

# **Children, Youth and Families Act 2005**

**Act No. 96/2005**

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**No. 96 of 2005**

# **Children, Youth and Families Act 2005<sup>†</sup>**

[Assented to 7 December 2005]

**The Parliament of Victoria enacts as follows:**

## **CHAPTER 1—PRELIMINARY**

### **PART 1.1—INTRODUCTION**

#### **1. Purposes**

The main purposes of this Act are—

- (a) to provide for community services to support children and families; and
- (b) to provide for the protection of children; and



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- (c) to make provision in relation to children who have been charged with, or who have been found guilty of, offences; and
- (d) to continue The Children's Court of Victoria as a specialist court dealing with matters relating to children.

## 2. Commencement

- (1) Sections 1, 603 and this section come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), section 605 comes into operation on a day to be proclaimed.
- (3) If section 605 does not come into operation before 1 July 2007, it comes into operation on that day.
- (4) Subject to sub-section (5), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (5) If a provision of this Act referred to in sub-section (4) does not come into operation before 1 October 2007, it comes into operation on that day.

## 3. Definitions

- (1) In this Act—

**"Aboriginal agency"** means an organisation declared to be an Aboriginal agency under section 6;

**"Aboriginal elder or respected person"** means a person who holds office as an Aboriginal elder or respected person under section 536;

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**"Aboriginal person"** means a person who—

- (a) is descended from an Aborigine or Torres Strait Islander; and
- (b) identifies as an Aborigine or Torres Strait Islander; and
- (c) is accepted as an Aborigine or Torres Strait Islander by an Aboriginal or Torres Strait Island community;

**"access"** means the contact of a child with a person who does not have custody of the child by way of—

- (a) a visit by or to that person, including attendance for a period of time at a place other than the child's usual place of residence; or
- (b) communication with that person by letter, telephone or other means—

and includes overnight access;

**"accountable undertaking"** means a sentencing order referred to in section 360(1)(c);

**"Adult Parole Board"** means the Adult Parole Board established by section 61 of the **Corrections Act 1986**;

**"age"** means, in the absence of positive evidence as to age, apparent age;

**"appropriate registrar"** means the registrar at the proper venue of the Court;

**"authorised officer"** means a person authorised under section 194;

**"care"**, in relation to a child, means the daily care and control of the child, whether or not involving custody of the child;

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**"case plan"** means—

- (a) in relation to the Secretary, a case plan as defined in section 166;
- (b) in relation to a community service, a statement of any decision concerning a child for whom it provides, or is to provide, services;

**"central register"** means the register established under section 165;

**"Chief Magistrate"** means the Chief Magistrate appointed under section 7(2) of the **Magistrates' Court Act 1989** and includes an Acting Chief Magistrate appointed under section 8 of that Act;

**"child"** means—

- (a) in the case of a person who is alleged to have committed an offence, a person who at the time of the alleged commission of the offence was under the age of 18 years but of or above the age of 10 years but does not include any person who is of or above the age of 19 years when a proceeding for the offence is commenced in the Court; and
- (b) in any other case, a person who is under the age of 17 years or, if a protection order, a child protection order within the meaning of Schedule 1 or an interim order within the meaning of that Schedule continues in force in respect of him or her, a person who is under the age of 18 years;

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**"Children's Koori Court officer"** means a person who—

- (a) is employed under Part 3 of the **Public Administration Act 2004**; and
- (b) exercises powers or performs functions in relation to the Koori Court (Criminal Division) of the Court;

**"community-based child and family service"** means a body registered under section 46 in the category of community-based child and family service;

**"community service"** means—

- (a) a community service established under section 44; or
- (b) a body registered under section 46;

**"Court"** means The Children's Court of Victoria;

**"court liaison officer"** means a court liaison officer appointed under section 545;

**"court official"** means—

- (a) the principal registrar of the Court; or
- (b) a registrar or deputy registrar of the Court; or
- (c) a court liaison officer; or
- (d) any person employed in any of the offices of the Court;

**"court register"** means the register kept under section 537;

**"cultural plan"** means a cultural plan prepared under section 176;

**"custody"** means custody as defined in section 5;

**"custody to Secretary order"** means an order referred to in section 275(1)(e);

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**"custody to third party order"** means an order referred to in section 275(1)(c);

**"decision-making process"** means—

- (a) in relation to the Secretary, means the process of decision-making by the Secretary concerning a child beginning when the Secretary receives a report under section 28, 33(2), 183, 184 or 185;
- (b) in relation to a community based child and family service, means the process of decision-making by the service concerning a child beginning when the service receives a referral under section 31;

**"Department"** means the Department of Human Services;

**"development"** means physical, social, emotional, intellectual, cultural and spiritual development;

**"disposition report"** means a report referred to in section 557;

**"Division"** means Division of the Court;

**"domestic partner"** of a person means a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

**"employee"** means a person employed under Part 3 of the **Public Administration Act 2004** in the Department;

**"extension application"** means an application under section 293 for an extension or further extension of a protection order;

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**"fine"** includes any penalties, forfeitures, sums of money and costs ordered to be paid by the person fined;

**"Fund"** means the State Guardianship Fund established under section 177;

**"group conference"** means a group conference under section 415;

**"group conference outcome plan"** means an outcome plan included in a group conference report;

**"group conference report"** means a report referred to in Division 7 of Part 7.8;

**"guardianship"** means guardianship as defined in section 4;

**"guardianship to Secretary order"** means an order referred to in section 275(1)(f);

**"hearing date"**, in relation to a proceeding, means the date on which the proceeding is listed for hearing;

**"information holder"** means—

- (a) a member of the police force;
- (b) an employee of the Department;
- (c) an employee of another Department;
- (d) a person who is registered as a teacher under the **Victorian Institute of Teaching Act 2001** or has been granted permission to teach under that Act;
- (e) the head teacher or principal of a State school within the meaning of the **Education Act 1958** or of a school registered under Part III of that Act;

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- (f) a person in charge of a relevant health service within the meaning of section 141 of the **Health Services Act 1988**;
  - (g) a person in charge of a relevant psychiatric service within the meaning of section 120A of the **Mental Health Act 1986**;
  - (h) a registered medical practitioner;
  - (i) a registered psychologist within the meaning of the **Psychologists Registration Act 2000**;
  - (j) a person registered under the **Nurses Act 1993**;
  - (k) a person in charge of a children's service within the meaning of the **Children's Services Act 1996**;
  - (l) the person in charge of a body that receives funding from the Secretary under a State contract to provide disability services to a child who is an eligible person within the meaning of the **Intellectually Disabled Persons' Services Act 1986** or the **Disability Services Act 1991**;
  - (m) the person in charge of a body that receives funding from the Secretary under a State contract to provide drug or alcohol treatment services;
  - (n) any person in a prescribed class of persons;
-

**"interim accommodation order"** means an order under section 262;

**"interim protection order"** means an order referred to in section 275(1)(h);

**"interpreter"** means—

- (a) an interpreter accredited with the National Accreditation Authority for Translators and Interpreters Limited A.C.N. 008 596 996; or
- (b) a competent interpreter;

**"irreconcilable difference application"** means an application under section 259;

**"legal practitioner"** means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

**"legal representation"** means representation by a legal practitioner;

**"long-term guardianship to Secretary order"** means an order referred to in section 275(1)(g);

**"magistrate"** means a magistrate for the Court;

**"medical examination"** includes—

- (a) physical examination, psychological examination and psychiatric examination; and
- (b) in the course of the examination, the taking of samples for analysis and the use of any machine or device to enable or assist in the examination;

**"order"**, in relation to the Criminal Division, includes judgment and conviction;



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**"out of home care"** means care of a child by a person other than a parent of the child;

**"out of home care service"** means—

- (a) a registered out of home care service; or
- (b) a community service established under section 44 to provide out of home care;

**"parent"**, in relation to a child, includes—

- (a) the father and mother of the child; and
- (b) the spouse of the father or mother of the child; and
- (c) the domestic partner of the father or mother of the child; and
- (d) a person who has custody of the child; and
- (e) a person whose name is entered as the father of the child in the register of births in the Register maintained by the Registrar of Births, Deaths and Marriages under Part 7 of the **Births, Deaths and Marriages Registration Act 1996**; and
- (f) a person who acknowledges that he is the father of the child by an instrument of the kind described in section 8(2) of the **Status of Children Act 1974**; and
- (g) a person in respect of whom a court has made a declaration or a finding or order that the person is the father of the child;

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**"parole order"** means an order under Division 4 or 5 of Part 5.5;

**"parole period"** means the period from a person's release on parole until the end of the period of his or her detention;

**"period"**, in relation to detention, includes the aggregate of two or more periods, whether cumulative or concurrent;

**"permanent care order"** means an order under section 321;

**"police gaol"** has the same meaning as in the **Corrections Act 1986**;

**"post-secondary qualification"** means a qualification from an institution, person or body providing or offering to provide (whether in or outside Victoria) post-secondary education as defined in the **Tertiary Education Act 1993** (whether or not that institution, person or body has since ceased to exist) and includes a qualification from a post-secondary education provider as defined in that Act;

**"pre-sentence report"** means a report referred to in Division 6 of Part 7.8;

**"prison"** has the same meaning as in the **Corrections Act 1986**;

**"proceeding"** means any matter in the Court, including a committal proceeding, but does not include the exercise by a registrar of any jurisdiction, power or authority vested in the registrar as registrar under Schedule 3;

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**"process"** includes witness summons, charge-sheet, summons to answer to a charge, warrant to arrest, remand warrant, search warrant, warrant to seize property, warrant to imprison, warrant to detain in a youth residential centre or a youth justice centre, warrant of delivery and any process by which a proceeding in the Court is commenced;

**"progress report"** means a report prepared under section 385, 391, 404 or 409(5)(a);

**"proper venue"**—

- (a) in relation to a proceeding in the Family Division, means the venue of the Court that is nearest to—
  - (i) the place of residence of the child; or
  - (ii) the place where the subject-matter of the application arose; and
- (b) in relation to a proceeding in the Criminal Division, means the venue of the Court that is nearest to—
  - (i) the place of residence of the child; or
  - (ii) the place where the offence is alleged to have been committed;

**"protection application"** means an application made to the Court for a finding that a child is in need of protection;

**"protection order"** means an order referred to in section 275(1);

**"protection report"** means a report referred to in Division 2 of Part 7.8;

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**"protective intervener"** means a person referred to in section 181;

**"protective intervention report"** means—

- (a) a report to a member of the police force as a protective intervener under section 183; or
- (b) a report to the Secretary under section 183 or 184 that the Secretary has determined under section 187 to be a protective intervention report; or
- (c) a report to the Secretary under section 28 or 33(2) that the Secretary has determined under section 34 to be a protective intervention report;

**"publish"** means—

- (a) insert in a newspaper or other periodical publication; or
- (b) disseminate by broadcast, telecast or cinematograph; or
- (c) otherwise disseminate to the public by any means;

**"register of community services"** means the register of community services kept under section 54;

**"register of out of home care services"** means the register of out of home care services kept under section 80;

**"registered community service"** means a body registered under section 46;

**"registered medical practitioner"** has the same meaning as in the **Medical Practice Act 1994**;

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**"registered out of home care service"** means a body registered under section 46 in the category of out of home care service;

**"registered psychologist"** has the same meaning as in the **Psychologists Registration Act 2000**;

**"relative"**, in relation to a child, means a grandparent, brother, sister, uncle or aunt of the child, whether of the whole blood or half-blood or by marriage, and whether or not the relationship depends on adoption of the child;

**"remand centre"** means a remand centre established under section 478(a);

**"return date"**, in relation to a proceeding, means any date on which the proceeding is listed before the Court;

**"safe custody"** means placement in accordance with section 242(5);

**"search warrant"**, means a warrant which authorises the person to whom it is directed—

- (a) to break, enter and search any place where the person named or described in the warrant is suspected to be; and
- (b) except in Division 1 of Part 4.8, to take into safe custody or arrest the person and—
  - (i) bring the person before a bail justice or the Court as soon as practicable to be dealt with according to law; or

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- (ii) release the person on an interim accommodation order in accordance with the endorsement on the warrant;

**"Secretary"** means the Secretary to the Department;

**"secure welfare service"** means a community service that has lock-up facilities;

**"sentencing order"** means any order made by the Criminal Division following a finding of guilt and includes—

- (a) any order made under Part 5.3 (other than an order granting bail made under section 420); and
- (b) the recording of a conviction;

**"service agency"** means—

- (a) a Department established under the **Public Administration Act 2004**;
- (b) a relevant health service within the meaning of section 141 of the **Health Services Act 1988**;
- (c) a relevant psychiatric service within the meaning of section 120A of the **Mental Health Act 1986**;
- (d) a body that receives funding from the Secretary under a State contract to provide disability services to a child who is an eligible person within the meaning of the **Intellectually Disabled Persons' Services Act 1986** or the **Disability Services Act 1991**;

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- (e) a body that receives funding from the Secretary under a State contract to provide drug or alcohol treatment services;
  - (f) a prescribed body or a body in a prescribed class;
- "spouse"** of a person means a person to whom the person is married;
- "stability plan"** has the meaning set out in section 169;
- "State contract"** means a contract entered into by or on behalf of the State;
- "supervised custody order"** means an order referred to in section 275(1)(d);
- "supervision order"** means an order referred to in section 275(1)(b);
- "temporary assessment order"** means an order referred to in section 231;
- "therapeutic treatment application report"** means a report referred to in Division 4 of Part 7.8;
- "Therapeutic Treatment Board"** means the Therapeutic Treatment Board established under section 339;
- "therapeutic treatment order"** means an order referred to in section 249;
- "therapeutic treatment (placement) order"** means an order referred to in section 253;
- "therapeutic treatment (placement) order report"** means an order referred to in Division 5 of Part 7.8;
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**"victim"**, in relation to an offence, means a person who, or body that, has suffered injury, loss or damage as a direct result of the offence, whether or not that injury, loss or damage was reasonably foreseeable by the child found guilty of the offence;

**"working day"**, in relation to the Court, means a day on which the offices of the Court are open;

**"youth attendance order"** means an order made under section 397;

**"youth justice centre"** means a youth justice centre established under section 478(c);

**"youth justice centre order"** means an order referred to in section 360(1)(j);

**"youth justice officer"** includes the Secretary, and every honorary youth justice officer;

**"youth justice unit"** means—

- (a) a youth justice unit established under section 478(d); or
- (b) a youth justice unit approved under section 479(1);

**"Youth Parole Board"** means the Youth Parole Board established by section 442;

**"youth parole officer"** includes an honorary youth parole officer;

**"Youth Residential Board"** means the Youth Residential Board established by section 431(1);

**"youth residential centre"** means a youth residential centre established under section 478(b);



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**"youth residential centre order"** means an order referred to in section 360(1)(i);

**"youth supervision order"** means an order referred to in section 360(1)(g).

- (2) For the purposes of the definition of "domestic partner" in sub-section (1), in determining whether persons are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 275(2) of the **Property Law Act 1958** as may be relevant in a particular case.
- (3) If under the **Public Administration Act 2004** the name of the Department is changed, the reference in the definition of "Department" in sub-section (1) to the "Department of Human Services" is from the date when the name is changed to be taken to be a reference to the Department by its new name.
- (4) Unless the context otherwise requires, a reference in this Act to the Criminal Division includes a reference to the Koori Court (Criminal Division).

#### **4. Guardianship**

A person (including the Secretary) who has, or under this Act is granted, guardianship of a child, has responsibility for the long-term welfare of the child and has, in relation to the child, all the powers, rights and duties that are, apart from this Act, vested by law or custom in the guardian of a child, other than—

- (a) the right to have the daily care and control of the child; and
- (b) the right and responsibility to make decisions concerning the daily care and control of the child.

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**5. Custody**

A person (including the Secretary) who has, or under this Act is granted, custody of a child has—

- (a) the right to have the daily care and control of the child; and
- (b) the right and responsibility to make decisions concerning the daily care and control of the child.

**6. Aboriginal agency**

- (1) The Governor in Council may, by Order published in the Government Gazette, declare an organisation to be an Aboriginal agency.
- (2) An organisation may only be declared to be an Aboriginal agency if—
  - (a) it is a registered community service; and
  - (b) the Secretary is satisfied—
    - (i) that it is managed by Aboriginal persons; and
    - (ii) that its activities are carried on for the benefit of Aboriginal persons.
- (3) An Order in Council made under sub-section (1) with respect to an organisation must state that the Secretary is satisfied as to the matters referred to in sub-section (2).

**7. References to Parts**

Unless the context otherwise requires, a reference in this Act to a Part by a number must be construed as a reference to the Part, designated by that number, of this Act.

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## **PART 1.2—PRINCIPLES**

### **Division 1—Decision Makers to Have Regard to Principles**

#### **8. Decision makers to have regard to principles**

- (1) The Court must have regard to the principles set out in this Part (where relevant) in making any decision or taking any action under this Act.
- (2) The Secretary must have regard to the principles set out in this Part (where relevant) in making any decision or taking any action under this Act or in providing any service under this Act to children and families.
- (3) A community service must have regard to the principles set out in this Part (where relevant) in making any decision or taking any action in relation to a child for whom it is providing, or is to provide, services under this Act.
- (4) This section does not apply in relation to any decision or action under Chapter 5 or Chapter 7 (in relation to any matter under Chapter 5).

#### **9. Role of principles**

- (1) The principles set out in this Part are intended to give guidance in the administration of this Act.
- (2) The principles do not apply to Chapter 5 or Chapter 7 (in relation to any matter under Chapter 5).

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**Division 2—Best Interests Principles**

**10. Best interests principles**

- (1) For the purposes of this Act the best interests of the child must always be paramount.
- (2) When determining whether a decision or action is in the best interests of the child, the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her age and stage of development) must always be considered.
- (3) In addition to sub-sections (1) and (2), in determining what decision to make or action to take in the best interests of the child, consideration must be given to the following, where they are relevant to the decision or action—
  - (a) the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child;
  - (b) the need to strengthen, preserve and promote positive relationships between the child and the child's parent, family members and persons significant to the child;
  - (c) the need, in relation to an Aboriginal child, to protect and promote his or her Aboriginal cultural and spiritual identity and development by, wherever possible, maintaining and building their connections to their Aboriginal family and community;

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- (d) the child's views and wishes, if they can be reasonably ascertained, and they should be given such weight as is appropriate in the circumstances;
  - (e) the effects of cumulative patterns of harm on a child's safety and development;
  - (f) the desirability of continuity and stability in the child's care;
  - (g) that a child is only to be removed from the care of his or her parent if there is an unacceptable risk of harm to the child;
  - (h) if the child is to be removed from the care of his or her parent, that consideration is to be given first to the child being placed with an appropriate family member or other appropriate person significant to the child, before any other placement option is considered;
  - (i) the desirability, when a child is removed from the care of his or her parent, to plan the reunification of the child with his or her parent;
  - (j) the capacity of each parent or other adult relative or potential care giver to provide for the child's needs and any action taken by the parent to give effect to the goals set out in the case plan relating to the child;
  - (k) access arrangements between the child and the child's parents, siblings, family members and other persons significant to the child;
  - (l) the child's social, individual and cultural identity and religious faith (if any) and the child's age, maturity, sex and sexual identity;
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- (m) where a child with a particular cultural identity is placed in out of home care with a care giver who is not a member of that cultural community, the desirability of the child retaining a connection with their culture;
- (n) the desirability of the child being supported to gain access to appropriate educational services, health services and accommodation and to participate in appropriate social opportunities;
- (o) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance;
- (p) the possible harmful effect of delay in making the decision or taking the action;
- (q) the desirability of siblings being placed together when they are placed in out of home care;
- (r) any other relevant consideration.

### **Division 3—Decision-making Principles**

#### **11. Decision-making principles**

In making a decision or taking an action in relation to a child, the Secretary or a community service must also give consideration to the following principles—

- (a) the child's parent should be assisted and supported in reaching decisions and taking actions to promote the child's safety and wellbeing;

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- (b) where a child is placed in out of home care, the child's care giver should be consulted as part of the decision-making process and given an opportunity to contribute to the process;
  - (c) the decision-making process should be fair and transparent;
  - (d) the views of all persons who are directly involved in the decision should be taken into account;
  - (e) decisions are to be reached by collaboration and consensus, wherever practicable;
  - (f) the child and all relevant family members (except if their participation would be detrimental to the safety or wellbeing of the child) should be encouraged and given adequate opportunity to participate fully in the decision-making process;
  - (g) the decision-making process should be conducted in such a way that the persons involved are able to participate in and understand the process, including any meetings that are held and decisions that are made;
  - (h) persons involved in the decision-making process should be—
    - (i) provided with sufficient information, in a language and by a method that they can understand, and through an interpreter if necessary, to allow them to participate fully in the process; and
    - (ii) given a copy of any proposed case plan and sufficient notice of any meeting proposed to be held; and
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- (iii) provided with the opportunity to involve other persons to assist them to participate fully in the process; and
- (i) if the child has a particular cultural identity, a member of the appropriate cultural community who is chosen or agreed to by the child or by his or her parent should be permitted to attend meetings held as part of the decision-making process.

**Division 4—Additional Decision-making Principles for Aboriginal Children**

**12. Additional decision-making principles**

In recognition of the principle of Aboriginal self-management and self-determination, in making a decision or taking an action in relation to an Aboriginal child, the Secretary or a community service must also give consideration to the following principles—

- (a) in making a decision or taking an action in relation to an Aboriginal child, an opportunity should be given, where relevant, to members of the Aboriginal community to which the child belongs and other respected Aboriginal persons to contribute their views;
- (b) a decision in relation to an Aboriginal child, should involve a meeting convened by an Aboriginal convener who has been approved by an Aboriginal agency and, wherever possible, attended by—
  - (i) the child; and
  - (ii) the child's parent; and
  - (iii) members of the extended family of the child; and



- (iv) other appropriate members of the Aboriginal community as determined by the child's parent;
- (c) in making a decision to place an Aboriginal child in out of home care, an Aboriginal agency must first be consulted and the Aboriginal Child Placement Principle must be applied.

**13. Aboriginal Child Placement Principle**

- (1) For the purposes of this Act the Aboriginal Child Placement Principle is that if it is in the best interests of an Aboriginal child to be placed in out of home care, in making that placement, regard must be had—
  - (a) to the advice of the relevant Aboriginal agency; and
  - (b) to the criteria in sub-section (2); and
  - (c) to the principles in section 14.
- (2) The criteria are—
  - (a) as a priority, wherever possible, the child must be placed within the Aboriginal extended family or relatives and where this is not possible other extended family or relatives;
  - (b) if, after consultation with the relevant Aboriginal agency, placement with extended family or relatives is not feasible or possible, the child may be placed with—
    - (i) an Aboriginal family from the local community and within close geographical proximity to the child's natural family;
    - (ii) an Aboriginal family from another Aboriginal community;

- (iii) as a last resort, a non-Aboriginal family living in close proximity to the child's natural family;
- (c) any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community.

**14. Further principles for placement of Aboriginal child**

*Self-identification and expressed wishes of child*

- (1) In determining where a child is to be placed, account is to be taken of whether the child identifies as Aboriginal and the expressed wishes of the child.

*Child with parents from different Aboriginal communities*

- (2) If a child has parents from different Aboriginal communities, the order of placement set out in sections 13(2)(b)(i) and 13(2)(b)(ii) applies but consideration should also be given to the child's own sense of belonging.
- (3) If a child with parents from different Aboriginal communities is placed with one parent's family or community, arrangements must be made to ensure that the child has the opportunity for continuing contact with his or her other parent's family, community and culture.

*Child with one Aboriginal parent and one non-Aboriginal parent*

- (4) If a child has one Aboriginal parent and one non-Aboriginal parent, the child must be placed with the parent with whom it is in the best interests of the child to be placed.

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*Placement of child in care of a non-Aboriginal person*

- (5) If an Aboriginal child is placed with a person who is not within an Aboriginal family or community, arrangements must be made to ensure that the child has the opportunity for continuing contact with his or her Aboriginal family, community and culture.
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## **CHAPTER 2—ADMINISTRATION**

### **15. Functions and powers of the Secretary**

The Secretary has the functions and powers conferred on the Secretary under this Act.

### **16. Responsibilities of the Secretary**

- (1) Without limiting any other responsibility of the Secretary under this Act, the Secretary has the following responsibilities—
  - (a) to promote the prevention of child abuse and neglect;
  - (b) to assist children who have suffered abuse and neglect and to provide services to their families to prevent further abuse and neglect from occurring;
  - (c) to work with community services to promote the development and adoption of common policies on risk and need assessment for vulnerable children and families;
  - (d) to implement or promote the implementation of appropriate requirements for checks to ensure that all persons employed, engaged or appointed by a community service to work with children—
    - (i) are and continue to be suitable to work with children; and
    - (ii) comply with appropriate ethical and professional standards;
  - (e) to work with other government agencies and community services to ensure that children in out of home care receive appropriate educational, health and social opportunities;

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- (f) to publish and promote a Charter for children in out of home care to provide a framework of principles to promote the wellbeing of those children;
  - (g) to provide or arrange for the provision of services to assist in supporting a person under the age of 21 years to gain the capacity to make the transition to independent living where the person—
    - (i) has been in the custody or under the guardianship of the Secretary; and
    - (ii) on leaving the custody or guardianship of the Secretary is of an age to, or intends to, live independently;
  - (h) to conduct research on child development, abuse and neglect and to evaluate the effectiveness of community based and protective interventions in protecting children from harm, protecting their rights and promoting their development;
  - (i) to lead the on-going development of an integrated child and family service system;
  - (j) to give effect to any protocol existing between the Secretary and an Aboriginal agency.
- (2) The statement of responsibilities of the Secretary under this section does not create, or confer on any person, any right or entitlement enforceable at law.

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- (3) The matters that may be addressed in the Charter for children in out of home care may include—
- (a) the protection and enhancement of a child's identity and sense of self;
  - (b) treatment in care;
  - (c) quality of placement;
  - (d) support and provision of services.
- (4) The kinds of services that may be provided to support a person to make the transition to independent living include—
- (a) the provision of information about available resources and services;
  - (b) depending on the Secretary's assessment of need—
    - (i) financial assistance;
    - (ii) assistance in obtaining accommodation or setting up a residence;
    - (iii) assistance with education and training;
    - (iv) assistance with finding employment;
    - (v) assistance in obtaining legal advice;
    - (vi) assistance in gaining access to health and community services;
  - (c) counselling and support.

**17. Delegation**

- (1) The Secretary may, by instrument, delegate to any employee or class of employees any function or power of the Secretary under this Act or the regulations, except—
- (a) the power to make an authorisation under section 18; and

- (b) the power to make an authorisation under section 19, 215(3)(c), 597(3) or 597(4); and
  - (c) the power to disclose information under Part 3.4; and
  - (d) the power to make an authorisation under section 195; and
  - (e) a function under section 323; and
  - (f) the power to approve under section 488(3) a period of isolation of more than 24 hours; and
  - (g) this power of delegation.
- (2) The Secretary may, by instrument, delegate to an executive within the meaning of the **Public Administration Act 2004** the power to make authorisations under section 19, 597(3) or 597(4).
  - (3) The Secretary may, by instrument, delegate to an executive within the meaning of the **Public Administration Act 2004** the power to disclose information under Part 3.4.
  - (4) The Secretary may, by instrument, delegate to an executive within the meaning of the **Public Administration Act 2004** who is employed at the level of EO–2 or above the power to approve under section 488(3) a period of isolation of more than 24 hours.

**18. Secretary may authorise principal officer of Aboriginal agency to act**

- (1) The Secretary may in writing authorise the principal officer of an Aboriginal agency to perform specified functions and exercise specified powers conferred on the Secretary by or under this Act in relation to a protection order in respect of an Aboriginal child.

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- (2) An authorisation under this section may only be made with the agreement of the Aboriginal agency and the principal officer.
  - (3) The principal officer may only be authorised if he or she is an Aboriginal person.
  - (4) Before giving an authorisation, the Secretary must have regard to any view expressed by the child and the parent of the child if those views can be reasonably obtained.
  - (5) On an authorisation being given, this Act applies in relation to the performance of the specified function or the exercise of the specified power as if the principal officer were the Secretary.
  - (6) The Secretary may at any time in writing revoke an authorisation under this section and on that revocation the Secretary may continue and complete any action commenced under the authorisation by the principal officer.

**19. Secretary may authorise person in charge of community service to act**

- (1) The Secretary may authorise the person in charge of a registered community service or any person for the time being acting in or performing the duties of that person to exercise or perform on the Secretary's behalf any function or power conferred on the Secretary by or under—
    - (a) section 282; or
    - (b) section 285; or
    - (c) section 320(1) (to the extent that it applies to the approval of persons as suitable to have custody and guardianship of a child); or
    - (d) section 324.
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- (2) An authorisation under sub-section (1) must be made by instrument and with the agreement of the person in charge of the community service, or of the person acting in or performing the duties of that person, at the time the authorisation is made.

**20. Role of Ombudsman in relation to certain administrative actions**

- (1) The Ombudsman may enquire into or investigate—
- (a) any administrative action of a registered community service in carrying out any duty or function or exercising any power under this Act; and
  - (b) any administrative action of a person authorised under section 18 or 19 in carrying out any duty or function or exercising any power under this Act; and
  - (c) any administrative action by an authorised assessor under Division 5 of Part 3.3; and
  - (d) any administrative action of an authorised investigator under Division 4 of Part 3.4.

Note: Under the **Ombudsman Act 1973**, an "administrative action" is defined as including, among other things, a refusal or failure to take a decision, or to perform an act. As a result of sub-section (2), this definition applies to references to administrative actions in this sub-section.

- (2) For the purposes of sub-section (1), the **Ombudsman Act 1973** applies as if—
- (a) the registered community service, authorised person, authorised assessor or authorised investigator were a public statutory body within the meaning of that Act; and

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- (b) the senior executive officer of the registered community service (by whatever title he or she is known) were the principal officer of that public statutory body; and
  - (c) a reference to the responsible Minister in sections 17 and 23(3) of that Act were a reference to the Minister responsible for administering this section.
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## **CHAPTER 3—CHILD AND FAMILY SERVICES**

### **PART 3.1—SUPPORT FOR COMMUNITY-BASED SERVICES AND FAMILIES**

#### **21. Object of Part**

The object of this Part is to enable the provision of funding and resources for community-based child and family services and other services for families.

#### **22. Purposes of community-based child and family services**

The purposes of a community-based child and family service are—

- (a) to provide a point of entry into an integrated local service network that is readily accessible by families, that allows for early intervention in support of families and that provides child and family services;
- (b) to receive reports about vulnerable children and families where there are significant concerns about their wellbeing;
- (c) to undertake assessments of needs and risks in relation to children and families to assist in the provision of services to them and in determining if a child is in need of protection;
- (d) to make referrals to other relevant agencies if this is necessary to assist vulnerable children and families;

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- (e) to promote and facilitate integrated local service networks working collaboratively to co-ordinate services and supports to children and families;
- (f) to provide on-going services to support vulnerable children and families.

**23. Power of Secretary to provide funds**

- (1) Subject to the approval of the Minister and having regard to the objects of this Part and, where relevant, the purposes of a community-based child and family service, the Secretary may allocate funds to any community-based child and family service, municipal council, or non-government agency out of money available for the purpose.
- (2) The Secretary may allocate funds under subsection (1) to be used for such purposes and subject to such conditions as the Secretary considers appropriate.

**24. Family assistance grants**

Subject to the approval of the Minister, the Secretary may make any grants to assist families that the Secretary considers appropriate out of money available for the purpose.

**25. Authority to use Crown property**

- (1) The Secretary may authorise any community-based child and family service, voluntary organisation, Government department, municipal council, person or body, to use for any purpose relating to the provision of services for children and families—
  - (a) any real or personal property vested in the Secretary and used for the purposes of the Department; or

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- (b) any land of the Crown reserved for any public purpose and used for the purposes of the Department (whether or not vested in trustees or jointly in trustees and the Minister for the time being administering the **Crown Land (Reserves) Act 1978**).
- (2) The Secretary must consult with the Secretary to the Department of Sustainability and Environment before giving an authority under this section.
- (3) An authority under this section is given by the Secretary for and on behalf of the Crown.
- (4) This section applies despite anything to the contrary in the **Land Act 1958**, the **Crown Land (Reserves) Act 1978** or any other Act.

**26. Agreements relating to use of Crown property**

- (1) The Secretary may refuse to grant an authority under section 25 until the community-based child and family service, voluntary organisation, Department head of the Government department, municipal council, person or body enters into an agreement with the Secretary for the expenditure of money towards—
    - (a) the making of improvements, renovations or repairs on any land authorised by the Secretary to be used; or
    - (b) the improvement or repair of any equipment authorised by the Secretary to be used; or
    - (c) the provision of any equipment or materials to be used for the purposes of the Department.
  - (2) An agreement under this section is entered into by the Secretary for and on behalf of the Crown.
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**PART 3.2—CONCERN ABOUT WELLBEING OF CHILD**

**27. Object of Part**

The object of this Part is to enable a confidential report or referral to be made about a child if there is a significant concern for the wellbeing of the child.

**28. Report to Secretary about child**

A person may make a report to the Secretary if the person has a significant concern for the wellbeing of a child.

**29. Report to Secretary about unborn child**

A person may make a report to the Secretary, before the birth of a child, if the person has a significant concern for the wellbeing of the child after his or her birth.

**30. Response by Secretary to report**

- (1) If the Secretary receives a report under section 28, the Secretary may—
    - (a) provide advice to the person who made the report;
    - (b) provide advice and assistance to the child or the family of the child;
    - (c) refer the matter to a community-based child and family service or a service agency to provide advice, services and support to the child or the family of the child;
    - (d) make a determination, under section 34, that the report is a protective intervention report.
  - (2) If the Secretary receives a report under section 29, the Secretary may—
    - (a) provide advice to the person who made the report;
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- (b) provide advice and assistance to the mother of the unborn child;
- (c) refer the matter to a community-based child and family service or a service agency to provide advice, services and support to the mother of the unborn child.

**31. Referral to community-based child and family service about child**

A person who has a significant concern for the wellbeing of a child may refer the matter to a community-based child and family service.

**32. Referral to community-based child and family service about unborn child**

A person who, before the birth of a child, has a significant concern for the wellbeing of the child after his or her birth may refer the matter to a community-based child and family service.

**33. Response by community-based child and family service to referral**

- (1) If a matter is referred to a community-based child and family service under section 31, the service may—
    - (a) provide advice to the person who made the report;
    - (b) provide advice and assistance to the child or the family of the child;
    - (c) refer the matter to a service agency to provide advice, services and support to the child or the family of the child.
  - (2) If a referral is made to a community-based child and family service under section 31 and it considers that the child may be in need of protection, the service must report the matter to the Secretary.
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- (3) If a referral is made to a community-based child and family service under section 32, the service may—
- (a) seek advice from the Secretary in relation to the referral;
  - (b) provide advice to the person who made the referral;
  - (c) provide advice and assistance to the mother of the unborn child;
  - (d) refer the matter to a service agency to provide advice, services and support to the mother of the unborn child.

**34. Is the report about a child in need of protection?**

If the Secretary receives a report under section 28 or 33(2) and the Secretary considers that the child may be in need of protection, the Secretary may determine that the report is a protective intervention report for the purposes of this Act.

Note: Part 4.4 deals with protective intervention reports.

**35. Who may the Secretary consult?**

- (1) If the Secretary receives a report under this Part, the Secretary may—
- (a) consult with a community-based child and family service or a service agency; and
  - (b) provide information about the child or family or the mother of the unborn child to, and receive information about them from, that service or agency.
- (2) A consultation or a disclosure of information under this section may only be for the purpose of—
- (a) seeking advice on or assessing a risk to a child; or
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- (b) seeking advice on or determining which community-based child and family service or service agency is an appropriate body to provide assistance for the child or the family of the child or the mother of the unborn child.

**36. Who may the community-based child and family service consult?**

- (1) This section applies if a community-based child and family service receives a referral under this Part.
- (2) The community-based child and family service may, for the purpose of assessing a risk to a child, consult with any of the following—
  - (a) the Secretary;
  - (b) another community-based child and family service;
  - (c) a service agency;
  - (d) an information holder.
- (3) The community-based child and family service may, for the purpose of determining which community-based child and family service or service agency is an appropriate body to provide assistance for the child or the family of the child or the mother of the unborn child, consult with any of the following—
  - (a) the Secretary;
  - (b) another community-based child and family service;
  - (c) a service agency.

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- (4) For the purpose only of a consultation under this section, a community-based child and family service may disclose information about the child or family to, and receive information about them from, the person or body permitted to be consulted.
  - (5) A community-based child and family service to which information is disclosed under this Part must not disclose that information to any other person except in accordance with this Part.

Penalty: 60 penalty units.

**37. Disclosers protected**

A disclosure of information made under section 35 or 36 in good faith—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made; and
- (b) does not make the person by whom it is made subject to any liability in respect of it; and
- (c) without limiting paragraphs (a) and (b), does not constitute a contravention of—
  - (i) section 141 of the **Health Services Act 1988**; or
  - (ii) section 120A of the **Mental Health Act 1986**.

**38. Consultation with Secretary**

A community-based child and family service may consult with the Secretary in relation to any matter relating to the purposes of the community-based child and family service as set out in section 22.

**39. Records of disclosures**

The Secretary and a community-based child and family service must make a written record of each report or referral received and each disclosure made to or by them under this Part.

**40. Reporters protected**

A report to the Secretary under section 28 or 29 or a referral to a community-based child and family service under section 31 or 32 if made in good faith—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made; and
- (b) does not make the person by whom it is made subject to any liability in respect of it; and
- (c) without limiting paragraphs (a) and (b), does not constitute a contravention of—
  - (i) section 141 of the **Health Services Act 1988**; or
  - (ii) section 120A of the **Mental Health Act 1986**.

**41. Identity of reporter confidential**

- (1) If a report is made to the Secretary under section 28 or 29 or a referral is made to a community-based child and family service under section 31 or 32, a person (other than the person who made it) must not disclose to any person other than the Secretary or the community-based child and family service—
    - (a) the name of the person who made the report or referral; or
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- (b) any information that is likely to lead to the identification of the person who made the report or referral.

Penalty: 60 penalty units.

- (2) Sub-section (1) does not apply if the person who made the report or referral—
  - (a) gives written consent to the Secretary; or
  - (b) gives written or oral consent to the community-based child and family service.

**42. Review by Victorian Civil and Administrative Tribunal**

- (1) A child or a child's parent may apply to VCAT for review of a decision relating to the recording of information about the child or parent by a community-based child and family service under section 39.
- (2) An application for review must be made within 28 days after the later of—
  - (a) the day on which the decision is made;
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

**PART 3.3—COMMUNITY SERVICES**

**Division 1—Object of Part**

**43. Object of Part**

The object of this Part is to provide for the establishment, registration and monitoring of community services.

**Division 2—Departmental Services**

**44. Departmental community services and secure welfare services**

The Governor in Council may, by Order published in the Government Gazette, establish or abolish community services and secure welfare services to be operated by the Department to meet the needs of children requiring protection, care or accommodation.

**Division 3—Registration of Community Services**

**45. Application for registration**

- (1) A body corporate may apply to the Secretary for registration of the body as a community service.
- (2) An application must be in a form approved by the Secretary.

**46. Registration**

- (1) The Secretary may register a body as a community service if the Secretary is satisfied that the body—
  - (a) is established to provide services to meet the needs of children requiring care, support, protection or accommodation and of families requiring support; and

(b) will be able to meet the performance standards applicable to community services of that kind.

(2) A body may be registered in one or more of the categories of registration set out in section 47.

**47. Categories of registration**

The categories of registration are—

- (a) out of home care service;
- (b) community-based child and family service;
- (c) a prescribed category of service.

**48. Conditions on registration**

The Secretary may impose any conditions or restrictions that the Secretary considers appropriate on the registration of a community service under this Division.

**49. Period of registration**

Subject to this Division, registration has effect for a period of 3 years.

**50. Renewal of registration**

- (1) A registered community service may apply to the Secretary for renewal of registration as a community service.
- (2) An application for renewal must be in a form approved by the Secretary.
- (3) A renewal of registration has effect for 3 years.

**51. Revocation of registration**

The Secretary may revoke the registration of a body as a community service if the Secretary considers it appropriate to do so as a result of—

- (a) a report from an authorised assessor under Division 5; or

- (b) an inquiry under Division 5; or
- (c) a recommendation of an administrator under Division 6.

**52. Notice to community service**

The Secretary must give a registered community service at least 14 days notice and the opportunity to make submissions before—

- (a) refusing an application by the community service for a renewal of registration; or
- (b) revoking the registration of the community service.

**53. Application for review**

- (1) A body may apply to VCAT for review of a decision by the Secretary—
    - (a) to refuse to register the body as a community service; or
    - (b) to refuse to renew the registration of the body as a community service; or
    - (c) to revoke the registration of the body as a community service.
  - (2) An application for review must be made within 28 days after the later of—
    - (a) the day on which the decision is made;
    - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
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**54. Register of community services**

The Secretary must keep a register of community services.

**55. What information is to be included in the register?**

The Secretary must include the following information in the register of community services in respect of each body that is registered under this Division—

- (a) the name of the body;
- (b) the address of the body;
- (c) contact information for the body;
- (d) the category of registration of the body;
- (e) any other information that is prescribed.

**56. Registered community service to notify changes**

A registered community service must notify the Secretary in writing within 14 days if there is any change to the information recorded in the register of community services in respect of that registered community service.

Penalty: 10 penalty units.

**57. Register to be made public**

The Secretary must make a copy of the register of community services available for inspection on the Department's Internet site.

**Division 4—Performance Standards and Responsibilities of  
Community Services**

**58. Performance standards**

- (1) The Minister may from time to time determine performance standards to be met by community services.



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- (2) The Minister may determine different performance standards for different categories of community services.
- (3) The Minister must ensure that each performance standard is published in the Government Gazette.
- (4) A performance standard takes effect—
  - (a) on the day that is 30 days after the day that the performance standard is published in the Government Gazette; or
  - (b) if a later day is specified in the determination, on that later day.
- (5) The Minister may, by determination published in the Government Gazette, amend or revoke a performance standard.

**59. What can performance standards provide for?**

Performance standards may be made in respect of any matter relating to the operation of a community service including, but not limited to—

- (a) governance;
  - (b) probity;
  - (c) information management;
  - (d) financial viability;
  - (e) client care, including cultural standards applicable to client care;
  - (f) pre-employment checks and pre-placement checks;
  - (g) service delivery and case management;
  - (h) privacy and confidentiality;
  - (i) complaints management;
  - (j) human resource management;
  - (k) compliance with this Act and the regulations.
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**60. Community service to comply with performance standards**

A community service must comply with the relevant performance standards applicable to that community service.

**61. Responsibilities of registered community services**

A registered community service must—

- (a) provide its services in relation to a child in a manner that is in the best interests of the child; and
- (b) ensure that the services provided by the service are accessible to and made widely known to the public, recognising that prioritisation of provision of services will occur based on need; and
- (c) participate collaboratively with local service networks to promote the best interests of children.

**Division 5—Monitoring and Review of Community Services**

**62. Secretary may conduct inquiries**

The Secretary may make or cause to be made any inquiries the Secretary considers appropriate relating to any matter arising from the performance by a community service of its powers and functions.

**63. Appointment of assessor**

- (1) The Secretary may in writing authorise any person as an assessor to conduct an independent review of the performance by a community service of its powers and functions.

- (2) An authorised assessor must report in writing to the Secretary within the time required by the Secretary on the results of the review and any recommendations arising from the review.
- (3) An authorised assessor must not disclose to any person other than the Secretary or the person in charge of or an employee of the community service, whether directly or indirectly, any information acquired by the authorised assessor in carrying out a review under this Division.

Penalty: 10 penalty units.

**64. Visits to community services**

The Secretary or an authorised assessor may at any time visit any community service—

- (a) to make any examinations or inspections that appear to be necessary regarding the management of the community service; and
- (b) to inspect any part of the premises of that community service; and
- (c) to see any child who is receiving services from the community service; and
- (d) to make inquiries relating to the care of children in the care of that community service; and
- (e) to inspect any document or record relating to the child or that is required to be kept under this Act or the regulations.

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**65. Community service to assist**

The person in charge of the community service and every member of staff of the community service must provide the Secretary or the authorised assessor with such reasonable assistance and access to records and employees as the Secretary or the authorised assessor requires in carrying out a function under this Division.

**Division 6—Appointment of Administrator**

**66. Displacement of other laws**

- (1) Sections 67 to 71 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.

Note: Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency.

- (2) This Division applies despite anything to the contrary in the **Co-operatives Act 1996** or the **Associations Incorporation Act 1981** or any other Act establishing a body that is a registered community service.

**67. Appointment of administrator**

- (1) If the Minister is satisfied that a registered community service is inefficiently or incompetently managed, the Minister may recommend to the Governor in Council that an administrator of the service be appointed.

- (2) If the Minister proposes that a registered community service should be administered by an administrator, the Minister—
- (a) must give notice in the prescribed form to the registered community service of his or her proposal; and
  - (b) must consider any submissions made to the Minister by the registered community service within 7 days after the giving of the notice; and
  - (c) may consider any other submissions and any other matters the Minister considers appropriate—
- before deciding whether or not to recommend the appointment of an administrator.

**68. Period of appointment of administrator**

If the Minister recommends the appointment of an administrator, the Governor in Council may appoint an administrator of the registered community service for the period and subject to the terms and conditions that are specified in the instrument of appointment.

**69. Powers of administrator**

- (1) An administrator of a registered community service appointed under this Division has and may exercise all the powers and is subject to all the duties of the board or other governing body of the registered community service.
- (2) On the appointment of an administrator, the members of the board or other governing body of the registered community service cease to hold office.

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**70. Revocation of appointment of administrator**

- (1) If the Minister recommends to the Governor in Council that the appointment of an administrator of a registered community service should be revoked, the Governor in Council may by notice published in the Government Gazette declare that the appointment will be revoked on the date specified in the notice.
- (2) The date specified in the notice must be a date not less than 28 days after the publication of the notice.
- (3) If a notice is published under sub-section (1) in relation to a registered community service—
  - (a) members of the board or other governing body of the registered community service are to be elected or appointed in accordance with the rules or other constituting document of the agency; and
  - (b) on the date specified in the notice—
    - (i) the appointment of the administrator is revoked; and
    - (ii) the board or other governing body of the registered community service is re-established.

**71. Remuneration of administrator**

The remuneration of an administrator appointed under this Division and any expenses of the administrator necessarily incurred in the administration of the registered community service are to be paid by the Secretary.

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**Division 7—Information Privacy and Registered  
Community Services**

**72. Registered community services**

The **Information Privacy Act 2000** applies to a registered community service in relation to the collection and handling of information under this Act as if the registered community service were an organisation within the meaning of that Act.

Note: The **Health Records Act 2001** may also apply to a registered community service.

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**PART 3.4—OUT OF HOME CARERS**

**Division 1—Introductory**

**73. Object of Part**

The object of this Part is to provide increased protection for children in out of home care through the registration of persons who are, or are to be, approved or employed or engaged as out of home carers.

**74. Definitions**

In this Part—

**"allegation"** means allegation in a report under section 81 or 82;

**"disqualified person"** means a person who is disqualified from registration under this Part;

**"out of home carer"** means—

- (a) a person who acts as a foster carer for an out of home care service; or
- (b) a person employed or engaged by an out of home care service—
  - (i) as a carer for children; or
  - (ii) as a provider of services to children at an out of home care residence managed by the service;

**"registered foster carer"** means a person registered as a foster carer under Division 3;

**"registered out of home carer"** means a person registered as an out of home carer under Division 3;



**"services to children"** means services provided to children where the provision of the services usually involves or is likely to usually involve working in close proximity to the children.

**Division 2—Approval, Employment or Engagement of Out of Home Carers**

**75. Approval of foster carers**

- (1) An out of home care service must have regard to the prescribed matters before approving a person to act as a foster carer for the service.
- (2) A disqualified person is not eligible to be approved by an out of home care service as a foster carer.

**76. Employment or engagement of carer**

- (1) An out of home service must have regard to the prescribed matters before employing or engaging a person—
  - (a) as a carer for children placed with the service; or
  - (b) as a provider of services to children at an out of home care residence managed by the service.
- (2) A disqualified person is not eligible to be employed or engaged by an out of home care service to carry out a function specified under sub-section (1).

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**77. Matters to be considered**

The matters prescribed for the purposes of this Division may include matters relating to—

- (a) the checking of criminal records and criminal history;
- (b) suitability and fitness;
- (c) medical, including psychiatric, health;
- (d) skills, experience and qualifications.

**78. Notice of approval, employment or engagement of carer**

- (1) An out of home care service must notify the Secretary of—
  - (a) the approval of a person as a foster carer by that service;
  - (b) the employment or engagement of a person—
    - (i) as a carer for children placed with the service; or
    - (ii) as a provider of services to children at an out of home care residence managed by the service.
- (2) A notice under this section must be given within 14 days after the approval, employment or engagement of the person.
- (3) A notice under this section must include the prescribed information (if any).

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**79. Notice of revocation of approval or termination of employment or engagement of carer**

- (1) An out of home care service must notify the Secretary within 14 days of—
  - (a) the revocation by the service of the approval of a person as a foster carer; or
  - (b) if a person ceases to be employed or engaged by the service—
    - (i) as a carer for children placed with the service; or
    - (ii) as a provider of services to children at an out of home care residence managed by the service.
- (2) A notice under this section must include the prescribed information (if any).

**Division 3—Register of Out of Home Carers**

**80. Register of carers**

- (1) The Secretary must keep a register of out of home carers.
- (2) The register of out of home carers must record the following information in respect of each person of whom notice is given to the Secretary under Division 2—
  - (a) name;
  - (b) address;
  - (c) date of birth;
  - (d) date of approval as a foster carer by the out of home care service, if applicable;

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- (e) date of employment or engagement as an out of home carer by the out of home care service, if applicable;
  - (f) name of notifying out of home care service;
  - (g) any other prescribed information.
- (3) The information about a person's name to be recorded on the register must include—
- (a) the name by which the person is registered under the **Births, Deaths and Marriages Registration Act 1996**, or an equivalent law of another jurisdiction; and
  - (b) any previous name of that person that was registered under that Act or such a law; and
  - (c) any other name used by the person or by which the person is known.
- (4) The Secretary must not record information in respect of a disqualified person in the register.
- (5) The Secretary must remove from the register any entry relating to—
- (a) a person of whom the Secretary receives notice under section 79 that the person has ceased to be approved, employed or engaged as an out of home carer by an out of home care service; or
  - (b) a person who is a disqualified person.
- (6) Subject to this Part, a person who is recorded on the register of out of home carers is registered under this Division.
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**Division 4—Conduct of Out of Home Carers**

**81. Report to Secretary by service of allegation about carer**

- (1) The person in charge of a registered out of home care service must make a report to the Secretary if—
  - (a) the person in charge receives or becomes aware of an allegation that—
    - (i) a person who is or was a registered foster carer has sexually or physically abused a child placed in his or her care by that service; or
    - (ii) a person who is or was a registered out of home carer employed or engaged by the service as an out of home carer has sexually or physically abused a child in the course of that employment or engagement; and
  - (b) the person in charge is reasonably satisfied that an investigation of the allegation by the Secretary is warranted.
- (2) The report must be given within 7 days after the person in charge receives or becomes aware of the allegation.
- (3) The report must include details of any inquiries made by the out of home care service into the allegation.
- (4) The report may relate to conduct occurring on or after or not more than 3 years before the date on which this Act receives the Royal Assent.

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**82. Other reports to Secretary of allegations about carers**

- (1) Any person may make a report to the Secretary alleging that—
  - (a) a person who is or was a registered foster carer has sexually or physically abused a child placed in his or her care by an out of home care service; or
  - (b) a person who is or was a registered out of home carer has sexually or physically abused a child in the course of the person's employment or engagement by an out of home care service as an out of home carer.
- (2) The report may relate to conduct occurring on or after or not more than 3 years before the date on which this Act receives the Royal Assent.

**83. Secretary to report allegation to police**

The Secretary must report to the Chief Commissioner of Police any allegation of sexual or physical abuse made in a report under section 81 or 82.

**84. Notice to carer of allegation**

The Secretary must, without delay after receiving a report under section 81 or 82, advise the person about whom the allegation is made—

- (a) that a report has been made; and
  - (b) the nature of the allegation; and
  - (c) that the Secretary—
    - (i) will consider the report and decide whether an independent investigation of the allegation is warranted; or
    - (ii) has considered the report and decided that no investigation is warranted.
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**85. Consideration by Secretary of report**

- (1) If the Secretary receives a report under section 81 or 82, the Secretary may ask the following persons for more information about the allegation—
  - (a) the person who made the report; and
  - (b) the person about whom the allegation was made.
- (2) A person may but is not required to provide any information requested of the person under this section.

**86. Decision by Secretary on report**

If the Secretary receives a report under section 81 or 82, the Secretary must consider whether there is a reasonable basis for conducting an investigation and may decide—

- (a) that an independent investigation of the allegation is warranted; or
- (b) that no investigation is warranted.

**87. Notice to carer of decision**

- (1) The Secretary must give notice of a decision under section 86 to the person about whom the allegation was made.
- (2) The notice must be given without delay after the decision is made.
- (3) If the Secretary decides that an independent investigation is warranted, the notice must specify each allegation to be investigated.
- (4) The notice is not required to be given if the person has already been notified under section 84 that no investigation is warranted.

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**88. Record of reports**

The Secretary must keep a written record of any report made under section 81 or 82 in respect of which the Secretary has decided that an independent investigation of the allegation is warranted.

**89. Appointment of investigator**

- (1) If the Secretary decides under this Division that an independent investigation of an allegation is warranted, the Secretary may authorise a person to conduct that investigation.
- (2) An authorisation must be in writing.

**90. Powers of authorised investigator**

- (1) The authorised investigator may at any time visit the out of home care service that approved, employed or engaged the person who is the subject of the investigation—
    - (a) to inspect any document or record relating to a person who is the subject of the investigation or the child in relation to whom the allegation was made; and
    - (b) to interview any person employed or engaged by the out of home care service whom the authorised investigator considers to be relevant to the investigation.
  - (2) The authorised investigator may interview—
    - (a) the child in relation to whom the allegation was made; and
    - (b) the person who is the subject of the investigation.
  - (3) Before interviewing a child, the authorised investigator must consider, and take all reasonable steps to mitigate, any negative effect that the interview may have on the child.
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- (4) The person who is the subject of the investigation may, but is not required to, answer any question of, or provide any information to, the authorised investigator.

**91. Out of home care service to assist investigator**

The person in charge of the out of home care service and every member of staff of the out of home care service must provide an authorised investigator with such reasonable assistance and access to records and employees of and persons engaged by the service as the authorised investigator requires in carrying out an investigation under this Part.

**92. Report by authorised investigator**

- (1) An authorised investigator must report in writing to the Secretary, within the time required by the Secretary, on the results of the investigation.
- (2) The report must set out the findings of the investigation.
- (3) The report may include a finding that on the balance of probabilities, the person who was the subject of the investigation has physically or sexually abused the child.

**93. Decision of Secretary following investigation**

- (1) After receiving a report from the authorised investigator in relation to an allegation against a person, the Secretary must decide whether to refer the matter for hearing by the Suitability Panel.
- (2) The Secretary must not refer the matter to the Suitability Panel unless—
- (a) the report of the authorised investigator includes a finding specified in section 92(3) in respect of the person; and

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- (b) the Secretary considers that the person poses an unacceptable risk of harm to children.
- (3) In making a decision, the Secretary must not draw any adverse inference from a failure or refusal by the person who is the subject of the investigation to answer any question by, or provide any information to, the authorised investigator.

**94. Notice to carer of result of investigation**

- (1) The Secretary must, within 14 days after receiving a report of an investigation under this Part, advise the person who was the subject of the investigation—
  - (a) as to the result of the investigation; and
  - (b) as to whether or not the matter is to be referred for hearing by the Suitability Panel.
- (2) If the notice states that the matter is to be referred for hearing by the Suitability Panel, the notice must be accompanied by a copy of the report of the investigation.

**95. Notice to out of home care service of result of investigation**

If the Secretary decides not to refer the matter for hearing by the Suitability Panel, the Secretary must within 14 days after receiving a report of an investigation under this Part, advise any out of home care service to which information has been provided under section 127 about the investigation—

- (a) that the investigation has been completed; and
- (b) that the matter will not be referred for hearing by the Suitability Panel.

**96. Referral to Suitability Panel**

- (1) If the Secretary decides to refer a matter to the Suitability Panel under this Part, the Secretary must give notice of the referral to the chairperson of the Suitability Panel.
- (2) The notice must—
  - (a) be in the prescribed form and include—
    - (i) the decision of the Secretary in relation to the report of the investigation; and
    - (ii) the reasons for that decision; and
  - (b) be accompanied by a copy of the report of the investigation.

**97. Secretary not to proceed if police investigation is proceeding**

- (1) Despite anything to the contrary in this Division, if the Secretary is or becomes aware that an allegation is the subject of a police investigation, the Secretary must defer giving any notice or further notice or taking any step or further step or making any decision or further decision under this Division in respect of the allegation until the completion of that investigation.
- (2) On completion of the police investigation, the Secretary may take into account any information he or she receives as to the results of the investigation to reconsider or to make any decision under this Division.
- (3) If the Secretary has given notice to a person under section 84, and the Secretary subsequently defers the matter, the Secretary must notify the person in writing of the deferral and of the ending of the deferral.

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**Division 5—The Suitability Panel**

**Subdivision 1—Establishment and Constitution**

**98. Establishment of Panel**

There is established a Panel to be called the Suitability Panel.

**99. Constitution of Panel**

- (1) The Suitability Panel consists of a chairperson and up to 5 other members appointed by the Governor in Council on the recommendation of the Minister.
- (2) The chairperson must be a legal practitioner.
- (3) In recommending other persons for appointment to the Suitability Panel, the Minister must have regard to the need to appoint people with the qualifications and experience in law, social work, psychology and the treatment of sex offenders and in any other discipline required for the Panel to perform its functions.
- (4) The Governor in Council may appoint a person who is a legal practitioner to be acting chairperson during any period when—
  - (a) there is a vacancy in the office of chairperson; or
  - (b) the chairperson is absent on leave or for any reason is temporarily unable to perform the duties of chairperson.
- (5) The acting chairperson has during the period of acting as chairperson the same powers and duties as the chairperson.

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**100. Terms and conditions of appointment**

- (1) A member of the Suitability Panel is appointed for a term of 3 years and is eligible to be reappointed.
- (2) The acting chairperson may be appointed for a period of not more than 3 years specified in the instrument of appointment.
- (3) A member of the Suitability Panel is entitled to be paid the remuneration and allowances fixed from time to time by the Governor in Council in respect of that member.
- (4) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a member of the Suitability Panel in respect of the office of member.
- (5) A member of the Suitability Panel may at any time resign from office by letter in writing delivered to the Minister.
- (6) The Governor in Council may at any time remove a member of the Suitability Panel from office.
- (7) Sub-sections (3) to (6) apply to the acting chairperson.

**101. Functions of Panel**

The functions of the Suitability Panel are—

- (a) to hear any matter referred to it by the Secretary under this Part; and
- (b) to determine whether or not a person should be disqualified from being placed on the register of out of home carers; and
- (c) to hear and determine any application by a person for the removal of a disqualification under this Part.

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**102. Executive officer of Panel**

- (1) An executive officer of the Suitability Panel shall be employed under Part 3 of the **Public Administration Act 2004**.
- (2) The functions of the executive officer are—
  - (a) to assist the Suitability Panel; and
  - (b) to give notice of hearings and determinations of the Suitability Panel; and
  - (c) to fix times and dates for hearings of the Suitability Panel.

**103. Constitution of Suitability Panel for hearings**

- (1) The Suitability Panel is be constituted for the purposes of a particular matter by the chairperson and 2 other members of the Suitability Panel.
- (2) The chairperson determines the members who are to constitute the Suitability Panel for a particular matter.
- (3) The chairperson must preside at any hearing by the Suitability Panel.

**Subdivision 2—Procedure of Suitability Panel in respect of Allegation**

**104. Notice to parties of hearing**

- (1) If the Secretary refers a matter to the Suitability Panel under this Part, the executive officer of the Panel must cause notice of the hearing of the matter to be served on the person who was the subject of the investigation to which the matter relates.
  - (2) The notice of hearing must—
    - (a) be in the prescribed form; and
    - (b) state the nature of the hearing and the allegation made against the person; and
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- (c) give the time, date and place of the hearing; and
  - (d) state that the person has the right to be present at the hearing and to make submissions and to be legally represented at the hearing; and
  - (e) state that the hearing is not open to the public; and
  - (f) list the findings that the Suitability Panel can make; and
  - (g) state that there is a right to apply for a review of a decision of the Suitability Panel; and
  - (h) be accompanied by a copy of the notice given by the Secretary under section 96.
- (3) The notice must be served at least 28 days before the date set for the hearing of the matter.

**105. Finding of Panel on allegation**

- (1) At a hearing the Suitability Panel must first determine whether or not the allegation that the person has physically or sexually abused the child is proved on the balance of probabilities.
  - (2) In making the determination, the Suitability Panel must have regard to—
    - (a) the allegation referred by the Secretary to the Panel; and
    - (b) any evidence presented to the Panel by any of the parties to the hearing; and
    - (c) any other matters that the Panel considers relevant to its determination.
  - (3) The Suitability Panel must not consider any other allegations or findings of misconduct by the person when making the determination.
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- (4) The Suitability Panel must not draw any adverse inference from a failure or refusal by the person to answer any question by, or provide any information to, the authorised investigator or the Panel when making the determination.
- (5) If the Suitability Panel determines that the allegation is proved, the Panel must make a finding of misconduct against the person.
- (6) If the Suitability Panel determines that the allegation is not proved, the Panel must state that fact and that no finding of misconduct has been made against the person in respect of the allegation.

**106. Finding in relation to disqualification**

- (1) If the Suitability Panel has made a finding of misconduct against a person, the Panel must then determine on the balance of probabilities whether or not the person poses an unacceptable risk of harm to children.
- (2) In making the determination the Suitability Panel must consider any of the following factors that the Panel considers relevant, giving a factor the weighting that the Panel considers appropriate in the circumstances—
  - (a) the gravity of the misconduct;
  - (b) any previous findings of misconduct by the Suitability Panel in respect of the person;
  - (c) the likelihood of the person physically or sexually abusing a child in the future;
  - (d) the recency of the misconduct;
  - (e) the relevance of the misconduct to the role of the person as an out of home carer;
  - (f) the history of the person's work with the out of home care agency as an out of home carer.



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- (3) If the Suitability Panel finds that the person poses an unacceptable risk of harm to children, the Panel must find that the person should be disqualified from registration under this Part.
- (4) If the Suitability Panel determines that the person does not pose an unacceptable risk of harm to children, the Panel must state that fact and that no finding of disqualification has been made against the person.
- (5) If the Suitability Panel finds that the person should be disqualified from registration under this Part, the person is disqualified from registration under this Part.

**107. Notice of Panel's findings and determinations**

- (1) The Suitability Panel must notify the Secretary without delay of its findings and determinations under sections 105 and 106 in respect of an allegation.
- (2) The Suitability Panel must notify the Secretary within the meaning of the **Working With Children Act 2005** without delay if it finds under section 106 that a person should be disqualified.
- (3) The Suitability Panel must give the person about whom the allegation was made written notice of its findings and determinations under sections 105 and 106 in respect of the allegation within 14 days after the findings and determinations are made.

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**108. Secretary to record finding**

- (1) On receipt of the notice under section 107 of a finding of disqualification of a person, the Secretary must immediately make a record of the disqualification of the person.
- (2) The record of disqualification of a person must set out the following information in respect of the person—
  - (a) name;
  - (b) address;
  - (c) date of birth;
  - (d) date of disqualification;
  - (e) the reason given by the Suitability Panel for the disqualification.
- (3) The information about a person's name to be recorded under this section must include—
  - (a) the name by which the person is registered under the **Births, Deaths and Marriages Registration Act 1996**, or an equivalent law of another jurisdiction; and
  - (b) any previous name of that person that was registered under that Act or such a law; and
  - (c) any other name used by the person or by which the person is known.

**109. Notice to out of home care service**

If an allegation is made against a person under this Part, the Secretary must notify the out of home care service by which the person is currently approved, employed or engaged of the findings or determinations of the Suitability Panel or of VCAT in respect of the allegation.

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**Subdivision 3—Review by Suitability Panel of  
Disqualification**

**110. Application for review of disqualification**

- (1) A disqualified person may apply to the Suitability Panel for the removal of the disqualification.
- (2) An application must be in the prescribed form and must state the reasons why the person believes the disqualification should be removed.
- (3) The application must set out the way in which the applicant's circumstances have changed and why the applicant no longer poses an unacceptable risk of harm to children.
- (4) An application may not be brought under this section before the end of the period of 12 months after the disqualification takes effect unless the Panel considers that exceptional circumstances exist.

**111. Notice to parties of hearing of application**

- (1) The executive officer of the Suitability Panel must give notice to the applicant and the Secretary of the hearing of an application under this Division.
- (2) The notice of hearing must—
  - (a) be in the prescribed form; and
  - (b) state the nature of the hearing; and
  - (c) give the time, date and place of the hearing; and
  - (d) state that any party to the hearing has the right to be present at the hearing and to make submissions and to be legally represented at the hearing; and
  - (e) state that the hearing is not open to the public; and

- (f) list the findings that the Suitability Panel can make; and
  - (g) state that there is a right to apply for a review of a decision of the Suitability Panel; and
  - (h) in the case of a notice to the Secretary, be accompanied by a copy of the application.
- (3) The notice must be served at least 28 days before the date set for the hearing of the application.

**112. Finding in relation to application**

- (1) In considering an application under this Division the Panel must determine whether or not on the balance of probabilities the person should continue to be disqualified or should have the disqualification removed.
- (2) In making the determination, the Suitability Panel must consider—
  - (a) if the conduct that resulted in the disqualification was dealt with as an offence—
    - (i) any finding of a court in respect of the offence and any reasons for that finding; and
    - (ii) any sentence imposed by a court in respect of the offence;
  - (b) the applicant's behaviour since he or she was disqualified;
  - (c) any information, evidence or submissions presented to the Panel by the applicant, the Secretary or any other person.

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- (3) In making a determination, the Suitability Panel may also consider any of the following factors, that the Panel considers relevant—
- (a) if the conduct that resulted in the disqualification was an offence at the time the conduct occurred, whether the conduct has since been decriminalised;
  - (b) the period of time that has elapsed since the person was disqualified;
  - (c) any other matter the Panel considers relevant to the application.
- (4) If the Suitability Panel determines that the applicant's disqualification from registration should be removed—
- (a) the Panel must make a finding to that effect; and
  - (b) the person is no longer disqualified from being registered under this Part.

**113. Notice of Panel's determination on application**

- (1) The Suitability Panel must notify the Secretary without delay of its determination in respect of an application under this Division.
- (2) The Suitability Panel must notify the Secretary within the meaning of the **Working With Children Act 2005** without delay if it finds under section 112 that a person's disqualification should be removed.
- (3) The Suitability Panel must give the applicant written notice of its determination in respect of the application within 14 days after the determination is made.

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**114. Secretary to record removal of disqualification**

On receipt of a notice under section 113 of a determination that a disqualification of a person should be removed, the Secretary must immediately make a record of the removal of the disqualification in the record kept under section 108.

**Subdivision 4—General Procedure of Suitability Panel**

**115. Conduct of hearing**

- (1) At a hearing—
  - (a) the Suitability Panel must hear and determine the matter before it; and
  - (b) the person who is the subject of the hearing and the Secretary are entitled to be present, to make submissions and to be legally represented.
- (2) A hearing must be closed to the public.

**116. Procedure at hearings**

- (1) At a hearing of the Suitability Panel under this Part—
    - (a) subject to this Part and the regulations, the procedure of the Panel is in its discretion; and
    - (b) the proceedings must be conducted with as little formality and technicality as the requirements of this Part and the proper consideration of the matter permit; and
    - (c) the Panel is not bound by rules of evidence but may inform itself in any way it thinks fit; and
    - (d) the Panel is bound by the rules of natural justice.
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- (2) Subject to the regulations, before permitting a child to appear before or be questioned in any hearing, the Suitability Panel must consider and take all reasonable steps to mitigate any negative effect that the hearing may have on the child.

**117. Powers of panel conducting a formal hearing**

Sections 14, 15, 16 and 21A of the **Evidence Act 1958** apply to the Suitability Panel in the conduct of a hearing as if it were a Board or the Chairman of a Board appointed by the Governor in Council.

**Subdivision 5—Review by VCAT**

**118. Review by VCAT**

- (1) A person may apply to VCAT for review of a finding or determination of the Suitability Panel under section 105, 106 or 112.
- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the applicant is given notice under this Part of the finding or determination;
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the finding, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

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**Division 6—Offences**

**119. Out of home care service not to approve, engage or employ disqualified person**

- (1) An out of home care service is guilty of an offence if the out of home care service knowingly or recklessly—
  - (a) approves a disqualified person as a foster carer; or
  - (b) employs or engages a disqualified person—
    - (i) as a carer for children placed with the service; or
    - (ii) to provide services to children at an out of home care residence managed by the service.
- (2) An out of home care service that is guilty of an offence under this section is liable to a penalty not exceeding 240 penalty units.

**120. Out of home care service must ask Secretary if person is disqualified**

An out of home care service must ask the Secretary for advice as to whether or not a person is a disqualified person before—

- (a) approving the person as a foster carer; or
- (b) employing or engaging the person—
  - (i) as a carer for children placed with the service; or
  - (ii) to provide services to children at an out of home care residence managed by the service.

Penalty: 300 penalty units.



**121. Offence to apply for work as out of home carer while disqualified**

A disqualified person must not knowingly apply for approval, employment or engagement by an out of home care service as an out of home carer.

Penalty: 240 penalty units or 2 years imprisonment.

**122. Offence to apply to work as out of home carer without disclosing investigation**

A person who knows that he or she is the subject of an allegation that is the subject of a continuing investigation under Division 4 or 5 or a continuing police investigation must not apply for approval, employment or engagement by an out of home care service as an out of home carer without disclosing the existence of that investigation.

Penalty: 60 penalty units.

**Division 7—General**

**123. Information provided not to be used in criminal proceedings**

The following information is not admissible in criminal proceedings (other than proceedings for perjury) against a person—

- (a) any information provided to the Secretary, an authorised investigator, the Suitability Panel or VCAT in the investigation of an allegation or hearing of a matter relating to an allegation against a person; and
- (b) any finding or determination of the Secretary, Suitability Panel or VCAT about a person under this Part.

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**124. Protection of reporter**

Subject to section 125, the Secretary must not disclose the identity of or disclose any information that is likely to lead to the disclosure of the identity of a person who made a report to the Secretary under section 82 if the Secretary is satisfied that—

- (a) the disclosure of the identity of the person making the report is likely to place the child who is alleged to have been abused at risk of harm; or
- (b) the identity of the person who made the report should be protected for the sake of the health or safety of that person or members of his or her family.

**125. Disclosure of information to police and investigator**

The Secretary may disclose to a member of the police force and to any person appointed under this Part to conduct the independent investigation—

- (a) the decision that an investigation is warranted; and
- (b) the nature of the allegation to be investigated; and
- (c) any information obtained by the Secretary in relation to the allegation.

**126. Secretary may provide information for the purpose of proceedings**

The Secretary may provide information from any record kept by the Secretary under this Part for the purpose of any proceeding by the Suitability Panel or VCAT under this Part.

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**127. Limited disclosure of information to out of home care services**

- (1) The Secretary may disclose to an out of home care service, or the person in charge of the out of home care service, by whom a person is employed or engaged the fact that an investigation is to be or is being conducted under this Part into an allegation about that person.
- (2) At the request of an out of home care service, or the person in charge of an out of home care service, the Secretary must provide a statement as to whether or not an investigation is to be or is being conducted under this Part in relation to a person whom the service is proposing to—
  - (a) approve as a foster carer; or
  - (b) employ or engage—
    - (i) as a carer for children placed with the service; or
    - (ii) as a provider of services to children at an out of home care residence managed by the service.
- (3) The Secretary must not disclose under subsection (1) or (2)—
  - (a) the nature of the allegation; or
  - (b) any other information obtained by the Secretary in relation to the allegation.
- (4) At the request of an out of home care service or the person in charge of an out of home care service, the Secretary must provide a statement as to whether or not a person whom the service is proposing to—

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- (a) approve as a foster carer; or
- (b) employ or engage—
  - (i) as a carer for children placed with the service; or
  - (ii) as a provider of services to children at an out of home care residence managed by the service—

is a disqualified person.

- (5) An out of home care service or person to whom information is disclosed under this section must not disclose that information to any other person.

Penalty: 60 penalty units.

**128. Disclosure by Chief Commissioner of Police**

The Chief Commissioner of Police may disclose to the Secretary any information he or she holds in relation to an allegation being considered by the Secretary under this Part.

**129. Disclosure of information by Secretary**

Except as provided in this Part, the Secretary must not disclose to any person—

- (a) any record kept by the Secretary under this Part; or
- (b) any information provided to the Secretary by an authorised investigator or the Chief Commissioner of Police under this Part.

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**130. Confidentiality of information acquired by authorised investigator**

An authorised investigator must not disclose to any person other than the Secretary or the Suitability Panel, whether directly or indirectly, any information acquired by the authorised investigator in carrying out an investigation under this Part, except as far as is necessary to carry out the investigation.

Penalty: 10 penalty units.

**131. Confidentiality of proceedings**

A person must not publish or broadcast or cause to be published or broadcast any report of a hearing of the Suitability Panel under this Part which contains information which would enable—

- (a) in the case of a hearing under Subdivision 2 of Division 5, the person against whom the allegation has been made to be identified; or
- (b) in the case of the hearing of an application under Subdivision 3 of Division 5, the applicant to be identified; or
- (c) a child to whom an allegation that has been considered by the Panel relates to be identified; or
- (d) if the Panel has made a determination prohibiting the publication or broadcast of the identity of a witness, that witness to be identified.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

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**132. Disclosure allowed for referee checks**

An out of home care service by whom a disqualified person has been approved, employed or engaged as an out of home carer is not guilty of an offence under section 127(5) or 131 if it discloses the fact that a person is a disqualified person to another out of home care service in the course of a referee check in respect of that person.

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## **PART 3.5—CHILD CARE AGREEMENTS**

### **Division 1—Introduction**

#### **133. Object**

The object of this Part is to regulate arrangements for voluntary child care agreements to place children in out of home care.

#### **134. Definitions**

In this Part—

**"care"** in relation to a child, means the daily care and control of the child but not involving custody of the child;

**"child care agreement"** means an agreement under Division 2 or 3;

**"long-term child care agreement"** means an agreement entered into under Division 3;

**"service provider"** means—

- (a) the Secretary; or
- (b) the person in charge of a registered out of home care service; or
- (c) a registered residential service within the meaning of the **Intellectually Disabled Persons' Services Act 1986**;

**"short-term child care agreement"** means an agreement entered into under Division 2;

**"suitable person"** has the meaning set out in section 148;

**"suitable person agreement"** means an agreement referred to in section 147(b).

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**Division 2—Short-Term Child Care Agreements**

**135. Short-term child care agreements**

- (1) A parent of a child may enter into a written agreement with a service provider to place the child in the care of the service provider for the purpose of supporting the child and his or her parent and encouraging and assisting the child's parent to resume the care of the child.
- (2) An agreement under sub-section (1) does not affect the guardianship and custody of a child.
- (3) An agreement under sub-section (1) must specify a period not exceeding 6 months, for which the agreement is to have effect.
- (4) The wishes of the child must be taken into account in making an agreement under this Division.
- (5) A service provider (other than the Secretary) must notify the Secretary in writing of each agreement entered into by the service provider under sub-section (1) within 14 days after entering into the agreement.

**136. Return of child to parent who has custody**

- (1) If a parent who does not have custody of a child is a party to a short-term child care agreement, the person who does have custody of the child may request the service provider to return the child to that person.
- (2) As soon as is practicable after receiving a request under sub-section (1), the service provider must notify the parent who was a party to the agreement of the making of the request.



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- (3) Subject to any provision to the contrary made by or under the authority of this or any other Act, the service provider must cause the child to be returned to the person who has custody of the child—
- (a) as soon as practicable after notifying the parent under sub-section (2); or
  - (b) within a reasonable time if the parent cannot be notified.

**137. Extension of agreement**

- (1) Subject to sub-section (2), the parties to a short-term child care agreement, after reviewing the agreement, may agree to extend the agreement before it expires for a further period not exceeding 6 months.
- (2) If the agreement relates to a child who has been in the care of the service provider for a continuous period of 6 months or for an aggregate of 6 months during a period of 9 months, the service provider must consult with the Secretary before agreeing to extend the agreement.

**138. Maximum period for care under agreement**

- (1) A child may not be placed in the care of a service provider by virtue of this Division for a period exceeding 12 months, or for periods which in aggregate exceed 12 months in any period of 18 months unless the Secretary has consented in writing to that placement.
- (2) A child may not be placed in the care of a service provider under this Division for a period exceeding 2 years or for periods which in the aggregate exceed 2 years in any period of 3 years.

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**139. Review of agreement**

- (1) The Secretary must review each short-term child care agreement—
  - (a) after the first 6 months of the agreement; and
  - (b) annually after the first review.
- (2) The Secretary must advise the parties to a short-term agreement of the results of a review and the Secretary's recommendations arising from the review.
- (3) The following may result from a review of an agreement under sub-section (1)—
  - (a) the agreement may remain unchanged;
  - (b) the agreement may be terminated;
  - (c) the terms of the agreement may be varied.

**140. Agreement may be made with minor**

A short-term child care agreement is not void or voidable by reason only that a party to it has not attained the age of 18 years.

**141. Termination of agreement**

A short-term child care agreement may be terminated by either party giving notice in writing to the other party.

**142. Return of child to parent at end of agreement**

On the expiry or termination of a short-term child care agreement, the person having the care of the child must, as soon as is practicable, cause the child to be returned to his or her parent.

**143. Rates of payment under agreement**

The Minister may determine the rates to be paid in respect of children under a short-term child care agreement.

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**Division 3—Long-Term Child Care Agreements**

**144. Children who may be the subject of a long-term child care agreement**

Subject to this Division, an agreement may be entered into under this Division with respect to a child who, immediately before the entering into of that agreement, had for a period of at least 2 years or an aggregate of at least 2 years in the preceding period of 3 years—

- (a) been the subject of a short-term child care agreement or agreements; or
- (b) been in the care of an out of home care service; or
- (c) been in the care of—

- (i) a registered residential service; or

- (ii) a residential institution—

within the meaning of the **Intellectually Disabled Persons' Services Act 1986**; or

- (d) been in the care of the Department at any premises proclaimed to be a residential program under section 19 of the **Intellectually Disabled Persons' Services Act 1986**.

**145. Long-term child care agreements**

- (1) A parent of a child may, with the written approval of the Secretary, enter into a written agreement with a service provider with respect to the care of the child.
- (2) If the agreement provides for the child to be in the care of a suitable person, that person must also be a party to the agreement.

**146. When will the Secretary approve an agreement?**

The Secretary must not approve the entering into of a long-term child care agreement unless the Secretary is satisfied that—

- (a) the agreement is in the best interests of the child; and
- (b) there are no alternative means available that would enable the parent of the child to resume the care of the child; and
- (c) the wishes of the child have, having regard to the age and understanding of the child, been taken into account in making the agreement; and
- (d) the agreement provides for the parent of the child to have an on-going involvement with the child in the terms specified in the agreement.

**147. Who may have the care of the child under an agreement?**

A long-term child care agreement may provide for a child to be in the care of—

- (a) an out of home care service; or
- (b) a suitable person other than—
  - (i) a parent of the child; or
  - (ii) the Secretary in his or her official capacity; or
  - (iii) a person employed by a community service in his or her official capacity; or
- (c) a registered residential service within the meaning of the **Intellectually Disabled Persons' Services Act 1986** or a residential institution within the meaning of that Act; or

- (d) the Department at any premises proclaimed to be a residential program under section 19 of the **Intellectually Disabled Persons' Services Act 1986**.

**148. Who is a suitable person?**

- (1) A person is a suitable person for the purposes of this Division if the person is approved in writing by the Secretary or by a person authorised by the Secretary to give approvals under this section as being a person suitable to have the long-term care of a child.
- (2) An authorisation under sub-section (1)—
  - (a) must be made by instrument; and
  - (b) may be made to the holder of an office or position or to any person for the time being acting in or performing the duties of an office or position.
- (3) The Secretary must have regard to the prescribed matters before approving a person as a suitable person for the purposes of this Division.
- (4) For the purposes of this section the matters prescribed for the purposes of this section may include matters relating to—
  - (a) the checking of criminal records and criminal history of the person and other usual members of the person's household;
  - (b) suitability and fitness of the person;
  - (c) previous history of the person as a carer of children.

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**149. What must an agreement include?**

A long-term child care agreement must—

- (a) set out the objectives of the agreement; and
- (b) set out the role of the service provider which must include—
  - (i) participating in any review of the agreement; and
  - (ii) assisting in the resolution of any disputes that may arise relating to the care of the child; and
  - (iii) assisting, if required, in the provision of particular services specified in the agreement; and
- (c) clarify the respective roles of the parent of the child, the service provider and, if the agreement provides for the child to be in the care of a suitable person, that suitable person.

**150. Maximum period of care under agreement**

A long-term child care agreement must specify the period for which the agreement is to have effect which—

- (a) in the case of an agreement (other than a suitable person agreement), must not exceed 2 years; and
- (b) in the case of a suitable person agreement, may be for any period up to the day on which the child attains the age of 18 years.

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**151. Return of child at request of parent with custody**

- (1) If a parent who does not have custody of a child is a party to a long-term child care agreement, the person who does have custody of the child may request the service provider to return the child to that person.
- (2) As soon as is practicable after receiving a request under sub-section (1), the service provider must notify the parent who was a party to the agreement of the making of the request.
- (3) Subject to any provision to the contrary made by or under the authority of this or any other Act, the service provider must cause the child to be returned to the person who has custody of the child—
  - (a) as soon as practicable after notifying the parent under sub-section (2); or
  - (b) within a reasonable time if the parent cannot be notified.

**152. Review of agreement**

- (1) A long-term child care agreement (other than a suitable person agreement)—
    - (a) may be reviewed at any time during the period of the agreement at the request of one of the parties to the agreement; and
    - (b) must be reviewed by the Secretary at the end of the first 6 months of the agreement and then annually after the first review; and
    - (c) may, with the written approval of the Secretary, be extended for a period not exceeding 2 years with or without any variation in its terms or another long-term child care agreement may be entered into.
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- (2) A suitable person agreement—
- (a) may be reviewed at any time during the period of the agreement at the request of one of the parties to the agreement; and
  - (b) must be reviewed by the Secretary at the end of the first 6 months of the agreement and then annually after the first review.
- (3) Any of the following may result from a review of an agreement under sub-section (2)—
- (a) the agreement may be terminated;
  - (b) the agreement may be extended for a period that does not extend beyond the day on which the child attains the age of 18 years;
  - (c) the terms of the agreement may be varied;
  - (d) another long-term child care agreement may be entered into.

**153. Agreement may be with minor**

A long-term child care agreement is not void or voidable by reason only that a party to it has not attained the age of 18 years.

**154. Termination of agreement**

A long-term child care agreement may be terminated by any party by giving notice in writing to the other party or parties.

**155. Return of child at end of agreement**

On the expiry or termination of a long-term child care agreement, the person having the care of the child must, as soon as is practicable, cause the child to be returned his or her parent.



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**156. Rates of payment under agreement**

The Minister may determine the rates to be paid in respect of children under a long-term child care agreement.

**Division 4—Review of Decision-Making and Reports**

**157. Review by Secretary**

- (1) The Secretary must prepare and implement procedures for the review of decisions relating to the care of the child made under or in relation to a child care agreement.
- (2) The Secretary must ensure that a copy of the procedures is given to—
  - (a) the child; and
  - (b) the parent of the child; and
  - (c) the service provider; and
  - (d) in the case of a suitable person agreement, the suitable person under the agreement.

**158. Review by Victorian Civil and Administrative Tribunal**

- (1) Any of the following may apply to VCAT for review of a decision made under or in relation to a child care agreement relating to the care of a child—
  - (a) the child;
  - (b) a parent of the child;
  - (c) any other person whose interests are affected by the decision.

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- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made;
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
- (3) Before a person is entitled to apply to VCAT for the review of a decision referred to in subsection (1), the person must have exhausted all available avenues for the review of the decision under section 157.

**159. Report by service providers**

A service provider (other than the Secretary) must report to the Secretary by 31 December in each year on—

- (a) the number of child care agreements that the service provider has been a party to in the preceding 12 months; and
- (b) the duration of each of those agreements.

**160. Report by Secretary**

The Secretary must publish on the Department's Internet site details of—

- (a) the number of child care agreements entered into in the previous 12 months; and
  - (b) the number of child care agreements that the Secretary is aware exist.
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**PART 3.6—RESTRICTIONS ON LONG-TERM CARE OF CHILDREN**

**161. Restrictions on who may provide long-term care of children**

- (1) A person must not, for fee or reward, provide care for a period longer than 24 hours for a child who is under 15 years of age.

Penalty: 15 penalty units.

- (2) Sub-section (1) does not apply to the provision of care for a child—
- (a) by a parent or relative of the child; or
  - (b) in the case of an Aboriginal child, by a member of the Aboriginal community of that child; or
  - (c) by an out of home care service or a secure welfare service; or
  - (d) by a person under a child care agreement within the meaning of Part 3.5; or
  - (e) by an institution or establishment conducted wholly for educational purposes or as a hospital or convalescent home; or
  - (f) by an institution or establishment conducted wholly as a holiday camp or for another similar purpose; or
  - (g) in a private house (including a boarding house) in which a child is temporarily accommodated; or

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- (h) by an institution or establishment or an institution or establishment included in a class of institutions or establishments exempted from the operation of subsection (1) by the Secretary by notice sent by post to the institution or establishment concerned.
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## **CHAPTER 4—CHILDREN IN NEED OF PROTECTION**

### **PART 4.1—CHILDREN IN NEED OF PROTECTION**

#### **162. When is a child in need of protection?**

- (1) For the purposes of this Act a child is in need of protection if any of the following grounds exist—
    - (a) the child has been abandoned by his or her parents and after reasonable inquiries—
      - (i) the parents cannot be found; and
      - (ii) no other suitable person can be found who is willing and able to care for the child;
    - (b) the child's parents are dead or incapacitated and there is no other suitable person willing and able to care for the child;
    - (c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
    - (d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
    - (e) the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
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- (f) the child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care.
- (2) For the purposes of sub-sections (1)(c) to (1)(f), the harm may be constituted by a single act, omission or circumstance or accumulate through a series of continuing acts, omissions or circumstances.

**163. Effect of conduct outside Victoria**

For the purposes of this Act it does not matter whether the conduct constituting a ground referred to in section 162 occurred wholly or partly outside Victoria.

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**PART 4.2—RESPONSIBILITIES OF MINISTER**

**164. Responsibilities of Minister**

The Minister has the following responsibilities—

- (a) to establish and maintain child protection services; and
- (b) to promote a clear definition of the respective responsibilities, in relation to children at risk of harm, of protective interveners, community services and other persons and bodies working with children and their families in a professional capacity.

**165. Central register**

- (1) The Minister may give directions for the maintenance of a central register for the purposes of this Act.
  - (2) There is to be recorded on the central register—
    - (a) the information required to be recorded under section 240(2); and
    - (b) any other information required to be recorded in the central register under this Act or the regulations.
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**PART 4.3—RESPONSIBILITIES OF SECRETARY**

**Division 1—Case Planning and Stability Planning**

**166. What is a case plan?**

- (1) A case plan is a plan prepared by the Secretary for a child.
- (2) A case plan must contain all decisions made by the Secretary concerning a child that—
  - (a) the Secretary considers to be significant decisions; and
  - (b) relate to the present and future care and wellbeing of the child, including the placement of, and access to, the child.
- (3) A case plan for a child includes any stability plan prepared for that child.

**167. Preparation of case plan**

- (1) The Secretary must ensure that a case plan is prepared in respect of a child within 6 weeks after the making by the Court of—
  - (a) a supervision order; or
  - (b) a supervised custody order; or
  - (c) a custody to Secretary order; or
  - (d) a guardianship to Secretary order; or
  - (e) a long-term guardianship to Secretary order; or
  - (f) a therapeutic treatment (placement) order.
- (2) The Secretary must ensure that a copy of the case plan is given to the child and his or her parent within 14 days after its preparation.



**168. Review of case plan**

The Secretary must ensure that the case plan is reviewed from time to time by the Secretary as appears necessary.

**169. What is a stability plan?**

- (1) A stability plan is a plan prepared by the Secretary for a child.
  - (2) A stability plan for a child must plan for stable long-term out of home care for the child.
  - (3) A stability plan may include details of—
    - (a) the proposed long-term carer of the child or the type of carer who should be sought to provide for the long-term stable care of the child;
    - (b) the appropriate Court order under this Chapter that the Secretary considers best supports the long-term stable placement of the child;
    - (c) matters relevant to the out of home care of the child that may relate to the family or environmental circumstances that caused the child to be placed in out of home care and that may give rise to particular needs or requirements in relation to the child;
    - (d) planning for arrangements for access by the child to the child's parent and siblings;
    - (e) steps to be taken by the child's carer to meet the developmental needs of the child, including steps relating to the child's health, emotional and behavioural development, education, family and social relationships and identity.
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**170. Preparation of stability plan**

- (1) The Secretary must ensure that a stability plan is prepared for each child who is in out of home care as a result of—
  - (a) an interim accommodation order made by the Court; or
  - (b) a protection order.
- (2) The stability plan for a child must be prepared by the required time after an interim accommodation order or protection order or either of them placing the child in out of home care is first made by a court for the child.
- (3) The required time for completing a stability plan is—
  - (a) in the case of a child who is under 2 years of age at the date of the order, once that child has been in out of home care for one or more periods totalling 12 months;
  - (b) in the case of a child who is 2 years of age but under 7 years of age at the date of the order, once that child has been in out of home care for a period or periods totalling 18 months;
  - (c) in the case of a child who is 7 years of age or over at the date of the order, once that child has been in out of home care, for a period or periods totalling 2 years within a period of 3 years from the date of the order.
- (4) A stability plan can only be prepared for a child who is in out of home care.

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- (5) The Secretary must provide a copy of a stability plan within 6 weeks after it is prepared to—
  - (a) the parent of the child; and
  - (b) if the child is of or above the age of 12 years, the child.
- (6) A stability plan for an Aboriginal child must accord with the Aboriginal Child Placement Principle.

**171. When is a stability plan not required?**

- (1) The Secretary is not required to prepare a stability plan for a child within the required time under section 170 if the Secretary considers that the completion of a stability plan for a child is not in the best interests of the child.
- (2) If the Secretary decides not to prepare a stability plan for a child, the Secretary must provide an explanation as to why a stability plan should not be prepared—
  - (a) in the disposition report or in an additional report provided to the Court in respect of the child; and
  - (b) in writing to the following persons within 6 weeks after making the decision not to prepare the stability plan—
    - (i) the parent of the child; and
    - (ii) if the child is of or above the age of 12 years, the child.

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**Division 2—Responsibilities of Secretary as Guardian or Custodian**

**172. Powers of Secretary as guardian or custodian**

- (1) The Secretary, in relation to a child who is under his or her guardianship—
  - (a) is the guardian of the person and estate of the child to the exclusion of all other persons; and
  - (b) has the same rights, powers, duties, obligations and liabilities as a natural parent of the child would have.
- (2) The Secretary, in relation to a child who is in the custody or under the guardianship of the Secretary—
  - (a) has the sole right to the custody of the child; and
  - (b) may demand, sue for and recover any money due to the child; and
  - (c) in the name and on behalf of the child may commence and prosecute any proceeding relating to any property or rights of the child.
- (3) The Secretary may detain without warrant any child who is in the custody or under the guardianship of the Secretary.
- (4) This section applies except as otherwise expressly provided by this Chapter or by any order made under this Chapter.

**173. Placement of children**

- (1) This section applies in relation to a child—
    - (a) who is in the custody or under the guardianship of the Secretary under this Act; or
    - (b) of whom the Secretary is the guardian under the **Adoption Act 1984**; or
    - (c) in respect of whom the Secretary has authority under the **Adoption Act 1984** to exercise any rights of custody.
  - (2) The Secretary may deal with the child in any of the following ways—
    - (a) place him or her in an out of home care service;
    - (b) place him or her in a secure welfare service for a period not exceeding 21 days (and, in exceptional circumstances, for one further period not exceeding 21 days) if the Secretary is satisfied that there is a substantial and immediate risk of harm to the child;
    - (c) place him or her for adoption under the **Adoption Act 1984** if he or she is under the guardianship of the Secretary and available for adoption;
    - (d) place him or her in any other suitable situation as circumstances require.
  - (3) For the purposes of sub-section (2)(b), the assessment of risk may be made on the basis of a single incident or an accumulated risk.
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**174. Secretary's duties in placing child**

- (1) In dealing with a child under section 173, the Secretary—
  - (a) must have regard to the best interests of the child as the first and paramount consideration; and
  - (b) must make provision for the physical, intellectual, emotional and spiritual development of the child in the same way as a good parent would; and
  - (c) must have regard to the fact that the child's lack of adequate accommodation is not by itself a sufficient reason for placing the child in a secure welfare service; and
  - (d) must have regard to the treatment needs of the child.
- (2) In placing a child under section 173(2)(d), the Secretary must have regard to the prescribed criteria (if any).

**175. Support for child moving from secure welfare service**

If a child is placed in a secure welfare service under section 173, the Secretary must plan for and support the transfer of the child to and integration of the child in another suitable placement in order to reduce the need for the child to be placed in a secure welfare service again.

**176. Cultural plan for Aboriginal child**

- (1) The Secretary must prepare a cultural plan for each Aboriginal child placed in out of home care under a guardianship to Secretary order or long-term guardianship to Secretary order.

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- (2) A cultural plan must set out how the Aboriginal child placed in out of home care is to remain connected to his or her Aboriginal community and to his or her Aboriginal culture.
  - (3) For the purposes of sub-section (2), a child's Aboriginal community is—
    - (a) the Aboriginal community to which the child has a sense of belonging, if this can be ascertained by the Secretary; or
    - (b) if paragraph (a) does not apply, the Aboriginal community in which the child has primarily lived; or
    - (c) if paragraphs (a) and (b) do not apply, the Aboriginal community of the child's parent or grandparent.
  - (4) The Secretary must monitor compliance by the carer of a child with the cultural plan prepared for a child.

**177. State Guardianship Fund**

- (1) All money received by the Secretary as guardian of the estate of a child must be paid to the credit of an account established and kept in an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth by the Secretary under the name of the "State Guardianship Fund".
- (2) The Secretary must keep an account showing the current amount at credit in the Fund on account of each child.
- (3) Money standing to the credit of a child in the Fund which is not immediately required for use by the child may be invested in any manner in which trust money may be invested by a trustee under the **Trustee Act 1958** and interest earned must be

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credited to the account of the child at least once a year.

- (4) Money standing to the credit of a child in the Fund may only be used for the benefit of the child and with the approval of the Secretary.
- (5) On the child ceasing to be under the guardianship of the Secretary all money standing to the credit of the child in the Fund—
  - (a) if the child is over 18 years of age, must be paid to the child; and
  - (b) in any other case, may be paid to the child or may, if the Secretary considers it to be in the interests of the child to do so, be retained (wholly or in part) in the Fund until the child is 18 years of age.
- (6) The Secretary must, on a child ceasing to be under the guardianship of the Secretary, notify the child of the amount standing to his or her credit in the Fund.

**Division 3—Responsibility to Provide Information**

**178. Responsibility of Secretary to provide information to parents**

- (1) If a child is in out of home care because of a protection order or a therapeutic treatment (placement) order, the Secretary has a responsibility to provide information to the parents about the child, including the provision of personal information.
- (2) The Secretary is not required to provide information to a parent under sub-section (1) if—
  - (a) the child is over the age of 12 years and does not consent to the provision of the information and the Secretary considers the refusal of consent to be reasonable; or



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- (b) the Secretary considers that it is not in the best interests of the child to provide the information; or
- (c) the Court has made an order under section 531 dispensing with service of all documents on that parent.

**179. Responsibility of Secretary or out of home care service to provide information to carers**

- (1) If the Secretary or an out of home care service intends to place a child in the care of a person other than the parent of the child, the Secretary or out of home care service must provide the carer with all information that is known to the Secretary or the service and that is reasonably necessary to assist the carer to make an informed decision as to whether or not to accept the care of the child.
- (2) If the Secretary or an out of home care service has placed a child in the care of a person other than the parent of the child, the Secretary or out of home care service must provide the carer with any information known to the Secretary or the service regarding the medical status of the child to enable the carer to provide appropriate care for the child.

**180. Confidentiality**

A person who is given information about a child under section 179 must not disclose that information to any other person except for the purpose of providing appropriate care for the child.

Penalty: 10 penalty units.

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**PART 4.4—REPORTING**

**Division 1—Introduction**

**181. Who is a protective intervener?**

For the purposes of this Act the following persons are protective interveners—

- (a) the Secretary;
- (b) all members of the police force.

**182. Who is a mandatory reporter?**

- (1) The following persons are mandatory reporters for the purposes of this Act—

- (a) a registered medical practitioner;
- (b) a person registered under the **Nurses Act 1993**;
- (c) a person who is registered as a teacher under the **Victorian Institute of Teaching Act 2001** or has been granted permission to teach under that Act;
- (d) the head teacher or principal of a State school within the meaning of the **Education Act 1958** or of a school registered under Part III of that Act;
- (e) a member of the police force;
- (f) on and from the relevant date, the proprietor of, or a person with a post-secondary qualification in the care, education or minding of children who is employed by, a children's service to which the **Children's Services Act 1996** applies or a person nominated under section 16(2)(b)(iii) of that Act;

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- (g) on and from the relevant date, a person with a post-secondary qualification in youth, social or welfare work who works in the health, education or community or welfare services field and who is not referred to in paragraph (h);
  - (h) on and from the relevant date, a person employed under Part 3 of the **Public Administration Act 2004** to perform the duties of a youth and child welfare worker;
  - (i) on and from the relevant date, a registered psychologist;
  - (j) on and from the relevant date, a youth justice officer;
  - (k) on and from the relevant date, a youth parole officer;
  - (l) on and from the relevant date, a member of a prescribed class of persons.
- (2) In paragraph (f), (g), (h), (i), (j), (k) or (l) of sub-section (1) "**the relevant date**", in relation to a person or class of persons referred to in that paragraph, means the date fixed for the purposes of that paragraph by an Order made by the Governor in Council and published in the Government Gazette.
- (3) In the case of sub-section (1)(l), different dates may be fixed by Order in Council for the purposes of different prescribed classes of persons.
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**Division 2—Report to Protective Intervener**

**183. Report to protective intervener**

Any person who believes on reasonable grounds that a child is in need of protection may report to a protective intervener that belief and the reasonable grounds for it.

**184. Mandatory reporting**

- (1) A mandatory reporter who, in the course of practising his or her profession or carrying out the duties of his or her office, position or employment as set out in section 182, forms the belief on reasonable grounds that a child is in need of protection on a ground referred to in section 162(c) or 162(d) must report to the Secretary that belief and the reasonable grounds for it as soon as practicable—
- (a) after forming the belief; and
  - (b) after each occasion on which he or she becomes aware of any further reasonable grounds for the belief.

Penalty: 10 penalty units.

- (2) It is a defence to a charge under sub-section (1) for the person charged to prove that he or she honestly and reasonably believed that all of the reasonable grounds for his or her belief had been the subject of a report to the Secretary made by another person.
- (3) The requirement imposed by sub-section (1)(b) applies to a mandatory reporter referred to in paragraph (f) to (l) of section 182(1) even if his or her belief was first formed before the relevant date under section 182(1) for that paragraph.

- (4) For the purposes of this section, a belief is a belief on reasonable grounds if a reasonable person practising the profession or carrying out the duties of the office, position or employment, as the case requires, would have formed the belief on those grounds.

**185. Report on child in need of therapeutic treatment**

Any person who believes on reasonable grounds that a child who is 10 years of age or over but under 15 years of age is in need of therapeutic treatment (as defined in section 244) may report to the Secretary that belief and the reasonable grounds for it.

**186. Grounds for belief**

Grounds for a belief referred to in this Division are—

- (a) matters of which a person has become aware; and
- (b) any opinions based on those matters.

**187. Determination by Secretary about report**

- (1) If a report is made to the Secretary under section 183 or 184, the Secretary may—
  - (a) provide advice to the person who made the report; or
  - (b) determine that the report is a protective intervention report for the purposes of this Act; or
  - (c) determine that the report should be dealt with as a report to the Secretary under section 28.
- (2) If the Secretary makes a determination under subsection (1)(c), the report may be dealt with under this Act as if it were a report to the Secretary under section 28.

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**188. Record of report**

The Secretary must keep a written record of each report made to the Secretary under this Division.

**Division 3—Protection of Reporters**

**189. Reporters protected**

A report made under Division 2 in good faith—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made; and
- (b) does not make the person by whom it is made subject to any liability in respect of it; and
- (c) without limiting paragraphs (a) and (b), does not constitute a contravention of—
  - (i) section 141 of the **Health Services Act 1988**; or
  - (ii) section 120A of the **Mental Health Act 1986**.

**190. Evidence and legal proceedings**

- (1) In any legal proceeding evidence may be given as to the grounds contained in—
  - (a) a report under section 183 or 184 or a report determined to be a protective intervention report under section 34; or
  - (b) a report under section 185 that a child is in need of therapeutic treatment.
- (2) However in a legal proceeding evidence that a particular matter is contained in a report referred to in sub-section (1) or evidence that identifies the person who made that report as the reporter, or is likely to lead to the identification of that person as

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the reporter is only admissible in the proceeding if—

- (a) the court or tribunal grants leave for the evidence to be given; or
  - (b) the reporter consents in writing to the admission of that evidence.
- (3) A witness appearing in a legal proceeding must not be asked and, if asked, is entitled to refuse to answer—
- (a) any question to which the answer would or might identify the person who made a report referred to in sub-section (1) as the reporter or would or might lead to the identification of that person as the reporter; or
  - (b) any question as to whether a particular matter is contained in a report referred to in sub-section (1)—

unless the court or tribunal grants leave for the question to be asked or the reporter has consented in writing to the question being asked.

- (4) A court or tribunal may only grant leave under sub-section (2) or (3) if—
- (a) in the case of a proceeding in the Court or in any other court arising out of a proceeding in the Court or in VCAT on a review under section 333, it is satisfied that it is necessary for the evidence to be given to ensure the safety and wellbeing of the child;
  - (b) in any other case, it is satisfied that the interests of justice require that the evidence be given.

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**191. Confidentiality**

- (1) If a report referred to in section 190(1) is made, a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than a protective intervener—
- (a) the name of the person who made the report;  
or
  - (b) any information that is likely to lead to the identification of the person who made the report.
- Penalty: 10 penalty units.
- (2) Sub-section (1) does not apply to a disclosure made to a court or tribunal in accordance with section 190.
- (3) Sub-section (1) does not apply to a disclosure to the Therapeutic Treatment Board of the name or information leading to the identification of a member of the police force who made a report under section 185.
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**PART 4.5—DISCLOSURE OF INFORMATION**

**Division 1—Voluntary Disclosure of Information**

**192. Secretary may request provision of information**

- (1) If the Secretary believes on reasonable grounds that an information holder or a person in charge of, or employed in, a registered community service has information that is relevant to the protection or development of a child in respect of whom the Secretary has received a protective intervention report, the Secretary may ask that person to provide that information to the Secretary.
- (2) A person who is asked under sub-section (1) to provide information to the Secretary may provide that information to the Secretary.

**193. Disclosers protected**

A disclosure of information made under section 192 in good faith—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made; and
- (b) does not make the person by whom it is made subject to any liability in respect of it; and
- (c) without limiting paragraphs (a) and (b), does not constitute a contravention of—
  - (i) section 141 of the **Health Services Act 1988**; or
  - (ii) section 120A of the **Mental Health Act 1986**.

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**Division 2—Compulsory Disclosure of Information**

**194. Who is an authorised officer?**

- (1) The Secretary may authorise any person in a prescribed class of employees as an authorised officer for the purposes of this Division.
- (2) An authorisation may be general or limited to specified functions.

**195. Secretary may authorise direction to disclose**

The Secretary may authorise a direction to be given to an information holder (other than a member of the police force) under this Division, if the Secretary believes on reasonable grounds that the information holder has information that is relevant to the protection or development of a child in respect of whom a protection order is in force.

**196. Authorised officer may require disclosure of information**

- (1) This section applies if the Secretary has authorised under section 195 the giving of a direction in relation to a child in respect of whom a protection order is in force.
  - (2) An authorised officer may in writing direct any information holder—
    - (a) to give information to the authorised officer, orally or in writing on any matter concerning the protection or development of the child; and
    - (b) to produce documents to the authorised officer that relate to any matter concerning the protection or development of the child; and
    - (c) to give reasonable assistance to the authorised officer in relation to the child.
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- (3) An authorised officer may disclose to the Secretary any information or document provided to the authorised officer under this Division.
- (4) Nothing in this section permits a direction requiring the disclosure by any person employed at or appointed to the Children's Court Clinic of any information or document relating to the carrying out of the Clinic's functions.

**197. Refusal or failure to comply with requirement**

A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an authorised officer under this Division.

Penalty: 10 penalty units.

**198. Protection against self-incrimination**

It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Division, if the giving of the information or the doing of that other thing would tend to incriminate the person.

**199. Legal professional privilege**

It is a reasonable excuse for a person to refuse or fail to give information or do any other thing that the person is required to do by or under this Division, if the giving of the information or the doing of that other thing would be a breach of legal professional privilege.

**200. Medical professional privilege does not apply**

- (1) It is not a reasonable excuse for a person to refuse or fail to give information or produce documents to an authorised officer under this Division on the ground of medical professional privilege.

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- (2) Sections 28(2), 28(3) and 32C of the **Evidence Act 1958** do not apply to prevent—
- (a) the giving of information or production of documents to an authorised officer as required under this Division; or
  - (b) the information given or documents produced to the authorised officer under this Division in relation to a child being given in evidence in any proceedings under this Chapter in relation to the child.

**201. Offence to give false or misleading information**

A person must not—

- (a) give information to an authorised officer under this Division that the person believes to be false or misleading in any material particular; or
- (b) produce a document to an authorised officer under this Division that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 10 penalty units.

**202. Exclusion of evidence of disclosed information**

Information given or documents produced to an authorised officer in relation to a child under this Division must not be given in evidence in a legal proceeding other than a proceeding in relation to the child under this Chapter.

**203. Reporting of authorisations and directions**

The Secretary must include in the annual report of the Department prepared under the **Financial Management Act 1994** a report on the operation of this Division in respect of the relevant financial year including—

- (a) the number of authorisations made under section 195; and
  - (b) the number of directions given under section 196; and
  - (c) the extent of compliance with directions under section 196; and
  - (d) the number of persons prosecuted under section 197.
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**PART 4.6—INVESTIGATION**

**Division 1—Investigation of Protective Intervention Report**

**204. Directions for protective interveners**

- (1) The Minister may—
  - (a) issue directions to be followed by protective interveners in the exercise of their functions;  
or
  - (b) amend, in whole or in part, any directions issued under paragraph (a).
- (2) The Minister must consult with the Minister administering the **Police Regulation Act 1958** before issuing directions relating to protective interveners who are members of the police force.
- (3) The Minister must cause any directions issued and any amendments made under sub-section (1) to be published in the Government Gazette.

**205. Investigation by protective intervener**

- (1) A protective intervener must, as soon as practicable after receiving a protective intervention report, investigate, or cause another protective intervener to investigate, the subject-matter of the report in a way that will be in the best interests of the child.
- (2) A protective intervener who is investigating the subject-matter of a report—
  - (a) must inform the child and the child's parents that any information they give may be used for the purposes of a protection application;  
and

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- (b) must not disclose any information arising from the investigation to anyone other than—
  - (i) a court; or
  - (ii) a person referred to in any paragraph of section 206(2); or
  - (iii) a person to whom the protective intervener is authorised by the Secretary to disclose the information.
- (3) The Secretary may only authorise the disclosure of information to a person under sub-section (2)(b) if he or she believes on reasonable grounds that the disclosure is necessary to assist in the investigation of the subject-matter of the report.

**206. Record of investigation**

- (1) On completing an investigation of a protective intervention report, the protective intervener must, as soon as practicable, make a written record of—
  - (a) details of the investigation; and
  - (b) the results of the investigation.
- (2) If after completing an investigation of a protective intervention report the protective intervener decides not to make a protection application, a person must not disclose the record of the investigation made under sub-section (1) to anyone other than—
  - (a) the child; or
  - (b) the child's parents; or
  - (c) the Secretary; or
  - (d) the Chief Commissioner of Police; or

- (e) a person in connection with a review by VCAT or a panel appointed under section 332 of decisions relating to the recording of information in the central register; or
- (f) a person who is, or is a member of a class of persons who are, authorised in writing by the Secretary or the Chief Commissioner of Police to have access to that record or the class of records to which that record belongs.

Penalty: 10 penalty units.

- (3) Despite anything to the contrary in the **Freedom of Information Act 1982**, sub-section (2) does not have the effect of making the record of the investigation an exempt document for the purposes of that Act.

#### **207. Provision of protection report to police**

- (1) The Secretary must, on a request made in accordance with any directions of the Minister by a member of the police force who is investigating the subject-matter of a protective intervention report, submit a protection report to that member of the police force within 21 days.
- (2) A member of the police force who receives a protection report under sub-section (1) or the author of that report must not disclose any information contained in it to any person other than another protective intervener who is investigating the subject-matter of the protective intervention report.

Penalty: 10 penalty units.



- (3) Nothing in sub-section (2) prevents the disclosure to a court by a member of the police force of information contained in a protection report received by that member.

#### **208. Protection of givers of information**

The giving of information to a protective intervener in good faith during the course of the investigation of the subject-matter of a protective intervention report—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is given; and
- (b) does not make the person by whom it is given subject to any liability in respect of it; and
- (c) does not constitute a contravention of—
  - (i) section 141 of the **Health Services Act 1988**; or
  - (ii) section 120A of the **Mental Health Act 1986**.

#### **209. Confidentiality**

- (1) A protective intervener must not disclose to any person, other than to another protective intervener or to a person in connection with a court proceeding or to a person in connection with a review by VCAT or a panel appointed under section 332 of decisions relating to the recording of information in the central register—
- (a) the name of a person who gave information in confidence to a protective intervener during the course of the investigation of the subject-matter of a protective intervention report; or

- (b) any information that is likely to lead to the identification of a person referred to in paragraph (a)—

without the written consent of the person referred to in paragraph (a) or authorisation by the Secretary.

Penalty: 10 penalty units.

- (2) The Secretary may only authorise the disclosure of information to a person under sub-section (1) if the Secretary believes on reasonable grounds that the disclosure is necessary to ensure the safety and wellbeing of the child.
- (3) In this section "**court proceeding**" includes a proceeding in the Family Court of Australia.

## **Division 2—Investigation of Therapeutic Treatment Report**

### **210. Investigation by Secretary**

- (1) The Secretary must, as soon as practicable after receiving a report under section 185 that a child is in need of therapeutic treatment, investigate the subject-matter of the report in a way that will best promote the provision of assistance and, where appropriate, therapeutic treatment to the child.
- (2) The Secretary, in carrying out the investigation—
- (a) must inform the child and the child's parents that any information they give may be used for the purposes of a therapeutic treatment application; and
  - (b) must not disclose any information arising from the investigation to anyone other than—
    - (i) a court; or
    - (ii) a person referred to in any paragraph of section 211(2); or

- (iii) a person to whom the Secretary believes on reasonable grounds that it is necessary to disclose the information to assist in the investigation of the subject-matter of the report.

**211. Record of investigation**

- (1) On completing an investigation of the subject-matter of a report under section 185, the Secretary must, as soon as practicable, make a written record of—
  - (a) details of the investigation; and
  - (b) the results of the investigation.
- (2) If, after completing an investigation of a report under section 185, the Secretary decides not to make a therapeutic treatment application, a person must not disclose the record of the investigation made under sub-section (1) to anyone other than—
  - (a) the child; or
  - (b) the child's parents; or
  - (c) the Secretary; or
  - (d) the Chief Commissioner of Police; or
  - (e) a person in connection with a review by VCAT or a panel appointed under section 332 of decisions relating to the recording of information in the central register; or
  - (f) a person who is, or is a member of a class of persons who are, authorised in writing by the Secretary or the Chief Commissioner of Police to have access to that record or the class of records to which that record belongs.

Penalty: 10 penalty units.

- (3) Despite anything to the contrary in the **Freedom of Information Act 1982**, sub-section (2) does not have the effect of making the record of the investigation an exempt document for the purposes of that Act.

## **212. Protection of givers of information**

The giving of information to the Secretary in good faith during the course of the investigation of a report under section 185—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is given; and
- (b) does not make the person by whom it is given subject to any liability in respect of it; and
- (c) does not constitute a contravention of—
  - (i) section 141 of the **Health Services Act 1988**; or
  - (ii) section 120A of the **Mental Health Act 1986**.

## **213. Confidentiality**

The Secretary must not disclose to any person, other than to the Therapeutic Treatment Board or to a person in connection with a court proceeding or to a person in connection with a review by VCAT or a panel appointed under section 332 of decisions relating to the recording of information in the central register—

- (a) the name of a person who gave information in confidence to the Secretary during the course of the investigation of the subject-matter of a report under section 185; or

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(b) any information that is likely to lead to the identification of a person referred to in paragraph (a)—

without the written consent of the person referred to in paragraph (a) unless the Secretary believes on reasonable grounds that the disclosure is necessary to ensure provision of assistance or therapeutic treatment for the child.

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**PART 4.7—PROCEDURE IN FAMILY DIVISION**

**Division 1—General**

**214. How proceeding in Family Division commenced**

A proceeding in the Family Division is commenced by filing an application with the appropriate registrar.

**215. Conduct of proceedings in Family Division**

- (1) The Family Division—
  - (a) must conduct proceedings before it in an informal manner; and
  - (b) must proceed without regard to legal forms; and
  - (c) must consider evidence on the balance of probabilities; and
  - (d) may inform itself on a matter in such manner as it thinks fit, despite any rules of evidence to the contrary.
- (2) The Attorney-General may appear or be represented in any proceeding before the Family Division and may call and examine or cross-examine witnesses and make submissions.
- (3) Despite anything to the contrary in this or any other Act, the Secretary or his or her delegate, in the capacity of being a party to any proceeding before the Family Division whether as a protective intervener or otherwise, may appear—
  - (a) personally; or
  - (b) by a legal practitioner; or

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- (c) by an employee of the public service (whether or not admitted as a barrister and solicitor of the Supreme Court) who is authorised by the Secretary to appear in proceedings before the Family Division.
- (4) An authorisation under sub-section (3)(c)—
  - (a) must be made by instrument;
  - (b) may be of a particular employee or of a class of employees;
  - (c) may be subject to any conditions or limitations that the Secretary may specify in it.
- (5) For the purposes of sections 226(4)(b), 226(4)(c) and 537(4), an employee representing a party in accordance with sub-section (3)(c) must be taken to be that party's legal practitioner or legal representative.
- (6) Nothing in sub-section (3) affects any right of the Secretary or his or her delegate to appear in any other matter in the Court personally or by a legal practitioner.

**216. Power of Family Division to make certain orders by consent in absence of parties**

If on an application to the Family Division for the extension of a custody to Secretary order or a guardianship to Secretary order the Court is satisfied that the parties to the proceeding have agreed on the terms of the order and that the making of the order is in the best interests of the child, the Court may make the order without requiring the parties to attend, or be represented at, the proceeding.

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**Division 2—Dispute Resolution Conferences**

**217. Referral of application to dispute resolution conference**

- (1) The Family Division may, on the application of a party or without that application, order that any application made to the Family Division under this Act be referred for a dispute resolution conference to one or two convenors appointed under section 227.
- (2) The purpose of the dispute resolution conference is to give the parties to the application the opportunity to agree or advise on the action that should be taken in the best interests of the child.
- (3) On that referral the convenor or convenors may determine whether the dispute resolution conference is to be—
  - (a) a facilitative conference; or
  - (b) an advisory conference.

**218. What is a facilitative conference?**

- (1) The purpose of a facilitative conference is to enable the parties to the application, with the assistance of the convenor or convenors—
  - (a) to identify the issues in dispute; and
  - (b) to consider alternatives; and
  - (c) to try to reach an agreement as to the action to be taken in the best interests of the child.



- (2) The role of a convenor or the convenors of a facilitative conference is—
  - (a) to chair the conference; and
  - (b) to advise on and determine the process to be followed for the conference; and
  - (c) to provide to the Court a written report of the conclusions reached at the conference.

**219. What is an advisory conference?**

- (1) The purpose of an advisory conference is to recommend to the Court the action to be taken in the best interests of the child.
- (2) The role of a convenor or the convenors of an advisory conference is—
  - (a) to chair the conference; and
  - (b) to consider and appraise the matters in dispute; and
  - (c) to provide to the Court a written report as to the facts of the dispute and the possible outcomes of the dispute and how these outcomes might be achieved.

**220. Guidelines for dispute resolution conferences**

A dispute resolution conference must be conducted in accordance with any guidelines issued from time to time by the Court.

**221. Time and place of dispute resolution conference**

The Court may fix a time and place for the holding of the dispute resolution conference or may direct that a convenor fix, within 14 working days, a time and place.

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**222. Who is to attend a dispute resolution conference?**

- (1) A dispute resolution conference is to be attended by the child's parent and the Secretary.
- (2) The Court may, in addition, order that any of the following attend—
  - (a) the child;
  - (b) a relative or relatives of the child;
  - (c) in the case of an Aboriginal child, a member of the child's Aboriginal community as agreed to by the child;
  - (d) if the child's parent is an Aboriginal person, a member of the parent's Aboriginal community as agreed to by the parent;
  - (e) in the case of a child from an ethnic background, a member of the appropriate ethnic community who is chosen or agreed to by the child or by his or her parent;
  - (f) if the child has a disability, an advocate for the child;
  - (g) if the child's parent has a disability, an advocate for the parent;
  - (h) any other support person for the child requested by the child.
- (3) If a parent of the child has a legal representative, the legal representative may attend the dispute resolution conference.
- (4) If the child is mature enough to give instructions and has a separate legal representative, the legal representative may attend.
- (5) If, in exceptional circumstances, the Court determines that it is in the best interests of a child who, in the opinion of the Court is not mature enough to give instructions, for the child to be

legally represented at a dispute resolution conference, the legal representative may attend.

- (6) Nothing in section 524 (except sub-sections (10) and (11)) or 525 applies to a dispute resolution conference.

**223. Report to Court by convenor**

- (1) A written report made by a convenor under section 218 as a result of a facilitative conference is admissible in the proceedings of the Family Division in respect of the child who is the subject of the conference for the purpose of establishing the conclusions reached at the conference.
- (2) A written report made by a convenor under section 219 as a result of an advisory conference is admissible in the proceedings of the Family Division in respect of the child who is the subject of the conference for the purpose of advising the Court on the matters set out in section 219(2)(c).

**224. Court to consider report of convenor**

If the Family Division has referred an application to a dispute resolution conference under this Division, the Court may consider the written report of the convenor or convenors of the conference in determining what order or finding to make in respect of the application.

**225. Immunity of participants**

- (1) A convenor has, in the performance of his or her duties as convenor of a dispute resolution conference under this Division, the same protection and immunity as a magistrate has in the performance of his or her duties.
- (2) A person representing a party in a dispute resolution conference has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the Court.
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**226. Confidentiality of dispute resolution conferences**

- (1) Evidence of anything said or done or admissions made at a dispute resolution conference is only admissible in a proceeding before a court if the court grants leave or all the parties to the dispute resolution conference consent.
- (2) A court may only grant leave under sub-section (1) if satisfied that it is necessary to do so to ensure the safety and wellbeing of the child.
- (3) Subject to sub-section (4), a person who attends a dispute resolution conference must not disclose any statement made at, or information provided to, the conference without the leave of the Court or the consent of all the parties to the dispute resolution conference.

Penalty: 10 penalty units.

- (4) Nothing in sub-section (3) prevents—
  - (a) the convenor making a record of the proceedings at the dispute resolution conference;
  - (b) discussions taking place between a person who attended the conference and his or her legal representative;
  - (c) discussions taking place between the legal representatives of persons who attended the conference;
  - (d) discussions taking place between protective interveners about the conference.

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**227. Dispute resolution convenors**

- (1) The Governor in Council, on the recommendation of the Attorney-General, may appoint as many convenors as are necessary for the purposes of this Division.
  - (2) A convenor is to be appointed on the terms and conditions set out in the instrument of appointment.
  - (3) The Minister may remove a convenor from office at any time.
  - (4) The Minister must not appoint a person as a convenor unless the Minister is satisfied that the person is of good character and has appropriate qualifications and experience.
  - (5) A convenor is not, in respect of the office of convenor, subject to the **Public Administration Act 2004**.
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**PART 4.8—PROTECTIVE INTERVENTION**

**Division 1—Temporary Assessment Orders**

**228. Application for temporary assessment order by notice**

- (1) The Secretary may give a notice under this section if the Secretary—
  - (a) has a reasonable suspicion that a child is, or is likely to be, in need of protection; and
  - (b) is of the opinion that further investigation and assessment of the matter is warranted; and
  - (c) is of the opinion that the investigation and assessment cannot properly proceed unless a temporary assessment order is made.
- (2) The Secretary may by notice direct—
  - (a) the child to appear; and
  - (b) the child's parents to produce the child—before the Court for the hearing of an application for a temporary assessment order.
- (3) A notice cannot be given under this section if—
  - (a) a protection order (other than an undertaking) is in force in respect of the child; or
  - (b) an application for a protection order has been made in respect of the child but has not been determined.

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- (4) A notice under this section must—
  - (a) be issued out of the Court by the appropriate registrar; and
  - (b) be served, in accordance with section 594, on the child's parent and, if the child is of or above the age of 12 years, the child.

**229. Application for temporary assessment order without notice**

- (1) The Secretary may apply to the Court for leave for the hearing of an application for a temporary assessment order in respect of a child without giving the notice under section 228 if the Secretary—
    - (a) has a reasonable suspicion that a child is, or is likely to be, in need of protection; and
    - (b) is of the opinion that further investigation and assessment of the matter is warranted; and
    - (c) is of the opinion that the investigation and assessment cannot properly proceed unless a temporary assessment order is made; and
    - (d) is satisfied that the giving of the notice required by section 228 is inappropriate in the circumstances.
  - (2) An application cannot be made under this section if—
    - (a) a protection order (other than an undertaking) is in force in respect of the child; or
    - (b) an application for a protection order has been made in respect of the child but has not been determined.
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- (3) The Court may grant leave for the application to be dealt with without giving the notice under section 228 if the Court is satisfied that it is appropriate to do so.

**230. Matters to be considered by Court**

In deciding whether or not to make a temporary assessment order, the Court must consider—

- (a) whether there is information or evidence that would lead to a person having a reasonable suspicion that the child is, or is likely to be, in need of protection; and
- (b) whether a further investigation and assessment of the matter is warranted; and
- (c) whether the Court is satisfied that the investigation and assessment cannot properly proceed unless a temporary assessment order is made; and
- (d) whether the proposed investigation or assessment is likely to provide relevant information that is unlikely to be obtained elsewhere; and
- (e) whether any distress the investigation or assessment is likely to cause the child will be outweighed by the value of the information that might be obtained; and
- (f) any other matter that the Court considers relevant.

**231. Temporary assessment order**

After considering the matters set out in section 230, the Court may make a temporary assessment order if it is satisfied that—

- (a) the making of the order is in the best interests of the child; and



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- (b) it is necessary for the Secretary to assess whether or not the child is in need of protection; and
- (c) the Secretary cannot properly carry out the investigation or assessment unless the order is made.

**232. What may a temporary assessment order provide for?**

- (1) A temporary assessment order may—
  - (a) authorise the Secretary to enter the premises where the child is living;
  - (b) require the parent of the child or any person with whom the child is living to permit the Secretary to enter the premises where the child is living;
  - (c) require the parent of the child or any person with whom the child is living to permit the Secretary to interview the child and to take the child to a place determined by the Secretary for that interview;
  - (d) authorise, subject to section 233, the medical examination of the child by a registered medical practitioner or a registered psychologist;
  - (e) direct the parent of the child or any person with whom the child is living to permit the Secretary to take the child for that medical examination;
  - (f) authorise the provision of the results of the medical examination to be given to the Secretary;

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- (g) require the parent of the child or any person with whom the child is living to attend an interview with the Secretary and, subject to section 234, to answer any questions put to them in the interview;
  - (h) give any other directions or impose any conditions that the Court considers to be in the best interests of the child.
- (2) If the application for a temporary assessment order is made under section 229, the order must include a statement setting out the right of the child or the parent of the child to apply to the Court under section 235 for the order to be varied or revoked.
  - (3) If the temporary assessment order authorises the medical examination of the child, the order must include a statement setting out the terms of section 233.
  - (4) A temporary assessment order must direct the Secretary to provide to the Court by a date specified in the order a report about the outcome of the investigation or assessment.

**233. Child not to be medically examined in certain cases**

Despite a temporary assessment order, a registered medical practitioner or registered psychologist by whom the child is to be examined under the order must not examine the child if—

- (a) the medical practitioner or psychologist is of the opinion that the child has sufficient understanding to give or refuse consent to the examination; and
- (b) the child refuses that consent.

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**234. Protection of privileges**

- (1) Despite a temporary assessment order, a person may refuse to answer a question put by the Secretary in an interview authorised by the order on the ground that—
  - (a) to answer might tend to incriminate the person; or
  - (b) the information is privileged on the ground of legal professional privilege.
- (2) Before the Secretary begins an interview of a person authorised by a temporary assessment order, the Secretary must advise the person of the person's rights under sub-section (1).

**235. Application for variation or revocation of order made in absence of child**

- (1) If a temporary assessment order has been made without notice to the child and the parent of the child, the child or the parent of the child may at any time apply to the Court for the variation or revocation of the order.
- (2) The applicant must serve notice of the application on the Secretary and each other party to the order a reasonable time before the hearing of the application.
- (3) An application under this section must be heard expeditiously.
- (4) On an application under this section, the Court may—
  - (a) vary the terms of the order; or
  - (b) revoke the order; or
  - (c) dismiss the application.

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**236. Duration of temporary assessment order**

- (1) A temporary assessment order made after notice is given under section 228 remains in force for the period (not exceeding 21 days) beginning on the date of the order that is specified in the order.
- (2) A temporary assessment order that is made on an application under section 229 remains in force for the period (not exceeding 10 days) beginning on the date of the order that is specified in the order.
- (3) A temporary assessment order cannot be extended.
- (4) Despite sub-sections (2) and (3), if an application is made under section 235 to vary or revoke an order referred to in sub-section (2), the Court, if it considers exceptional circumstances exist, may extend the period of operation of the order to a total period not exceeding 21 days.

**237. Secretary may apply for warrant**

- (1) The Secretary may apply to the Court for the issue of a search warrant to authorise a member of the police force to enter any premises where a child is believed to be located and search for and apprehend the child to enable the Secretary to exercise his or her powers under a temporary assessment order.
- (2) The Court may grant the search warrant if the Court is satisfied by evidence on oath or by affidavit by the Secretary that it is necessary to issue the warrant to authorise a member of the police force to enter any premises where a child is believed to be located and search for and apprehend the child to enable the Secretary to exercise his or her powers under a temporary assessment order.

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- (3) The search warrant authorises a member of the police force to whom it is directed to use reasonable force to enter any premises where a child to whom the temporary assessment order relates is believed to be located, by force if necessary, and search for and apprehend the child and bring the child to the Secretary to enable the Secretary to exercise his or her powers under the temporary assessment order.
  - (4) The search warrant is executed only when the member of the police force enters the premises where the child is actually located.
  - (5) On executing a search warrant, the member of the police force executing the warrant—
    - (a) must announce that he or she is authorised by the warrant to enter the place; and
    - (b) if the member of the police force has been unable to obtain unforced entry, must give any person at the place an opportunity to allow entry to the place.
  - (6) A member of the police force need not comply with sub-section (5) if he or she believes on reasonable grounds that immediate entry to the place is required to ensure—
    - (a) the safety of any person; or
    - (b) that the effective execution of the search warrant is not frustrated.
  - (7) Unless executed earlier, a search warrant issued under this section remains in force for the duration of the temporary assessment order.
  - (8) Subject to this section, the rules that apply to search warrants under the **Magistrates' Court Act 1989** extend and apply to a search warrant under this section.
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**238. Report to Court by Secretary**

- (1) The Secretary must provide a report in writing to the Court by the date for that report specified in the temporary assessment order.
- (2) The report must set out—
  - (a) details of the action taken by the Secretary under the order; and
  - (b) the results of the investigation and assessment; and
  - (c) any other information that the Secretary considers ought to be provided to the Court or that the Court directs to be included in the report.
- (3) Unless otherwise directed by the Court, the Secretary must cause a copy of the report to be given to each of the following—
  - (a) the child who is the subject of the report;
  - (b) the child's parent;
  - (c) the legal practitioners representing that child;
  - (d) the legal practitioners representing that child's parent;
  - (e) any other person specified by the Court.

**239. Appeal against temporary assessment order**

- (1) If the Court makes a temporary assessment order in respect of a child or dismisses an application for a temporary assessment order in respect of a child, then—
  - (a) the child; or
  - (b) a parent of the child; or
  - (c) the Secretary—may appeal to the Supreme Court against the order or the dismissal.

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- (2) If the Court makes an order dismissing an application by the Secretary for leave for the hearing of an application for a temporary assessment order in respect of a child without giving notice under section 228, the Secretary may appeal to the Supreme Court against that order.
- (3) On an appeal under this section against a temporary assessment order, the Supreme Court must—
- (a) if it thinks that a different temporary assessment order should have been made—
    - (i) set aside the order of the Children's Court; and
    - (ii) make any other order that it thinks ought to have been made; or
  - (b) if it thinks that a temporary assessment order should not have been made, set aside the order of the Children's Court; or
  - (c) in any other case, dismiss the appeal.
- (4) On an appeal under this section against the dismissal of an application for a temporary assessment order, the Supreme Court must—
- (a) if it thinks that the application should not have been dismissed, make the order that it thinks ought to have been made; or
  - (b) in any other case, dismiss the appeal.
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**Division 2—Action by Protective Intervener**

**240. Action by protective intervener**

- (1) If a protective intervener is satisfied on reasonable grounds that a child is in need of protection, he or she may—
  - (a) serve a notice under section 243 directing that the child appear, or be produced, before the Court for the hearing of a protection application; or
  - (b) with or without a warrant, under section 241, take the child into safe custody or cause another protective intervener to take the child into safe custody pending the hearing of a protection application.
- (2) After considering what procedure (if any) to take under sub-section (1) in respect of the child, the protective intervener must record in the central register the information arising from the investigation that the Minister determines should be recorded in that register.
- (3) If the procedure set out in sub-section (1)(a) or (1)(b) has been taken in respect of a child, a protective intervener must as soon as possible make a protection application to the Court and give a copy of the application to—
  - (a) the child's parents, unless they cannot be found after reasonable inquiries; and
  - (b) the child, if he or she is of or above the age of 12 years.



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**241. Protective intervener may take child in need of protection into safe custody**

- (1) If a protective intervener is satisfied on reasonable grounds that a child is in need of protection and that it is inappropriate to take the procedure set out in section 240(1)(a), he or she may—
  - (a) without a warrant, take the child into safe custody or cause another protective intervener to take the child into safe custody; or
  - (b) apply to a magistrate for the issue of a search warrant for the purpose of having the child taken into safe custody.
- (2) A search warrant issued under sub-section (1)—
  - (a) may only be directed to a named member of the police force or generally all members of the police force; and
  - (b) may be endorsed by the person issuing it with a direction that the child be released on an interim accommodation order of the type referred to in section 263(1)(a) or 263(1)(b) as specified in the endorsement.

**242. Actions on taking child into safe custody**

- (1) A protective intervener must on taking a child into safe custody under section 241 give to—
  - (a) the child's parents, unless they cannot be found after reasonable inquiries; and
  - (b) the child, if he or she is of or above the age of 12 years—

a written statement containing the prescribed information relating to the taking of children into safe custody under that section.

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- (2) Subject to sub-section (4), a child taken into safe custody under section 241 must be brought before the Court for the hearing of an application for an interim accommodation order as soon as practicable and, in any event, within one working day after the child was taken into safe custody.
  - (3) Unless a child is brought before the Court under sub-section (2) within 24 hours after the child was taken into safe custody, he or she must, subject to sub-section (4), be brought before a bail justice as soon as possible within that period of 24 hours for the hearing of an application for an interim accommodation order.
  - (4) A child of tender years need not be brought before the Court under sub-section (2) or a bail justice under sub-section (3) unless the Court or bail justice otherwise orders but the Court or bail justice may deal with the application in the absence of the child.
  - (5) Until a child taken into safe custody under section 241 is brought before the Court or a bail justice for the making of an interim accommodation order, the child may only be placed—
    - (a) in an out of home care service; or
    - (b) if there is a substantial and immediate risk of harm to the child, in a secure welfare service; or
    - (c) in other accommodation approved by the Secretary in accordance with the prescribed criteria (if any).
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**243. Making a protection application without taking child into safe custody**

- (1) If a protective intervener is satisfied on reasonable grounds that a child is in need of protection, he or she may by notice direct—
  - (a) the child to appear; and
  - (b) the child's parent to produce the child—before the Court for the hearing of a protection application.
- (2) A notice under sub-section (1) must—
  - (a) be issued out of the Court by the appropriate registrar; and
  - (b) set out the grounds on which a protective intervener intends to make a protection application; and
  - (c) be served on the child's parent and, if the child is of or above the age of 12 years, the child, in accordance with section 594.
- (3) If a notice under sub-section (1) is served in accordance with sub-section (2)(c) and the child does not appear before the Court at the time stated in the notice, the Court may, if satisfied that the notice has come to the attention of the child's parent or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent, issue a search warrant for the purpose of having the child taken into safe custody.
- (4) Sections 241 and 242 apply to the issue and execution of a warrant under sub-section (3) as if it were a warrant issued under section 241(1).

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**Division 3—Child in Need of Therapeutic Treatment**

**Subdivision 1—When is a Child in Need of Therapeutic Treatment?**

**244. When is a child in need of therapeutic treatment?**

For the purposes of this Division, a child is in need of therapeutic treatment if the child—

- (a) is of or above the age of 10 years and under the age of 15 years; and
- (b) has exhibited sexually abusive behaviours.

**245. Referral to Therapeutic Treatment Board for advice**

- (1) This section applies if—
  - (a) the Secretary receives a report under section 185 that a child is in need of therapeutic treatment; or
  - (b) the Court has referred a matter to the Secretary under section 349(2).
- (2) If the Secretary receives a report from a member of the police force under section 185, the Secretary must refer the matter to the Therapeutic Treatment Board for advice.
- (3) If the Secretary receives a report from any other person under section 185, the Secretary may refer the matter to the Therapeutic Treatment Board for advice.
- (4) If the Secretary receives a referral from the Court under section 349(2), the Secretary must refer the matter to the Therapeutic Treatment Board for advice.

- (5) If a matter is to be referred to the Therapeutic Treatment Board, it must be referred before the Secretary applies for a therapeutic treatment order in relation to the matter.
- (6) On a referral to it under this section, the Therapeutic Treatment Board must provide advice as to whether it is appropriate to seek a therapeutic treatment order in respect of the child.
- (7) The Secretary must consider any advice received from the Therapeutic Treatment Board under this section before applying for a therapeutic treatment order.

#### **Subdivision 2—Therapeutic Treatment Orders**

##### **246. Secretary may apply for therapeutic treatment order**

- (1) If the Secretary is satisfied on reasonable grounds that a child is in need of therapeutic treatment, the Secretary may by notice direct—
  - (a) the child to appear; and
  - (b) the child's parent to produce the child—before the Court for the hearing of a therapeutic treatment application.
- (2) A notice under sub-section (1) must—
  - (a) be issued out of the Court by the appropriate registrar; and
  - (b) set out the grounds on which the Secretary intends to make a therapeutic treatment application; and
  - (c) be served on the child's parent and the child in accordance with section 594.

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**247. Issue of search warrant if child does not appear**

- (1) If the child does not appear before the Court for the hearing of the therapeutic treatment application, the Court may issue a search warrant for the purpose of having the child taken into safe custody.
- (2) Sections 241 and 242 apply (with any necessary modifications) to the issue and execution of the warrant as if it were a warrant issued under section 241(1).

**248. When Court may make order under this Division**

The Court may make a therapeutic treatment order in respect of a child of or over the age of 10 years and under the age of 15 years if the Court is satisfied—

- (a) that the child has exhibited sexually abusive behaviours; and
- (b) that the order is necessary to ensure the child's access to, or attendance at, an appropriate therapeutic treatment program.

**249. Therapeutic treatment order**

- (1) A therapeutic treatment order must require the child to participate in an appropriate therapeutic treatment program.
- (2) A therapeutic treatment order may include—
  - (a) a condition directing the parent of the child or any person who has the care of the child to take any necessary steps to enable the child to participate in a therapeutic treatment program; and

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- (b) a condition directing the child to permit reports of his or her progress and attendance at the therapeutic treatment program to be given to the Secretary; and
- (c) any other conditions that the Court considers appropriate.

**250. Duration of order**

A therapeutic treatment order remains in force for the period (not exceeding 12 months) specified in the order.

**251. Statements by child not admissible in criminal proceedings**

Any statement made by a child when participating in a therapeutic treatment program under a therapeutic treatment order is not admissible in any criminal proceedings in relation to the child.

**Subdivision 3—Therapeutic Treatment (Placement) Orders**

**252. When can a therapeutic treatment (placement) order be made?**

- (1) The Court, on the application of the Secretary, may make a therapeutic treatment (placement) order in respect of a child if—
  - (a) the Court makes or has made a therapeutic treatment order in respect of the child; and
  - (b) the Court is satisfied that the therapeutic treatment (placement) order is necessary for the treatment of the child.
- (2) The Secretary must serve notice of the application on the child and the child's parent a reasonable time before the hearing of the application.

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- (3) A notice under sub-section (2) must—
- (a) be issued out of the Court by the appropriate registrar; and
  - (b) set out the grounds on which the Secretary has made the application for a therapeutic treatment (placement) order; and
  - (c) be served on the child's parent and the child in accordance with section 594.

**253. Therapeutic treatment (placement) order**

A therapeutic treatment (placement) order—

- (a) grants sole custody of the child to the Secretary; and
- (b) does not affect the guardianship of the child; and
- (c) may include any conditions that the Court considers to be in the best interests of the child, including—
  - (i) a condition concerning access by a parent or other person; and
  - (ii) in the case of an Aboriginal child, a condition incorporating a cultural plan for the child.

**254. Duration of order**

A therapeutic treatment (placement) order remains in force for the period (not exceeding the period of the therapeutic treatment order to which it relates) specified in the order.



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**Subdivision 4—Extension of Orders**

**255. Application for extension of order**

- (1) The Secretary may apply to the Court for one extension of the period of—
  - (a) a therapeutic treatment order; or
  - (b) a therapeutic treatment (placement) order.
- (2) An application to extend a therapeutic treatment order may be made at any time while the order is in force.
- (3) An application to extend a therapeutic treatment (placement) order may be made at any time while the order and the therapeutic treatment order to which it relates is in force.
- (4) If an application is made under this section to extend an order, the order continues in force until the application is determined.
- (5) The Secretary must cause a copy of an application under this section to be served, in accordance with section 594, on the child's parent and the child.

**256. Extension of order**

- (1) If an application is made under section 255 to extend a therapeutic treatment order, the Court may extend the order for a period not exceeding 12 months if it is satisfied that the child is still in need of therapeutic treatment.
- (2) If an application is made under section 255 to extend a therapeutic treatment (placement) order, the Court may extend the order for a period not exceeding the period of the therapeutic treatment order to which it relates if the Court is satisfied that the therapeutic treatment (placement) order is still necessary for the therapeutic treatment of the child.

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- (3) The Court must not extend an order under this section unless the Court is satisfied that therapeutic treatment is still available for the child.

**Subdivision 5—Variation and Revocation of Orders**

**257. Variation of order**

- (1) An application for a variation of the conditions of a therapeutic treatment order or a therapeutic treatment (placement) order may be made to the Court by—
- (a) the Secretary; or
  - (b) the child in respect of whom the order is made; or
  - (c) a parent of the child.
- (2) An applicant under sub-section (1) must serve a copy of the application on each other person who may make an application under this section in respect of the order a reasonable time before the hearing of the application.
- (3) On an application under sub-section (1) the Court may vary any of the conditions included in the order or add or substitute a condition but must not—
- (a) in the case of a therapeutic treatment order, make a change in the requirement to participate in a therapeutic program or extend the period of the order; and
  - (b) in the case of a therapeutic treatment (placement) order, make any change in custody or extend the period of the order.

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**258. Revocation of order**

- (1) The Secretary may apply to the Court to revoke a therapeutic treatment order or a therapeutic treatment (placement) order.
- (2) If criminal proceedings against a child have been adjourned pending the completion by the child of a therapeutic treatment program under a therapeutic treatment order, the Secretary must seek the advice of the Therapeutic Treatment Board for advice before applying to the Court to revoke the therapeutic treatment order.
- (3) The Secretary must give notice of the application to the child and the child's parent.
- (4) A notice under sub-section (3) must—
  - (a) be issued out of the Court by the appropriate registrar; and
  - (b) set out the grounds on which the Secretary seeks the revocation of the order; and
  - (c) be served on the child's parent and the child in accordance with section 594.
- (5) The child or the parent of the child may apply to the Court for the revocation of a therapeutic treatment order or a therapeutic treatment (placement) order.
- (6) An applicant under sub-section (5) must serve a copy of the application on the Secretary and any other person who was a party to the application for the therapeutic treatment order or therapeutic treatment (placement) order a reasonable time before the hearing of the application.
- (7) On an application under this section, the Court may revoke the therapeutic treatment order or therapeutic treatment (placement) order.

- (8) A therapeutic treatment (placement) order is revoked when the therapeutic treatment order to which it relates is revoked.

**Division 4—Irreconcilable Differences**

**259. Application if there is an irreconcilable difference**

- (1) A person who has custody of a child and who believes that there is a substantial and presently irreconcilable difference between himself or herself and the child to such an extent that the care and control of the child are likely to be seriously disrupted may, subject to section 260, apply to the Court for a finding that such a difference exists.
- (2) A child who believes that there is a substantial and presently irreconcilable difference between himself or herself and the person who has custody of him or her to such an extent that the care and control of him or her are likely to be seriously disrupted may, subject to section 260, apply to the Court for a finding that such a difference exists.
- (3) The applicant must cause notice of the irreconcilable difference application to be served on all other parties to the application and on the Secretary at least 5 days before the hearing of the application.
- (4) A notice under sub-section (3) must—
  - (a) be issued out of the Court by the appropriate registrar; and
  - (b) set out the grounds on which the applicant has made the irreconcilable difference application; and
  - (c) be served on the child's parent or the child (as the case requires) in accordance with section 594.

- (5) With the leave of the Court, the Secretary may appear or be represented on the hearing of the irreconcilable difference application and may call and examine or cross-examine witnesses and make submissions.

**260. Conciliation counselling**

- (1) Before an irreconcilable difference application may be filed with the appropriate registrar by a person, he or she must lodge with the Secretary an application for conciliation counselling and produce to the appropriate registrar a certificate of conciliation counselling issued by the Secretary within the last 3 months.
- (2) If an application for conciliation counselling is lodged with the Secretary, he or she must—
- (a) cause information relating to conciliation counselling and appropriate support services to be given or sent by post to the child, the person who has custody of the child and any other relevant parties; and
  - (b) ensure that conciliation counselling is provided to those persons—
- as soon as possible within the period of 21 days after that lodgement.
- (3) The purpose of conciliation counselling is to assist the parties in the resolution of their differences and thereby avoid proceedings in the Court.
- (4) The person conducting conciliation counselling must—
- (a) undertake conciliation counselling with each of the parties separately; and
  - (b) hold at least one conference involving all the parties.

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- (5) At the end of the period of 21 days referred to in sub-section (2) the Secretary must provide a certificate of conciliation counselling to each party who participated in the conciliation counselling.
  - (6) The Secretary may provide a certificate of conciliation counselling to a party even if a conference involving all the parties did not take place if—
    - (a) that party was willing to attend a conference involving all the parties but one or more other parties refused to attend; or
    - (b) the Secretary determined that exceptional circumstances existed which would have the effect that attendance at a conference involving all the parties would subject one of the parties to extreme duress or emotional distress.

**261. Proceeding on application if party does not appear**

- (1) If the child does not appear before the Court for the hearing of the irreconcilable difference application, the Court may issue a search warrant for the purpose of having the child taken into safe custody.
- (2) Sections 241 and 242 apply to the issue and execution of the warrant as if it were a warrant issued under section 241(1).
- (3) If the person who has custody of the child does not appear before the Court for the hearing of the irreconcilable difference application, the Court may proceed to hear and determine the application in that person's absence if the Court is satisfied that a copy of the application was served on that person in accordance with section 259(4).

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**Division 5—Interim Accommodation Orders**

**262. Interim accommodation order**

- (1) The Court may make an interim accommodation order in respect of a child if—
- (a) the child has been taken into safe custody by a protective intervener under this Chapter; or
  - (b) a protection application is filed with the appropriate registrar; or
  - (c) a child has been taken into safe custody under section 247; or
  - (d) an irreconcilable difference application is filed with the appropriate registrar; or
  - (e) an application for conciliation counselling is lodged with the Secretary under section 260; or
  - (f) the hearing by the Court of a proceeding in the Family Division (including a proceeding under this section) is adjourned; or
  - (g) an application for an extension or further extension of the period of an interim accommodation order has been made to the Court under section 267; or
  - (h) an interim accommodation order or any condition attached to an interim accommodation order has not been complied with; or
  - (i) an application for a new interim accommodation order has been made to the Court under section 270(1); or
  - (j) the child is taken into safe custody on a warrant issued under this Chapter; or

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- (k) an appeal has been instituted under Part 4.11 to the Supreme Court or the County Court against an order made by the Children's Court under this Chapter; or
    - (l) a question of law has been reserved by the Family Division under section 533 for the opinion of the Supreme Court.
  - (2) An application for an interim accommodation order may be made—
    - (a) by the child or a parent of the child; or
    - (b) by a protective intervener.
  - (3) The Supreme Court or the County Court may also make an interim accommodation order in respect of a child if the hearing by it of an appeal against an order made by the Children's Court under this Chapter is adjourned.
  - (4) Without limiting any other power to make an interim accommodation order that is expressly conferred on a bail justice by this Division, a bail justice may also make an interim accommodation order in respect of a child in the circumstances referred to in sub-section (1)(a), (c), (h), (i) and (j).
  - (5) If a bail justice makes an interim accommodation order—
    - (a) he or she must cause a written copy of the order to be given to every party to the application for the order at the time the order is made; and
    - (b) the protective intervener or, if there is no protective intervener involved, the bail justice must cause a copy of the order to be filed with the appropriate registrar as soon as possible.
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- (6) Despite anything to the contrary in this section, an interim accommodation order must not be made in respect of a child in relation to whom a custody to Secretary order, a guardianship to Secretary order or a long-term guardianship to Secretary order is in force.
- (7) Despite anything to the contrary in this Chapter, if an interim accommodation order is made as a result of a breach of a supervision order or a supervised custody order, that supervision order or supervised custody order is suspended on the making of the interim accommodation order and remains suspended for the period of operation of the interim accommodation order but the period of the supervision order or supervised custody order is not extended by the suspension.

**263. Conditions of interim accommodation order**

- (1) An interim accommodation order may provide for—
  - (a) the release of the child on the signing by the child of an undertaking to appear on the hearing, or the resumption of the hearing, of the relevant proceeding; or
  - (b) the release of the child into the care of his or her parent pending that hearing or resumption on the entering into (whether orally or in writing) by that parent of an undertaking to produce the child before the Court for the hearing, or the resumption of the hearing, of the relevant proceeding; or
  - (c) the placement of the child with a suitable person or suitable persons pending that hearing or resumption on the entering into (whether orally or in writing) by that person or those persons of an undertaking to produce the child before the Court for the

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- hearing, or the resumption of the hearing, of the relevant proceeding and following a report (whether oral or written) from the Secretary on that person's or those persons' suitability; or
- (d) the placement of the child in an out of home care service pending that hearing or resumption; or
  - (e) the placement of the child in a secure welfare service pending that hearing or resumption if there is a substantial and immediate risk of harm to the child; or
  - (f) the placement of the child in a declared hospital on the provision to the Court or bail justice of a statement in the prescribed form by or on behalf of the chief executive of the hospital that a bed is available for the child at the hospital; or
  - (g) the placement of the child in a declared parent and baby unit on the provision to the Court or bail justice of a statement in the prescribed form by or on behalf of the chief executive of the agency managing the parent and baby unit that a place is available for the child at the parent and baby unit.
- (2) The Court or bail justice may determine not to require a suitable person referred to in sub-section (1)(c) to attend on the hearing of the application for an interim accommodation order if the undertaking required under that sub-section is given by that person by statutory declaration in the prescribed form.
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- (3) An interim accommodation order must not be made providing for the placement of a child in a secure welfare service in any case referred to in section 262(1)(d) or 262(1)(e) unless the Court or bail justice making the order is of the opinion that the placement is necessary to ensure the attendance of the child on the hearing of the irreconcilable difference application.
  - (4) An interim accommodation order must not be made in any case referred to in section 262(1)(c) unless the Court or bail justice making the order is of the opinion that the placement is necessary to ensure the attendance of the child on the hearing of the therapeutic treatment application.
  - (5) The fact that the child does not have adequate accommodation is not by itself a sufficient reason for the making of an order providing for the placement of a child in a secure welfare service.
  - (6) In preparing a report under sub-section (1)(c), the Secretary must have regard to the prescribed criteria (if any).
  - (7) An interim accommodation order may include any conditions that the Court or bail justice considers should be included in the best interests of the child.
  - (8) Conditions included in an interim accommodation order may relate to the access of a parent or other person to the child.
  - (9) The Governor in Council may by Order published in the Government Gazette declare hospitals and parent and baby units for the purposes of sub-section (1).
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**264. Duration of interim accommodation order**

- (1) Subject to this section, an interim accommodation order under section 263(1)(a) or 263(1)(b) remains in force for the period specified in the order and beginning on the day the order is made.
- (2) Subject to this section an interim accommodation order of a kind referred to in paragraph (c), (d), (e), (f) or (g) of section 263(1) remains in force for the period (not exceeding 21 days) specified in the order and beginning on the day on which the order is made.
- (3) An interim accommodation order made by a bail justice only remains in force until the application is heard by the Court on the next working day.
- (4) An interim accommodation order made in any case referred to in section 262(1)(e) only remains in force until an irreconcilable difference application has been made to the Court or for the period of 21 days (beginning on the day on which the order is made), whichever is the shorter.

**265. Parent entitled to know child's whereabouts**

- (1) A parent is entitled to be given details of the child's whereabouts under an interim accommodation order unless the Court or bail justice making the order directs that those details be withheld from the parent.
- (2) The Court or a bail justice may only give a direction under sub-section (1) if of the opinion that the direction is in the best interests of the child.

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**266. Power of Secretary to transfer child**

- (1) If an interim accommodation order provides for the placement of a child in an out of home care service or a secure welfare service, the Secretary may from time to time, if he or she believes that it is advisable in the best interests of the child, transfer the child—
  - (a) from one out of home care service to another out of home care service; or
  - (b) from one secure welfare service to another secure welfare service.
- (2) If the whereabouts of a child are changed under sub-section (1), the Secretary must give notice of that change to—
  - (a) the child's parent, unless a direction has been given under section 265; and
  - (b) the appropriate registrar.

**267. Extension of interim accommodation order**

- (1) Subject to sub-section (2), at any time while an interim accommodation order made by the Court is in force an application for an extension or further extension of the period of the order may be made to the Court by a protective intervener.
- (2) On an application under sub-section (1) the Court may—
  - (a) in the case of an order of a kind referred to in section 263(1)(a) or 263(1)(b), extend the order for the period specified in the order and beginning on the day the order is made if it is satisfied that it is in the best interests of the child to do so;

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- (b) in the case of an order of a kind referred to in paragraph (c), (d), (f) or (g) of section 263(1), extend the order for the period (not exceeding 21 days) specified in the order and beginning on the day on which the order is made if it is satisfied that it is in the best interests of the child to do so;
  - (c) in the case of an order of a kind referred to in section 263(1)(e), extend the order (if it has not previously been extended) for one further period (not exceeding 21 days) beginning on the day on which the order is made if it is satisfied that exceptional circumstances exist which justify it in doing so.
- (3) The Court may not vary or revoke an interim accommodation order or make a new interim accommodation order on an application under sub-section (1).
- (4) The Court may, if in its opinion special circumstances exist which justify it in doing so, refuse to hear an application under sub-section (1) unless the applicant has given notice of the application to—
- (a) the person who applied for the interim accommodation order; and
  - (b) any other party to the proceeding in which that order was made; and
  - (c) any person with whom the child is living—  
a reasonable time before the hearing of the application.
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- (5) If the Court proceeds to hear an application under sub-section (1) without requiring notice of it to be given as specified in sub-section (4), it must cause a written copy of any order made by it on the application to be given as soon as possible to the persons and parties referred to in paragraphs (a), (b) and (c) of sub-section (4).

**268. Application for variation of interim accommodation order**

- (1) If the Court makes an interim accommodation order in respect of a child, the child or a parent of the child may apply to the Court for variation of the conditions included in the order if—
- (a) the applicant was not legally represented at the hearing of the application for the order; or
  - (b) new facts or circumstances have arisen since the making of the order.
- (2) If—
- (a) the Court makes an interim accommodation order in respect of a child; and
  - (b) new facts or circumstances have arisen since the making of the order—
- a protective intervener may apply to the Court for variation of the conditions included in the order.
- (3) On an application under sub-section (2) by a protective intervener, he or she may by notice direct—
- (a) the child to appear; and
  - (b) the parent or other person with whom the child is living to produce the child—
- before the Court.

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- (4) A notice under sub-section (3) must be served on—
- (a) the child's parent or other person with whom the child is living; and
  - (b) if the child is of or above the age of 12 years, the child—
- a reasonable time before the hearing of the application.
- (5) If a notice under sub-section (3) is served in accordance with sub-section (4) and the child does not appear before the Court at the time stated in the notice—
- (a) a protective intervener may, without a warrant, take the child into safe custody; or
  - (b) the Court may, if satisfied that the notice has come to the attention of the child's parent or other person with whom the child is living or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent or other person with whom the child is living, issue a search warrant for the purpose of having the child taken into safe custody.
- (6) Sections 241 and 242 apply with any necessary modifications to the taking of a child into safe custody and the issue and execution of a search warrant under this section.
- (7) On the child appearing or being brought before the Court under this section, the Court may vary the conditions of the order.
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**269. Procedure on breach of interim accommodation order**

- (1) If a protective intervener has reasonable grounds for believing that an interim accommodation order or any condition of an interim accommodation order has not been, or is not being, complied with, he or she may by notice direct—
  - (a) the child to appear; and
  - (b) the parent or other person with whom the child is living to produce the child—before the Court.
- (2) A notice under sub-section (1) must be served on—
  - (a) the child's parent or other person with whom the child is living; and
  - (b) if the child is of or above the age of 12 years, the child—a reasonable time before the commencement of the hearing under this section.
- (3) If a notice under sub-section (1) is served in accordance with sub-section (2) and the child does not appear before the Court at the time stated in the notice—
  - (a) a protective intervener may, without a warrant, take the child into safe custody; or
  - (b) the Court may, if satisfied that the notice has come to the attention of the child's parent or other person with whom the child is living or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent or other person with whom the child is living, issue a search warrant for the purpose of having the child taken into safe custody.

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- (4) If a protective intervener—
- (a) is satisfied that there is good reason not to proceed as specified in sub-section (1) or that service of a notice under sub-section (1) cannot be carried out; and
  - (b) is satisfied on reasonable grounds that there has been a failure to comply with the interim accommodation order or any condition attached to it—
- he or she may, without a warrant, take the child into safe custody or apply to a magistrate for the issue of a search warrant for the purpose of having the child taken into safe custody.
- (5) A child taken into safe custody under sub-section (4) must be brought before the Court or a bail justice as soon as possible after being taken into safe custody and in any event within 24 hours after that event.
- (6) Sections 241 and 242 apply with any necessary modifications to the taking of a child into safe custody and the issue and execution of a search warrant under this section.
- (7) On the child appearing or being brought before the Court or a bail justice under this section, the Court or bail justice—
- (a) may revoke the interim accommodation order and make another interim accommodation order; or
  - (b) may refuse to revoke the interim accommodation order; or
  - (c) may make another interim accommodation order if the interim accommodation order expired after the notice was served under sub-section (1) or the protective intervener proceeded as specified in sub-section (4), as the case requires.
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**270. Application for new interim accommodation order**

- (1) If an interim accommodation order is in force in respect of a child, the child or a parent of the child may apply to the Court for a new interim accommodation order if—
  - (a) the applicant was not legally represented at the hearing of the application for the order;  
or
  - (b) new facts or circumstances have arisen since the making of the order.
- (2) If the Court makes an interim accommodation order in respect of a child, a protective intervener (whether or not the order is still in force) may apply to the Court for a new interim accommodation order if—
  - (a) new facts or circumstances have arisen since the making of the order; or
  - (b) the protective intervener is satisfied on reasonable grounds that the child is living in conditions which are unsatisfactory in terms of the safety and wellbeing of the child.
- (3) On an application under sub-section (2), the protective intervener may by notice direct—
  - (a) the child to appear; and
  - (b) the parent or other person with whom the child is living to produce the child—before the Court.

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- (4) A notice under sub-section (3) must be served on—
- (a) the child's parent or other person with whom the child is living; and
  - (b) if the child is of or above the age of 12 years, the child—
- a reasonable time before the commencement of the hearing under this section.
- (5) If a notice under sub-section (3) is served in accordance with sub-section (4) and the child does not appear before the Court at the time stated in the notice—
- (a) a protective intervener may, without a warrant, take the child into safe custody; or
  - (b) the Court may issue a search warrant for the purpose of having the child taken into safe custody, if the Court is satisfied that the notice has come to the attention of the child's parent or other person with whom the child is living or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent or other person with whom the child is living.
- (6) If on an application under sub-section (2) by a protective intervener in the circumstances set out in sub-section (2)(b), the protective intervener is satisfied that there is good reason not to proceed as specified in sub-section (3) or that service of a notice under sub-section (3) cannot be carried out, he or she may—
- (a) without a warrant, take the child into safe custody; or
  - (b) apply to a magistrate for the issue of a search warrant.
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- (7) Sections 241 and 242 apply with any necessary modifications to the taking of a child into safe custody and the issue and execution of a search warrant under this section.
  - (8) A child taken into safe custody under subsection (6) must be brought before the Court or a bail justice as soon as possible after being taken into safe custody and in any event within 24 hours after that event.
  - (9) On the child appearing or being brought before the Court or a bail justice under this section, the Court or bail justice may make a new interim accommodation order.
  - (10) Nothing in this section limits the power of the Court to make another interim accommodation order where the existing order was made by a bail justice or was made by the Court on an adjournment of a proceeding.

**271. Appeal against interim accommodation order**

- (1) If the Court makes an interim accommodation order in respect of a child or dismisses an application for an interim accommodation order in respect of a child, then—
  - (a) the child; or
  - (b) a parent of the child; or
  - (c) a protective intervener—may appeal to the Supreme Court against the order or the dismissal.
- (2) On an appeal under this section against an interim accommodation order, the Supreme Court must—
  - (a) if it thinks that a different interim accommodation order should have been made—

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- (i) set aside the order of the Children's Court; and
  - (ii) make any other order that it thinks ought to have been made; or
- (b) in any other case, dismiss the appeal.
- (3) On an appeal under this section against the dismissal of an application for an interim accommodation order, the Supreme Court must—
  - (a) if it thinks that the application should not have been dismissed, make the order that it thinks ought to have been made; or
  - (b) in any other case, dismiss the appeal.

**Division 6—Undertakings**

**272. Order requiring undertaking**

- (1) In a proceeding under this Part, the Court may make an order under this Division requiring a person to give an undertaking.
- (2) The order may require—
  - (a) the child; or
  - (b) the child's parent; or
  - (c) the person with whom the child is living—to enter into an undertaking in writing to do or refrain from doing the thing or things specified in the undertaking for the period specified in the undertaking.
- (3) The period specified in the undertaking must be a period not exceeding 6 months or, if the Court is satisfied that there are special circumstances which warrant the making of an order for such a period, exceeding 6 months but not exceeding 12 months.

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- (4) An undertaking may include any conditions that the Court considers to be in the best interests of the child.
- (5) The Court may only make an order requiring a person to enter into an undertaking if that person consents to the making of the order.

**273. Variation or revocation of undertaking**

- (1) An application for a variation of an undertaking or of any conditions of an undertaking or for the revocation of an undertaking may be made to the Court by—
  - (a) the child; or
  - (b) the child's parent; or
  - (c) the person with whom the child is living.
- (2) The applicant must as soon as possible cause a copy of an application under this section to be given or sent by post to any person by or on behalf of whom the application could have been made.
- (3) On an application under sub-section (1) the Court may—
  - (a) if the application is for a variation of an undertaking or of any conditions of an undertaking, vary the undertaking or any of the conditions of the undertaking or add or substitute a condition but must not extend the period of the undertaking; or
  - (b) if the application is for the revocation of an undertaking, revoke the undertaking.

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**PART 4.9—PROTECTION ORDERS**

**Division 1—General**

**274. When Court may make order under this Part**

The Court may make an order under this Part in respect of a child if the Court finds—

- (a) that the child is in need of protection; or
- (b) that there is a substantial and irreconcilable difference between the person who has custody of the child and the child to such an extent that the care and control of the child are likely to be seriously disrupted.

**275. Types of protection order**

- (1) If the Court makes a finding under section 274 it may make any one of the following protection orders—
  - (a) an order requiring a person to give an undertaking;
  - (b) a supervision order;
  - (c) a custody to third party order;
  - (d) a supervised custody order;
  - (e) a custody to Secretary order;
  - (f) a guardianship to Secretary order;
  - (g) a long-term guardianship to Secretary order;
  - (h) an interim protection order.
- (2) A protection order may continue in force after the child attains the age of 17 years but ceases to be in force when the child attains the age of 18 years.



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**276. Restrictions on the making of protection orders**

- (1) Subject to section 557(2), the Court must not make a protection order unless—
  - (a) it has received and considered a disposition report; and
  - (b) it is satisfied that all reasonable steps have been taken by the Secretary to provide the services necessary in the best interests of the child.
- (2) The Court must not make a protection order that has the effect of removing a child from the custody of his or her parent unless—
  - (a) the Court has considered and rejected as being contrary to the best interests of the child, an order allowing the child to remain in the custody of his or her parent; and
  - (b) the Court is satisfied by a statement contained in a disposition report in accordance with section 558(c) that all reasonable steps have been taken by the Secretary to provide the services necessary to enable the child to remain in the custody of his or her parent; and
  - (c) the Court considers that the making of the order is in the best interests of the child.
- (3) The fact that the child does not have adequate accommodation is not by itself a sufficient reason for the making of an order referred to in subsection (2).

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**277. Service of applications**

The applicant must as soon as possible cause a copy of an application for—

- (a) the variation of an undertaking under this Part or of any conditions of an undertaking or for the revocation of an undertaking; or
- (b) the variation or revocation of a supervision order; or
- (c) the variation or revocation of a custody to third party order or a supervised custody order; or
- (d) the extension of the period of a supervision order or a supervised custody order; or
- (e) the extension of the period of a custody to Secretary order or a guardianship to Secretary order; or
- (f) the variation or revocation of a custody to Secretary order; or
- (g) the revocation of a guardianship to Secretary order or long-term guardianship to Secretary order; or
- (h) an order in respect of a failure to comply with a supervision order, a supervised custody order, an interim protection order or an interim accommodation order; or
- (i) an order regarding the exercise of any right, power or duty vested in a person as joint custodian or guardian of a child—

to be given or sent by post to any person by or on behalf of whom such an application could have been made and, in the case of an application referred to in paragraph (d) or (e), to the child and the parent of the child.

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**Division 2—Undertaking**

**278. Undertaking—protection order**

- (1) By an order referred to in section 275(1)(a) the Court may require—
  - (a) the child; or
  - (b) the child's parent; or
  - (c) the person with whom the child is living—to enter into an undertaking in writing to do or refrain from doing the thing or things specified in the undertaking for the period specified in the undertaking.
- (2) The period specified in the undertaking must be a period not exceeding 6 months or, if the Court is satisfied that there are special circumstances which warrant the making of an order for such a period, exceeding 6 months but not exceeding 12 months.
- (3) An undertaking may include any conditions that the Court considers to be in the best interests of the child.
- (4) The Court may only make an order requiring a person to enter into an undertaking if that person consents to the making of the order.

**279. Variation or revocation of undertaking**

- (1) An application for a variation of an undertaking or of any conditions of an undertaking or for the revocation of an undertaking may be made to the Court by—
  - (a) the child; or
  - (b) the child's parent; or
  - (c) the person with whom the child is living.

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- (2) On an application under sub-section (1) the Court may—
- (a) if the application is for a variation of an undertaking or of any conditions of an undertaking, vary the undertaking or any of the conditions of the undertaking or add or substitute a condition but must not extend the period of the undertaking; or
  - (b) if the application is for the revocation of an undertaking, revoke the undertaking.

### **Division 3—Supervision Order**

#### **280. Supervision order**

- (1) A supervision order—
  - (a) gives the Secretary responsibility for the supervision of the child; and
  - (b) does not affect the guardianship or custody of the child; and
  - (c) provides for the child to be placed in the day to day care of one or both of the child's parents.
- (2) A supervision order remains in force for the period specified in the order which must either be a period—
  - (a) not exceeding 12 months; or
  - (b) exceeding 12 months but not exceeding 2 years, if the Court is satisfied that there are special circumstances which warrant the making of an order for such a period.

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- (3) If under sub-section (2)(b) the Court specifies a period exceeding 12 months for a supervision order to remain in force it must direct the Secretary—
- (a) to review the operation of the order before the end of the period of 12 months after the making of the order; and
  - (b) to notify the Court, the child, the child's parent and such other persons as the Court directs before the end of that period if the Secretary considers that it is in the best interests of the child for the order to continue for the duration of the period specified in the order.
- (4) Unless the Secretary makes a notification in accordance with sub-section (3) the supervision order ceases to be in force at the end of the period of 12 months after it was made.

**281. Supervision order may impose conditions**

- (1) A supervision order may include conditions to be observed by—
- (a) the child in respect of whom it is made; or
  - (b) a parent of the child—
- being conditions that the court considers to be in the best interests of the child.
- (2) A supervision order must not include any condition as to where the child lives, unless the condition relates to—
- (a) the child living with a specified parent; or
  - (b) the child living as far as possible for an equal amount of time with each parent if the parents do not live in the same household.

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**282. Powers of Secretary under supervision order**

- (1) If the Court makes a supervision order in respect of a child, the parent must permit the Secretary to visit the child at his or her place of residence and to carry out the duties of the Secretary under the order.
- (2) The Secretary may, by notice in the prescribed form, give to—
  - (a) the child in respect of whom a supervision order is made; or
  - (b) a parent of the child—any direction that the Secretary considers to be in the best interests of the child and that is both reasonable and lawful.

**Division 4—Custody to Third Party Order**

**283. Custody to third party order**

- (1) A custody to third party order—
  - (a) grants sole or joint custody of the child to the person or persons named in the order; and
  - (b) must not be made in favour of—
    - (i) the Secretary in his or her official capacity; or
    - (ii) a person employed by a community service in his or her official capacity; or
    - (iii) a parent of the child; and
  - (c) does not affect the guardianship of the child; and
  - (d) remains in force for the period (not exceeding 12 months) specified in the order; and

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- (e) may include any conditions that the Court considers to be in the best interests of the child, including—
    - (i) a condition concerning access by a parent or other person; and
    - (ii) in the case of an Aboriginal child, a condition incorporating a cultural plan for the child; and
  - (f) must not include any condition that gives powers or duties to, or otherwise involves, the Secretary.
- (2) The Court must not make a custody to third party order unless the Court—
- (a) has considered the effect of the order on the likelihood of the re-unification of the child with his or her family; and
  - (b) is satisfied that, so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child.
- (3) If two persons who have been granted joint custody of a child under a custody to third party order cannot agree on the exercise or performance of a right, power or duty vested in them as custodian of the child, either of them may apply to the Court and the Court may make such orders regarding the exercise of the right or power or the performance of the duty as it thinks fit.

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**Division 5—Supervised Custody Order**

**284. Supervised custody order**

- (1) A supervised custody order—
- (a) grants sole or joint custody of the child to the person or persons named in the order; and
  - (b) must not be made in favour of—
    - (i) the Secretary in his or her official capacity; or
    - (ii) a person employed by a community service in his or her official capacity; or
    - (iii) a parent of the child; and
  - (c) does not affect the guardianship of the child; and
  - (d) remains in force for the period (not exceeding 12 months) specified in the order; and
  - (e) may include any conditions that the Court considers to be in the best interests of the child, including—
    - (i) a condition concerning access by a parent or other person; and
    - (ii) in the case of an Aboriginal child, a condition incorporating a cultural plan for the child; and
  - (f) must provide that if, while the order is in force, the Secretary is satisfied that it is in the child's best interests, the Secretary may in writing direct that the child return to the sole or joint custody of a parent or the parents of the child.



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- (2) The Court must not make a supervised custody order unless the Court—
    - (a) has considered the effect of the order on the likelihood of the re-unification of the child with his or her family; and
    - (b) is satisfied that, so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child.
  - (3) A supervised custody order remains in force for the period (not exceeding 12 months) specified in the order.
  - (4) In making a supervised custody order the Court must have regard to the fact that the ultimate objective is the re-unification of the child with his or her parent and must by the order direct the parties to it to take all appropriate steps to enable the re-unification of the child with his or her parent before the end of the period for which the order remains in force.
  - (5) If two persons who have been granted joint custody of a child under a supervised custody order cannot agree on the exercise or performance of a right, power or duty vested in them as custodian of the child, either of them may apply to the Court and the Court may make such orders regarding the exercise of the right or power or the performance of the duty as it thinks fit.

**285. Powers of Secretary under supervised custody order**

- (1) If the Court makes a supervised custody order in respect of a child, the person who has custody of the child must permit the Secretary to visit the child at his or her place of residence and to carry out the duties of the Secretary under the order.

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- (2) The Secretary may, by notice in the prescribed form, give to—
- (a) the child in respect of whom a supervised custody order is made; or
  - (b) the person who has custody of the child—
- any direction that the Secretary considers to be in the best interests of the child and that is both reasonable and lawful.

**286. Change to nature of order on re-unification**

- (1) If under a supervised custody order the Secretary directs that a child is to return to the sole or joint custody of a parent or the parents of the child, then on and from the date that the direction takes effect—
- (a) the child ceases to be in the custody of the persons in whom custody is vested under the order; and
  - (b) the child is deemed to be in the sole or joint custody of the parent or parents of the child as specified in the direction; and
  - (c) the supervised custody order is deemed to be a supervision order giving the Secretary responsibility for the supervision of the child and placing the child in the day to day care of the parent or parents who have sole or joint custody of the child; and
  - (d) Division 3 applies to the order; and
  - (e) the order ceases to be a supervised custody order for the purposes of this Act.

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- (2) The Secretary must give a copy of a direction under this section to—
- (a) the Court; and
  - (b) the child; and
  - (c) the parent of the child; and
  - (d) the person who had custody of the child under the supervised custody order.

**Division 6—Custody to Secretary Order**

**287. Custody to Secretary order**

- (1) A custody to Secretary order—
- (a) grants sole custody of the child to the Secretary; and
  - (b) does not affect the guardianship of the child; and
  - (c) subject to this Division, remains in force for the period (not exceeding 12 months) specified in the order; and
  - (d) may include any conditions that the Court considers to be in the best interests of the child, including—
    - (i) a condition concerning access by a parent or other person; and
    - (ii) in the case of an Aboriginal child, a condition incorporating a cultural plan for the child.
- (2) In determining whether or not to make a custody to Secretary order, the Court must have regard to advice from the Secretary as to whether or not the Secretary is satisfied that the making of the order is a workable option.
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**288. Lapsing of custody to Secretary order**

- (1) A custody to Secretary order—
  - (a) is, subject to sub-section (2), suspended on the making, with the prior consent of the Secretary, of an application under the Family Law Act 1975 of the Commonwealth by a person who is not a parent of the child, seeking an order with respect to the custody or the guardianship and custody of the child, on the terms of which the parties to the application have agreed; and
  - (b) ceases to be in force on the making of that order under the Family Law Act 1975 of the Commonwealth.
- (2) A custody to Secretary order that has been suspended under sub-section (1)(a) revives if—
  - (a) the application for the order sought under the Family Law Act 1975 of the Commonwealth is withdrawn; or
  - (b) the order sought is refused.

**Division 7—Guardianship to Secretary Order**

**289. Guardianship to Secretary order**

- (1) A guardianship to Secretary order—
  - (a) grants custody and guardianship of the child to the Secretary to the exclusion of all other persons; and
  - (b) subject to this Division, remains in force for the period (not exceeding 2 years) specified in the order; and

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- (c) ceases to be in force—
  - (i) when the child attains the age of 18 years; or
  - (ii) when the child marries—whichever happens first.
- (2) If the Court specifies in a guardianship to Secretary order a period exceeding 12 months for the order to remain in force it must direct the Secretary—
  - (a) to review the operation of the order before the end of the period of 12 months after the making of the order; and
  - (b) to notify the Court, the child, the child's parent and such other persons as the Court directs before the end of that period if the Secretary considers that it is in the best interests of the child for the order to continue for the duration of the period specified in the order.
- (3) Unless the Secretary makes a notification in accordance with sub-section (2), the guardianship to Secretary order ceases to be in force at the end of the period of 12 months after it was made.

**Division 8—Long-term Guardianship to Secretary Order**

**290. Long-term guardianship to Secretary order**

- (1) A long-term guardianship to Secretary order—
    - (a) may be made in respect of a child of or over the age of 12 years; and
    - (b) grants custody and guardianship of the child to the Secretary to the exclusion of all other persons; and
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- (c) subject to this Division, remains in force until the child attains the age of 18 years or marries whichever happens first; and
    - (d) despite anything to the contrary in Division 7, may be made instead of extending a guardianship to Secretary order.
  - (2) The Court must not make a long-term guardianship to Secretary order unless the Court is satisfied that—
    - (a) there is a person or persons available with whom the child will continue to live for the duration of the order; and
    - (b) the Secretary consents to the making of the order; and
    - (c) the child consents to the making of the order; and
    - (d) the making of the order is in the best interests of the child.
  - (3) The Court must direct the Secretary—
    - (a) to review the operation of the order before the end of each period of 12 months after the making of the order; and
    - (b) to notify the Court, the child, the child's parent and such other persons as the Court directs before the end of that period if he or she considers that, to ensure the safety and wellbeing of the child, the order should continue for a further period of 12 months.
  - (4) Unless the Secretary makes a notification in accordance with sub-section (3), the guardianship to Secretary order ceases to be in force at the end of the period of 12 months to which the review applies.
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**Division 9—Interim Protection Order**

**291. Interim protection order**

- (1) If the Court in hearing and determining a protection application or an irreconcilable difference application is satisfied—
  - (a) that the child is in need of protection or that there is a substantial and presently irreconcilable difference between the person who has custody of the child and the child to such an extent that the care and control of the child are likely to be seriously disrupted; and
  - (b) that it is desirable, before making a protection order, to test the appropriateness of a particular course of action—it may make an interim protection order.
- (2) If the Court in hearing and determining an application for a revocation of a supervised custody order or a custody to third party order or a matter relating to a breach of a supervision order or a breach of a supervised custody order is satisfied that it is desirable, before making a further protection order in respect of a child, to test the appropriateness of a particular course of action, it may make an interim protection order.
- (3) An interim protection order—
  - (a) makes the Secretary accountable to the Court for the implementation of the order; and
  - (b) states who has responsibility for the supervision of the child; and
  - (c) may direct the preparation and submission to the Court of an additional report by a person specified in the order; and

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- (d) must require the child and his or her parent or other person with whom the child is living to appear before the Court before the expiry of the order at the time specified in the order or in any notice caused by the Court to be served on—
- (i) the child's parent or other person with whom the child is living; and
  - (ii) if the child is of or above the age of 12 years, the child—
- a reasonable time before the hearing date specified in the notice; and
- (e) remains in force for the period (not exceeding 3 months) specified in the order; and
- (f) may include any conditions to be observed by—
- (i) the child in respect of whom the order is made; or
  - (ii) the parent of the child; or
  - (iii) the person with whom the child is living—
- that the Court considers to be in the best interests of the child, including conditions as to where the child lives or concerning access by a parent or other person.
- (4) If the child does not appear before the Court at the time required in accordance with subsection (3)(d)—
- (a) the Secretary may, without a warrant, take the child into safe custody; or
  - (b) the Court may issue a search warrant for the purpose of having the child taken into safe custody.
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- (5) Sections 241 and 242 apply with any necessary modifications to the taking of a child into safe custody and the issue and execution of a search warrant under this section.
  - (6) On the child appearing or being brought before the Court under this section the Court, after considering a further disposition report, must make, or refuse to make, a further protection order but must not extend the interim protection order or make a new interim protection order (if it is still in force).

**292. Interim accommodation order if hearing adjourned**

- (1) If an interim protection order expires and the Court adjourns the proceedings in relation to which it was made, the Court may make an interim accommodation order in respect of the child.
- (2) The interim accommodation order must include the same conditions as the interim protection order and must provide for the child to live with the same person or persons as those with whom the child was living under the interim protection order, unless—
  - (a) the parties agree to different living arrangements for the child; or
  - (b) the parties agree to different conditions; or
  - (c) the Court is satisfied that the circumstances have changed.

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**Division 10—Extension of Protection Orders**

**293. Application for extension of protection order**

- (1) The Secretary may apply to the Court for an extension or additional extension of the period of—
  - (a) a supervision order;
  - (b) a supervised custody order;
  - (c) a custody to Secretary order;
  - (d) a guardianship to Secretary order.
- (2) An extension application may be made at any time while the order is in force.
- (3) If an extension application is made in respect of an order, the order continues in force until the application is determined.
- (4) If the period of a guardianship to Secretary order does not exceed 12 months, the Secretary must not make an extension application relating to the order unless the Secretary has reviewed the operation of the order and is of the opinion that an extension of the order is in the best interests of the child.

**294. Extension of order**

If an extension application is made in respect of an order, the Court may extend the order if it is satisfied that this is in the best interests of the child.

**295. Matters to be taken into account**

- (1) In determining an extension application relating to a supervised custody order, the Court must be satisfied that the ultimate objective of re-unification of the child with his or her parent is still achievable.

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- (2) In determining an extension application relating to a custody to Secretary order or a guardianship to Secretary order, the Court must give due consideration to the following matters in the following order—
- (a) the appropriateness of making a permanent care order in respect of the child;
  - (b) the benefits of the child remaining in the custody, or custody and guardianship, of the Secretary.
- (3) In determining an extension application relating to a custody to Secretary order or a guardianship to Secretary order, the Court must take into account—
- (a) the nature of the relationship of the child with his or her parent, including the nature of the access between the child and the parent during the period of the order; and
  - (b) the capacity of the parent to fulfil the responsibilities and duties of parenthood, including the capacity to provide adequately for the emotional, intellectual, educational and other needs of the child; and
  - (c) any action taken by the parent to give effect to the goals set out in the case plan; and
  - (d) the effects on the child of continued separation from the parent; and
  - (e) any other fact or circumstance that, in the opinion of the Court, should be taken into account in considering the best interests of the child.
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**296. Duration of extension**

- (1) On an extension application relating to a supervision order or supervised custody order, the Court may extend the order for a period ending not later than 2 years after the extension or additional extension is granted.
- (2) Subject to section 297, if an extension application is made in relation to a custody to Secretary order or a guardianship to Secretary order—
  - (a) if the order had been in force for less than 12 months at the time the extension is granted, an extension or additional extension of that order may be for a period not exceeding 12 months after the extension or additional extension is granted;
  - (b) if the order has been in force for 12 months or more at the time the extension is granted, an extension or additional extension of the order may be for a period not exceeding 2 years after the extension or additional extension is granted.

**297. Limited extension pending other orders**

- (1) If—
  - (a) an extension application is made in respect of a custody to Secretary order or a guardianship to Secretary order; and
  - (b) the order has been in force for more than 12 months and is still in force; and
  - (c) the Court is satisfied that it would not be in the best interests of the child to be returned to the custody of his or her parent; and
  - (d) the Court is satisfied that a permanent care order or similar order made by another court would be in the best interests of the child and

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that there is no likelihood of re-unification of the child with his or her parent—

the Court may—

- (e) extend the order for a period ending not later than 12 months after the extension is granted; and
  - (f) direct the Secretary to take steps to ensure that at the end of the period of the order a person other than the child's parent applies to a court for an order relating to—
    - (i) the custody of the child; or
    - (ii) the custody and guardianship of the child; or
    - (iii) the custody and joint guardianship of the child.
- (2) If the Court has given a direction to the Secretary under sub-section (1)(f) in respect of an order, the Secretary cannot apply for an additional extension to that order.

**298. Review of extended orders**

- (1) If under this Division the Court specifies a period exceeding 12 months for an extension of a protection order, it must direct the Secretary—
- (a) to review the operation of the order before the end of the period of 12 months after the making of the order; and
  - (b) to notify the Court, the child, the child's parent and such other persons as the Court directs before the end of that period if the Secretary considers that it is in the best interests of the child for the order to continue for the duration of the period specified in the order.

- (2) Unless the Secretary makes a notification in accordance with sub-section (1), the protection order ceases to be in force at the end of the period of 12 months after the extension order was made.

### **Division 11—Variation of Protection Orders**

#### **299. Application of Division**

This Division applies to the following protection orders—

- (a) a supervision order;
- (b) a custody to third party order;
- (c) a supervised custody order;
- (d) a custody to Secretary order;
- (e) an interim protection order.

#### **300. Application for variation of order**

An application for a variation of the conditions of a protection order to which this Division applies may be made to the Court by—

- (a) the child in respect of whom the order was made; or
- (b) a parent of the child; or
- (c) except in the case of a custody to third party order, the Secretary; or
- (d) in the case of a custody to third party order or supervised custody order, a person who has been granted custody of the child; or
- (e) in the case of an interim protection order, a person with whom the child is living.

**301. Decision of Court on application for variation**

On an application under section 300, the Court may vary any of the conditions included in the order or add or substitute a condition but must not—

- (a) extend the period of the order; or
- (b) in the case of a custody to third party order, supervised custody order or custody to Secretary order, make any change in the custody of the child.

**302. Interim variation of custody to Secretary order**

- (1) On an application under section 300 in relation to a custody to Secretary order, the Court may in exceptional circumstances vary any of the conditions included in the order or add or substitute a condition pending the final determination of the application.
- (2) The Court must not under sub-section (1) make any change in the custody of the child or extend the period of the order.
- (3) The variations made under sub-section (1) have effect until the final determination of the application.

**Division 12—Revocation of Protection Orders**

**303. Application of Division**

This Division applies to the following protection orders—

- (a) a supervision order;
- (b) a custody to third party order;
- (c) a supervised custody order;

- (d) a custody to Secretary order;
- (e) a guardianship to Secretary order;
- (f) a long-term guardianship to Secretary order;
- (g) an interim protection order.

**304. Application for revocation of order—general**

- (1) An application for the revocation of a protection order to which this Division applies may be made to the Court by—
  - (a) the child in respect of whom the order was made; or
  - (b) a parent of the child; or
  - (c) except in the case of a custody to third party order, the Secretary; or
  - (d) in the case of a custody to third party order or supervised custody order, a person who has been granted custody of the child; or
  - (e) in the case of an interim protection order, a person with whom the child is living.
- (2) This section does not apply to a guardianship to Secretary order or a long-term guardianship to Secretary order.

**305. Application for revocation of guardianship to Secretary order**

- (1) An application for the revocation of a guardianship to Secretary order may be made to the Court by—
  - (a) the Secretary; or
  - (b) subject to sub-section (2), the child in respect of whom the order is made or a parent of the child.



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- (2) A person referred to in sub-section (1)(b) may only apply to the Court under that sub-section if—
- (a) circumstances have changed since the making of the guardianship to Secretary order and the person has asked the Secretary to review the case plan and the Secretary has either refused to review the case plan or has reviewed it in a way that the person finds unsatisfactory; or
  - (b) the Secretary makes a notification in accordance with section 289(2) in respect of the order.

**306. Application for revocation of long-term guardianship to Secretary order**

- (1) An application for the revocation of a long-term guardianship to Secretary order may be made to the Court by—
- (a) the Secretary; or
  - (b) subject to sub-section (3), the child in respect of whom the order is made or a parent of the child.
- (2) The Secretary must apply to the Court under sub-section (1) if the Secretary has become aware that—
- (a) the child or the person or persons with whom the child is to live under the order has withdrawn his or her consent to the continuation of the order; or
  - (b) the relationship between the child and the person or persons with whom the child is to live under the order has irretrievably broken down; or

- (c) the child has not lived with the person or persons with whom the child is to live under the order for a period of 3 months and it seems unlikely that the child will be able to return to live with that person or those persons in the foreseeable future.
- (3) If a long-term guardianship to Secretary order has been in force for more than 12 months, a parent of the child may only apply to the Court under subsection (1) with the leave of the Court.

**307. Decision of Court on application for revocation**

- (1) On an application under section 304, the Court may revoke the order.
- (2) This section does not apply to a custody to Secretary order.

**308. Revocation of custody to Secretary order or guardianship to Secretary order**

On an application under section 304 in respect of a custody to Secretary order or on an application under section 305, the Court—

- (a) must revoke the order if it is satisfied that—
  - (i) the Secretary, the child and the child's parent have agreed to the revocation; and
  - (ii) the revocation of the order is in the best interests of the child; and
- (b) in any other case, may revoke the order if it is satisfied that it is in the best interests of the child to do so.

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**309. Revocation of long-term guardianship to Secretary order**

On an application under section 306, the Court may revoke the order if it is satisfied that it is in the best interests of the child to do so.

**310. Court may make further orders on revocation**

- (1) If the Court revokes a supervised custody order or custody to third party order under section 304, it may, if satisfied that the grounds for the finding under section 274 still exist, make any other protection order in respect of the child.
- (2) If the Court revokes an interim protection order under section 304, it may, if satisfied that the grounds for the finding under section 274 still exist, make a further protection order in respect of the child but must not make another interim protection order.
- (3) If the Court revokes a custody to Secretary order under section 308, it may, if satisfied that the grounds for the finding under section 274 still exist, make—
  - (a) an order requiring a person to give an undertaking under this Part; or
  - (b) a supervision order in respect of the child; or
  - (c) if the Court is satisfied that the changed circumstances justify it in doing so, a guardianship to Secretary order or long-term guardianship to Secretary order in respect of the child.
- (4) If the Court revokes an order under section 308(a), the Court may only make an order under sub-section (3)(c) if the application for revocation was made by the Secretary.

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- (5) If the Court revokes a guardianship to Secretary order, it may, if satisfied that the grounds for the finding under section 274 still exist, make—
- (a) an order requiring a person to give an undertaking under this Part; or
  - (b) a supervision order in respect of the child.
- (6) If the Court revokes a long-term guardianship to Secretary order, it may, if satisfied that the grounds for the finding under section 274 still exist, make—
- (a) an order requiring a person to give an undertaking under this Part; or
  - (b) a supervision order in respect of the child; or
  - (c) a guardianship to Secretary order.
- (7) If the Court makes a guardianship to Secretary order under sub-section (6), it must make the order as if the application under sub-section (1) were an application for an extension or further extension of a guardianship to Secretary order, as the case requires, taking into account the cumulative period that the child has been the subject of a guardianship to Secretary order and a long-term guardianship to Secretary order.

**Division 13—Breach of Protection Order**

**311. Application of Division**

This Division applies to the following protection orders—

- (a) a supervision order;
- (b) a supervised custody order;
- (c) an interim protection order.

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**312. Breach of protection order—notice to appear**

- (1) If at any time while a protection order to which this Division applies is in force the Secretary is satisfied on reasonable grounds that—
- (a) there has been a failure to comply with any condition of the order; or
  - (b) in the case of a supervision order, there has been a failure to comply with any direction given by the Secretary under section 282(2); or
  - (c) in the case of a supervised custody order, there has been a failure to comply with any direction given by the Secretary under section 285(2); or
  - (d) the child is living in conditions which are unsatisfactory in terms of the safety and wellbeing of the child—
- the Secretary may by notice direct—
- (e) the child to appear; and
  - (f) the relevant person to produce the child—
- before the Court.
- (2) A notice under sub-section (1) must be served on the relevant person and, if the child is of or above the age of 12 years, the child in accordance with section 594.
- (3) In this section "**relevant person**" means—
- (a) in the case of a supervision order, the parent of the child;
  - (b) in the case of a supervised custody order, any person who has custody of the child;
  - (c) in the case of an interim protection order, the child's parent or other person with whom the child is living.
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**313. Taking child into safe custody when notice is served**

If a notice under section 312(1) is served in accordance with section 312(2) and the child does not appear before the Court at the time stated in the notice—

- (a) the Secretary may, without a warrant, take the child into safe custody; or
- (b) the Court may, if satisfied that the notice has come to the attention of the relevant person under section 312 or, if the child is of or above the age of 12 years, the child, issue a search warrant for the purpose of having the child taken into safe custody.

**314. Taking child into safe custody without notice**

- (1) This section applies if—
  - (a) the Secretary is satisfied that there is good reason not to proceed as specified in section 312(1) or that service of a notice under section 312(1) cannot be carried out; and
  - (b) the Secretary is satisfied on reasonable grounds that—
    - (i) there has been a failure to comply with any condition of the supervision order; or
    - (ii) in the case of a supervision order, there has been a failure to comply with any direction given by the Secretary under section 282(2); or
    - (iii) in the case of a supervised custody order, there has been a failure to comply with any direction given by the Secretary under section 285(2); or

(iv) the child is living in conditions which are unsatisfactory in terms of the safety and wellbeing of the child.

(2) The Secretary may, without a warrant, take the child into safe custody or apply to a magistrate for the issue of a search warrant.

**315. Requirements when taking child into safe custody**

Sections 241 and 242 apply with any necessary modifications to the taking of a child into safe custody and the issue and execution of a search warrant under this Division.

**316. Order to continue**

Subject to section 317, if the Secretary takes action as specified in section 312 or 314, the protection order to which the action relates continues in force until the matter is determined by the Court under section 318.

**317. Interim protection order expires on making of interim accommodation order**

- (1) If the Court makes an interim accommodation order in respect of a child to whom an interim protection order applies and who is brought before the Court under this Division, the interim protection order expires on the making of that interim accommodation order.
- (2) The making of an interim accommodation order referred to in sub-section (1) does not affect the duty of the Secretary to prepare a disposition report under section 557(1)(d) but, despite section 557, the Secretary is not required to prepare a disposition report in respect of the failure to comply with the interim protection order.

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**318. Decision of Court**

- (1) On the child being brought before the Court under this Division, the Court may make an order under sub-section (2) if satisfied that—
  - (a) there has been a failure to comply with any condition of the order; or
  - (b) in the case of a supervision order, there has been a failure to comply with any direction given by the Secretary under section 282(2); or
  - (c) in the case of a supervised custody order, there has been a failure to comply with any direction given by the Secretary under section 285(2); or
  - (d) the child is living in conditions which are unsatisfactory in terms of the safety and wellbeing of the child and, in the case of an interim protection order, that an interim accommodation order is not required.
- (2) The Court may—
  - (a) confirm the protection order as originally made; or
  - (b) vary any of the conditions included in the protection order or add or substitute a condition but must not—
    - (i) extend the period of the order; or
    - (ii) in the case of a supervised custody order, make any change in the custody of the child; or
  - (c) revoke the protection order.



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- (3) If the Court revokes a protection order under subsection (2), it may, if satisfied that the grounds for the finding under section 274 still exist, make a further protection order under this Part in respect of the child but, if the revoked order was an interim protection order, must not make a further interim protection order.
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**PART 4.10—PERMANENT CARE ORDERS**

**319. When Court may make permanent care order**

- (1) The Court may make a permanent care order in respect of a child if—
  - (a) the child's parent or, if the child's parent has died, the child's surviving parent has not had care of the child for a period of at least 6 months or for periods that total at least 6 months of the last 12 months; and
  - (b) it is satisfied that—
    - (i) the parent is unable or unwilling to resume custody and guardianship of the child; or
    - (ii) it would not be in the best interests of the child for the parent to resume custody and guardianship of the child; and
  - (c) it is satisfied that the person or persons named in the application as suitable to have custody and guardianship of the child is or are suitable having regard to—
    - (i) any prescribed matters; and
    - (ii) any wishes expressed by the parent in relation to those prescribed matters; and
  - (d) it is satisfied that the person or persons named in the application is or are willing and able to assume responsibility for the permanent care of the child by having custody and guardianship of the child; and
  - (e) it is satisfied that, so far as is practicable, the wishes and feelings of the child have been ascertained and due consideration given to

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them, having regard to the age and understanding of the child; and

- (f) it is satisfied that the best interests of the child will be promoted by the making of the order.
- (2) Any period that the child is in the care of a person or body under a child care agreement within the meaning of Part 3.5 must be disregarded in calculating any period under sub-section (1).

**320. Application for permanent care order**

- (1) An application for a permanent care order may be made by the Secretary in relation to a person who is, or persons who are, approved by the Secretary as suitable to have custody and guardianship of the child.
  - (2) With the leave of the Court, the person or persons named in the application as suitable to have custody and guardianship of the child may appear, and be legally represented at, the hearing of the application and may call and examine or cross-examine witnesses and make submissions.
  - (3) The person or persons referred to in sub-section (2) must be taken to be a party to a proceeding in the Court for the purposes of section 522, 523, 526 or 527.
  - (4) The Secretary must cause notice of the application to be served on—
    - (a) the child who is the subject of the application; and
    - (b) the parent of the child; and
    - (c) the person or persons named in the application as suitable to have custody and guardianship of the child; and
    - (d) such other persons as the Court directs.
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- (5) A notice under sub-section (4) must—
- (a) be issued out of the Court by the appropriate registrar; and
  - (b) set out the grounds on which the applicant has made the application; and
  - (c) be served on a person—
    - (i) by posting, not less than 14 days before the hearing date stated in the notice, a true copy of the notice addressed to the person at the last known place of residence or business of the person; or
    - (ii) by delivering, not less than 5 days before the hearing date stated in the notice, a true copy of the notice to the person; or
    - (iii) by leaving, not less than 5 days before the hearing date stated in the notice, a true copy of the notice for the person at the last known place of residence or business of the person with a person who apparently resides or works there and who apparently is not less than 16 years of age.

**321. Permanent care order**

- (1) A permanent care order—
- (a) subject to paragraph (b), grants custody and guardianship of the child to the person or persons named in the order (not being the child's parent or the Secretary) to the exclusion of all other persons; and
  - (b) may vest guardianship of the child jointly in the person or persons named in the order and the child's parent if the Court is satisfied that—
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- (i) the Secretary, the child and the persons to be named in the order as guardians have agreed on the terms of the order; and
    - (ii) special circumstances exist which justify the making of such an order; and
  - (c) may continue in force after the child attains the age of 17 years but ceases to be in force—
    - (i) when the child attains the age of 18 years; or
    - (ii) when the child marries—whichever happens first; and
  - (d) must include conditions that the Court considers to be in the best interests of the child concerning access by the child's parent; and
  - (e) may include conditions that the Court considers to be in the best interests of the child concerning access by the child's siblings and other persons significant to the child; and
  - (f) in the case of an Aboriginal child, may include a condition incorporating a cultural plan for the child.
- (2) On the making of a permanent care order any protection order then in force in respect of the child ceases to be in force.

**322. Restrictions on the making of permanent care orders**

- (1) The Court must not make a permanent care order unless it has received and considered a disposition report.
- (2) The Court must not make a permanent care order unless a stability plan has been prepared.

- (3) The Court must not make a permanent care order if a protection order is in force in respect of the child but an application to the Court to revoke it has been made but not yet determined.
- (4) The Court must not make a permanent care order if there is a current proceeding under the Family Law Act 1975 of the Commonwealth seeking an order (on the terms of which the parties to the proceeding have agreed) with respect to the custody and guardianship of the child, being a proceeding commenced by a person who is not a parent of the child.

**323. Restrictions on the making of a permanent care order in respect of an Aboriginal child**

The Court must not make a permanent care order to place an Aboriginal child solely with a non-Aboriginal person or persons unless—

- (a) the disposition report states that—
  - (i) no suitable placement can be found with an Aboriginal person or persons; and
  - (ii) the decision to seek the order has been made in consultation with the child, where appropriate; and
  - (iii) the Secretary is satisfied that the order sought will accord with the Aboriginal Child Placement Principle; and
- (b) the Court has received a report from an Aboriginal agency that recommends the making of the order; and
- (c) if the Court so requires, a cultural plan has been prepared for the child.

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**324. Lapsing of permanent care order**

- (1) A permanent care order—
  - (a) is, subject to sub-section (2), suspended on the making, with the prior consent of the Secretary, of an application under the Family Law Act 1975 of the Commonwealth by a person who is not a parent of the child in respect of whom the permanent care order is made, seeking an order with respect to the custody and guardianship of the child, on the terms of which the parties to the proceeding have agreed; and
  - (b) ceases to be in force on the making of that order under the Family Law Act 1975 of the Commonwealth.
- (2) A permanent care order that has been suspended under sub-section (1)(a) revives if—
  - (a) the application for the order sought under the Family Law Act 1975 of the Commonwealth is withdrawn; or
  - (b) the order sought is refused.

**325. Disputes between joint custodians or guardians**

If two persons who have been granted joint custody or guardianship of a child under a permanent care order cannot agree on the exercise or performance of a right, power or duty vested in them as custodian or guardian of the child, either of them may apply to the Court and the Court may make any orders regarding the exercise of the right or power or the performance of the duty that it thinks fit.

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**326. Variation or revocation of permanent care order**

- (1) An application for a variation of a permanent care order or for the revocation (in whole or in part) of a permanent care order may be made to the Court by—
  - (a) the child in respect of whom the order is made; or
  - (b) a parent of the child; or
  - (c) a person granted custody and guardianship of the child under the order; or
  - (d) the Secretary.
- (2) The applicant must cause notice of the application to be served on—
  - (a) the child who is the subject of the application; and
  - (b) the parent of the child; and
  - (c) the person or persons granted in the custody and guardianship of the child under the order; and
  - (d) the Secretary; and
  - (e) such other persons as the Court directs.
- (3) A notice under sub-section (2) must—
  - (a) be issued out of the Court by the appropriate registrar; and
  - (b) set out the grounds on which the applicant has made the application; and
  - (c) be served on a person—
    - (i) by posting, not less than 14 days before the hearing date stated in the notice, a true copy of the notice addressed to the person at the last known place of residence or business of the person; or



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- (ii) by delivering, not less than 5 days before the hearing date stated in the notice, a true copy of the notice to the person; or
- (iii) by leaving, not less than 5 days before the hearing date stated in the notice, a true copy of the notice for the person at the last known place of residence or business of the person with a person who apparently resides or works there and who apparently is not less than 16 years of age.

**327. Decision on application for variation or revocation**

On an application under section 326, the Court may, if satisfied that it is in the best interests of the child to do so—

- (a) if the application is for a variation of the order, vary any of the conditions included in the order or add or substitute a condition but must not make any change in the custody or guardianship of the child; or
  - (b) if the application is for the revocation of the order, revoke the order in whole or in part.
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**PART 4.11—APPEALS AND REVIEWS**

**Division 1—Appeals**

**328. Appeal to County Court or Supreme Court**

- (1) A person to whom this section applies may appeal to the County Court or, if the Court was constituted by the President, to the Trial Division of the Supreme Court against—
- (a) a protection order; or
  - (b) the dismissal of a protection application or an irreconcilable difference application; or
  - (c) an order requiring an undertaking where the Court has not found the child to be in need of protection; or
  - (d) a therapeutic treatment order; or
  - (e) a therapeutic treatment (placement) order; or
  - (f) the dismissal of an application for—
    - (i) a therapeutic treatment order; or
    - (ii) a therapeutic treatment (placement) order; or
  - (g) an order varying or revoking—
    - (i) a therapeutic treatment order; or
    - (ii) a therapeutic treatment (placement) order; or
  - (h) an order extending—
    - (i) a therapeutic treatment order; or
    - (ii) a therapeutic treatment (placement) order; or

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- (i) an order varying or revoking—
    - (i) a supervision order; or
    - (ii) a custody to third party order; or
    - (iii) a supervised custody order; or
    - (iv) a custody to Secretary order; or
    - (v) a permanent care order; or
  - (j) an order extending—
    - (i) a supervision order; or
    - (ii) a supervised custody order; or
    - (iii) a custody to Secretary order; or
    - (iv) a guardianship to Secretary order; or
  - (k) an order revoking—
    - (i) a guardianship to Secretary order; or
    - (ii) a long-term guardianship to Secretary order; or
  - (l) an order made under section 318 (breach of supervision order, supervised custody order or interim protection order); or
  - (m) the dismissal of an application for an order referred to in paragraph (g), (h), (i), (j), (k) or (l); or
  - (n) a permanent care order; or
  - (o) the dismissal of an application for a permanent care order.
- (2) This section applies to—
- (a) the child who is the subject of the order or application; or
  - (b) the parent of that child; or
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- (c) the protective intervener, if one has been involved in the proceeding; or
  - (d) the person who has been granted custody and guardianship in a permanent care order; or
  - (e) the Secretary; or
  - (f) the Attorney-General, if he or she appeared or was represented in the proceeding under section 215(2).
- (3) If the appellant is a child under the age of 15 years an appeal may be made on the child's behalf and in the name of the child by the child's parent.
  - (4) If a protective intervener wishes to appeal under this section, the appeal must be brought by the Secretary on behalf of the protective intervener.
  - (5) If a person appeals under this Act to the Supreme Court on a question of law, that person is deemed to have abandoned finally and conclusively any right under this or any other Act to appeal to the County Court or any right under this section to appeal to the Trial Division of the Supreme Court.
  - (6) Subdivision 1 of Division 4 of Part 4 (except sections 83, 84, 87 and 90) of, and Schedule 6 (except clauses 3, 4 and 8) to, the **Magistrates' Court Act 1989** apply, with any necessary modifications, to appeals to the County Court under this section as if—
    - (a) a reference to the Magistrates' Court were a reference to the Children's Court; and
    - (b) a reference to section 83 or 84 were a reference to this section; and
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- (c) in section 85 for the words "and the appellant is not bound by the plea entered in the Magistrates' Court" there were substituted the words "and the appellant is not bound by the fact that he or she did not contest the application"; and
  - (d) a reference to the sentencing order were a reference to the order or the dismissal of the application referred to in sub-section (1).
- (7) The provisions of the **Magistrates' Court Act 1989** that apply to appeals to the County Court under this section by virtue of sub-section (6) (as modified by that sub-section) apply, with any other necessary modifications, to appeals to the Trial Division of the Supreme Court under this section as if—
- (a) a reference to the County Court were a reference to the Trial Division of the Supreme Court;
  - (b) in section 86(2) the reference to section 74 of the **County Court Act 1958** were a reference to section 17(2) of the **Supreme Court Act 1986**;
  - (c) in section 88AA(2) the reference to the **County Court Act 1958** were a reference to the **Supreme Court Act 1986**;
  - (d) in clause 1(4) of Schedule 6 the reference to rules of the County Court were a reference to rules of the Supreme Court;
  - (e) a reference to the registrar of the County Court were a reference to the prothonotary of the Supreme Court.
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- (8) An appeal under this section does not operate as a stay of any order made by the Court unless the Court so orders with respect to the whole or any part of the order.
- (9) The Court must hear and determine as expeditiously as possible an application for a stay of an order made by a person who has filed a notice of appeal and signed the undertaking referred to in clause 2(1) of Schedule 6 to the **Magistrates' Court Act 1989** (as applied by sub-section (6)).
- (10) Sections 522(1) (except paragraph (c)), 524, 526, 527, 534, 547 to 570 and Part 1.2 apply, with any necessary modifications, to appeals under this section as if—
- (a) a reference to the Court or the Family Division were a reference to the County Court or the Supreme Court (as the case requires); and
  - (b) a reference to a proceeding to which section 525(1) applies were a reference to an appeal under this section; and
  - (c) the reference in section 527(3) to an order to which that sub-section applies were a reference to a final order made on the hearing of the appeal; and
  - (d) a reference in section 534(1) to the President were a reference to the County Court or the Supreme Court (as the case requires); and
  - (e) a reference to the appropriate registrar were a reference to the registrar of the County Court or the prothonotary of the Supreme Court (as the case requires).
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**329. Appeal to Supreme Court on a question of law**

- (1) A party to a proceeding before the Family Division or the Attorney-General, if he or she appeared or was represented in the proceeding under section 215(2), may appeal to the Supreme Court, on a question of law, from a final order of the Court in that proceeding.
- (2) The person or persons named in an application for a permanent care order as suitable to have custody and guardianship of a child must, for the purposes of this section, be taken to be a party to the proceeding for the permanent care order.
- (3) If a protective intervener wishes to appeal under this section, the appeal must be brought by the Secretary on behalf of the protective intervener.
- (4) An appeal under sub-section (1)—
  - (a) must be instituted not later than 30 days after the day on which the order complained of was made; and
  - (b) does not operate as a stay of any order made by the Court unless the Supreme Court so orders.
- (5) Subject to sub-section (4), an appeal under sub-section (1) must be brought in accordance with the rules of the Supreme Court.
- (6) An appeal instituted after the end of the period referred to in sub-section (4)(a) is deemed to be an application for leave to appeal under sub-section (1).
- (7) The Supreme Court may grant leave under sub-section (6) and the appellant may proceed with the appeal if the Supreme Court—

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- (a) is of the opinion that the failure to institute the appeal within the period referred to in sub-section (4)(a) was due to exceptional circumstances; and
  - (b) is satisfied that the case of any other party to the appeal would not be materially prejudiced because of the delay.
- (8) After hearing and determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court with or without any direction in law.
- (9) An order made by the Supreme Court on an appeal under sub-section (1), other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.
- (10) The Supreme Court may, as it thinks fit, provide for a stay of the order or may make any interim accommodation order pending the hearing of the appeal that the Children's Court has jurisdiction to make.

**330. Appeals to be heard in open court**

- (1) Proceedings on an appeal under section 328 or 329 are, subject to sub-section (2), to be conducted in open court.
- (2) The Supreme Court or County Court (as the case requires) may, on the application of a party or of any other person who has a direct interest in the proceeding or without any such application—
  - (a) order that the whole or any part of a proceeding be heard in closed court; or
  - (b) order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.



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- (3) Any party to the proceeding and any other interested person has standing to support or oppose an application under sub-section (2).
- (4) If an order has been made under this section, the Supreme Court or County Court (as the case requires) must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the Court is being held.
- (5) An order posted under this section must not contain any particulars likely to lead to the identification of the child who is a party to the proceeding.
- (6) A person must not contravene an order made and posted under this section.

Penalty:

- (a) In the case of a person of or above the age of 18 years, 25 penalty units or committal for a term of not more than six months to prison; or
- (b) In the case of a child of or above the age of 15 years, 25 penalty units or detention for a period of not more than six months in a youth justice centre; or
- (c) In the case of a child under the age of 15 years, 12 penalty units or detention for a period of not more than three months in a youth residential centre.

**Division 2—Reviews**

**331. Internal review**

- (1) The Secretary must prepare and implement procedures for the review within the Department of decisions made as part of the decision-making process following the making of a protection order.
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- (2) The Secretary must ensure that a copy of the procedures prepared under sub-section (1) is given to the child and his or her parent together with the copy of the case plan required to be given under section 167.

**332. Review of decisions relating to recording of information**

- (1) The Secretary, in consultation with the Chief Commissioner of Police, must prepare and implement procedures for the review by a panel that comprises—
- (a) a nominee of the Attorney-General (who shall be the chairperson); and
  - (b) a nominee of the Secretary; and
  - (c) a nominee of the Chief Commissioner of Police—
- of decisions relating to the recording of information in the central register.
- (2) A person with the right to nominate a person under sub-section (1) may nominate another person as an alternate member of the panel and the person so nominated under this sub-section is entitled to attend a meeting of the panel and to act for the other person in the absence from duty of that other person.
- (3) The Secretary must ensure that a copy of the procedures prepared under sub-section (1) is given to every person directly affected by a decision referred to in that sub-section.

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**333. Review by Victorian Civil and Administrative Tribunal**

- (1) A child or a child's parent may apply to VCAT for review of—
    - (a) a decision contained in a case plan prepared in respect of the child under section 167 or any other decision made by the Secretary concerning the child; or
    - (b) a decision relating to the recording of information in the central register.
  - (2) An application for review must be made within 28 days after the later of—
    - (a) the day on which the decision is made;
    - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.
  - (3) Before a person is entitled to apply to VCAT for the review of a decision referred to in subsection (1), the person must have exhausted all available avenues for the review of the decision under section 331 or 332.
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**PART 4.12—INTERSTATE MOVEMENT OF CHILDREN AND TRANSFERS**

**Division 1—Interstate Movement of Children**

**334. Definition**

In this Division "**State**" means a State or Territory of the Commonwealth.

**335. Interstate movement of children**

- (1) The Secretary may, on request by or on behalf of the Minister or other person in another State exercising guardianship in that State over a child under an enactment corresponding to this Chapter, declare the child to be under the guardianship of the Secretary if the child has entered or is about to enter Victoria.
- (2) A declaration under sub-section (1) is for all purposes to be deemed to be a guardianship to Secretary order of 12 months duration commencing from—
  - (a) the date when the Minister or other person in the other State was last granted guardianship of the child or the period of that guardianship was last extended; or
  - (b) if the date referred to in paragraph (a) occurred more than 12 months before the date of the declaration under sub-section (1), the latter date.
- (3) A deemed guardianship to Secretary order referred to in sub-section (2) may be extended or revoked in accordance with the provisions of Division 10 or 12 of Part 4.9 (as the case requires).

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- (4) Subject to sub-sections (2) and (3), a deemed guardianship to Secretary order referred to in sub-section (2) remains in force—
  - (a) until the child leaves Victoria; or
  - (b) until the child would have ceased to be under the guardianship of the Minister or other person in the other State if the child had remained in the other State.

**336. Financial or other arrangements**

The Secretary may make financial or other arrangements with the Minister or other person in another State exercising guardianship in that State over a child under an enactment corresponding to this Chapter—

- (a) for the care of that child in Victoria and may, subject to those arrangements, cause the child while he or she is under the guardianship of the Secretary to be removed from Victoria and returned to that other State; and
- (b) for the care in that other State of a child who is under the guardianship of the Secretary under this Act or of whom the Secretary is the guardian under the **Adoption Act 1984**.

**337. Transfer agreements**

- (1) The Minister may enter into a general agreement with a Minister in another State for the transfer of children in the custody or under the supervision of the Secretary—
  - (a) into or out of Victoria; or
  - (b) through Victoria from one State to another.

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- (2) If the Minister enters into an agreement with a Minister in another State under sub-section (1), the Secretary—
- (a) may make an arrangement with that Minister, or with a person authorised by that Minister for the purpose in the agreement, for the transfer of a particular child—
    - (i) to that State from Victoria; or
    - (ii) to Victoria from that State; and
  - (b) in relation to any particular child who is in the custody of the Secretary, may make financial arrangements with that Minister, or with a person authorised by that Minister for the purpose in the agreement, for the care of the child in that other State.

**Division 2—Transfer of Child Protection Orders and Proceedings**

**338. Transfer of child protection orders and proceedings**

Schedule 1 sets out provisions relating to the transfer of child protection orders and proceedings between Victoria and another State or a Territory of Australia or between Victoria and New Zealand.

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**PART 4.13—THERAPEUTIC TREATMENT BOARD**

**339. Establishment of Therapeutic Treatment Board**

There is established a Board to be called the Therapeutic Treatment Board.

**340. Constitution of Board**

The members of the Therapeutic Treatment Board are to be appointed by the Governor in Council, on the recommendation of the Minister, from persons nominated by—

- (a) the Chief Commissioner of Police; and
- (b) one or more health services that the Minister considers appropriate; and
- (c) the Director of Public Prosecutions; and
- (d) the Secretary.

**341. Functions of Board**

The functions of the Therapeutic Treatment Board are—

- (a) to evaluate and advise the Minister on services available for the treatment of children in need of therapeutic treatment (within the meaning of section 244); and
- (b) to provide advice to the Secretary under Division 3 of Part 4.8.

**342. Committees**

- (1) The Therapeutic Treatment Board may, subject to the approval of the Minister, appoint for the purposes of carrying out any of its functions under this Act, a committee consisting of such of its members as it determines.
  - (2) A committee appointed under this section must report to the Therapeutic Treatment Board.
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**343. Procedure of the Board**

- (1) A majority of the members for the time being of the Therapeutic Treatment Board constitutes a quorum of that Board.
  - (2) The Board may regulate its own proceedings.
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**CHAPTER 5—CHILDREN AND THE CRIMINAL  
LAW**

**PART 5.1—CRIMINAL RESPONSIBILITY OF CHILDREN**

**344. Children under 10 years of age**

It is conclusively presumed that a child under the  
age of 10 years cannot commit an offence.

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**PART 5.2—PROCEDURES AND STANDARD OF PROOF**

**Division 1—Custody and Bail**

**345. Children to be proceeded against by summons except in exceptional circumstances**

- (1) On the filing of a charge against a child a registrar must not issue in the first instance a warrant to arrest unless satisfied by evidence on oath or by affidavit that the circumstances are exceptional.
- (2) This section has effect despite anything to the contrary in section 28 of the **Magistrates' Court Act 1989**.

**346. Child in custody to be brought before Court or bail justice**

- (1) Subject to this section, the provisions of Subdivision (30A) of Division 1 of Part III of the **Crimes Act 1958** apply to the custody and investigation of a child.
- (2) A child taken into custody must be—
  - (a) released unconditionally; or
  - (b) released on bail under section 10 of the **Bail Act 1977**; or
  - (c) brought before the Court; or
  - (d) if the Court is not sitting at any convenient venue, brought before a bail justice—

within a reasonable time of being taken into custody but not later than 24 hours after being taken into custody.

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- (3) If a child is brought before the Court under sub-section (2)(c), the Court may—
  - (a) grant bail; or
  - (b) refuse bail and remand the child in custody for a period not exceeding 21 days.
- (4) If a child is brought before a bail justice under sub-section (2)(d), the bail justice may only—
  - (a) grant bail; or
  - (b) refuse bail and remand the child in custody to appear before the Court on the next working day or, if the proper venue is in a prescribed region of the State, within 2 working days.
- (5) When a child is brought before the Court on the expiry of a period of remand in custody, the Court must not remand the child in custody for a further period longer than 21 days.
- (6) The **Bail Act 1977** (to the extent that it is not inconsistent with this section) applies to an application for bail by a child.
- (7) If a member of the police force inquires into a case under section 10 of the **Bail Act 1977**, a parent or guardian of the child in custody or an independent person must be present.
- (8) An independent person present in accordance with sub-section (7) may take steps to facilitate the granting of bail, for example, by arranging accommodation.
- (9) Bail must not be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation.

- (10) If, in the opinion of the Court or bail justice or member of the police force, the child does not have the capacity or understanding to enter into an undertaking within the meaning of the **Bail Act 1977**, the child may be released on bail if the child's parent or some other person enters into an undertaking, in any amount which the Court or bail justice or member of the police force thinks fit, to produce the child at the venue of the Court to which the charge is adjourned or the court to which the child is committed for trial.

**347. Child in custody to be placed in remand centre**

- (1) If a child is remanded in custody by a court or a bail justice, the child must be placed in a remand centre except as otherwise provided by the regulations with respect to prescribed regions of the State.
- (2) If any children are remanded in custody in a police gaol under this section, they—
- (a) are entitled to be kept separate from adults who are detained there;
  - (b) are entitled to be kept separate according to their sex;
  - (c) subject to the **Corrections Act 1986** and the regulations made under that Act, are entitled to receive visits from parents, relatives, legal practitioners, persons acting on behalf of legal practitioners and other persons;
  - (d) are entitled to have reasonable efforts made to meet their medical, religious and cultural needs including, in the case of Aboriginal children, their needs as members of the Aboriginal community;

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- (e) are entitled to complain to the Chief Commissioner of Police or the Ombudsman about the standard of care, accommodation or treatment which they are receiving in the police gaol;
  - (f) are entitled to be advised of their entitlements under this sub-section.
- (3) It is the responsibility of the Chief Commissioner of Police to make sure that sub-section (2) is complied with.

**348. Breach of bail**

Despite section 24(3) of the **Bail Act 1977**, if a child is arrested under section 24(1) of that Act and is brought before the Court, the Court must not remand the child in custody for a period longer than 21 days.

**Division 2—Referral for Investigation**

**349. Referral to Secretary**

- (1) If—
- (a) a child appears as a defendant in a criminal proceeding in the Court; and
  - (b) the Court considers that there is prima facie evidence that grounds exist for the making of a protection application in respect of the child—

the Court may refer the matter of an application to the Secretary for investigation.

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(2) If—

- (a) a child appears as a defendant in a criminal proceeding in the Court; and
- (b) the Court considers that there is *prima facie* evidence that grounds exist for the making of an application for a therapeutic treatment order in respect of the child—

the Court may refer the matter of an application to the Secretary for investigation.

**350. Report of investigation**

- (1) If a matter is referred to the Secretary under section 349, the Secretary must enquire into the matter and provide, within 21 days of the referral, a report on the matter to the Court.
- (2) A report provided under sub-section (1) must—
  - (a) confirm that the Secretary has enquired into the matter referred; and
  - (b) advise that—
    - (i) a protection application has been made by the Secretary; or
    - (ii) an application for a therapeutic treatment order has been made by the Secretary; or
    - (iii) the Secretary is satisfied that no protection application or no application for a therapeutic treatment order, as the case may be, is required.

**351. Report on outcome of application**

If a protection application or an application for a therapeutic treatment order is made by the Secretary, the Secretary, as soon as possible after the determination of the application, must report to the Criminal Division—

- (a) that the application was dismissed; or
- (b) that a protection order or a therapeutic treatment order, as the case may be, was made and state the terms of the order.

**352. Court must adjourn in case of therapeutic treatment order**

If the Secretary reports to the Criminal Division under section 351 that a therapeutic treatment order has been made in respect of a child, and the Court has not yet made a finding in the criminal proceedings in which the child is a defendant, the Court must adjourn the criminal proceedings for a period not less than the period of the therapeutic treatment order.

**353. Report to Criminal Division on outcome of therapeutic treatment order**

- (1) If criminal proceedings are adjourned under section 352, the Secretary must report to the Criminal Division—
  - (a) on the completion of the therapeutic treatment order; or
  - (b) on the revocation of the therapeutic treatment order.
- (2) The report must set out details of the child's participation in and attendance at the therapeutic treatment program under the order.

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- (3) The Court may direct the Secretary to provide a copy of the report to—
- (a) the child; and
  - (b) the prosecutor.

**354. Hearing of adjourned case**

- (1) If criminal proceedings are adjourned under section 352 and the therapeutic treatment order is revoked, the Court may, on the application of the Secretary, re-list the adjourned case at short notice if the Court considers it appropriate to do so.
  - (2) Notice of an application under sub-section (1) must be given to—
    - (a) the Court; and
    - (b) the prosecutor; and
    - (c) the child.
  - (3) On the adjourned hearing date, the Court must consider—
    - (a) the report of the Secretary under section 353; and
    - (b) submissions made by or on behalf of the child and the prosecutor in relation to the matters in the report.
  - (4) If the Court is satisfied that the child has attended and participated in the therapeutic treatment program under the therapeutic treatment order, it must discharge the child without any further hearing of the criminal proceedings.
  - (5) If the child is not discharged under sub-section (4), the Court may determine what (if any) further proceedings in the Criminal Division in respect of the child are appropriate.
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**355. Pre-sentence report to Court**

- (1) If a matter is referred to the Secretary under section 349, the Court may order the Secretary to prepare a pre-sentence report in respect of the child and may, subject to section 522(2), defer sentencing the child until the Secretary provides the pre-sentence report (if any) and a report under section 350(2)(b)(iii) or 351.
- (2) The Secretary must forward a pre-sentence report on the child to the Criminal Division at the same time as the report under section 351 if the pre-sentence report has been ordered by the Court.

**Division 3—Procedure for Indictable Offences Triable Summarily**

**356. Procedure for indictable offences triable summarily**

- (1) If a child is charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death), the Court must, before the hearing of any evidence, inform the child and his or her parent, if present, that the child may object to the charge being heard and determined summarily.
- (2) If the parent of a child who—
  - (a) is charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death); and

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(b) is under the age of 15 years—

is not present before the Court, the Court may adjourn the hearing of the proceeding for the purpose of securing the parent's attendance or may proceed to hear and determine the proceeding in the parent's absence.

- (3) If a child is charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death), the Court must hear and determine the charge summarily unless—

- (a) before the hearing of any evidence the child objects; or
- (b) at any stage the Court considers that the charge is unsuitable by reason of exceptional circumstances to be determined summarily—

and the Court must conduct a committal proceeding into the charge and, in the circumstances mentioned in paragraph (b), must give reasons for declining to determine the charge summarily.

- (4) If a child charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death), is—

- (a) under the age of 15 years; and
- (b) not legally represented—

the child's parent may, for the purposes of sub-section (3)(a), object on the child's behalf.

- (5) If the Court hears and determines summarily a charge against a child for an indictable offence, the Court may find the child not guilty of the offence charged but guilty of having attempted to commit the offence charged.

**Division 4—Standard of Proof**

**357. Proof beyond reasonable doubt**

- (1) On the summary hearing of a charge, whether indictable or summary, the Court must be satisfied of a child's guilt on proof beyond reasonable doubt by relevant and admissible evidence.
- (2) If the Court is not satisfied in accordance with sub-section (1), it must dismiss the charge.

**Division 5—Reports and other Matters to be Taken into Account in Considering Sentence**

**358. Court may only consider certain reports and other matters**

If the Court finds a child guilty of an offence, the Court may, in considering sentence, take into account only the following—

- (a) a pre-sentence report prepared by the Secretary or the Secretary to the Department of Justice and the evidence, if any, of its author;
- (b) a group conference report prepared by a group conference convenor and the evidence, if any, of its author;
- (c) any report, submission or evidence given, made or tendered by or on behalf of the child who is to be sentenced;

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- (d) any offences of which the child has been convicted or found guilty before the commission of the offence under consideration;
- (e) any submission on sentencing made by the informant or prosecutor or any person appearing on behalf of the Crown;
- (f) any victim impact statement made, or other evidence given, under section 359.

**359. Victim impact statements**

- (1) If the Court finds a child guilty of an offence, a victim of the offence may make a victim impact statement to the Court for the purpose of assisting the Court in determining sentence.
- (2) A victim impact statement may be made—
  - (a) in writing by statutory declaration; or
  - (b) in writing by statutory declaration and orally by sworn evidence.
- (3) A victim impact statement may be made by another person on behalf of a victim—
  - (a) who is under the age of 18 years; or
  - (b) who the Court is satisfied is incapable of making the statement because of mental illness or for any other reason; or
  - (c) that is not an individual.
- (4) A victim impact statement contains particulars of the impact of the offence on the victim and of any injury, loss or damage suffered by the victim as a direct result of the offence.
- (5) The Court may rule as inadmissible the whole or any part of a victim impact statement.

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- (6) If the victim prepares a victim impact statement, the victim must, a reasonable time before sentencing is to take place—
    - (a) file a copy with the Court; and
    - (b) provide a copy to—
      - (i) the child or the legal practitioner representing the child; and
      - (ii) the prosecutor.
  - (7) The Court may, at the request of the child or the prosecutor, call a victim who has made a victim impact statement, or a person who has made a victim impact statement on behalf of a victim, to give evidence.
  - (8) A victim or other person who gives evidence under sub-section (7) may be cross-examined and re-examined.
  - (9) A victim, or a person who has made a victim impact statement on behalf of a victim, may call a witness to give evidence in support of any matter contained in the victim impact statement.
  - (10) A witness who gives evidence under sub-section (9) may be cross-examined and re-examined.
  - (11) Any party to the proceeding may lead evidence on any matter contained in a victim impact statement.
  - (12) If a victim who has made, or on behalf of whom another person has made, a victim impact statement so requests, the Court must ensure that any admissible parts of the statement that are appropriate and relevant to sentencing are read aloud by the prosecutor in open court in the course of the sentencing hearing.
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- (13) Nothing in this section prevents the presiding magistrate from reading aloud any admissible part of a victim impact statement in the course of sentencing the child or at any other time in the course of the sentencing hearing.
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**PART 5.3—SENTENCING ORDERS**

**Division 1—Sentencing generally**

**360. Sentencing orders**

- (1) If the Court finds a child guilty of an offence, whether indictable or summary, the Court may—
- (a) without conviction, dismiss the charge; or
  - (b) without conviction, dismiss the charge and order the giving of an undertaking under section 363; or
  - (c) without conviction, dismiss the charge and order the giving of an accountable undertaking under section 365; or
  - (d) without conviction, place the child on a good behaviour bond under section 367; or
  - (e) with or without conviction, impose a fine under section 373; or
  - (f) with or without conviction, place the child on probation under section 380; or
  - (g) with or without conviction, release the child on a youth supervision order under section 387; or
  - (h) convict the child and make a youth attendance order under section 397; or
  - (i) convict the child and order that the child be detained in a youth residential centre under section 410; or
  - (j) convict the child and order that the child be detained in a youth justice centre under section 412.
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- (2) If the Court is of the opinion that sentencing should be deferred, the Court may defer sentencing the child in accordance with section 414.
- (3) In addition to any other sentencing order, the Court may order the child—
- (a) to make restitution or pay compensation in accordance with section 417; or
  - (b) to pay costs.
- (4) The Court may not make an order referred to in sub-section (3) a special condition of another sentencing order.
- (5) If under any Act other than this Act a court is authorised on a conviction for an offence—
- (a) to make an order with respect to any property or thing the subject of or in any way connected with the offence; or
  - (b) to impose any disqualification or like disability on the person convicted—
- then the Court may, if it finds a child guilty of that offence, make any such order or impose any such disqualification or disability despite the child not being convicted of the offence.
- (6) The Court must not pass a sentence that imposes any condition or requirement on a person or body that is not a party to the proceeding unless the Court is satisfied that the person or body consents to that condition or requirement.

**361. Sentencing hierarchy**

The Court must not impose a sentence referred to in any of the paragraphs of section 360(1) unless it is satisfied that it is not appropriate to impose a sentence referred to in any preceding paragraph of that section.

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**362. Matters to be taken into account**

- (1) In determining which sentence to impose on a child, the Court must, as far as practicable, have regard to—
  - (a) the need to strengthen and preserve the relationship between the child and the child's family; and
  - (b) the desirability of allowing the child to live at home; and
  - (c) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and
  - (d) the need to minimise the stigma to the child resulting from a court determination; and
  - (e) the suitability of the sentence to the child; and
  - (f) if appropriate, the need to ensure that the child is aware that he or she must bear a responsibility for any action by him or her against the law; and
  - (g) if appropriate, the need to protect the community, or any person, from the violent or other wrongful acts of the child.
- (2) In passing sentence on a child who has appeared before the Family Division or who is or has been the subject of an order of the Family Division (including a therapeutic treatment order), the Court must not impose a sentence more severe than it would have imposed had the child not so appeared or been the subject of such an order.

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- (3) If a child has participated in a group conference and has agreed to the group conference outcome plan, the Court must impose a sentence less severe than it would have imposed had the child not participated in a group conference.
  - (4) If sentencing of a child is deferred for the purpose of the child's participation in a group conference and the child has failed to participate in the group conference, the Court must not impose a sentence more severe than it would have imposed had the child not so failed to participate in the group conference.

## **Division 2—Undertaking**

### **363. Non-accountable undertaking**

- (1) If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, without conviction, dismiss the charge and order that—
  - (a) the child; and
  - (b) if required, the child's parent—give an undertaking, with or without conditions, to do or refrain from doing the act or acts specified in the undertaking for a period not exceeding 6 months or, in exceptional circumstances, 12 months.
- (2) An undertaking may be given in relation to one, or more than one, offence.

### **364. Breach of undertaking**

If an undertaking under section 363 is breached, the Court must not take any action.

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**Division 3—Accountable Undertaking**

**365. Accountable undertaking**

If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, without conviction, dismiss the charge in accordance with section 363, and order that on breach of the undertaking by the child, the child be made accountable and dealt with for the breach under section 366.

**366. Breach of undertaking**

(1) If—

(a) a person has given an undertaking to the Court or another court under section 365; and

(b) it appears to the Court that the person has failed to comply with the undertaking—

the Court may direct that the person and, if the person is under the age of 15 years, his or her parent be served with a notice to appear before the Court at a specified time.

(2) If a notice is served under sub-section (1) and the person fails to appear before the Court at the time specified, the Court may direct that a warrant to arrest the person be issued.

(3) A person alleged to have failed to comply with an undertaking under section 365 must appear or be brought before the Court constituted by—

(a) the magistrate who made the order under section 365, if he or she still holds the office of magistrate; or

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- (b) any other magistrate if—
    - (i) the first-mentioned magistrate does not still hold the office of magistrate; or
    - (ii) the person consents.
  - (4) If a person does not consent to the Court constituted by any other magistrate dealing with the breach, the proceeding must be adjourned for hearing before the Court constituted by the magistrate who made the order under section 365, if he or she still holds the office of magistrate.
  - (5) If the Court is satisfied that the person has failed to comply with an undertaking given under section 365, the Court may—
    - (a) cancel the undertaking; or
    - (b) continue or vary the undertaking but must not extend the period of the undertaking; or
    - (c) revoke the order dismissing the charge and impose a fine not exceeding 1 penalty unit.

**Division 4—Good Behaviour Bond**

**367. Good behaviour bond**

- (1) If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, without conviction, adjourn the proceeding if it appears expedient to do so, having regard to all the circumstances of the matter including—
  - (a) the nature of the offence; and
  - (b) the character and antecedents of the child; and
  - (c) whether or not the child pleaded guilty.

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- (2) The period of an adjournment under this section must be specified by the Court and must not exceed—
    - (a) 12 months; or
    - (b) if the child is aged 15 years or more on the day on which the proceeding is adjourned and the circumstances are exceptional, 18 months.
  - (3) An adjournment under this section must not be granted unless the child enters into a bond for an amount less than one half of the maximum fine that may be imposed on the child under section 373 on the following conditions—
    - (a) that the child appears, if so required by the Court, at the time to which the further hearing is adjourned;
    - (b) that the child appears before the Court, if required to do so, during the period of the adjournment;
    - (c) that the child is of good behaviour during the period of the adjournment;
    - (d) that the child observes any special conditions imposed by the Court.
  - (4) A bond may be entered into in relation to one, or more than one, offence.
  - (5) Subject to this section, the Court may grant an adjournment under this section to a child who is serving or is about to serve a term of detention in respect of another offence and in such a case the period of the adjournment shall commence on the discharge of the child from detention by due course of law.
  - (6) Subject to sub-section (5), a child who has entered into a bond under this section must be allowed to go at large.
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**368. Dismissal where bond observed**

If, at the further hearing of a proceeding adjourned under section 367, the Court is satisfied that the child has observed the conditions of the bond, the Court must dismiss the charge.

**369. Child required to appear**

- (1) A child to whom an adjournment under section 367 has been granted may be required to appear before the Court—
  - (a) by order of the Court; or
  - (b) by notice issued by the registrar.
- (2) An order or notice under sub-section (1) must be served not less than 14 days before the day on which the child is required to appear.

**370. Failure to appear**

- (1) If—
  - (a) the Court, when granting an adjournment under section 367, specifies that the child is required to appear at the time to which the further hearing is adjourned and the child fails to do so; or
  - (b) a child fails to appear as required by order or notice under section 369; or
  - (c) reasonable efforts have been made to serve an order or notice under section 369, but have been unsuccessful—a warrant to arrest may be issued by the Court, directing that the child be arrested and brought before the Court as soon as possible.
- (2) If a child is brought before the Court under sub-section (1), the Court may remand the child in custody or on bail to be brought or to appear before the Court at a specified time and venue.

- (3) If a child is remanded on bail under sub-section (2) and fails to appear in accordance with the conditions of bail, the Court may issue a further warrant to arrest.

**371. Breach of bond**

- (1) If—
- (a) a person has been released on a bond under section 367; and
  - (b) it appears to the Court that the person has failed to be of good behaviour or to observe any condition of the bond—
- the Court may direct that the person and, if the person is under the age of 15 years, his or her parent be served with a notice to appear before the Court at a specified time.
- (2) If a notice is served on a person under sub-section (1) and the person fails to appear before the Court at the time specified, the Court may, if satisfied that the notice has come to the attention of the person—
- (a) direct that a warrant to arrest the person be issued; or
  - (b) proceed under sub-section (5) in the absence of the person.
- (3) A person alleged to have failed to be of good behaviour or to observe any condition of a bond must (whether a notice under sub-section (1) has been issued or not) appear or be brought before the Court—
- (a) constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate; or

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- (b) constituted by any other magistrate—
  - (i) if the first-mentioned magistrate does not still hold the office of magistrate; or
  - (ii) with the person's consent.
- (4) If a person does not consent to the Court constituted by any other magistrate dealing with the breach, the proceeding must be adjourned for hearing before the Court constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate.
- (5) If—
  - (a) a person has been released on a bond under section 367; and
  - (b) the Court is satisfied that the person has failed to be of good behaviour or to observe any condition of the bond—the Court may—
  - (c) declare the bond to be forfeited and impose no penalty; or
  - (d) proceed with the further hearing and determination of the charge and deal with the person in any manner in which the person could have been dealt with before the adjournment was granted.

**372. Time for application**

If a breach of a bond is constituted by—

- (a) any act the subject of a charge before a court, a proceeding for the breach must be commenced not later than 3 months after a finding of guilt in respect of the charge; or



- (b) any other act, a proceeding for the breach must be commenced not later than 14 working days after the alleged breach and before the expiry of the period of the adjournment under section 367.

### **Division 5—Fines**

#### **373. Fines**

If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, with or without conviction, impose a fine—

- (a) in respect of each offence, not exceeding—
  - (i) 1 penalty unit, if the child is under the age of 15 years or 5 penalty units in any other case; or
  - (ii) the maximum fine which may be imposed on an adult for the same offence—

whichever is the lower amount; and

- (b) in respect of more than one offence, not exceeding an aggregate of 2 penalty units, if the child is under the age of 15 years or 10 penalty units in any other case.

#### **374. Financial circumstances of child to be considered**

If the Court determines to impose a fine on a child in respect of an offence, the Court must take into consideration, among other things, the financial circumstances of the child when determining the amount of the fine.

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**375. Instalment orders**

(1) In sections 375 to 379—

**"child"** includes a person on whom the Court has imposed a fine but who is of or above the age of 19 years at the time of an application under section 377;

**"fine"** means the sum of money payable by a child under an order of the Court made in respect of an offence and includes costs but does not include a sum of money payable by way of restitution or compensation;

**"instalment order"** means an order made under sub-section (2) that a fine be paid by 2 or more instalments and, if such an order has been varied, means the order as so varied.

(2) If the Court determines to impose a fine on a child, the Court—

(a) must, if the child so requests, order that the fine be paid by instalments; or

(b) in any other case, may order that the fine be paid by instalments, if the Court deems it appropriate to do so.

**376. Time to pay**

If the Court does not make an instalment order in respect of a fine, the Court, at the time of imposing the fine, may order that the child be allowed time for the payment of the fine.

**377. Application for time to pay, for instalment order or for variation of instalment order**

A child who has been ordered by the Court to pay a fine may apply at any time in the prescribed manner to the appropriate registrar for—

- (a) an order that the child be allowed time for the payment of the fine; or
- (b) an order that the fine be paid by instalments; or
- (c) an order for the variation of an instalment order.

**378. Default in payment of fine or instalment**

- (1) If for a period of more than one month a child defaults in the payment of a fine or of any instalment under an instalment order, the Court may—
  - (a) determine that payment of the amount of the fine that remains unpaid not be enforced; or
  - (b) adjourn the hearing or further hearing of the matter for up to 6 months on any terms that the Court thinks fit; or
  - (c) order that the fine be varied as specified in the order of the Court; or
  - (d) if the default is in the payment of an instalment under an instalment order, order that the instalment order be varied as specified in the order of the Court; or
  - (e) order that the fine then unpaid be levied by a warrant to seize property; or
  - (f) release the child on probation or a youth supervision order for a period not exceeding 3 months but in no case extending beyond the child's twenty-first birthday.

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(2) The Court must not make an order under sub-section (1) unless the child has been served by post or otherwise with a notice to appear before the Court in respect of the default in payment.

(3) If—

(a) a notice is served on a child under sub-section (2) and the child fails to appear before the Court at the time specified and the Court is satisfied that the notice has come to the attention of the child; or

(b) service of a notice under sub-section (2) cannot be effected—

the Court may adjourn the proceeding and order that a warrant to arrest the child be issued.

**379. Reduction of order by payment of portion of fine**

If—

(a) a child is released on probation under section 378(1)(f) or a youth supervision order has been made under section 378(1)(f); and

(b) before the expiry of the term of the order, it appears to the Court that part of the fine has been paid—

the total term of the period of probation or the youth supervision order must be reduced by the number of days bearing as nearly as possible the same proportion to the total number of days in the term as the amount paid bears to the whole amount of the fine.

**Division 6—Probation Orders**

**380. Court may order probation**

- (1) If the Court finds a child guilty of one or more offences, whether indictable or summary, the Court may, with or without conviction, place the child on probation for a specified term—
  - (a) not exceeding 12 months; or
  - (b) not exceeding 18 months if the offence or one of the offences is punishable by imprisonment for a term of more than 10 years—and not extending beyond his or her twenty-first birthday.
- (2) The Court may only make an order under subsection (1) if the child has consented to the order being made.

**381. Conditions of probation orders**

- (1) If a person is released on probation, the probation order is subject to the following conditions—
  - (a) the person must report to the Secretary within 2 working days after the order is made;
  - (b) the person must, during the period of the probation order, report to the assigned youth justice officer as required by the youth justice officer;
  - (c) the person must not re-offend during the period of the probation order;
  - (d) the person must not leave the State without the written permission of the Secretary;

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- (e) the person must notify the assigned youth justice officer of any change of residence, school or employment within 48 hours after the change;
  - (f) the person must obey the reasonable and lawful instructions of the assigned youth justice officer.
- (2) Subject to sub-sections (3) and (4), the Court may order the person to observe any special condition for the whole or any part of the period of probation.
- (3) A special condition ordered under sub-section (2) must relate to the offence and the Court must, in its statement of reasons for the sentence, give its reason for ordering the special condition.
- (4) A special condition which may be ordered under sub-section (2) may be—
- (a) that the person attend school, if the child is under school-leaving age; or
  - (b) that the person abstain from alcohol; or
  - (c) that the person abstain from the use of illegal drugs; or
  - (d) that the person reside at a specified address; or
  - (e) that the person not leave his or her place of residence between specified hours on specified days; or
  - (f) that the person undergo medical, psychiatric, psychological or drug counselling or treatment; or
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- (g) if a pre-sentence report includes a declaration of eligibility in respect of the person issued under section 8 of the **Intellectually Disabled Persons' Services Act 1986**, that the person participate in services available under that Act as directed by the Secretary; or
  - (h) any other condition that the Court considers necessary or desirable.
- (5) A probation order may at any time during the period of the order be varied or revoked by the Court in accordance with section 421.

**382. Concurrent probation orders**

- (1) If a person is found guilty on the same day, or in the same proceeding, of more than one offence, the aggregate period of any probation orders imposed in respect of the offences must not exceed 18 months or extend beyond the person's twenty-first birthday.
- (2) Despite anything to the contrary in any Act, every probation order imposed on a person by the Court shall, unless otherwise directed by the Court at the time of making the probation order, be, as from the date of its commencement, served concurrently with any uncompleted probation order or orders imposed on that person, whether previously to or at the time the relevant order was made.
- (3) If the Court imposes a probation order on a person who has not completed another probation order, it may direct that the order being imposed be served in part concurrently with the other order or wholly cumulatively on it.

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**383. Court may require Secretary to report**

- (1) If a person has been placed on probation under section 380 and at any time during the period of probation the Court—

- (a) finds the person guilty of an offence; and
- (b) is aware that a probation order is in force in respect of the person—

the Court may require the Secretary to provide the Court with a report on the extent to and the manner in which the person has complied with the probation order.

- (2) In dealing with the offence referred to in sub-section (1)(a), the Court—

- (a) may take into account the report referred to in that sub-section; and
- (b) must not impose on the person a penalty greater than the penalty which the Court may impose for that offence.

**384. Breach of probation**

- (1) If—

- (a) a person has been placed on probation under section 380; and
- (b) at any time during the probation period it appears to the Court or to the Secretary that the person has failed to observe any condition, or amended condition, of the probation order—

the Court or the Secretary may cause the person and, if the person is under the age of 15 years, his or her parent to be served, by post or otherwise, with a notice to appear before the Court at a specified time.



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- (2) If—
- (a) a notice is served on a person under sub-section (1) and the person fails to appear before the Court at the time specified and the Court is satisfied that the notice has come to the attention of the person; or
  - (b) service of a notice under sub-section (1) cannot be effected—
- the Court may direct that a warrant to arrest the person be issued.
- (3) A person alleged to have failed to observe any condition, or amended condition, of a probation order must appear or be brought before the Court—
- (a) constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate; or
  - (b) constituted by any other magistrate—
    - (i) if the first-mentioned magistrate does not still hold the office of magistrate; or
    - (ii) with the person's consent.
- (4) If a person does not consent to the Court constituted by any other magistrate dealing with the breach, the proceeding must be adjourned for hearing before the Court constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate.
- (5) If—
- (a) a person has been placed on probation; and
  - (b) the person is brought or appears before the Court (whether a notice under sub-section (1) has been issued or not); and
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- (c) the Court is satisfied that the person has failed to observe any condition, or amended condition, of the probation order—  
the Court may—
  - (d) confirm the probation order; or
  - (e) vary, add or substitute any special condition of the probation order but must not extend the period of the order; or
  - (f) revoke the probation order and impose any sentencing order that the Court thinks just; or
  - (g) if the probation order has expired, impose any sentencing order that the Court thinks just.
- (6) In considering what order to make under subsection (5), the Court may take into account—
  - (a) a report on the person prepared by the Secretary under section 385; and
  - (b) the fact of the making of the probation order; and
  - (c) the extent to which and the manner in which the person has complied with the probation order.

**385. Secretary's report**

- (1) If a person is brought or appears before the Court under section 384, the Secretary must prepare a report on the person including—
  - (a) the nature and circumstances of the breach of the probation order; and
  - (b) the extent to which and the manner in which the person has complied with the probation order; and

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- (c) the recommendation of the Secretary with respect to an appropriate sentencing order for the person; and
  - (d) any other relevant matter.
- (2) Any statement made in a report under sub-section (1) must be relevant to—
  - (a) the breach of the probation order; and
  - (b) the sentencing order (if any) recommended in the report.
- (3) A report under sub-section (1) must be provided, after the Court is satisfied that a person has failed to observe a condition, or amended condition, of the probation order and before the Court makes an order under section 384(5), to—
  - (a) the Court; and
  - (b) the person who is the subject of the report; and
  - (c) the legal practitioners representing the person; and
  - (d) any other person whom the Court has ordered is to receive a copy of the report.

**386. Time for application**

If a breach of a probation order is constituted by—

- (a) any act the subject of a charge before a Court, any proceeding for the breach must be commenced not later than 3 months after a finding of guilt in respect of the charge; or
- (b) any other act, any proceeding for the breach must be commenced not later than 14 working days after the alleged breach.

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**Division 7—Youth Supervision Orders**

**387. Court may impose youth supervision order**

- (1) If the Court finds a child guilty of one or more offences, whether indictable or summary, the Court may, with or without conviction, release the child on a youth supervision order for a specified term—
  - (a) not exceeding 12 months; or
  - (b) not exceeding 18 months if the offence or one of the offences is punishable by imprisonment for a term of more than 10 years—and not extending beyond his or her twenty-first birthday.
- (2) The Court may make an order under subsection (1) only if—
  - (a) the venue at which the Court is then sitting is in a prescribed region of the State; and
  - (b) the child has consented to the order being made.

**388. Concurrent youth supervision orders**

- (1) If a person is found guilty on the same day, or in the same proceeding, of more than one offence, the aggregate period of any youth supervision orders imposed in respect of the offences must not exceed 18 months or extend beyond the person's twenty-first birthday.
- (2) Despite anything to the contrary in any Act, every youth supervision order imposed on a person by the Court shall, unless otherwise directed by the Court at the time of making the youth supervision order, be, as from the date of its commencement, served concurrently with any uncompleted youth supervision order or orders imposed on that

person, whether previously to or at the time the relevant order was made.

- (3) If the Court imposes a youth supervision order on a person who has not completed another youth supervision order, it may direct that the order being imposed be served in part concurrently with the other order or wholly cumulatively on it.

**389. Youth supervision orders**

- (1) If a person is released on a youth supervision order, the order is subject to the following conditions—
- (a) the person must report to the Secretary within 2 working days after the order is made;
  - (b) the person must, during the period of the youth supervision order, report to the Secretary as required by the Secretary;
  - (c) the person must not re-offend during the period of the youth supervision order;
  - (d) the person must not leave the State without the written permission of the Secretary;
  - (e) the person must notify the Secretary of any change of residence, school or employment within 48 hours after the change;
  - (f) the person must attend a youth justice unit or any other place specified in the youth supervision order;
  - (g) the person must participate in a community service program or any other program, if so directed by the Secretary;
  - (h) the person must obey the reasonable and lawful instructions of the Secretary.

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- (2) Subject to sub-section (3), the Court may order the person to observe any special condition for the whole or any part of the period of a youth supervision order.
  - (3) Sub-sections (3) and (4) of section 381 apply to a special condition ordered under sub-section (2) of this section in the same manner as they apply to a special condition ordered under sub-section (2) of that section.
  - (4) A youth supervision order may at any time during the period of the order be varied or revoked by the Court in accordance with section 421.
  - (5) A requirement by the Secretary under sub-section (1)(b) that a person report to the Secretary must specify dates and times which, as far as practicable, avoid interference—
    - (a) with the attendance of the person at his or her place of employment, education, training or religious observance; or
    - (b) with the person's religious beliefs.
  - (6) A direction given by the Secretary under sub-section (1)(g)—
    - (a) may require a person to engage in community service activities—
      - (i) at or in relation to a community service organisation; or
      - (ii) at the home of any old, infirm or disabled person; or
      - (iii) on any Crown land or land occupied by the Crown or owned, leased or occupied by any person or body under any Act for a public purpose; and
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- (b) must not require a person to engage in any community service activities so as to take the place of some other person who would usually be engaged in those activities for hire or reward if that other person is absent from those activities because of an industrial dispute involving that other person's employer or is otherwise available and willing to perform the work required in those activities.
- (7) If a direction under sub-section (1)(g) requires a person to engage in community service activities—
  - (a) the person is, for the purposes of the **Accident Compensation Act 1985** or any other Act or law, to be taken to be a worker employed by the Crown; and
  - (b) for the purposes of the **Accident Compensation Act 1985** the weekly earnings of the person are to be taken to be an amount equivalent to the weekly earnings of the person in any full-time employment in which the person is engaged at that time or, if the person is not then engaged in full-time employment, an amount which the Minister administering the **Accident Compensation Act 1985** considers reasonable in the circumstances of the case; and
  - (c) the person is not entitled to receive any remuneration in respect of any work performed in those community service activities.

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**390. Suspension of youth supervision order**

(1) If—

- (a) at the time the Court makes a youth supervision order, the person in respect of whom the order is made is in custody in a remand centre, youth residential centre, youth justice centre or prison; or
- (b) after the making of a youth supervision order, the person in respect of whom the order is made is taken into custody in a remand centre, youth residential centre, youth justice centre or prison—

the Secretary may by notice in writing in the prescribed form sent by registered post to, or served personally on, the person suspend the person's service of the youth supervision order.

- (2) The Secretary must, after consultation with the appropriate parole board, superintendent of a youth residential centre or youth justice centre or the Secretary to the Department of Justice, determine a time at and date on which a person shall commence or re-commence service of the youth supervision order and must by a notice in writing sent by registered post to, or served personally on, the person specify the time at and date on which the person is first required to report to the Secretary.
- (3) With the consent of the appropriate parole board, the Secretary may direct that the term of operation of a youth supervision order be served concurrently with a period of parole but the service of the youth supervision order must not be a condition of the parole.



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**391. Court may require Secretary to report**

- (1) If a person has been released on a youth supervision order and at any time during the term of the order the Court—

- (a) finds the person guilty of an offence; and
- (b) is aware that a youth supervision order is in force in respect of the person—

the Court may require the Secretary to provide the Court with a report on the extent to and the manner in which the person has complied with the youth supervision order.

- (2) In dealing with the offence referred to in paragraph (a) of sub-section (1), the Court—

- (a) may take into account the report referred to in that sub-section; and
- (b) must not impose on the person a penalty greater than the penalty which the Court may impose for that offence.

**392. Breach of youth supervision order**

- (1) If—

- (a) a person has been released on a youth supervision order; and
- (b) at any time during the period of the order it appears to the Court or the Secretary that the person has failed to observe any condition, or amended condition, of the order—

the Court or the Secretary may cause the person and, if the person is under the age of 15 years, his or her parent to be served, by post or otherwise, with a notice to appear before the Court at a specified time.

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- (2) If—
- (a) a notice is served on a person under sub-section (1) and the person fails to appear before the Court at the time specified and the Court is satisfied that the notice has come to the attention of the person; or
  - (b) service of a notice under sub-section (1) cannot be effected—
- the Court may direct that a warrant to arrest the person be issued.
- (3) A person alleged to have failed to observe any condition, or amended condition, of a youth supervision order must appear or be brought before the Court—
- (a) constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate; or
  - (b) constituted by any other magistrate—
    - (i) if the first-mentioned magistrate does not still hold the office of magistrate; or
    - (ii) with the person's consent.
- (4) If a person does not consent to the Court constituted by any other magistrate dealing with the breach, the proceeding must be adjourned for hearing before the Court constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate.
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**393. Penalties for breach**

If—

- (a) a person has been released on a youth supervision order; and
- (b) the person is brought or appears before the Court (whether a notice under section 392(1) has been issued or not); and
- (c) the Court is satisfied that the person has failed to observe any condition, or amended condition, of the order—

the Court may make an order—

- (d) varying the youth supervision order but not extending the term of the order; or
- (e) confirming the youth supervision order and directing the person to comply with the youth supervision order; or
- (f) revoking the youth supervision order and imposing any sentencing order that the Court thinks just; or
- (g) if the youth supervision order has expired, imposing any sentencing order that the Court thinks just.

**394. Matters to be taken into account**

- (1) In considering what order to make under section 393, the Court may take into account—
    - (a) a report on the person prepared by the Secretary under sub-section (2); and
    - (b) the fact of the making of the youth supervision order; and
    - (c) the extent to and the manner in which the person has complied with the youth supervision order.
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- (2) If a person is brought or appears before the Court under section 393, the Secretary must prepare a report on the person including—
- (a) the nature and circumstances of the breach of the youth supervision order; and
  - (b) the extent to which and the manner in which the person has complied with the order; and
  - (c) the recommendation of the Secretary with respect to an appropriate sentencing order for the person; and
  - (d) any other relevant matter.
- (3) Any statement made in a report under sub-section (2) must be relevant to—
- (a) the breach of the youth supervision order; and
  - (b) the sentencing order (if any) recommended in the report.
- (4) A report under sub-section (2) must be provided, after the Court is satisfied that a person has failed to observe any condition, or amended condition, of the order and before the Court makes an order under section 393, to—
- (a) the Court; and
  - (b) the person who is the subject of the report; and
  - (c) the legal practitioners representing the person; and
  - (d) any other person whom the Court has ordered is to receive a copy of the report.
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**395. Time for application**

If a breach of a youth supervision order is constituted by—

- (a) any act the subject of a charge before a court, any proceeding for the breach must be commenced not later than 3 months after a finding of guilt in respect of the charge; or
- (b) any other act, any proceeding for the breach must be commenced not later than 14 working days after the alleged breach.

**Division 8—Youth Attendance Orders**

**396. Definitions**

In this Division—

"**week**" means the period of 7 days commencing on a Monday;

"**working day**" does not include a Saturday, Sunday or public holiday.

**397. Youth attendance order**

(1) If—

- (a) the Court convicts a child of one or more offences for which the Court considers that the child would otherwise be sentenced to detention in a youth justice centre as a result of the gravity or habitual nature of the child's unlawful behaviour; and
- (b) on the day of sentencing, the child is of or above the age of 15 years—

the Court may make a youth attendance order in respect of the child with a specified term not exceeding 12 months and not extending beyond his or her twenty-first birthday.

- (2) The power to make a youth attendance order is subject to the restrictions set out in section 398.

**398. Restrictions on power to make youth attendance order**

The Court does not have power to make a youth attendance order under section 397(1) unless—

- (a) the offence or one of the offences is punishable by imprisonment; and
- (b) it has made enquiries of the Secretary and is satisfied that the child is a suitable person to be placed on a youth attendance order; and
- (c) the child has consented to the order being made.

**399. Sentencing court to impose requirements**

- (1) The Court, when making a youth attendance order, must impose on the person the following requirements—
- (a) that the person does not commit another offence during the period that the order is in force;
  - (b) that the person attend at a youth justice unit for the number of weeks specified by the Court (not being more than 52 weeks);
  - (c) that the person report to the Secretary within 2 working days after the order is made;
  - (d) that the person does not leave the State without the written permission of the Secretary;
  - (e) that the person notify the Secretary of any change of residence, school or employment within 48 hours after the change;

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- (f) that the person comply with the provisions of a notice under section 402 and with the requirements for attendance in paragraphs (a) and (b) of section 402(1);
  - (g) that the person attend at any alternative day and time fixed under section 402(5) or attend for such extension of the term of the order as is fixed under section 402(6);
  - (h) that the person carry out the reasonable and lawful directions of the Secretary or any person acting under the authority of the Secretary under sections 406 and 407(1).
- (2) Subject to sub-section (3), the Court may order the person to observe any special condition for the whole or any part of the period of the youth attendance order.
- (3) Sections 381(3) and 381(4) apply to a special condition ordered under sub-section (2) of this section in the same manner as they apply to a special condition ordered under sub-section (2) of that section.

**400. Concurrent orders**

- (1) If a person is convicted on the same day, or in the same proceeding, of more than one offence—
- (a) the aggregate period of any youth attendance orders imposed in respect of the offences must not exceed 12 months or extend beyond the person's twenty-first birthday; and
  - (b) if the Court makes a youth attendance order in relation to an offence and directs that the person be detained in a youth justice centre in respect of another offence, the aggregate term of attendance and detention in respect of all of the offences must not exceed 3 years.
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- (2) Despite anything to the contrary in any Act, every youth attendance order imposed on a person by the Court shall, unless otherwise directed by the Court at the time of making the youth attendance order, be, as from the date of its commencement, served concurrently with any uncompleted youth attendance order or orders imposed on that person, whether previously to or at the time the relevant order was made.
  - (3) If the Court imposes a youth attendance order on a person who has not completed another youth attendance order, it may direct that the order being imposed be served in part concurrently with the other order or wholly cumulatively on it.

**401. Copy of order to be given**

- (1) A youth attendance order must be in the prescribed form.
- (2) The Court, when it makes a youth attendance order, must cause a copy of the order to be given or sent by post to—
  - (a) the person; and
  - (b) the Secretary.

**402. Reporting**

- (1) Subject to sub-sections (5) and (6), a person in respect of whom a youth attendance order is made must in every week during the term of the order—
  - (a) attend for a maximum of 3 attendances; and
  - (b) attend under paragraph (a) for a maximum of 10 hours of which no more than 4 hours may be spent in community service activities under section 407.



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- (2) Subject to sub-section (1), the Secretary must from time to time specify in a notice in the prescribed form sent by registered post to, or served personally on, the person—
  - (a) the periods of time; and
  - (b) the starting and finishing times of each such period; and
  - (c) the number of times; and
  - (d) the total number of hours—in each week during which the person is required to attend the youth justice unit.
- (3) Subject to sub-section (1), the Secretary may from time to time vary the details referred to in paragraph (a), (b), (c) or (d) of sub-section (2) by notice sent by registered post to, or served personally on, the person.
- (4) In specifying the dates and times of attendance for a person in a notice under this section the Secretary must specify dates and times which, as far as practicable, avoid interference—
  - (a) with the attendance of the person at his or her place of employment, education, training or religious observance; or
  - (b) with the person's religious beliefs.
- (5) The Secretary may excuse a person from reporting at a youth justice unit on any occasion—
  - (a) on account of illness certified by a registered medical practitioner; or

- (b) on account of any other good cause—  
and if the Secretary so excuses a person, the Secretary may fix an alternative day and time and must specify the day and time in a notice sent by registered post to, or served personally on, the person.
- (6) If it is not reasonably practicable for a person to make up time for which the person has been excused under sub-section (5) during the term of the youth attendance order, the Secretary may extend the term of the youth attendance order so that the lost time can be made up and must inform the person of the extension by a notice sent by registered post to, or served personally on, the person.

**403. Suspension of youth attendance order**

- (1) If—
- (a) at the time the Court makes a youth attendance order, the person in respect of whom the order is made is in custody in a remand centre, youth residential centre, youth justice centre or prison; or
  - (b) after the making of a youth attendance order, the person in respect of whom the order is made is taken into custody in a remand centre, youth residential centre, youth justice centre or prison—

the Secretary may by a notice in writing in the prescribed form sent by registered post to, or served personally on, the person suspend the person's service of the youth attendance order.

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- (2) The Secretary must, after consultation with the appropriate parole board, superintendent of a youth residential centre or youth justice centre or the Secretary to the Department of Justice, determine a time at and date on which a person shall commence or re-commence service of the youth attendance order and must by a notice in writing sent by registered post to, or served personally on, the person specify the time at and date on which the person is first required to report to the Secretary.
  - (3) With the consent of the appropriate parole board, the Secretary may direct that the term of operation of a youth attendance order be served concurrently with a period of parole but the service of the youth attendance order must not be a condition of the parole.

**404. Court may require Secretary to report**

- (1) If, at any time during a person's service of a youth attendance order, the Court—
    - (a) finds the person guilty of an offence; and
    - (b) is aware that a youth attendance order is in force in respect of the person—the Court may require the Secretary to provide the Court with a report on the extent to and the manner in which the person has complied with the youth attendance order.
  - (2) In dealing with the offence referred to in paragraph (a) of sub-section (1), the Court—
    - (a) may take into account the report referred to in that sub-section; and
    - (b) must not impose on the person a penalty greater than the penalty which the Court may impose for that offence.
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**405. Objects of youth attendance order**

The objects of a youth attendance order are to provide a person in respect of whom a youth attendance order is in force with activities and requirements—

- (a) which take into account the gravity of the person's behaviour; and
- (b) which penalise the person by imposing restrictions on his or her liberty; and
- (c) which require the person to make amends for the offence committed by him or her by performing community services; and
- (d) which provide the person with opportunities to receive such instruction, guidance, assistance and experiences as will assist the person in developing an ability to abide by the law and complete the requirements of the youth attendance order.

**406. Person subject to control etc. of Secretary etc.**

A person in respect of whom a youth attendance order is in force is subject to the reasonable control, direction and supervision of the Secretary or any person acting under the authority of the Secretary during—

- (a) each period of the person's attendance at a youth justice unit; and
- (b) the person's absence from a youth justice unit when the person is complying with a direction of that person; and
- (c) the person's time of travel between the youth justice unit and a place outside the youth justice unit at which the person is directed to be by that person.

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**407. Community service**

- (1) A person in respect of whom a youth attendance order is in force must engage in community service or other activities as directed by the Secretary.
- (2) A direction given by the Secretary—
  - (a) may require a person to engage in community service activities—
    - (i) at or in relation to a community service organisation; or
    - (ii) at the home of any old, infirm or disabled person; or
    - (iii) on any Crown land or land occupied by the Crown or owned, leased or occupied by any person or body under any Act for a public purpose; and
  - (b) must not require a person to engage in any community service activities so as to take the place of some other person who would usually be engaged in those activities for hire or reward if that other person is absent from those activities because of an industrial dispute involving that other person's employer or is otherwise available and willing to perform the work required in those activities.
- (3) If a direction under sub-section (1) requires a person to engage in community service activities—
  - (a) the person is, for the purposes of the **Accident Compensation Act 1985** or any other Act or law, to be taken to be a worker employed by the Crown; and

- (b) for the purposes of the **Accident Compensation Act 1985** the weekly earnings of the person are to be taken to be an amount equivalent to the weekly earnings of the person in any full-time employment in which the person is engaged at that time or, if the person is not then engaged in full-time employment, an amount which the Minister administering the **Accident Compensation Act 1985** considers reasonable in the circumstances of the case; and
- (c) the person is not entitled to receive any remuneration in respect of any work performed in those community service activities.

**408. Breach of youth attendance order**

- (1) A person subject to a youth attendance order who—
  - (a) commits an offence during the period that the youth attendance order is in force; or
  - (b) does not report to the Secretary as specified under section 399(1)(c) or 403(2) (as the case requires); or
  - (c) fails to attend the youth justice unit as specified in a notice under section 402(2) or at an alternative time and on an alternative day fixed under section 402(5) without being excused from attending; or
  - (d) fails to comply with an extension of the term of the youth attendance order under section 402(6); or
  - (e) contravenes any provision of a regulation made for the purposes of this Division; or

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- (f) contravenes any reasonable direction of the Secretary under section 406 or 407(1); or
- (g) refuses to work as directed during an attendance at a youth justice unit; or
- (h) is absent from or leaves—
  - (i) a youth justice unit; or
  - (ii) any other place at which the person has been directed to be present under section 406(b)—

without reasonable excuse at a day and time when the person is required to be present; or

- (i) fails to observe any other requirement or special condition imposed by the Court under section 399—

must be taken to have breached the youth attendance order.

- (2) Subject to sub-section (3), on application to the Court by the Secretary, the Court may, if it is satisfied that a person has breached a youth attendance order, make—
  - (a) an order varying the youth attendance order, but not extending the term of the order; or
  - (b) an order confirming the youth attendance order and directing the person to comply with the youth attendance order; or
  - (c) an order revoking the youth attendance order and imposing any sentencing order that the Court thinks just but must not make an order for the person to be kept in custody for a period longer than the period of the breached youth attendance order; or

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- (d) if the youth attendance order has expired, imposing any sentencing order that the Court thinks just, but must not make an order for the person to be kept in custody for a period longer than the period of the breached youth attendance order.
- (3) If a breach of a youth attendance order is constituted by—
- (a) any act the subject of a charge before a court, any proceeding for the breach must be commenced not later than 3 months after a finding of guilt in respect of the charge; or
  - (b) any other act, any proceeding for the breach must be commenced not later than 14 working days after the alleged breach.
- (4) If at any time during the period that a youth attendance order is in force it appears to the Secretary that the person subject to the order has breached it, the Secretary may cause the person to be served, by post or otherwise, with a notice to appear before the Court at a specified time.
- (5) In dealing with an application under subsection (2), the Court must take into account—
- (a) a report on the person prepared by the Secretary; and
  - (b) the fact of the making of the youth attendance order; and
  - (c) the extent to and the manner in which the person has complied with the youth attendance order.
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(6) If—

- (a) a notice is served on a person under sub-section (4) and he or she fails to appear before the Court at the time specified and the Court is satisfied that the notice has come to the attention of the person; or
- (b) service of a notice under sub-section (4) cannot be effected—

the Court may direct that a warrant to arrest the person be issued.

(7) A person alleged to have breached a youth attendance order must appear or be brought before the Court—

- (a) constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate; or
- (b) constituted by any other magistrate—
  - (i) if the first-mentioned magistrate does not still hold the office of magistrate; or
  - (ii) with the person's consent.

(8) If a person does not consent to the Court constituted by any other magistrate dealing with the breach, the proceeding must be adjourned for hearing before the Court constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate.

**409. Application for variation or revocation of order**

- (1) Subject to sub-sections (2), (3) and (4), the Secretary or a person in respect of whom a youth attendance order is in force may apply to the Court for a variation or the revocation of the youth attendance order.

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- (2) An application under sub-section (1) may be made where—
- (a) the circumstances of the person—
    - (i) have changed since the making of the youth attendance order; or
    - (ii) were not accurately presented to the Court or the Secretary before the making of the youth attendance order; or
  - (b) the person is in custody or is otherwise unable to comply with the youth attendance order; or
  - (c) the person is no longer willing to comply with the order.
- (3) If the Secretary is the applicant under sub-section (1), the Secretary must, as soon as practicable after the making of the application, send by registered post to, or serve personally on, the person in respect of whom the order is in force a notice of the date set by the Court for the hearing of the application.
- (4) If the person in respect of whom the order is in force is the applicant under sub-section (1), the principal registrar must, as soon as practicable after the making of the application, send by registered post to, or cause to be served personally on, the Secretary a notice of the date set by the Court for the hearing of the application.
- (5) In dealing with an application under sub-section (1), the Court must take into account—
- (a) a report on the person prepared by the Secretary; and
  - (b) the fact of the making of the youth attendance order; and
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- (c) the extent to and the manner in which the person has complied with the youth attendance order—

and, subject to sub-section (6), may make—

- (d) an order varying the youth attendance order, but not extending the period of the order; or
  - (e) an order directing that the youth attendance order continue in force; or
  - (f) an order revoking the youth attendance order and imposing any sentencing order that the Court thinks just but must not make an order for the person to be kept in custody for a period longer than the period of the breached youth attendance order.
- (6) If a person in respect of whom an application is made under sub-section (1) fails to appear before the Court at the time fixed for the hearing of the application, a warrant to arrest the person may be issued by the Court.
  - (7) Division 3 of Part 4 of the **Magistrates' Court Act 1989** applies, with any necessary modifications, to warrants under sub-section (6), and in particular with the modification that a reference to the bringing of a person before the Magistrates' Court is to be construed as a reference to bringing the person as soon as practicable before the Children's Court.
  - (8) If it is not possible for the Court to deal immediately with an application under sub-section (1) in respect of which the person has been arrested under sub-section (6), for the purposes of granting bail the provisions of this Act and the **Bail Act 1977** apply, with any necessary modifications, and in particular with the modification that a reference to a person accused
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of an offence or an accused person is to be construed as a reference to the person.

- (9) If a person is being held in custody pending the determination of an application under subsection (1), the person must be detained in a youth justice centre.
- (10) If a person changes his or her place of residence, the Secretary may, on receipt of an application in writing by the person, send by registered post to, or serve personally on, the person a written authority to attend at another youth justice unit specified in the authority at the time and place specified in the authority and the giving of the authority has effect as if it were a variation of a youth attendance order by the Court under subsection (5)(d).

#### **Division 9—Youth Residential Centre Orders**

#### **410. Court may make youth residential centre order**

- (1) If—
  - (a) the Court finds a child guilty of an offence, whether indictable or summary; and
  - (b) on the day of sentencing, the child is aged 10 years or more but under 15 years; and
  - (c) the Court is satisfied that the circumstances and nature of the offence are sufficiently serious to warrant the making of a youth residential centre order and that no other sentence is appropriate; and
  - (d) the offence is one punishable by imprisonment (other than for default in payment of a fine); and

- (e) it has received and considered a pre-sentence report—

the Court may convict the child and order that the child be detained in a youth residential centre.

- (2) If the Court makes an order under sub-section (1), it must—
  - (a) state in writing the reasons for the order; and
  - (b) cause the statement of reasons to be entered in the court register; and
  - (c) unless the Court otherwise orders, cause a copy of the written statement of reasons to be given or sent by post within 21 days after the making of the order to the child, the child's parents and other parties to the proceeding.
- (3) The failure of the Court to comply with sub-section (2) does not invalidate an order made by the Court under sub-section (1).
- (4) The Court must not make an order under sub-section (1) if the child is not present before the Court.

#### **411. Youth residential centre orders**

- (1) If a child is ordered to be detained in a youth residential centre under section 410, the period of detention in respect of an offence must not exceed the maximum term of imprisonment for the offence if committed by an adult and in any event must not exceed 1 year.
- (2) If a child is convicted on the same day, or in the same proceeding, of more than one offence—
  - (a) any period of detention in a youth residential centre shall be concurrent with any period of detention in respect of any other of the offences, unless the Court, at the time of

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sentencing, states that the sentences are cumulative and gives reasons for its decision; and

- (b) the aggregate period of detention in a youth residential centre which may be required in respect of all of the offences must not exceed 2 years; and
- (c) if the Court imposes a sentence of detention in a youth residential centre on a child who has not completed another sentence of detention in a youth residential centre, the Court may direct that the sentence being imposed be served in part concurrently with the other sentence or wholly cumulatively on it.

(3) If—

- (a) a sentence of detention in a youth residential centre is imposed on a child already under sentence of detention in a youth residential centre; and
- (b) the subsequent sentence is cumulative on any uncompleted prior sentence; and
- (c) the aggregate of the periods of the unexpired portion of the prior sentence and the subsequent sentence exceeds 2 years—

the subsequent sentence is to be taken to be a sentence that the child be further detained in a youth residential centre after the expiration of the period of the prior sentence for the period determined by deducting from 2 years the period of the unexpired portion of the prior sentence at the date of the passing of the subsequent sentence.

- (4) The Court may make recommendations in writing as to the management or treatment of, or any other matter concerning, a child sentenced to detention in a youth residential centre.

- (5) Subject to this section, the provisions of Subdivision (4) of Division 2 of Part 3 of the **Sentencing Act 1991** (except sections 32 and 33) apply to an order made by the Criminal Division detaining a child in a youth residential centre as if a reference to the Magistrates' Court were a reference to the Children's Court.

**Division 10—Youth Justice Centre Orders**

**412. Court may make youth justice centre order**

- (1) If—
- (a) the Court finds a child guilty of an offence, whether indictable or summary; and
  - (b) on the day of sentencing, the child is aged 15 years or more but under 21 years; and
  - (c) the Court is satisfied that no other sentence is appropriate; and
  - (d) the offence is one punishable by imprisonment (other than for default in payment of a fine); and
  - (e) it has received and considered a pre-sentence report—
- the Court may convict the child and order that the child be detained in a youth justice centre.
- (2) If the Court makes an order under sub-section (1), it must—
- (a) state in writing the reasons for the order; and
  - (b) cause the statement of reasons to be entered in the court register; and

- (c) unless the Court otherwise orders, cause a copy of the written statement of reasons to be given or sent by post within 21 days after the making of the order to the child, the child's parents and other parties to the proceeding.
- (3) The failure of the Court to comply with sub-section (2) does not invalidate an order made by the Court under sub-section (1).
- (4) The Court must not make an order under sub-section (1) if the child is not present before the Court.

**413. Youth justice centre orders**

- (1) Subject to this section, the provisions of Subdivision (4) of Division 2 of Part 3 of the **Sentencing Act 1991** (except sections 32 and 33) apply to an order made by the Criminal Division detaining a child in a youth justice centre as if a reference to the Magistrates' Court were a reference to the Children's Court.
- (2) If a child is ordered to be detained in a youth justice centre under section 412, the period of detention in respect of an offence must not exceed the maximum term of imprisonment for the offence if committed by an adult and in any event must not exceed 2 years.
- (3) If a child is convicted on the same day, or in the same proceeding, of more than one offence—
  - (a) any period of detention in a youth justice centre shall be concurrent with any period of detention in respect of any other of the offences, unless the Court, at the time of sentencing, states that the sentences are cumulative and gives reasons for its decision; and



- (b) the aggregate term of detention in a youth justice centre which may be required in respect of all of the offences must not exceed 3 years.
- (4) Every term of detention in a youth justice centre imposed on a child by a court must, unless otherwise directed by the court at the time of pronouncing the sentence, be, as from the date of its commencement, served concurrently with any uncompleted sentence or sentences of detention in a youth justice centre imposed on that child, whether before or at the time the relevant sentence was imposed.
- (5) The Court may make recommendations in writing as to the management or treatment of, or any other matter concerning, a child sentenced to detention in a youth justice centre.

### **Division 11—Deferral of Sentencing**

#### **414. Deferral of sentencing**

- (1) If—
  - (a) the Court is of the opinion that sentencing should, in the interests of the child, be deferred; and
  - (b) the child agrees to a deferral of sentencing; and
  - (c) in the case of deferral of sentencing for the purpose of the child's participation in a group conference—
    - (i) the Court is of the opinion, after consultation with the Secretary, that the child is suitable to participate in a group conference; and

- (ii) the child agrees to participate in a group conference—

the Court may defer sentencing the child for a period not exceeding 4 months.

- (2) If the Court defers sentencing a child, the Court—
  - (a) must adjourn the case to a fixed date for sentence and release the child unconditionally or adjourn the case to a fixed date for sentence and release the child on bail; and
  - (b) may order the preparation of a pre-sentence, or a further pre-sentence, report; and
  - (c) if a group conference is to be held, must order the preparation of a group conference report.

#### **415. Group conference**

- (1) The Court may consider deferral of sentencing for the purpose of a child's participation in a group conference if the Court is considering imposing a sentence of probation or a youth supervision order.
- (2) A group conference must be chaired by a convenor appointed by a service approved under section 480.
- (3) The convenor is to fix the date on which and the time and place at which a group conference is to be held.
- (4) The purpose of a group conference is to facilitate a meeting between the child and other persons (including, if they wish to participate, the victim or their representative and members of the child's family and other persons of significance to the child) which has the following objectives—

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- (a) to increase the child's understanding of the effect of their offending on the victim and the community;
    - (b) to reduce the likelihood of the child re-offending;
    - (c) to negotiate an outcome plan that is agreed to by the child.
  - (5) An outcome plan is a plan designed to assist the child to take responsibility and make reparation for his or her actions and to reduce the likelihood of the child re-offending.
  - (6) A group conference must be attended by—
    - (a) the child; and
    - (b) the child's legal practitioner; and
    - (c) the informant or other member of the police force; and
    - (d) the convenor.
  - (7) A group conference may be attended by—
    - (a) members of the child's family; and
    - (b) persons of significance to the child; and
    - (c) the victim of the offence or the victim's representative; and
    - (d) any other person permitted to attend by the convenor.
  - (8) The convenor must prepare a group conference report for the Court and must include in the report the outcome plan, if any, agreed to by the child.
  - (9) Subject to sub-section (8) and Division 7 of Part 7.8, the proceedings of a group conference are confidential.
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- (10) Subject to sub-sections (8) and (11), a person who attends a group conference must not disclose any statement made at, or information provided to, the conference without the leave of the Court or the consent of all the parties to the group conference.

Penalty applying to this sub-section: 10 penalty units.

- (11) Nothing in sub-section (10) prevents—
- (a) the convenor making a record of the proceedings at the group conference;
  - (b) discussions taking place between a person who attended the conference and his or her legal representative;
  - (c) discussions taking place between the legal representatives of persons who attended the conference.

**416. Hearing of adjourned case**

- (1) The Court may, on application by the child, re-list an adjourned case at short notice if the Court considers it appropriate to do so.
- (2) Notice of an application under sub-section (1) setting out the grounds of the application must be given to—
  - (a) the Court; and
  - (b) the informant; and
  - (c) if appropriate, the Secretary.
- (3) On the adjourned hearing date, the Court must, in determining the appropriate sentence for a child, have regard to—
  - (a) the child's behaviour during the period of deferral; and
  - (b) any pre-sentence report ordered under section 414(2)(b); and

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- (c) if the child participated in a group conference, the fact of that participation; and
- (d) any group conference report ordered under section 414(2)(c); and
- (e) any other relevant matter.

Note: See section 362(3) for effect on sentence of participation in a group conference.

- (4) If a child is found guilty of an offence during a period of deferral under section 414, or a group conference does not proceed, the Court may—
  - (a) re-list the adjourned case at short notice; and
  - (b) on the adjourned hearing make any order which the Court could have made if it had not deferred sentence.
- (5) If a child does not appear before the Court on the date fixed for sentence, the Court may order that a warrant to arrest the child be issued.

**Division 12—Orders in Addition to Sentence**

**417. Orders in addition to sentence**

- (1) The provisions of Part 4 of the **Sentencing Act 1991** apply to a proceeding in the Criminal Division with any necessary modification and as if in sections 85H(1), 86(2) and 87J(1) for "may" there were submitted "must" and as if in section 85C(1)(b)(iii)(B) the reference to the Magistrates' Court were a reference to the Criminal Division.
- (2) The maximum amount that the Court may order an offender to pay under Part 4 of the **Sentencing Act 1991** is \$1000.

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**418. Enforcement of orders in addition to sentence**

- (1) In this section, "**appropriate court**" means a court that has jurisdiction to enforce a debt of an amount equivalent to the amount required to be paid under an order made under section 417.
- (2) A person in whose favour an order is made under section 417 may enforce the order, during the period of 5 years following the making of the order, by filing in the appropriate court—
  - (a) a copy of the order certified by the principal registrar of the Children's Court to be a true copy; and
  - (b) that person's affidavit as to the amount not paid under the order.
- (3) Despite any requirement by or under any other Act, no charge is to be made for filing a copy of an order or an affidavit under this section.
- (4) On filing, the order must be taken to be an order of the appropriate court and may be enforced accordingly subject to the following—
  - (a) no order may be made under section 19 of the **Judgment Debt Recovery Act 1984**; and
  - (b) no order of imprisonment may be made under the **Imprisonment of Fraudulent Debtors Act 1958**.

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**Division 13—General**

**419. Provisions applicable to warrants**

The provisions of sections 57 to 65 and 73 to 78 of the **Magistrates' Court Act 1989** apply, with any necessary modifications, to warrants issued in respect of sentencing orders alleged to have been breached as if a reference to bringing a person before the Magistrates' Court as soon as practicable were a reference to bringing a person before the Court as soon as practicable but not later than the next working day after the person is arrested and in the meantime placing the person as provided by this Act.

**420. Bail**

(1) If—

- (a) a person has been arrested in accordance with a warrant issued in respect of an alleged breach of a sentencing order and it is not possible for the Court to hear immediately an application for breach of the sentencing order; or
- (b) a person has appeared before the Court in answer to a notice to appear served in respect of an alleged breach of a sentencing order and the Court adjourns the hearing of the application—

the Court or a bail justice or a member of the police force may grant bail and, subject to section 346, the **Bail Act 1977** applies, with any necessary modifications, as if a reference to a person accused of an offence or an accused person were a reference to the person.

- (2) If a person is refused bail, the person must be remanded in custody for a period not exceeding 21 days.

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**421. Variation or revocation of order**

- (1) Subject to sub-sections (2), (3) and (4), the Secretary or a person in respect of whom a probation order or a youth supervision order is in force may apply to the Court for a variation or the revocation of the order.
- (2) An application under sub-section (1) may be made where—
  - (a) the circumstances of the person—
    - (i) have changed since the making of the order; or
    - (ii) were wrongly stated or were not accurately presented to the Court or the Secretary before sentence; or
  - (b) the person is in custody or is otherwise unable to comply with the order; or
  - (c) the person is no longer willing to comply with the order.
- (3) If the Secretary is the applicant under sub-section (1), the Secretary must, as soon as practicable after the making of the application, send by registered post to, or serve personally on, the person in respect of whom the order is in force a notice of the date set by the Court for the hearing of the application.
- (4) If the person in respect of whom the order is in force is the applicant under sub-section (1), the principal registrar must, as soon as practicable after the making of the application, send by registered post to, or cause to be served personally on, the Secretary a notice of the date set by the Court for the hearing of the application.



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- (5) In dealing with an application under sub-section (1), the Court must take into account—
- (a) a report on the person prepared by the Secretary; and
  - (b) the fact of the making of the probation order or youth supervision order (as the case requires); and
  - (c) the extent to and the manner in which the person has complied with the order—
- and, subject to sub-section (6), may make—
- (d) an order varying the order, but not extending the period of the order, or revoking the order; or
  - (e) an order directing that the order continue in force; or
  - (f) any order in respect of the person which the Court could originally have made if it had not made the order.
- (6) If a person in respect of whom an application is made under sub-section (1) fails to appear before the Court at the time fixed for the hearing of the application, a warrant to arrest the person may be issued by the Court.
- (7) Division 3 of Part 4 of the **Magistrates' Court Act 1989** applies, with any necessary modifications, to warrants under sub-section (6), and in particular with the modification that a reference to the bringing of a person before the Magistrates' Court is to be construed as a reference to bringing the person as soon as practicable before the Children's Court.
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- (8) If it is not possible for the Court to deal immediately with an application under sub-section (1) in respect of which the person has been arrested under sub-section (6), for the purposes of granting bail the provisions of this Act and the **Bail Act 1977** apply, with any necessary modifications, and in particular with the modification that a reference to a person accused of an offence or an accused person is to be construed as a reference to the person.

**422. Suspension of order**

- (1) If—
- (a) a person in respect of whom a youth supervision order is in force is ill; or
  - (b) there are other exceptional circumstances—
- the Secretary may suspend the operation of the order or any of the conditions of the order.
- (2) Any period of suspension under sub-section (1) is to be added to the period of the youth supervision order for the purpose of calculating the time of its expiry.

**423. Proceedings for breach of sentencing order**

- (1) In this section, "**breach of a sentencing order**" includes default in the payment of a fine or of any instalment under an instalment order.
- (2) A proceeding for breach of a sentencing order must be commenced in the Children's Court—
- (a) whether the sentencing order was made by the Children's Court or by the Supreme Court or the County Court, on appeal or otherwise; and
  - (b) whether the person against whom the proceeding is commenced is aged 19 years or more.

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- (3) If the proceeding for breach of a sentencing order is against a child who is under the age of 19 years when the proceeding for breach is commenced, the Children's Court must hear and determine the proceeding unless—
    - (a) the sentencing order was made by the Supreme Court or the County Court and the child does not consent to the Children's Court hearing the proceeding for breach; or
    - (b) the Court considers that in all the circumstances of the case it is appropriate to transfer the proceeding to the court that made the sentencing order.
  - (4) If the proceeding for breach of a sentencing order is against a person who is aged 19 years or more when the proceeding for breach is commenced, the Children's Court must transfer the proceeding (other than a proceeding for breach of an accountable undertaking) to the Magistrates' Court or to the court that made the sentencing order unless the Children's Court considers that in all the circumstances of the case it is appropriate for the Children's Court to hear and determine the proceeding, having regard to the matters referred to in sub-section (5).
  - (5) For the purposes of sub-section (4), the Court must have regard to—
    - (a) the age of the person;
    - (b) the nature and circumstances of the alleged breach;
    - (c) the stage of the proceeding for breach;
    - (d) whether the person is the subject of another proceeding in any other court;
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- (e) the availability of appropriate sentencing orders in the other court if the breach were proved;
  - (f) whether the person prefers to be dealt with in the Children's Court or any other court;
  - (g) any other matter that the Court considers relevant.
- (6) A proceeding must not be transferred on the sole ground that the sentencing order was made by another court.
- (7) If the person does not consent to the Children's Court hearing and determining the proceeding or the Court considers that the proceeding should be transferred, the Court must discontinue the proceeding and order that it be transferred to the Magistrates' Court or to the court that made the sentencing order, as the case may be, and in the meantime may—
- (a) permit the person to go at large; or
  - (b) grant the person bail conditioned for the appearance of the person before the Supreme Court, the County Court or the Magistrates' Court, as the case may be, at the time and place at which the proceeding is to be heard; or
  - (c) remand the person in custody or in accordance with section 49 of the **Magistrates' Court Act 1989** until the proceeding is heard by the Supreme Court, the County Court or the Magistrates' Court, as the case may be.
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- (8) If a proceeding is transferred to the Magistrates' Court under this section—
- (a) the Magistrates' Court may sentence the person as if the Magistrates' Court had just been satisfied of the person's guilt of the offence in respect of which the sentencing order was made; and
  - (b) for that purpose, the Magistrates' Court has jurisdiction, whether or not the Magistrates' Court would otherwise have had jurisdiction to deal with the offence.
- (9) This section applies despite section 427(8) of this Act and section 86(2) of the **Magistrates' Court Act 1989** as applied by sections 424(5) and 424(6) of this Act.
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**PART 5.4—APPEALS TO COUNTY COURT AND SUPREME COURT**

**424. Appeal to County Court or Supreme Court**

- (1) A person may appeal to the County Court or, if the Court was constituted by the President, to the Trial Division of the Supreme Court against any sentencing order made against that person by the Children's Court in a proceeding in the Criminal Division.
- (2) If a person appeals under this Act to the Supreme Court on a question of law, that person is deemed to have abandoned finally and conclusively any right under this or any other Act to appeal to the County Court or any right under this section to appeal to the Trial Division of the Supreme Court.
- (3) The Director of Public Prosecutions may appeal to the County Court or, if the Court was constituted by the President, to the Trial Division of the Supreme Court against any sentencing order made by the Children's Court in a proceeding in the Criminal Division if satisfied that an appeal should be brought in the public interest.
- (4) The Director of Public Prosecutions must not bring a further appeal against a sentencing order made by the County Court or the Supreme Court (as the case requires).
- (5) Subdivision 1 of Division 4 of Part 4 (except sections 83, 84, 89A and 90) of, and Schedule 6 (except clauses 1(4A) and (4B), 6(2A) to (2C) and 9(2)) to, the **Magistrates' Court Act 1989** apply, with any necessary modifications, to appeals to the County Court under this section as if—

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- (a) a reference to the Magistrates' Court were a reference to the Children's Court; and
  - (b) a reference to section 83 or 84 were a reference to this section; and
  - (c) section 86 had not been amended by section 9 of the **Magistrates' Court (Amendment) Act 1999**; and
  - (d) a reference to a criminal proceeding were a reference to a proceeding in the Criminal Division; and
  - (e) a reference to imprisonment were a reference to detention in a youth residential centre or a youth justice centre.
- (6) The provisions of the **Magistrates' Court Act 1989** that apply to appeals to the County Court under this section by virtue of sub-section (5) (as modified by that sub-section) apply, with any other necessary modifications, to appeals to the Trial Division of the Supreme Court under this section as if—
- (a) a reference to the County Court were a reference to the Trial Division of the Supreme Court;
  - (b) in section 86(2) the reference to section 74 of the **County Court Act 1958** were a reference to section 17(2) of the **Supreme Court Act 1986**;
  - (c) in section 88AA(2) the reference to the **County Court Act 1958** were a reference to the **Supreme Court Act 1986**;
  - (d) in clause 1(4) of Schedule 6 the reference to rules of the County Court were a reference to rules of the Supreme Court;
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- (e) a reference to the registrar of the County Court were a reference to the prothonotary of the Supreme Court.
- (7) If an appellant appeals against an order made under section 363, 365 or 367, the County Court or the Supreme Court (as the case requires) may—
- (a) dismiss the charge against the appellant; or
  - (b) make an order in the same terms as the order of the Children's Court—
- but must not make any other sentencing order.
- (8) If an appeal is made from a sentencing order of the Court which orders a person to be detained in—
- (a) a youth residential centre; or
  - (b) a youth justice centre—
- in respect of two or more offences for an aggregate period which is specified, the County Court or the Supreme Court (as the case requires) may, if it finds the person guilty of the offences or any two or more of them, order—
- (c) that the person be detained in a youth residential centre or a youth justice centre (as the case may be) for a period not exceeding the aggregate period; or
  - (d) that the person be detained in a youth residential centre or a youth justice centre (as the case may be) for a separate period of detention in respect of each offence, but so that the separate periods do not in the aggregate exceed the aggregate period ordered to be served by the Court.
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- (9) Sections 524, 526, 527, 547 to 552, 571 to 575 apply, with any necessary modifications, to appeals under this section as if—
- (a) a reference to the Court or the Criminal Division were a reference to the County Court or the Supreme Court (as the case requires); and
  - (b) a reference to a proceeding to which section 525(2) applies were a reference to an appeal under this section; and
  - (c) the reference in section 527(3) to an order to which that sub-section applies were a reference to a final order made on the hearing of the appeal; and
  - (d) a reference to the appropriate registrar were a reference to the registrar of the County Court or the prothonotary of the Supreme Court (as the case requires).
- (10) On an appeal under this section, the County Court or the Supreme Court (as the case requires) may, despite anything to the contrary in this Act, make a probation order, youth supervision order or youth attendance order in respect of a person even though at the time of making that order the person is of or above the age of 19 years but under 21 years.

**425. County Court or the Supreme Court may reserve question of law for Full Court**

Sections 446 to 450A of the **Crimes Act 1958** apply to an appeal to the County Court or the Supreme Court from the Children's Court as if—

- (a) a reference to the Magistrates' Court were a reference to the Children's Court; and

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- (b) a reference to a criminal proceeding were a reference to a proceeding in the Criminal Division; and
- (c) the reference in section 446(1) (as modified by paragraphs (a) and (b) of this section) to the hearing of an appeal in a proceeding in the Criminal Division of the Children's Court to the County Court included a reference to the hearing of an appeal in a proceeding in the Criminal Division of the Children's Court to the Trial Division of the Supreme Court.

**426. Appeals to Full Court from County Court or Supreme Court**

- (1) In this section "**detention**" includes detention in a youth residential centre or youth justice centre, but does not include detention in default of payment of a fine.
- (2) If—
  - (a) on an appeal under section 424 the County Court or the Supreme Court (as the case requires) orders that the appellant be sentenced to a term of detention; and
  - (b) the Children's Court in the proceeding that is the subject of the appeal had not ordered that the appellant be detained—the person sentenced to be detained may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the sentence.
- (3) Part VI of the **Crimes Act 1958** with respect to admission to bail pending determination of an appeal applies to a person sentenced as described in sub-section (2) and who seeks leave to appeal under that sub-section as if the person were convicted on indictment.

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- (4) If a person intends to apply under this section for leave to appeal to the Court of Appeal, the person must serve notice in writing of his or her intention to do so on—
  - (a) the Registrar of Criminal Appeals; and
  - (b) the informant; and
  - (c) the Director of Public Prosecutions—within 30 days after the sentence is imposed by the County Court or the Supreme Court (as the case requires).
- (5) On an appeal under this section the Court of Appeal must—
  - (a) if it thinks that a different order should have been made—
    - (i) set aside the order of the County Court or the Supreme Court (as the case requires); and
    - (ii) make any other order (whether more or less severe) which it thinks ought to have been made; or
  - (b) in any other case, dismiss the appeal.

**427. Appeal to Supreme Court on a question of law**

- (1) A party to a proceeding (other than a committal proceeding) before the Criminal Division may appeal to the Supreme Court, on a question of law, from a final order of the Court in that proceeding.
- (2) If an informant who is a member of the police force wishes to appeal under sub-section (1), the appeal must be brought by the Director of Public Prosecutions on behalf of the informant.

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- (3) An appeal under sub-section (1)—
- (a) must be instituted not later than 30 days after the day on which the order complained of was made; and
  - (b) does not operate as a stay of any order made by the Court unless the Supreme Court so orders.
- (4) Subject to sub-section (3), an appeal under sub-section (1) must be brought in accordance with the rules of the Supreme Court.
- (5) An appeal instituted after the end of the period referred to in sub-section (3)(a) is deemed to be an application for leave to appeal under sub-section (1).
- (6) The Supreme Court may grant leave under sub-section (5) and the appellant may proceed with the appeal if the Supreme Court—
- (a) is of the opinion that the failure to institute the appeal within the period referred to in sub-section (3)(a) was due to exceptional circumstances; and
  - (b) is satisfied that the case of any other party to the appeal would not be materially prejudiced because of the delay.
- (7) After hearing and determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court with or without any direction in law.
- (8) An order made by the Supreme Court on an appeal under sub-section (1), other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.
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- (9) The Supreme Court may provide for a stay of the order or for admitting any person to bail as it thinks fit.

**428. Appeal by child under 15 years**

If an appellant is a child under the age of 15 years the appeal may be made on the child's behalf and in the name of the child by—

- (a) the child's parent; or
- (b) in the absence of the parent, the Secretary.

**429. Parent may enter into bail**

If the child is granted bail with or without a surety pending the appeal but it appears to the Court granting bail that the child does not have the capacity or understanding to enter into bail, the child's parent or any other person may enter into bail as principal in an amount determined by the Court, on condition that the person produce the child at the County Court or Supreme Court at a place and on a day to be fixed by the registrar of the County Court or as directed by the Supreme Court.

**430. Appeals to be heard in open court**

- (1) Proceedings on an appeal under section 424, 426 or 427 are, subject to sub-section (2), to be conducted in open court.
  - (2) The Supreme Court or County Court (as the case requires) may, on the application of a party or of any other person who has a direct interest in the proceeding or without any such application—
    - (a) order that the whole or any part of a proceeding be heard in closed court; or
    - (b) order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.
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- (3) Any party to the proceeding and any other interested person has standing to support or oppose an application under sub-section (2).
  - (4) If an order has been made under this section, the Supreme Court or County Court (as the case requires) must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the Court is being held.
  - (5) An order posted under this section must not contain any particulars likely to lead to the identification of the child who is a party to the proceeding.
  - (6) A person must not contravene an order made and posted under this section.

Penalty:

- (a) In the case of a person of or above the age of 18 years, 25 penalty units or committal for a term of not more than six months to prison; or
  - (b) In the case of a child of or above the age of 15 years, 25 penalty units or detention for a period of not more than six months in a youth justice centre; or
  - (c) In the case of a child under the age of 15 years, 12 penalty units or detention for a period of not more than three months in a youth residential centre.
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**PART 5.5—PAROLE**

**Division 1—Youth Residential Board**

**431. Establishment of Youth Residential Board**

- (1) There is established a Board called the Youth Residential Board.
- (2) The Board consists of—
  - (a) a judge of the County Court appointed by the Governor in Council on the nomination of the Attorney-General, who is to be the chairperson; and
  - (b) the Secretary or an officer appointed by the Governor in Council on the nomination of the Secretary; and
  - (c) two other persons appointed by the Governor in Council, both of whom must have experience in matters relating to child welfare and at least one of whom must be a woman.
- (3) A member of the Youth Parole Board may be appointed as a member of the Youth Residential Board.

**432. Terms and conditions of office**

- (1) A member of the Youth Residential Board appointed by the Governor in Council holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment, and is eligible for re-appointment.
- (2) A member appointed by the Governor in Council may resign his or her office in writing delivered to the Governor in Council.

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- (3) The Governor in Council may remove from office a member appointed by the Governor in Council.
  - (4) A member is entitled to be paid—
    - (a) any remuneration that is fixed by the Governor in Council; and
    - (b) any travelling and other allowances that are fixed by the Governor in Council.
  - (5) A member is appointed subject to any other terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act.
  - (6) If a member who is a judge of the County Court ceases to be such a judge, he or she ceases to hold office as a member.
  - (7) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a member in respect of the office of member.
  - (8) The appointment of a judge of the County Court as a member does not affect the tenure of office, rank, status, remuneration, rights or privileges of that person as a judge and, for all purposes, service as a member of the Youth Residential Board by a judge is to be regarded as service as a judge.
  - (9) If a person was immediately before becoming a member of the Youth Residential Board an officer within the meaning of the **State Superannuation Act 1988**, the member continues, subject to that Act, to be an officer within the meaning of that Act.
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**433. Alternate members**

- (1) The Governor in Council may appoint—
  - (a) a judge of the County Court nominated by the Attorney-General as an alternate member for the chairperson of the Youth Residential Board and the person so appointed is required to act as chairperson if the chairperson is absent from duty or the office of chairperson is vacant; and
  - (b) an officer nominated by the Secretary as an alternate member for the member holding office under section 431(2)(b) and the person so appointed is required to act for that member if he or she is absent from duty.
- (2) The Governor in Council may appoint an alternate member for each member holding office under section 431(2)(c) and at least one of those alternate members must be a woman.
- (3) In the absence from duty of a member holding office under section 431(2)(c) the alternate member for that member is entitled to attend a meeting of the Board.
- (4) A person appointed under sub-section (1) or (2), while acting for a member—
  - (a) has all the powers and may perform all the functions of the member; and
  - (b) is entitled to be paid—
    - (i) any remuneration that is fixed by the Governor in Council; and
    - (ii) any travelling and other allowances that are fixed by the Governor in Council.

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**434. Meetings of the Youth Residential Board**

- (1) The Youth Residential Board must meet at the times and places that are fixed by the regulations or, if no times or places are so fixed, at the times and places that are determined by the chairperson.
- (2) The chairperson or, in the chairperson's absence, the acting chairperson, must preside at every meeting of the Youth Residential Board.
- (3) Subject to sub-sections (4) and (5), a quorum of the Youth Residential Board consists of the chairperson and one other member.
- (4) A female member of the Youth Residential Board must be present at any meeting of the Board at which consideration is being given to the release on parole of a female person.
- (5) A quorum at any meeting of the Youth Residential Board at which consideration is being given to the transfer to a youth justice centre of a person detained in a youth residential centre consists of the chairperson and two other persons.
- (6) The following questions which may arise at a meeting of the Youth Residential Board are to be determined by the person presiding at the meeting alone—
  - (a) whether a question is a question of law;
  - (b) any question determined to be a question of law.
- (7) A question (other than a question referred to in sub-section (6)) arising at a meeting of the Youth Residential Board must be determined by a majority of votes and, if the votes are equal, the person presiding has a casting vote.
- (8) Subject to this Act and the regulations, the Board may regulate its own procedure.

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**435. Validity of acts or decisions of the Youth Residential Board**

An act or decision of the Youth Residential Board is not invalid only because—

- (a) of a vacancy in the office of a member; or
- (b) of a defect or irregularity in or in connection with the appointment of a member; or
- (c) in the case of an alternate member, the occasion for that person acting for a member had not arisen or had ceased.

**436. Secretary or member may act on behalf of Youth Residential Board**

- (1) If the Youth Residential Board has heard and determined a matter, the secretary or acting secretary or a member of the Board may, on behalf of the Board, sign and issue all necessary orders and documents relating to that matter.
- (2) An order or document signed under subsection (1) has effect as if signed by all the members of the Youth Residential Board.

**437. Evidentiary provisions**

- (1) All courts must take judicial notice of the signature on an order or document of the secretary or acting secretary or a member of the Youth Residential Board and, until the contrary is proved, must presume that the document was properly signed.
  - (2) A certificate purporting to be signed by the secretary or acting secretary of the Youth Residential Board and purporting to record any determination or decision of the Board on a matter is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the making of that determination or decision by the Board.
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**438. Powers etc. of Youth Residential Board**

- (1) The Youth Residential Board has the powers, duties and functions conferred or imposed on it by or under this or any other Act.
- (2) In exercising its functions, the Youth Residential Board is not bound by the rules of natural justice.

**439. Powers to take evidence etc.**

The Youth Residential Board has and may exercise the powers conferred by sections 17, 18, 19, 20, 20A, 21 and 21A of the **Evidence Act 1958** as if the Board were a body of persons to whom the Governor in Council has issued a commission and the person presiding at meetings of the Board were the president or chairman of the commission.

**440. Saving of members of Youth Residential Board from liability**

The members or secretary of the Youth Residential Board are not liable to any action or suit in respect of any act or thing done or omitted to be done in the exercise or purported exercise of any power or duty conferred or imposed on the Board or on any members or on the secretary of the Board by or under this or any other Act.

**441. Reports by Youth Residential Board**

- (1) The Youth Residential Board must once in every year within the prescribed period give to the Minister a report on—
  - (a) the number of persons released on parole by the Board during the period to which the report relates and the number returned during that period to youth residential centres on cancellation of parole; and

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- (b) the operation and activities of the Board and of youth parole officers generally during that period.
- (2) The Youth Residential Board must, if required to do so by the Minister in writing, give to the Minister a report on a matter stated in the requirement and relating to the exercise by the Board of any power or function.
- (3) The Minister must cause each report received by him or her under sub-section (1) to be laid before the Legislative Council and the Legislative Assembly before the end of the fourteenth sitting day of the Council or the Assembly after the receipt of the report by the Minister.
- (4) At the request of the Attorney-General for the Commonwealth, the Minister may authorise the Youth Residential Board or an officer—
- (a) to make reports and recommendations to the Attorney-General for the Commonwealth, at the intervals or times requested by that Attorney-General, with respect to a person who is detained in a youth residential centre in Victoria under any law of the Commonwealth; and
  - (b) to exercise any power or perform any function in relation to a person who is or has been detained in a youth residential centre in Victoria under any law of the Commonwealth, being a power or function that the Attorney-General for the Commonwealth might exercise or perform or cause to be exercised or performed in relation to that person.
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**Division 2—Youth Parole Board**

**442. Establishment of Youth Parole Board**

- (1) There is established a board called the Youth Parole Board.
- (2) The Board consists of—
  - (a) a judge of the County Court appointed by the Governor in Council on the nomination of the Attorney-General, who is to be the chairperson; and
  - (b) the Secretary or an officer appointed by the Governor in Council on the nomination of the Secretary; and
  - (c) two other persons appointed by the Governor in Council, both of whom must have experience in matters relating to child welfare and at least one of whom must be a woman.
- (3) A member of the Youth Residential Board may be appointed as a member of the Youth Parole Board.

**443. Terms and conditions of office**

- (1) A member of the Youth Parole Board appointed by the Governor in Council holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment, and is eligible for re-appointment.
- (2) A member appointed by the Governor in Council may resign his or her office in writing delivered to the Governor in Council.
- (3) The Governor in Council may remove from office a member appointed by the Governor in Council.

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- (4) A member is entitled to be paid—
  - (a) any remuneration that is fixed by the Governor in Council; and
  - (b) any travelling and other allowances that are fixed by the Governor in Council.
- (5) A member is appointed subject to any other terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act.
- (6) If a member who is a judge of the County Court ceases to be such a judge, he or she ceases to hold office as a member.
- (7) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a member in respect of the office of member.
- (8) The appointment of a judge of the County Court as a member does not affect the tenure of office, rank, status, remuneration, rights or privileges of that person as a judge and, for all purposes, service as a member of the Youth Parole Board by a judge is to be regarded as service as a judge.
- (9) If a person was immediately before becoming a member of the Youth Parole Board an officer within the meaning of the **State Superannuation Act 1988**, the member continues, subject to that Act, to be an officer within the meaning of that Act.

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**444. Alternate members**

- (1) The Governor in Council may appoint—
  - (a) a judge of the County Court nominated by the Attorney-General as an alternate member for the chairperson of the Youth Parole Board and the person so appointed is required to act as chairperson if the chairperson is absent from duty or the office of chairperson is vacant; and
  - (b) an officer nominated by the Secretary as an alternate member for the member holding office under section 442(2)(b) and the person so appointed is required to act for that member if he or she is absent from duty.
- (2) The Governor in Council may appoint an alternate member for each member holding office under section 442(2)(c) and at least one of those alternate members must be a woman.
- (3) In the absence from duty of a member holding office under section 442(2)(c) the alternate member for that member is entitled to attend a meeting of the Board.
- (4) A person appointed under sub-section (1) or (2), while acting for a member—
  - (a) has all the powers and may perform all the functions of the member; and
  - (b) is entitled to be paid—
    - (i) any remuneration that is fixed by the Governor in Council; and
    - (ii) any travelling and other allowances that are fixed by the Governor in Council.



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**445. Meetings of the Youth Parole Board**

- (1) The Youth Parole Board must meet at the times and places that are fixed by the regulations or, if no times or places are so fixed, at the times and places that are determined by the chairperson.
- (2) The chairperson or, in the chairperson's absence, the acting chairperson, must preside at every meeting of the Youth Parole Board.
- (3) Subject to sub-sections (4) and (5), a quorum of the Youth Parole Board consists of the chairperson and one other member.
- (4) A female member of the Youth Parole Board must be present at any meeting of the Board at which consideration is being given to the release on parole of a female person.
- (5) A quorum at any meeting of the Youth Parole Board at which consideration is being given to the transfer to a prison of a person detained in a youth justice centre consists of the chairperson and two other persons.
- (6) The following questions which may arise at a meeting of the Youth Parole Board are to be determined by the person presiding at the meeting alone—
  - (a) whether a question is a question of law;
  - (b) any question determined to be a question of law.
- (7) A question (other than a question referred to in sub-section (6)) arising at a meeting of the Youth Parole Board must be determined by a majority of votes and, if the votes are equal, the person presiding has a casting vote.
- (8) Subject to this Act and the regulations, the Board may regulate its own procedure.

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**446. Validity of acts or decisions of the Youth Parole Board**

An act or decision of the Youth Parole Board is not invalid only because—

- (a) of a vacancy in the office of a member; or
- (b) of a defect or irregularity in or in connection with the appointment of a member; or
- (c) in the case of an alternate member, the occasion for that person acting for a member had not arisen or had ceased.

**447. Secretary or member may act on behalf of Youth Parole Board**

- (1) If the Youth Parole Board has heard and determined a matter, the secretary or acting secretary or a member of the Board may, on behalf of the Board, sign and issue all necessary orders and documents relating to that matter.
- (2) An order or document signed under subsection (1) has effect as if signed by all the members of the Youth Parole Board.

**448. Evidentiary provisions**

- (1) All courts must take judicial notice of the signature on an order or document of the secretary or acting secretary or a member of the Youth Parole Board and, until the contrary is proved, must presume that the document was properly signed.
- (2) A certificate purporting to be signed by the secretary or acting secretary of the Youth Parole Board and purporting to record any determination or decision of the Board on a matter is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the making of that determination or decision by the Board.

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**449. Powers etc. of Youth Parole Board**

- (1) The Youth Parole Board has the powers, duties and functions conferred or imposed on it by or under this or any other Act.
- (2) In exercising its functions, the Youth Parole Board is not bound by the rules of natural justice.

**450. Powers to take evidence etc.**

The Youth Parole Board has and may exercise the powers conferred by sections 17, 18, 19, 20, 20A, 21 and 21A of the **Evidence Act 1958** as if the Board were a body of persons to whom the Governor in Council has issued a commission and the person presiding at meetings of the Board were the president or chairman of the commission.

**451. Saving of members of Youth Parole Board from liability**

The members or secretary of the Youth Parole Board are not liable to any action or suit in respect of any act or thing done or omitted to be done in the exercise or purported exercise of any power or duty conferred or imposed on the Board or on any members or on the secretary of the Board by or under this or any other Act.

**452. Reports by Youth Parole Board**

- (1) The Youth Parole Board must once in every year within the prescribed period give to the Minister a report on—
    - (a) the number of persons released on parole by the Board during the period to which the report relates and the number returned during that period to youth justice centres on cancellation of parole; and
    - (b) the operation and activities of the Board and of youth parole officers generally during that period.
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- (2) The Youth Parole Board must, if required to do so by the Minister in writing, give to the Minister a report on a matter stated in the requirement and relating to the exercise by the Board of any power or function.
  - (3) The Minister must cause each report received by him or her under sub-section (1) to be laid before the Legislative Council and the Legislative Assembly before the end of the fourteenth sitting day of the Council or the Assembly after the receipt of the report by the Minister.
  - (4) At the request of the Attorney-General for the Commonwealth, the Minister may authorise the Youth Parole Board or an officer—
    - (a) to make reports and recommendations to the Attorney-General for the Commonwealth, at the intervals or times requested by that Attorney-General, with respect to a person who is detained in a youth justice centre under any law of the Commonwealth; and
    - (b) to exercise any power or perform any function in relation to a person who is or has been detained in a youth justice centre in Victoria under any law of the Commonwealth, being a power or function that the Attorney-General for the Commonwealth might exercise or perform or cause to be exercised or performed in relation to that person.

### **Division 3—Youth Parole Officers**

#### **453. Youth parole officers**

- (1) There are to be employed under Part 3 of the **Public Administration Act 2004** as many youth parole officers as are necessary to be employed for the purposes of this Act.
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- (2) The Secretary may by instrument published in the Government Gazette appoint as an honorary youth parole officer any fit and proper person who is willing to exercise and perform the powers and duties given to honorary youth parole officers by or under this Act.
  - (3) An honorary youth parole officer is not in respect of the office of honorary youth parole officer subject to the **Public Administration Act 2004**.
  - (4) A youth parole officer is, in relation to a parole order made by the Youth Residential Board, subject to the direction of the Youth Residential Board and, in the case of a parole order made by the Youth Parole Board, the Youth Parole Board but otherwise he or she is subject to the direction and control of the Secretary.
  - (5) A youth parole officer has the powers and duties prescribed by or under this Act.

#### **Division 4—Release on Parole from Youth Residential Centre**

##### **454. Release on parole from youth residential centre**

- (1) The Youth Residential Board may by order in writing direct that a person detained in a youth residential centre or otherwise subject to the jurisdiction of the Youth Residential Board be released on or granted parole at the time specified in the order and, unless the Youth Residential Board revokes the order under sub-section (2), the person must be released on or granted parole accordingly.
- (2) Before a person is released under a parole order the Youth Residential Board may revoke the parole order.

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- (3) If, before a person is released on parole, the Youth Residential Board determines that the person is to be released at a time other than that specified in the parole order, the person must be released at that other time.
  - (4) Subject to any determination of the Youth Residential Board, a parole order is subject to the prescribed terms and conditions.
  - (5) The Youth Residential Board may amend or vary the terms and conditions to which a parole order is subject.
  - (6) If the terms and conditions of a parole order require a person to be under the supervision of a youth parole officer, the Secretary must assign a youth parole officer to supervise the person and may from time to time assign another youth parole officer in place of the youth parole officer previously assigned.
  - (7) A person released on or granted parole must during the parole period comply with the terms and conditions of the parole order.

**455. Person still under sentence until end of parole period**

- (1) A person is to be regarded as having served his or her period of detention if—
    - (a) at the end of the parole period the Youth Residential Board has not made an order cancelling the person's parole under section 456(1); or
    - (b) during the parole period the person has not committed, whether in Victoria or elsewhere, an offence for which he or she could be sentenced to a term of imprisonment or period of detention in a youth residential centre or youth justice centre for more than 3 months.
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- (2) Until the parole period ends or until the person is otherwise discharged from the sentence of detention, a person released on parole is to be regarded as being still under sentence and as not having served his or her period of detention.

**456. Cancellation of parole**

- (1) If a person is released on or granted parole under section 454, the Youth Residential Board may at any time before the end of the parole period by order cancel the parole.
- (2) If the Youth Residential Board cancels a person's parole under sub-section (1) the Youth Residential Board may at any time by further order revoke the cancellation and, on that revocation, the parole order revives.
- (3) The Youth Residential Board must not make a revocation order under sub-section (2) in any case where a warrant has been issued under sub-section (5)(a) unless the Youth Residential Board is satisfied that the warrant will not be executed.
- (4) If the person is sentenced to a term of imprisonment or to a period of detention in a youth justice centre for more than 3 months or to a further period of detention in a youth residential centre for more than 3 months in respect of an offence committed during the parole period, whether in Victoria or elsewhere, the Youth Residential Board may cancel that person's parole, whether or not the parole period may already have ended.

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- (5) If a person's parole is cancelled, the Youth Residential Board or any member of the Board may—
- (a) authorise any member of the police force or other officer by warrant signed by the secretary or a member of the Board to apprehend the person and return the person to a youth residential centre to serve the unexpired portion of the person's sentence of detention; or
  - (b) whether or not a warrant has been issued under paragraph (a), apply to a magistrate for a warrant authorising any member of the police force or other officer to apprehend the person and return the person to a youth residential centre to serve the unexpired portion of the person's sentence of detention.
- (6) A warrant issued under sub-section (5)(a) is sufficient authority for the person's apprehension and return to a youth residential centre to serve the unexpired portion of the person's sentence of detention or for the person to be otherwise dealt with by the Youth Residential Board.
- (7) If a person's parole is cancelled the original warrant or other authority for the person's detention revives and unless the Youth Residential Board otherwise orders, having regard to the extent to and the manner in which the person complied with the parole order, no part of the time between the person's release on parole and his or her recommencing to serve the unexpired portion of the period of detention is to be regarded as time served in respect of the period of detention.
- (8) If section 464 applies, the warrant or other authority must in all respects be regarded as and taken to be a warrant to detain the person in a youth justice centre.
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- (9) The Youth Residential Board may revoke any order for cancellation of parole at any time before the warrant to arrest is executed and, on revoking the order, must cause the warrant to be withdrawn.

**457. Youth Residential Board may release on parole more than once**

The Youth Residential Board may again release a person on parole whether or not the person's parole has been cancelled on any prior occasion or occasions in respect of the same period of detention.

**Division 5—Release on Parole from Youth Justice Centre**

**458. Release on parole from youth justice centre**

- (1) The Youth Parole Board may by order in writing direct that a person detained in a youth justice centre or otherwise subject to the jurisdiction of the Youth Parole Board be released on or granted parole at the time specified in the order and, unless the Youth Parole Board revokes the order under sub-section (2), the person must be released on or granted parole accordingly.
- (2) Before a person is released under a parole order the Youth Parole Board may revoke the parole order.
- (3) If, before a person is released on parole, the Youth Parole Board determines that the person is to be released at a time other than that specified in the parole order, the person must be released at that other time.
- (4) Subject to any determination of the Youth Parole Board, a parole order is subject to the prescribed terms and conditions.

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- (5) The Youth Parole Board may amend or vary the terms and conditions to which a parole order is subject.
  - (6) If the terms and conditions of a parole order require a person to be under the supervision of a youth parole officer, the Secretary must assign a youth parole officer to supervise the person and may from time to time assign another youth parole officer in place of the youth parole officer previously assigned.
  - (7) A person released on or granted parole must during the parole period comply with the terms and conditions of the parole order.

**459. Person still under sentence until end of parole period**

- (1) A person is to be regarded as having served his or her period of detention if—
    - (a) at the end of the parole period the Youth Parole Board has not made an order cancelling the person's parole under section 460(1); or
    - (b) during the parole period the person has not committed, whether in Victoria or elsewhere, an offence for which he or she could be sentenced to a term of imprisonment or period of detention in a youth justice centre or youth residential centre for more than 3 months.
  - (2) Until the parole period ends or until the person is otherwise discharged from the sentence of detention, a person released on parole is to be regarded as being still under sentence and as not having served his or her period of detention.
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**460. Cancellation of parole**

- (1) If a person is released on or granted parole under section 458, the Youth Parole Board may at any time before the end of the parole period by order cancel the parole.
- (2) If the Youth Parole Board cancels a person's parole under sub-section (1) the Youth Parole Board may at any time by further order revoke the cancellation and, on that revocation, the parole order revives.
- (3) The Youth Parole Board must not make a revocation order under sub-section (2) in any case where a warrant has been issued under sub-section (5)(a) unless the Youth Parole Board is satisfied that the warrant will not be executed.
- (4) If the person is sentenced to a term of imprisonment or to a period of detention in a youth residential centre for more than 3 months or to a further period of detention in a youth justice centre for more than 3 months in respect of an offence committed during the parole period, whether in Victoria or elsewhere, the Youth Parole Board may cancel that person's parole, whether or not the parole period may already have ended.
- (5) If a person's parole is cancelled, the Youth Parole Board or any member of the Board may—
  - (a) authorise any member of the police force or other officer by warrant signed by the secretary or a member of the Board to apprehend the person and return the person to a youth justice centre to serve the unexpired portion of the person's sentence of detention; or

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- (b) whether or not a warrant has been issued under paragraph (a), apply to a magistrate for a warrant authorising any member of the police force or other officer to apprehend the person and return the person to a youth justice centre to serve the unexpired portion of the person's sentence of detention.
- (6) A warrant issued under sub-section (5)(a) is sufficient authority for the person's apprehension and return to a youth justice centre to serve the unexpired portion of the person's sentence of detention or for the person to be otherwise dealt with by the Youth Parole Board.
- (7) If a person's parole is cancelled the original warrant or other authority for the person's detention revives and unless the Youth Parole Board otherwise orders, having regard to the extent to and the manner in which the person complied with the parole order, no part of the time between the person's release on parole and his or her recommencing to serve the unexpired portion of the period of detention is to be regarded as time served in respect of the period of detention.
- (8) If section 467 applies, the warrant or other authority must in all respects be regarded as and taken to be a warrant to imprison the person in a youth justice centre.
- (9) The Youth Parole Board may revoke any order for cancellation of parole at any time before the warrant to arrest is executed and, on revoking the order, must cause the warrant to be withdrawn.
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**461. Youth Parole Board may release on parole more than once**

The Youth Parole Board may again release a person on parole whether or not the person's parole has been cancelled on any prior occasion or occasions in respect of the same period of detention.

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**PART 5.6—TRANSFERS**

**Division 1—Jurisdiction over Detainees**

**462. Persons detained in youth residential centre subject to Youth Residential Board**

Every child ordered by a court to be detained in a youth residential centre is subject to the jurisdiction of the Youth Residential Board.

**463. Persons detained in youth justice centre subject to Youth Parole Board**

Every person ordered by a court to be detained in a youth justice centre is subject to the jurisdiction of the Youth Parole Board.

**Division 2—Transfer from Youth Residential Centre to Youth Justice Centre**

**464. Power of Youth Residential Board to transfer person to a youth justice centre**

On the application of the Secretary the Youth Residential Board may, subject to section 465, direct that a person sentenced to be detained in a youth residential centre by a court or a person transferred to a youth residential centre under this Division be transferred to a youth justice centre to serve the unexpired portion of the period of his or her sentence as detention in a youth justice centre if the Board considers the direction appropriate, having regard to the antecedents and behaviour of the person or the age and maturity of the person.

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**465. Restriction on transfer of under 14 year olds**

The Youth Residential Board may only direct that a child under the age of 14 years be transferred to a youth justice centre if, in the opinion of the Board, exceptional circumstances justify the making of that direction.

**466. Transfer to youth justice centre**

- (1) The Secretary must cause the physical removal of a person from a youth residential centre to a youth justice centre on the direction of the Youth Residential Board under section 464.
  - (2) A person directed to be transferred under section 464, while being removed from a youth residential centre to a youth justice centre, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Youth Residential Board and that officer must deliver that person into the custody of the officer in charge of the youth justice centre.
  - (3) A member of the police force may, if requested to do so by the Secretary, assist the officer referred to in sub-section (2) in the discharge of his or her duties under that sub-section and, in that case, the person being transferred is deemed to be in the legal custody of the member of the police force.
  - (4) A person transferred to a youth justice centre under section 464 becomes, on transfer, subject to the jurisdiction of the Youth Parole Board.
  - (5) Despite section 458, the Youth Parole Board must not release a person who—
    - (a) has been sentenced to a period of imprisonment; and
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- (b) has been transferred from prison and is currently detained in a youth justice centre—  
on parole before the expiry of any non-parole period fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.
- (6) Despite section 458, the Youth Parole Board must not release a person on parole if—
- (a) the person has been sentenced to a period of imprisonment of 12 months or more; and
  - (b) a non-parole period has not been fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.
- (7) In determining whether to release a person on parole, the Youth Parole Board may take into account the periods which that person has spent in prison and in a youth residential centre.

### **Division 3—Transfer from Youth Justice Centre to Prison**

#### **467. Power of Youth Parole Board to transfer person to prison**

- (1) The Youth Parole Board may, on the application of the Secretary, direct a person aged 16 years or more sentenced as a child by the Children's Court or any other court to be detained in a youth justice centre be transferred to a prison to serve the unexpired portion of the period of his or her detention as imprisonment.
- (2) The Youth Parole Board may only make a direction under sub-section (1) in respect of a person if—
  - (a) it has had regard to the antecedents and behaviour of the person; and



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- (b) it has had regard to the age and maturity of the person; and
  - (c) it has taken into account a report from the Secretary; and
  - (d) it is satisfied that the person—
    - (i) has engaged in conduct that threatens the good order and safe operation of the youth justice centre; and
    - (ii) cannot be properly controlled in a youth justice centre.
  - (3) A report from the Secretary under sub-section (2)(c) must set out the steps that have been taken to avoid the need to transfer the person concerned to prison.
  - (4) The Youth Parole Board may direct that a person aged 18 years or more sentenced by a court other than the Children's Court to be detained in a youth justice centre be transferred to a prison to serve the unexpired portion of the period of his or her detention as imprisonment if the Board considers the direction appropriate, having regard to the antecedents and behaviour of the person.

**468. Detainee may request transfer to prison**

- (1) A person aged 16 years or more who is sentenced to be detained in a youth justice centre may apply to the Youth Parole Board for a direction that he or she be transferred to a prison to serve the unexpired portion of the period of his or her detention as imprisonment.
- (2) A person who applies to the Youth Parole Board under sub-section (1) must appear before the Board to support the application.

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- (3) The Youth Parole Board may make a direction under sub-section (1) if the Board considers the direction appropriate, having taken into account a report from the Secretary and having regard to the antecedents and behaviour of the person.

**469. Transfer to prison**

- (1) The Secretary must cause the physical removal of a person from a youth justice centre to a prison on the direction of the Youth Parole Board under section 467 or 468.
- (2) A person directed to be transferred under section 467 or 468, while being removed from a youth justice centre to a prison, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Youth Parole Board and that officer must deliver that person into the legal custody of the Secretary to the Department of Justice.
- (3) A member of the police force may, if requested to do so by the Secretary, assist the officer referred to in sub-section (2) in the discharge of his or her duties under that sub-section and, in that case, the person being transferred is deemed to be in the legal custody of the Chief Commissioner of Police.
- (4) A person transferred to a prison under section 467 or 468 becomes, on transfer, subject to the jurisdiction of the Adult Parole Board as if the period of detention served by that person prior to the transfer had been a non-parole period.

(5) If—

- (a) a person is transferred to a prison under section 467 or 468; and
- (b) a warrant for the detention of the person in a youth justice centre in default of payment of a fine or sum of money is executed—

the Youth Parole Board may further direct that the person be imprisoned in default of payment of the fine or sum of money.

#### **Division 4—Transfer from Youth Justice Centre to Youth Residential Centre**

##### **470. Persons in youth justice centre may be transferred to youth residential centre**

- (1) If the Youth Parole Board, having regard to the antecedents and behaviour of the child, considers it appropriate in the interests of a child under the age of 18 years detained in a youth justice centre to transfer that child to a youth residential centre, the Youth Parole Board may direct that that person be transferred to a youth residential centre.
- (2) The Secretary must cause the physical removal of a person from a youth justice centre to a youth residential centre on the direction of the Youth Parole Board under sub-section (1).
- (3) A person directed to be transferred under sub-section (1), while being removed from a youth justice centre to a youth residential centre, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Youth Parole Board and that officer must deliver that person into the custody of the officer in charge of the youth residential centre.

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- (4) A member of the police force may, if requested to do so by the Secretary, assist the officer referred to in sub-section (3) in the discharge of his or her duties under that sub-section and, in that case, the person being transferred is deemed to be in the legal custody of the Chief Commissioner of Police.
- (5) A person transferred from a youth justice centre to a youth residential centre under sub-section (1) becomes, on transfer, subject to the jurisdiction of the Youth Residential Board for the unexpired portion of the term of his or her sentence and that sentence is to be treated for all purposes as a sentence of detention in a youth residential centre.
- (6) Despite section 454, the Youth Residential Board must not release a person who—
- (a) has been sentenced to a term of imprisonment; and
  - (b) has been transferred from prison and is currently detained in a youth residential centre—
- on parole before the expiry of any non-parole period fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.
- (7) Despite section 454, the Youth Residential Board must not release a person on parole if—
- (a) the person has been sentenced to a term of imprisonment of 12 months or more; and
  - (b) a non-parole period has not been fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.
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- (8) In determining whether to release a person on parole, the Youth Residential Board may take into account the periods which that person has spent in prison and in a youth justice centre.

**Division 5—Transfers to and from Prison**

**471. Persons in prison may be transferred to youth justice centre**

- (1) If the Adult Parole Board considers it appropriate in the interests of a person under the age of 21 years imprisoned in a prison to transfer that person to a youth justice centre, the Adult Parole Board may if satisfied, after considering a report from the Secretary, that—
- (a) that person is suitable for detention in a youth justice centre; and
  - (b) a place is available in a youth justice centre—
- direct that that person be transferred to a youth justice centre.
- (2) The Secretary to the Department of Justice must cause the physical removal of a person from a prison to a youth justice centre on the direction of the Adult Parole Board under sub-section (1).
- (3) A person directed to be transferred under sub-section (1), while being removed from a prison to a youth justice centre, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Adult Parole Board and that officer must deliver that person into the custody of the officer in charge of the youth justice centre.

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- (4) A member of the police force may, if requested to do so by the Secretary to the Department of Justice, assist the officer referred to in sub-section (3) in the discharge of his or her duties under that sub-section and, in that case, the person being transferred is deemed to be in the legal custody of the Chief Commissioner of Police.
- (5) Sub-section (3) does not apply if the officer transferring a person under this section is an escort officer within the meaning of the **Corrections Act 1986** and the person being transferred is deemed under that Act to be in the legal custody of the Secretary to the Department of Justice.
- (6) A person transferred from a prison to a youth justice centre under sub-section (1) becomes, on transfer, subject to the jurisdiction of the Youth Parole Board for the unexpired portion of the term of his or her sentence and that sentence is to be treated for all purposes as a sentence of detention in a youth justice centre.
- (7) Despite section 458, the Youth Parole Board must not release a person who—
- (a) has been sentenced to a term of imprisonment; and
  - (b) has been transferred from prison and is currently detained in a youth justice centre—
- on parole before the expiry of any non-parole period fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.
- (8) Despite section 458, the Youth Parole Board must not release a person on parole if—
- (a) the person has been sentenced to a term of imprisonment of 12 months or more; and
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(b) a non-parole period has not been fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(9) In determining whether to release a person on parole, the Youth Parole Board may take into account the periods which that person has spent in prison.

**472. Person in prison may be transferred to youth residential centre**

- (1) If the Adult Parole Board considers it appropriate in the interests of a child under the age of 18 years imprisoned in a prison to transfer the child to a youth residential centre, the Adult Parole Board may direct that the child be transferred to a youth residential centre.
- (2) The Adult Parole Board may only make a direction under sub-section (1) if, after considering a report from the Secretary, the Board is satisfied that—
  - (a) the child is suitable for detention in a youth residential centre; and
  - (b) a place is available in a youth residential centre.
- (3) The Secretary to the Department of Justice must cause the physical removal of a child from a prison to a youth residential centre on the direction of the Adult Parole Board under sub-section (1).
- (4) A child directed to be transferred under sub-section (1), while being removed from a prison to a youth residential centre, is deemed to be in the legal custody of the officer having the custody of the child and acting under the direction of the Adult Parole Board and that officer must deliver

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the child into the custody of the officer in charge of the youth residential centre.

- (5) A member of the police force may, if requested to do so by the Secretary to the Department of Justice, assist the officer referred to in sub-section (4) in the discharge of his or her duties under that sub-section and, in that case, the child being transferred is deemed to be in the legal custody of the Chief Commissioner of Police.
- (6) Sub-section (4) does not apply if the officer transferring a child under this section is an escort officer within the meaning of the **Corrections Act 1986** and the child being transferred is deemed under that Act to be in the legal custody of the Secretary to the Department of Justice.
- (7) A child transferred from a prison to a youth residential centre under sub-section (1) becomes, on transfer, subject to the jurisdiction of the Youth Residential Board for the unexpired portion of the term of his or her sentence and that sentence is to be treated for all purposes as a sentence of detention in a youth residential centre.
- (8) Despite section 454, the Youth Residential Board must not release a person who—
  - (a) has been sentenced to a term of imprisonment; and
  - (b) has been transferred from prison and is currently detained in a youth residential centre—on parole before the expiry of any non-parole period fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.



(9) Despite section 454, the Youth Residential Board must not release a person on parole if—

- (a) the person has been sentenced to a term of imprisonment of 12 months or more; and
- (b) a non-parole period has not been fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(10) In determining whether to release a person on parole, the Youth Residential Board may take into account the periods which that person has spent in prison.

**473. Person transferred from prison to YJC or YRC may be transferred back to prison**

(1) The Youth Parole Board may direct that a person aged 16 years or more who has been transferred to—

- (a) a youth justice centre under section 471(1);  
or
- (b) a youth residential centre under section 472(1)—

and is currently detained in a youth justice centre, be transferred to a prison to serve the unexpired portion of the period of his or her sentence.

(2) The Youth Parole Board may only make a direction under sub-section (1) in respect of a person if the Board considers the direction appropriate, having regard to—

- (a) the antecedents and behaviour of the person;  
and
- (b) the length of the unexpired portion of the person's sentence; and

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- (c) the age and maturity of the person; and
  - (d) a report from the Secretary.
- (3) A report from the Secretary under sub-section (2)(d) must set out the steps that have been taken to avoid the need to transfer the person concerned to prison.
  - (4) The Secretary must cause the physical removal of a person from a youth justice centre to a prison on the direction of the Youth Parole Board under this section.
  - (5) A person directed to be transferred under this section, while being removed from a youth justice centre to a prison, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Youth Parole Board and that officer must deliver that person into the legal custody of the Secretary to the Department of Justice.
  - (6) A member of the police force may, if requested to do so by the Secretary, assist the officer referred to in sub-section (5) in the discharge of his or her duties under that sub-section and, in that case, the person being transferred is deemed to be in the legal custody of the Chief Commissioner of Police.
  - (7) A person transferred to a prison under this section becomes, on transfer, subject to the jurisdiction of the Adult Parole Board for the unexpired portion of the term of his or her sentence and that sentence is to be treated for all purposes as a sentence of imprisonment.
  - (8) In determining whether to release a person on parole, the Adult Parole Board may take into account the periods which the person has spent in a youth justice centre and a youth residential centre.
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**Division 6—General**

**474. Person in youth residential centre sentenced to detention in youth justice centre or imprisonment**

(1) If a person—

- (a) has been sentenced to detention in a youth residential centre; and
- (b) before the end of that sentence is sentenced to a period of detention in a youth justice centre or to a term of imprisonment in respect of any offence—

the Youth Residential Board may direct that the person must serve the unexpired portion of the period of detention in a youth residential centre as detention in a youth justice centre or as imprisonment (as the case requires) and thereafter the person is subject to the jurisdiction of the Youth Parole Board or the Adult Parole Board (as the case requires).

(2) If a person—

- (a) has been sentenced to detention in a youth residential centre; and
- (b) before the end of that sentence is sentenced to a period of detention in a youth justice centre or to a term of imprisonment to be served cumulatively on the sentence of detention in a youth residential centre—

service of the sentence of detention in a youth residential centre must be suspended until that person has served the sentence of detention in a youth justice centre or the sentence of imprisonment (as the case requires).

- (3) If a person undergoing a sentence of detention in a youth residential centre is brought before a court under section 490 or under any warrant or order of the Magistrates' Court, that person is, subject to sub-section (2), deemed to be continuing to serve the sentence of detention which that person is then undergoing even if he or she is held in custody in a prison, police gaol, youth justice centre or other place that is not a youth residential centre.
- (4) If a person who is sentenced to detention in a youth residential centre is at that time being held in custody in a prison, police gaol, youth justice centre or other place that is not a youth residential centre, that person is, subject to sub-section (2), deemed to be serving that sentence of detention even if he or she is being held in custody otherwise than in a youth residential centre.

**475. Person in youth justice centre sentenced to imprisonment**

- (1) If a person—
  - (a) has been sentenced to detention in a youth justice centre; and
  - (b) before the end of that sentence is sentenced to a term of imprisonment in respect of any offence—

the Youth Parole Board may direct that the person must serve the unexpired portion of the period of detention as imprisonment in a prison and thereafter the person is subject to the jurisdiction of the Adult Parole Board as if the period of detention served by him or her before that sentence of imprisonment or his or her release on parole by the Youth Parole Board had been a non-parole period.

(2) If a person—

- (a) has been sentenced to detention in a youth justice centre; and
- (b) before the end of that sentence is sentenced by a court to a term of imprisonment to be served cumulatively on the sentence of detention—

service of the sentence of detention must be suspended until that person has served the sentence of imprisonment.

- (3) Despite anything to the contrary in any Act, every sentence of imprisonment imposed on a person by a court must, unless otherwise directed by the court at the time of pronouncing the sentence, be, as from the date of its commencement, served concurrently with any uncompleted sentence or sentences of detention in a youth justice centre imposed on that person, whether before or at the time the relevant sentence was imposed.
- (4) If a person undergoing a sentence of detention in a youth justice centre is brought before a court under section 490 or under any warrant or order of the Magistrates' Court, that person is, subject to sub-section (2), deemed to be continuing to serve the sentence of detention which that person is then undergoing even if he or she is held in custody in a prison, police gaol or other place that is not a youth justice centre.
- (5) If a person who is sentenced to detention in a youth justice centre is at that time being held in custody in a prison, police gaol or other place that is not a youth justice centre, that person is, subject to sub-section (2), deemed to be serving that sentence of detention even if he or she is being held in custody otherwise than in a youth justice centre.

(6) If—

- (a) a person is in a prison under sub-section (1) serving the unexpired portion of a sentence of detention as imprisonment; and
- (b) a warrant for the detention of the person in a youth justice centre in default of payment of a fine or sum of money is executed—

the Youth Parole Board may further direct that the person be imprisoned in default of payment of the fine or sum of money.

**476. Person in youth justice centre sentenced to detention in youth residential centre**

(1) If—

- (a) a person is serving a sentence of detention in a youth justice centre; and
- (b) before the end of that sentence of detention he or she is sentenced to a period of detention in a youth residential centre to be served cumulatively on the sentence of detention in a youth justice centre—

service of the period of detention in a youth residential centre is suspended until that person has served the sentence of detention in a youth justice centre.

- (2) The Youth Residential Board may before the person is released from a youth justice centre, whether under a parole order made by the Youth Parole Board in respect of the sentence of detention in a youth justice centre or otherwise, direct that at the end of the sentence of detention in a youth justice centre, the person must serve the whole of the period of detention in a youth residential centre (if it was to be served cumulatively on the sentence of detention in a youth justice centre) or the unexpired portion

(if any) of it (if it was to be served concurrently with the sentence of detention in a youth justice centre) as detention in a youth justice centre.

- (3) If under sub-section (2) the period of detention in a youth residential centre is to be served as detention in a youth justice centre, the person is, in respect of that detention in a youth justice centre, subject to the jurisdiction of the Youth Parole Board and the Youth Parole Board may at any time release the person on parole.
- (4) This section does not apply to or in relation to a person who is sentenced to a period of detention in a youth residential centre while that person is released from a youth justice centre on parole.

**477. Person in prison sentenced to detention in youth justice centre**

- (1) If—
  - (a) a person is serving a sentence of imprisonment in a prison; and
  - (b) before the end of that sentence of imprisonment he or she is sentenced to a period of detention in a youth justice centre to be served cumulatively on the sentence of imprisonment—service of the period of detention is suspended until that person has served the sentence of imprisonment.
- (2) Despite anything to the contrary in any Act, every sentence of detention in a youth justice centre imposed on a person by a court must, unless otherwise directed by the court at the time of pronouncing the sentence, be, as from the date of its commencement, served concurrently with any uncompleted sentence or sentences of imprisonment imposed on that person, whether

before or at the time the relevant sentence was imposed.

- (3) The Youth Parole Board may, before a person is released from prison, whether under a parole order made by the Adult Parole Board in respect of the sentence of imprisonment or otherwise, direct that at the end of the sentence of imprisonment, the person must serve the whole of the period of detention (if it was to be served cumulatively on the sentence of imprisonment) or the unexpired portion (if any) of it (if it was to be served concurrently with the sentence of imprisonment) as imprisonment in a prison.
- (4) If under sub-section (3) the period of detention is to be served as imprisonment in a prison, the person is, in respect of that imprisonment, subject to the jurisdiction of the Adult Parole Board and, whether or not a non-parole period has been set in respect of that imprisonment, the Adult Parole Board may at any time release the person on parole.
- (5) If—
  - (a) under sub-section (3) a person is serving a period of detention as imprisonment in a prison; and
  - (b) a warrant for the detention of the person in a youth justice centre in default of payment of a fine or sum of money is executed—the Youth Parole Board may direct that the person be imprisoned in default of payment of the fine or sum of money.
- (6) This section does not apply to or in relation to a person who is sentenced to a period of detention in a youth justice centre while that person is released from prison on parole.



**PART 5.7—ESTABLISHMENT OF CORRECTIVE SERVICES  
FOR CHILDREN**

**478. Governor in Council may establish corrective  
services**

For the purposes of this Act the Governor in Council may, by notice published in the Government Gazette, establish or abolish—

- (a) remand centres for the detention of children awaiting trial or sentence or in transit to or from a youth residential centre or youth justice centre; or
- (b) youth residential centres for the care and welfare of children ordered under this Act or the **Sentencing Act 1991** to be placed in a youth residential centre and which provide special direction, support, educational opportunities and supervision; or
- (c) youth justice centres for the care and welfare of persons ordered to be detained in youth justice centres under this Act or the **Sentencing Act 1991**; or
- (d) youth justice units for persons—
  - (i) referred to them as a condition of a probation order, youth supervision order, youth attendance order or other order made by the Court; or
  - (ii) referred to them as a requirement of a parole order.

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**479. Approval of service as youth justice unit**

- (1) The Secretary may approve a service operated by any person or body of persons (other than the Department) as a youth justice unit.
- (2) An approval under sub-section (1)—
  - (a) may be of general or limited application; and
  - (b) is given by sending by post to the person or body of persons concerned a notice of approval; and
  - (c) may, if at any time the Secretary is satisfied that the unit is unable to provide services of an adequate standard, be withdrawn by sending by post to the person or body of persons concerned a notice of withdrawal of approval.
- (3) The Secretary may out of money available for the purpose make a grant to an approved youth justice unit to assist the unit in carrying out its functions.
- (4) A grant under sub-section (3) may be made on any terms and conditions that are determined by the Secretary.

**480. Approval of service as group conference program**

- (1) The Secretary may approve a service operated by any person or body of persons (other than the Department) as a group conference program.
- (2) An approval under sub-section (1)—
  - (a) may be of general or limited application; and
  - (b) is given by sending by post to the person or body of persons concerned a notice of approval; and

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- (c) may, if at any time the Secretary is satisfied that the group conference program is unable to provide services of an adequate standard, be withdrawn by sending by post to the person or body of persons concerned a notice of withdrawal of approval.

**481. Standard of services**

The Minister may issue directions relating to the standards of services established under section 478 or approved under section 479 or 480 and may establish procedures that are appropriate to ensure that those directions are given effect.

**482. Form of care, custody or treatment**

- (1) The Secretary must—
  - (a) determine the form of care, custody or treatment which he or she considers to be in the best interests of each person detained in a remand centre, youth residential centre or youth justice centre; and
  - (b) not detain in a community service or secure welfare service a person who is on remand or is serving a period of detention and is not released on parole; and
  - (c) separate persons who are on remand from those who are serving a period of detention by accommodating them separately in some part set aside for the purpose unless—
    - (i) the Secretary considers it appropriate not to separate them, having regard to the best interests, rights and entitlements of the persons on remand; and
    - (ii) the persons on remand consent; and

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- (d) separate persons held on remand who are under the age of 15 years from those held on remand who are of or above the age of 15 years unless exceptional circumstances exist.
- (2) Persons detained in remand centres, youth residential centres or youth justice centres—
  - (a) are entitled to have their developmental needs catered for;
  - (b) subject to section 501, are entitled to receive visits from parents, relatives, legal practitioners, persons acting on behalf of legal practitioners and other persons;
  - (c) are entitled to have reasonable efforts made to meet their medical, religious and cultural needs including, in the case of Aboriginal children, their needs as members of the Aboriginal community;
  - (d) are entitled to receive information on the rules of the centre in which they are detained that affect them and on their rights and responsibilities and those of the officer in charge of the centre and the other staff;
  - (e) are entitled to complain to the Secretary or the Ombudsman about the standard of care, accommodation or treatment which they are receiving in the centre;
  - (f) are entitled to be advised of their entitlements under this sub-section.
- (3) It is the responsibility of the Secretary to make sure that sub-section (2) is complied with and he or she must, at least once each year, report to the Minister on the extent of compliance with sub-section (2).

**PART 5.8—PERSONS IN DETENTION**

**483. Legal custody**

- (1) A person who is detained in a remand centre, youth residential centre or youth justice centre is deemed to be in the legal custody of the Secretary while so detained.
- (2) As soon as possible after a person is received into a youth residential centre or youth justice centre to serve the whole or a part of a sentence of detention, the officer in charge of the centre may take photographs of the person for the purpose of identifying the person and compiling records of detainees.

**484. Removal of person from remand centre etc.**

- (1) The Secretary may by warrant under his or her hand cause the removal of a person—
  - (a) from any remand centre to any other remand centre or to a youth residential centre or youth justice centre; or
  - (b) from a youth residential centre to any other youth residential centre or to a remand centre; or
  - (c) from a youth justice centre to any other youth justice centre or to a remand centre.
- (2) On being removed under sub-section (1) a person must be kept at the remand centre, youth residential centre or youth justice centre for the residue of the period of his or her detention in custody or until removed by legal authority.

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- (3) A person while being removed from or to a remand centre, youth residential centre or youth justice centre is deemed to be in the legal custody of the officer having the custody of the person and acting under the warrant.
  - (4) The officer acting under the warrant must in due course deliver or return the person into the custody of the officer in charge of the remand centre, youth residential centre or youth justice centre in accordance with the terms of the warrant.
  - (5) A member of the police force may, if requested to do so by the Secretary, assist the officer referred to in sub-sections (3) and (4) in the discharge of his or her duties under those sub-sections and, in that case, the person being removed is deemed to be in the legal custody of the member of the police force.

**485. Temporary leave from legal custody**

- (1) In relation to a person who is detained in a remand centre, youth residential centre or youth justice centre, the Secretary or the officer in charge of the centre with the authority in writing of the Secretary given either generally or in any particular case, may by writing under his or her hand permit a person in the centre to take temporary leave of absence, with or without escort or supervision, from the place where that person is detained for any purpose stated in the permit which may include, but is not limited to, any of the following purposes—
    - (a) to engage in employment, whether with or without remuneration;
    - (b) to attend an educational or training institution;
    - (c) to visit his or her family, relatives or friends;
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- (d) to participate in sport, recreation or entertainment in the community;
  - (e) to attend a hospital or a medical, dental or psychiatric clinic or like place for receiving treatment or for examination;
  - (f) to attend a funeral;
  - (g) to accompany members of the police force for a specified purpose or for assisting in the administration of justice;
  - (h) to seek employment;
  - (i) to live in any other accommodation specified in the permit for any purpose specified in the permit.
- (2) A permit under this section may be subject to any conditions, limitations and restrictions that the Secretary thinks fit to impose and may be issued to or in respect of an individual person or any group of persons engaged in common employment, education, instruction or activity.
- (3) A person permitted temporary leave in accordance with this section is during the temporary leave deemed to continue to be in legal custody.
- (4) The person issuing a permit under this section to an individual person must give that person a copy of the permit or cause that person to be given a copy.
- (5) A person to whom a copy of a permit is given in accordance with sub-section (4) must carry that copy at all times during the temporary leave.
- (6) The Secretary may at any time before the end of a period of temporary leave cancel a permit issued under this section.
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- (7) The cancellation of a permit takes effect at the end of the day on which the person permitted temporary leave is informed of the cancellation of the permit.
  - (8) A person who fails, before the end of a period of temporary leave, either to return to the place of custody from which he or she was released on leave or to report at some other place of custody specified in the permit is deemed to have escaped from the place of custody within the meaning of section 498.
  - (9) It is a defence to any proceedings brought under section 498 by virtue of the provisions of sub-section (8) for the person charged to prove that the failure to return or report to any place was not attributable to any failure on his or her part but was due to circumstances beyond his or her control.
  - (10) A person must not contravene a condition, limitation or restriction to which a permit under this section is subject, not being a condition, limitation or restriction with respect to returning to or reporting to a place of custody as described in sub-section (8).

Penalty:

- (a) In the case of a child, detention in a youth residential centre for 2 months or in a youth justice centre for 3 months;
- (b) In any other case, imprisonment or detention in a youth justice centre for 3 months.



**486. Search**

- (1) In this section "**formal search**", in relation to a person, means a search to detect the presence of drugs, weapons or metal articles carried out by an electronic or mechanical device.
- (2) The officer in charge of a remand centre, youth residential centre or youth justice centre may—
  - (a) cause a person detained in the centre to be formally searched—
    - (i) as soon as possible after the person is received into the centre or returns after temporary leave of absence;
    - (ii) at any time when he or she believes on reasonable grounds that the person may have in his or her possession—
      - (A) any firearm, offensive weapon or other article which is capable of being used as a weapon;
      - (B) any form of drug or alcoholic liquor or beverage;
      - (C) any other article or thing not allowed by the regulations made for the purposes of section 501(1)(b);
  - (b) if in his or her opinion it is necessary to do so in the interests of the security or good order of the centre, cause a person detained in the centre to submit to search and examination of the person and of any article or thing (including a letter) in the person's possession or under the person's control if there is reasonable cause to believe that the article or thing—
    - (i) is of a kind referred to in paragraph (a)(ii); or

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- (ii) jeopardises or is likely to jeopardise the security or good order of the centre or the safety of persons in it;
  - (c) if in his or her opinion it is necessary to do so in the interests of the safety and security of the person or any person in the centre or with whom the person may come into contact on leaving the centre, cause a person detained in the centre to submit to search and examination of the person and of any article or thing (including a letter) in the person's possession or under the person's control if there is reasonable cause to believe that the article or thing—
    - (i) is of a kind referred to in paragraph (a)(ii); or
    - (ii) jeopardises or is likely to jeopardise the security or safety of the person or any person in the centre or with whom the person may come into contact on leaving the centre;
  - (d) cause any part of the centre to be searched and any article or thing (including a letter) found in it to be examined if there is reasonable cause to believe that the article or thing—
    - (i) is of a kind referred to in paragraph (a)(ii); or
    - (ii) jeopardises or is likely to jeopardise the security or good order of the centre or the safety of persons in it.
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- (3) The person carrying out a search under sub-section (2) may seize any article or thing (including a letter) found in the centre, whether in a person's possession or not, that he or she believes on reasonable grounds is of a kind referred to in sub-section (2)(a)(ii) or is likely to jeopardise the security or good order of the centre or the safety of persons in it or, in the case of a search under sub-section (2)(c) is likely to jeopardise the safety and security of the person subjected to the search or any person with whom that person may come into contact.
- (4) Any article or thing seized under sub-section (3) must be dealt with in accordance with the regulations.
- (5) If necessary, reasonable force may be used to carry out a search under sub-section (2).

**487. Prohibited actions**

The following actions are prohibited in relation to a person detained in a remand centre, youth residential centre or youth justice centre or a child detained in a police gaol—

- (a) the use of isolation (within the meaning of section 488) as a punishment;
- (b) the use of physical force unless it is reasonable and—
  - (i) is necessary to prevent the person or child from harming himself or herself or anyone else or from damaging property; or
  - (ii) is necessary for the security of the centre or police gaol; or
  - (iii) is otherwise authorised by or under this or any other Act or at common law;

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- (c) the administering of corporal punishment, that is, any action which inflicts, or is intended to inflict, physical pain or discomfort on the person or child as a punishment;
- (d) the use of any form of psychological pressure intended to intimidate or humiliate the person or child;
- (e) the use of any form of physical or emotional abuse;
- (f) the adoption of any kind of discriminatory treatment.

**488. Isolation**

- (1) The officer in charge of a remand centre, youth residential centre or youth justice centre may authorise the isolation of a person detained in the centre, that is, the placing of the person in a locked room separate from others and from the normal routine of the centre.
- (2) Isolation may only be authorised under subsection (1) if—
  - (a) all other reasonable steps have been taken to prevent the person from harming himself or herself or any other person or from damaging property; and
  - (b) the person's behaviour presents an immediate threat to his or her safety or the safety of any other person or to property.
- (3) The period of isolation must be approved by the Secretary.
- (4) If necessary, reasonable force may be used to place a person in isolation under this section.

- (5) A person placed in isolation must be closely supervised and observed at intervals of not longer than 15 minutes.
- (6) The officer in charge of a remand centre, youth residential centre or youth justice centre must make sure that the prescribed particulars of every use of isolation under sub-section (1) are recorded in a register established for the purpose.
- (7) In addition to his or her powers under this section, the officer in charge of a remand centre, youth residential centre or youth justice centre may cause a person detained in the centre to be isolated in the interests of the security of the centre.
- (8) This section (except sub-section (4)) does not apply to the use of isolation under sub-section (7).

**489. Detention in default of payment of a fine**

If a person is undergoing, or has been sentenced to, detention in a youth residential centre or youth justice centre and there is delivered to the Secretary a warrant to detain the person in a youth residential centre or youth justice centre or to imprison the person in default of payment of a fine or sum of money, the Secretary may direct that the period of the default be served in the youth residential centre or youth justice centre (as the case requires) instead of in the manner specified in the warrant.

**490. Bringing of person before court or inquest**

- (1) If a court or proper officer of a court, or a coroner holding an inquest under the **Coroners Act 1985** or the coroner's clerk requires by an order in the prescribed form that a person in a remand centre, youth residential centre or youth justice centre be brought before the court or inquest—

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- (a) the person may be brought before, or be brought to another place specified in the order where facilities exist to enable the person (by audio or audio visual link within the meaning of Part IIA of the **Evidence Act 1958**) to appear before, the court or inquest as often as is necessary for the person to be dealt with according to law or to give evidence, without a writ of habeas corpus or other writ or an order for that purpose; and
  - (b) the person must then be returned to the custody from which the person was brought.
- (2) A person being removed from a remand centre, youth residential centre or youth justice centre under this section is, during the time of removal, deemed to be in the legal custody of the member of the police force, protective services officer or other officer having the custody of that person.
- (3) No proceeding, either criminal or civil, may be maintained by a person against any member of the police force or against any other person on account of the removal.

**491. Power of police to arrest person in youth justice centre**

- (1) Without limiting the generality of Subdivision (30) of Division 1 of Part III of the **Crimes Act 1958**, a member of the police force may at any time, on the request of the officer in charge of a youth justice centre, without warrant apprehend and take before a bail justice or the Magistrates' Court to be dealt with according to law, a person of or above the age of 18 years who—
  - (a) is serving a period of detention in the youth justice centre; and

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(b) is being charged with an offence alleged to have been committed within the youth justice centre while serving the period of detention.

(2) Section 49 of the **Magistrates' Court Act 1989** and section 5A of the **Bail Act 1977** do not apply to a defendant in a criminal proceeding who has been apprehended under sub-section (1) of this section if the Magistrates' Court, County Court or Supreme Court, as the case may be, is satisfied that the defendant—

(a) has engaged in conduct that threatens the good order and safe operation of the youth justice centre; and

(b) is unable to be properly controlled in the youth justice centre.

**492. Interstate transfer of young offenders**

Schedule 2 sets out provisions relating to the interstate transfer of young offenders.

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## **CHAPTER 6—OFFENCES**

### **PART 6.1—OFFENCES RELATING TO THE PROTECTION OF CHILDREN**

#### **493. Offence to fail to protect child from harm**

- (1) A person who has a duty of care in respect of a child—
  - (a) who intentionally takes action that has resulted, or appears likely to result, in—
    - (i) the child suffering significant harm as a result of—
      - (A) physical injury; or
      - (B) sexual abuse; or
    - (ii) the child suffering emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged; or
    - (iii) the child's physical development or health being significantly harmed; or
  - (b) who intentionally fails to take action that has resulted, or appears likely to result, in the child's physical development or health being significantly harmed—

is guilty of an offence and liable to a penalty of not more than 50 penalty units or to imprisonment for a term of not more than 12 months.
- (2) Proceedings for an offence under sub-section (1) may only be brought by a person after consultation with the Secretary.



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- (3) A person may be guilty of an offence under sub-section (1) even though the child was protected by the action of another person from harm of the type referred to in that sub-section.

**494. Offence to leave child unattended**

- (1) A person who has the control or charge of a child must not leave the child without making reasonable provision for the child's supervision and care for a time which is unreasonable having regard to all the circumstances of the case.

Penalty: 15 penalty units or imprisonment for 3 months.

- (2) Proceedings for an offence under sub-section (1)—
- (a) must not be brought against a person who is under 16 years of age and is not the parent of the child; and
  - (b) may only be brought by a person after consultation with the Secretary.

**495. Offence to harbour or conceal child**

A person must not in the knowledge that a child is absent without lawful authority or excuse from the place in which the child had been placed under an interim accommodation order, a custody to third party order or a supervised custody order or by the Secretary under section 173 or from the lawful custody of a member of the police force or other person—

- (a) harbour or conceal or assist in harbouring or concealing the child; or
- (b) prevent or assist in preventing the child from returning to that place or custody.

Penalty: 15 penalty units or imprisonment for 3 months.

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**496. Offence to counsel or induce child to be absent without lawful authority etc.**

- (1) A person must not directly or indirectly—
- (a) without lawful authority or excuse, withdraw a child from the place in which the child had been placed under an interim accommodation order, a custody to third party order or a supervised custody order or by the Secretary under section 173; or
  - (b) counsel, induce or assist a child placed as described in paragraph (a) to absent himself or herself from any such place; or
  - (c) without lawful authority or excuse, withdraw a child from the custody or guardianship of any person who has custody or guardianship of the child under a permanent care order; or
  - (d) without lawful authority or excuse, withdraw a child from the lawful custody of a member of the police force or other person; or
  - (e) counsel or induce a child to absent himself or herself from the lawful custody of a member of the police force or other person.

Penalty: 15 penalty units or imprisonment for 3 months.

- (2) Sub-section (1) applies whether the conduct is carried out wholly within or wholly outside Victoria or partly within and partly outside Victoria.

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- (3) A person must not, by any conduct carried out within Victoria, without lawful authority or excuse withdraw a child from the place in which the child had been placed under a child protection order, or an interim order, within the meaning of Schedule 1 excluding an order referred to in sub-section (1)(a).

Penalty: 15 penalty units or imprisonment for 3 months.

- (4) If conduct constitutes an offence under 2 or more laws, a person who is convicted or found guilty or acquitted of the offence under a law referred to in paragraph (b) or (c) of sub-section (5) is not liable to be prosecuted for the offence under this section.

- (5) In sub-section (4) "**law**" means—

- (a) this section; or
- (b) a law of another State or a Territory of Australia; or
- (c) a law of New Zealand.

- (6) A prosecution can only be commenced for an offence under this section after the Secretary has been consulted about the matter.

**497. Offences in relation to community service etc.**

A person must not without lawful authority or excuse—

- (a) enter any place in which a child has been placed under an interim accommodation order, a custody to third party order or a supervised custody order or by the Secretary under section 173; or

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- (b) at any time or in any manner contrary to the regulations, convey to or cause to be conveyed to a child placed as described in paragraph (a) any article or thing; or
  - (c) contrary to the instructions of the Secretary, attempt to have access to a child placed as described in paragraph (a); or
  - (d) lurk or loiter about any place described in paragraph (a) for any of the purposes mentioned in this section.

Penalty: 15 penalty units or imprisonment for 3 months.

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**PART 6.2—OFFENCES RELATING TO DETAINED PERSONS**

**498. Offence to escape or attempt to escape etc.**

- (1) A person who is lawfully detained in a remand centre, youth residential centre or youth justice centre must not escape, attempt to escape or be absent without lawful authority from the remand centre, youth residential centre or youth justice centre or from the custody of the Chief Commissioner of Police or of any member of the police force or other officer in whose custody the person may be.

Penalty:

- (a) In the case of a child who is under the age of 15 years, detention in a youth residential centre for 3 months;
- (b) In the case of a child who is of or above the age of 15 years, detention in a youth justice centre for 6 months;
- (c) In any other case, imprisonment or detention in a youth justice centre for 6 months.
- (2) Without limiting section 458 of the **Crimes Act 1958**, a person who is escaping or attempting to escape or who is unlawfully absent as described in sub-section (1) may be apprehended without warrant by any member of the police force.
- (3) If it appears to a magistrate by evidence on oath or by affidavit that there is reasonable cause to suspect that a person so escaping or unlawfully absent is in any place, the magistrate may issue a search warrant.

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- (4) A child apprehended under this section may—
- (a) be placed in a remand centre, youth residential centre or youth justice centre; or
  - (b) be placed in prison or a police gaol if it is not possible to place the child in a remand centre, youth residential centre or youth justice centre.

**499. Offence to harbour or conceal person**

A person must not, in the knowledge that a person—

- (a) has escaped or is absent without lawful authority from a remand centre, youth residential centre or youth justice centre in which the person is lawfully detained; or
- (b) has escaped from the custody of a member of the police force or other officer in whose legal custody the person is or is deemed to be under section 466(2), 469(2), 470(3) or 471(3)—

harbour or conceal or assist in harbouring or concealing the person or prevent or assist in preventing the person from returning to that centre or custody.

Penalty: 15 penalty units or imprisonment for 3 months.

**500. Offence to counsel or induce person to escape**

A person must not directly or indirectly withdraw a person without legal authority from, or counsel or induce or assist a person to escape from, a remand centre, youth residential centre or youth justice centre in which the person is lawfully detained.

Penalty: 15 penalty units or imprisonment for 3 months.

**501. Offences in relation to persons held in centres**

- (1) A person must not without lawful authority or excuse—
- (a) communicate or attempt to communicate with a person held in a remand centre, youth residential centre, youth justice centre or youth justice unit in contravention of a clear instruction from the Secretary not to do so; or
  - (b) deliver, or in any manner attempt to deliver, to any such person or introduce or attempt to introduce or cause to be introduced into a remand centre, youth residential centre, youth justice centre or youth justice unit—
    - (i) any firearm, offensive weapon or other article which is capable of being used as a weapon; or
    - (ii) any form of drug without the consent of the Secretary; or
    - (iii) any form of alcoholic liquor or beverage; or
    - (iv) any other article or thing not allowed by the regulations; or
  - (c) in any manner take or receive from any such person for the purpose of conveying out of or taking away from a remand centre, youth residential centre, youth justice centre or youth justice unit any article or thing without the consent of the Secretary; or

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- (d) deliver or cause to be delivered to any other person any article or thing for the purpose of being introduced as mentioned in paragraph (b) or secrete or leave about or in any place where any such person is usually employed or detained any article or thing for the purpose of being found or received by any such person; or
- (e) at any time or in any manner contrary to the regulations convey to or cause to be conveyed to any person any article or thing; or
- (f) lurk or loiter about a remand centre, youth residential centre, youth justice centre or youth justice unit for any of the purposes mentioned in this sub-section.

Penalty: 15 penalty units or imprisonment for 3 months.

- (2) A person who has without lawful authority or excuse entered a remand centre, youth residential centre, youth justice centre or youth justice unit or any building, yard or ground belonging to that centre or unit must not refuse or fail to leave when required to do so by any person for the time being in charge of that centre or unit.

Penalty: 15 penalty units or imprisonment for 3 months.

- (3) A person guilty of an offence under this section may be apprehended by a member of the police force without warrant.



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Part 6.3—General Offences

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**PART 6.3—GENERAL OFFENCES**

**502. Offence to impersonate Secretary as protective intervener**

A person must not impersonate the Secretary as a protective intervener.

Penalty: 60 penalty units.

**503. Offence to obstruct Secretary or employee**

A person must not obstruct or hinder the Secretary or any employee in the execution of his or her duties under this Act.

Penalty: 15 penalty units or imprisonment for 3 months.

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## **CHAPTER 7—THE CHILDREN'S COURT OF VICTORIA**

### **PART 7.1—THE CHILDREN'S COURT**

#### **504. The Children's Court**

- (1) There continues to be a court called "The Children's Court of Victoria".
- (2) The Court consists of a President, the magistrates and the registrars of the Court.
- (3) The Court has the following Divisions—
  - (a) the Family Division;
  - (b) the Criminal Division;
  - (c) the Koori Court (Criminal Division).
- (4) Every proceeding in the Court must be commenced, heard and determined in one of those Divisions.
- (5) The Court must not sit as more than one Division at the same time in the same room.
- (6) Each Division has such of the powers of the Court as are necessary to enable it to exercise its jurisdiction.
- (7) The Court, in any Division, shall be constituted by the President or a magistrate except in the case of any proceeding for which provision is made by any Act for the Court to be constituted by a registrar.

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**505. Where and when Court to be held**

- (1) The Court is to be held—
  - (a) at the places at which the Magistrates' Court is to be held under section 5(1) of the **Magistrates' Court Act 1989**; and
  - (b) on such days and at such times as the President, after consulting the Chief Magistrate, from time to time appoints by notice published in the Government Gazette.
- (2) The President, after consulting the Chief Magistrate, may from time to time by notice published in the Government Gazette alter the days and times appointed for the holding of the Court at any place.
- (3) The Court must not be held at any time in the same building as that in which the Magistrates' Court is at the time sitting unless the Governor in Council, by Order published in the Government Gazette, otherwise directs with respect to any particular building.
- (4) The Court may, subject to sub-section (3), sit and act at any time and place.

**506. President, magistrate or acting magistrate to be in attendance**

Except where the Court is to be constituted by the President, the President, after consulting the Chief Magistrate, must make arrangements for a magistrate or an acting magistrate to attend on the day and at the time and place at which the Court is to be held.

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**507. Assignment of magistrates or acting magistrates**

- (1) The President, after consulting the Chief Magistrate, may assign any person who is appointed as a magistrate under section 7 of the **Magistrates' Court Act 1989** or as an acting magistrate under section 9 of that Act to be a magistrate for the Court, whether exclusively or in addition to any other duties.
- (2) In assigning a magistrate or acting magistrate to be a magistrate for the Court, the President must have regard to the experience of the magistrate or acting magistrate in matters relating to child welfare.
- (3) The President, after consulting the Chief Magistrate, may at any time revoke the assignment of a magistrate or acting magistrate.
- (4) Unless his or her assignment is revoked under sub-section (3), a magistrate or acting magistrate who is assigned to be a magistrate for the Court continues to be a magistrate for the Court for so long as he or she holds the office of magistrate or acting magistrate under the **Magistrates' Court Act 1989**.
- (5) A magistrate or acting magistrate who is for any period suspended from office under section 11 of the **Magistrates' Court Act 1989** is, for that period and by virtue of that suspension, also suspended from the office of magistrate for the Court.

**508. President**

- (1) There continues to be an office of President of the Children's Court.
  - (2) The President must be a judge of the County Court who is appointed by the Governor in Council on the recommendation of the Attorney-General made after consultation with the Chief Judge.
  - (3) Subject to this Act, the President holds office—
    - (a) for the term (not exceeding 5 years) that is specified in his or her instrument of appointment, and is eligible for re-appointment; and
    - (b) on any other terms and conditions that are specified in his or her instrument of appointment.
  - (4) The appointment of a judge of the County Court as President does not affect his or her tenure of office or status as a judge nor the payment of his or her salary or allowances as a judge nor any other rights or privileges that he or she has as a judge.
  - (5) Nothing in sub-section (4) limits the power of the Governor in Council to specify in the instrument of appointment of the President terms and conditions of appointment (other than as to salary or allowances), whether or not inconsistent with rights or privileges that he or she has as a judge.
  - (6) Service in the office of President must be taken for all purposes to be service in the office of judge of the County Court.
  - (7) Nothing in this Act prevents a judge of the County Court appointed as President from constituting the County Court for the purpose of the exercise by the County Court of any of its functions.
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- (8) The President may exercise any power conferred on a magistrate by or under this or any other Act.
- (9) The **Public Administration Act 2004** does not apply to the President in respect of the office of President.
- (10) The office of President becomes vacant if he or she ceases to hold the office of judge of the County Court.

**509. Acting President**

- (1) The Governor in Council may appoint a magistrate nominated by the President to be Acting President during any period when—
  - (a) there is a vacancy in the office of President;  
or
  - (b) the President is absent on leave or for any reason is temporarily unable to perform the duties of the office of President.
- (2) The Chief Magistrate or a magistrate nominated by the President shall act as President if there is—
  - (a) a vacancy in the office of the President; or
  - (b) a period when the President is absent on leave or for any reason is temporarily unable to perform the duties of the office of President—and the Governor in Council has not appointed an Acting President under sub-section (1).
- (3) The Chief Magistrate or a magistrate nominated by the President shall not act under sub-section (2) as President for a term exceeding 3 months.
- (4) A magistrate who is appointed as Acting President under sub-section (1) or who acts as President under sub-section (2) has, during the period of the appointment or the period of acting as President, the same powers and duties as the President.

- (5) Service in the office of Acting President must not be taken to be service in the office of judge of the County Court.

**510. Assignment of duties**

- (1) The President may assign duties to a magistrate for the Court.
- (2) A magistrate for the Court must carry out the duties that are from time to time assigned to him or her by the President.
- (3) Nothing in section 13 of the **Magistrates' Court Act 1989** gives the Chief Magistrate any power to assign duties to a magistrate for the Court in respect of his or her office as a magistrate for the Court.

**511. Delegation by the President**

The President, by instrument, may delegate to any magistrate for the Court any of his or her powers under section 506 or 510.

**512. Protection of President**

The President has in the performance of his or her duties as President the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

**513. Protection of magistrates or acting magistrates**

A magistrate or acting magistrate has in the performance of his or her duties as a magistrate for the Court the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

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**514. Annual report**

As soon as practicable in each year but not later than 31 October, the President must submit to the Governor a report containing—

- (a) a review of the operation of the Court during the 12 months ending on the preceding 30 June; and
- (b) such other matters as are prescribed by regulations made under this Act.

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**PART 7.2—JURISDICTION**

**515. Jurisdiction of Family Division**

- (1) The Family Division has jurisdiction to hear and determine an application for—
  - (a) an interim accommodation order; or
  - (b) a finding that a child is in need of protection; or
  - (c) a finding that there is a substantial and presently irreconcilable difference between the person who has custody of a child and the child to such an extent that the care and control of the child are likely to be seriously disrupted; or
  - (d) a permanent care order; or
  - (e) a therapeutic treatment order; or
  - (f) a therapeutic treatment (placement) order; or
  - (g) a temporary assessment order; or
  - (h) the variation or revocation of—
    - (i) a therapeutic treatment order; or
    - (ii) a therapeutic treatment (placement) order; or
    - (iii) a temporary assessment order; or
  - (i) the variation of an interim accommodation order; or
  - (j) the variation or revocation of—
    - (i) a supervision order; or
    - (ii) a custody to third party order; or
    - (iii) a supervised custody order; or

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- (iv) a custody to Secretary order; or
  - (v) a permanent care order; or
  - (k) the extension of—
    - (i) a supervision order; or
    - (ii) a supervised custody order; or
    - (iii) a custody to Secretary order; or
    - (iv) a guardianship to Secretary order; or
  - (l) the revocation of—
    - (i) a guardianship to Secretary order; or
    - (ii) a long-term guardianship to Secretary order; or
  - (m) an order in respect of a failure to comply with—
    - (i) an interim accommodation order; or
    - (ii) an interim protection order; or
    - (iii) a supervision order; or
    - (iv) a supervised custody order; or
  - (n) an order regarding the exercise of any right, power or duty vested in a person as joint custodian or guardian of a child; or
  - (o) an order arising out of a child protection proceeding within the meaning of Schedule 1 transferred to the Court under an interstate law within the meaning of that Schedule.
- (2) The jurisdiction given by sub-section (1) is additional to the jurisdiction given to the Family Division by Schedule 1 or by an interstate law within the meaning of that Schedule or by the **Crimes (Family Violence) Act 1987**.
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**516. Jurisdiction of Criminal Division**

- (1) The Criminal Division has jurisdiction—
    - (a) to hear and determine all charges against children for summary offences; and
    - (b) subject to section 356, to hear and determine summarily all charges against children for indictable offences, other than murder, attempted murder, manslaughter, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death); and
    - (c) to conduct committal proceedings into all charges against children for indictable offences and either—
      - (i) direct the defendant to be tried and order that the defendant be remanded in custody until trial or grant bail; or
      - (ii) discharge the defendant; and
    - (d) to grant or refuse bail to, or extend, vary or revoke the bail of, a child who is charged with an offence; and
    - (e) subject to Chapter 5, to deal with a breach of a sentencing order or variation of a sentencing order.
  - (2) The Criminal Division has the jurisdiction referred to in sub-section (1) despite anything to the contrary in any other Act.
  - (3) The jurisdiction given by sub-section (1) is additional to any other jurisdiction given to the Criminal Division by or under this or any other Act.
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- (4) If before or during the hearing of a charge for an offence it appears to the Children's Court that the defendant is not a child, the Court must discontinue the proceeding and order that it be transferred to the Magistrates' Court and in the meantime it may—
- (a) permit the defendant to go at large; or
  - (b) grant the defendant bail conditioned for the appearance of the defendant before the Magistrates' Court at the time and place at which the proceeding is to be heard; or
  - (c) remand the defendant in prison or a police gaol or in accordance with section 49 of the **Magistrates' Court Act 1989** until the proceeding is heard by the Magistrates' Court.
- (5) Despite sub-section (4), if before or during the hearing of a charge for an offence it appears to the Children's Court that the defendant is of or above the age of 19 years but was a child when the proceeding for the offence was commenced in the Court, the Court must hear and determine the charge unless at any stage the Court considers that exceptional circumstances exist, having regard to—
- (a) the age of the defendant;
  - (b) the nature and circumstances of the alleged offence;
  - (c) the stage of the proceeding;
  - (d) whether the defendant is the subject of another proceeding in any other court;
  - (e) any delay in the hearing of the charge and the reason for the delay;
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- (f) whether the sentencing orders available to the Court are appropriate;
  - (g) whether the defendant prefers the charge to be heard in the Children's Court or the Magistrates' Court;
  - (h) any other matter that the Court considers relevant.
- (6) If the Court considers that exceptional circumstances exist under sub-section (5), the Court must discontinue the proceeding and order that it be transferred to the Magistrates' Court and in the meantime it may—
- (a) permit the defendant to go at large; or
  - (b) grant the defendant bail conditioned for the appearance of the defendant before the Magistrates' Court at the time and place at which the proceeding is to be heard; or
  - (c) remand the defendant in prison or a police gaol or in accordance with section 49 of the **Magistrates' Court Act 1989** until the proceeding is heard by the Magistrates' Court.

**517. Koori Court (Criminal Division)**

- (1) The Koori Court (Criminal Division) has all of the powers of the Court that are necessary to enable it to exercise its jurisdiction.
- (2) Despite anything to the contrary in this Act, the Koori Court (Criminal Division) may only sit and act at a venue of the Court specified by the President, after consulting the Chief Magistrate, by notice published in the Government Gazette.

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- (3) The Koori Court (Criminal Division) must exercise its jurisdiction with as little formality and technicality, and with as much expedition, as the requirements of this Act and the proper consideration of the matters before the Court permit.
- (4) The Koori Court (Criminal Division) must take steps to ensure that, so far as practicable, any proceeding before it is conducted in a way which it considers will make it comprehensible to—
- (a) the child; and
  - (b) a family member of the child; and
  - (c) any member of the Aboriginal community who is present in court.
- (5) Subject to this Act, the regulations and the rules, the Koori Court (Criminal Division) may regulate its own procedure.
- (6) Nothing in this section limits Part 7.3.
- (7) In this section "**family member**" of a child means—
- (a) the spouse or domestic partner of the child; or
  - (b) a person who has or has had an intimate personal relationship with the child; or
  - (c) a parent of the child; or
  - (d) a person who is or has been a relative of the child; or
  - (e) another child who normally or regularly resides with the child; or
  - (f) a person who is or has been ordinarily a member of the household of the child.
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**518. Jurisdiction of Koori Court (Criminal Division)**

The Koori Court (Criminal Division) has—

- (a) the jurisdiction to deal with a proceeding for an offence given to it by section 519; and
- (b) jurisdiction to deal with a breach of a sentencing order made by it (including any offence constituted by such a breach) or variation of such a sentencing order; and
- (c) any other jurisdiction given to it by or under this or any other Act.

**519. Circumstances in which Koori Court (Criminal Division) may deal with certain offences**

- (1) The Koori Court (Criminal Division) only has jurisdiction to deal with a proceeding for an offence (other than an offence constituted by a breach of a sentencing order made by it) if—
  - (a) the child is Aboriginal; and
  - (b) the offence is within the jurisdiction of the Criminal Division, other than a sexual offence as defined in section 6B(1) of the **Sentencing Act 1991**; and
  - (c) the child—
    - (i) intends to plead guilty to the offence; or
    - (ii) pleads guilty to the offence; or
    - (iii) has been found guilty of the offence by the Criminal Division; and
  - (d) the child consents to the proceeding being dealt with by the Koori Court (Criminal Division).

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- (2) Subject to and in accordance with the rules—
- (a) a proceeding may be transferred to the Koori Court (Criminal Division), whether sitting at the same or a different venue; and
  - (b) the Koori Court (Criminal Division) may transfer a proceeding (including a proceeding transferred to it under paragraph (a)) to the Criminal Division, whether sitting at the same or a different venue.
- (3) Despite anything to the contrary in this Act, if a proceeding is transferred from one venue of the Court to another, the transferee venue is the proper venue of the Court for the purposes of this Act.

**520. Sentencing procedure in Koori Court (Criminal Division)**

- (1) This section applies to the Koori Court (Criminal Division) when it is considering which sentencing order to make in respect of a child.
- (2) The Koori Court (Criminal Division) may consider any oral statement made to it by an Aboriginal elder or respected person.
- (3) The Koori Court (Criminal Division) may inform itself in any way it thinks fit, including by considering a report prepared by, or a statement or submission prepared or made to it by, or evidence given to it by—
  - (a) a Children's Koori Court officer; or
  - (b) a youth justice worker employed under Part 3 of the **Public Administration Act 2004**; or
  - (c) a health service provider; or



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- (d) a victim of the offence; or
  - (e) a family member of the child; or
  - (f) anyone else whom the Koori Court (Criminal Division) considers appropriate.
- (4) Nothing in this section affects the requirement to observe the rules of natural justice.
- (5) This section does not limit—
- (a) any other power conferred on the Court by or under this or any other Act; or
  - (b) any other specific provision made by or under this or any other Act for the making of any report, statement or submission, or the giving of any evidence, to the Court for the purpose of assisting it in determining sentence.
- (6) Nothing in section 358 operates to limit this section.
- (7) In this section "**family member**" has the same meaning as it has in section 517.

**521. Application of Act to other Courts**

Except for the purposes of appeals this Act applies, with any necessary modifications, in relation to an order made by the Supreme Court or the County Court of a type that could be made by the Children's Court under this Act, whether the order was made on appeal or under section 586 or otherwise, as if it were an order made by the Children's Court.

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**PART 7.3—PROCEDURE**

**522. Procedural guidelines to be followed by Court**

- (1) As far as practicable the Court must in any proceeding—
  - (a) take steps to ensure that the proceeding is comprehensible to—
    - (i) the child; and
    - (ii) the child's parents; and
    - (iii) all other parties who have a direct interest in the proceeding; and
  - (b) seek to satisfy itself that the child understands the nature and implications of the proceeding and of any order made in the proceeding; and
  - (c) allow—
    - (i) the child; and
    - (ii) in the case of a proceeding in the Family Division, the child's parents and all other parties who have a direct interest in the proceeding—  
to participate fully in the proceeding; and
  - (d) consider any wishes expressed by the child; and
  - (e) respect the cultural identity and needs of—
    - (i) the child; and
    - (ii) the child's parents and other members of the child's family; and
  - (f) minimise the stigma to the child and his or her family.

- (2) If at any time there are proceedings in more than one Division of the Court relating to the same child, the Court must, unless it otherwise orders, hear and determine the proceeding in the Family Division first.
- (3) If the Court makes an order under sub-section (2), it must state orally the reasons for the order.
- (4) An order made by the Court in a proceeding is not invalidated by, nor liable to be challenged, appealed against, reviewed, quashed or called in question in any court on account of the failure of the Court to comply with sub-section (3) in the proceeding.

**523. Proceedings to be heard in open court**

- (1) Proceedings in the Court are, subject to sub-section (2), to be conducted in open court.
- (2) The Court may, on the application of a party or of any other person who has a direct interest in the proceeding or without any such application—
  - (a) order that the whole or any part of a proceeding be heard in closed court; or
  - (b) order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.
- (3) Any party to the proceeding and any other interested person has standing to support or oppose an application under sub-section (2).
- (4) If an order has been made under this section, the Court must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the Court is being held.

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- (5) An order posted under this section must not contain any particulars likely to lead to the identification of the child who is a party to the proceeding.
- (6) A person must not contravene an order made and posted under this section.

Penalty:

- (a) In the case of a person of or above the age of 18 years, 25 penalty units or committal for a term of not more than six months to prison; or
- (b) In the case of a child of or above the age of 15 years, 25 penalty units or detention for a period of not more than six months in a youth justice centre; or
- (c) In the case of a child under the age of 15 years, 12 penalty units or detention for a period of not more than three months in a youth residential centre.

**524. Legal representation**

- (1) If at any stage—
  - (a) in a proceeding in the Family Division, a child is not separately legally represented; or
  - (b) in a proceeding in the Criminal Division, a child is not legally represented; or
  - (c) in a proceeding in the Family Division, a child's parents are not legally represented; or
  - (d) in a proceeding in the Family Division for the making, variation or revocation of a permanent care order, an applicant for the order or a person named in the application as suitable to have custody and guardianship of a child or a person who was granted custody

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and guardianship of a child under the order is not legally represented—

the Court may adjourn the hearing of the proceeding to enable the child or the child's parents or the person referred to in paragraph (d) (as the case requires) to obtain legal representation.

- (2) If a child who, in the opinion of the Court, is mature enough to give instructions is not, subject to section 216, separately legally represented in a proceeding referred to in section 525(1) or a child is not legally represented in a proceeding referred to in section 525(2), the Court must adjourn the hearing of the proceeding to enable the child to obtain legal representation and, subject to sub-section (3), must not resume the hearing unless the child is legally represented.
- (3) The Court may resume a hearing that was adjourned by it in accordance with sub-section (2) even though the child is not legally represented if satisfied that the child has had a reasonable opportunity to obtain legal representation and has failed to do so or, in the case of a proceeding in the Family Division, that the child is otherwise represented pursuant to leave granted under sub-section (8).
- (4) If, in exceptional circumstances, the Court determines that it is in the best interests of a child who, in the opinion of the Court is not mature enough to give instructions, for the child to be legally represented in a proceeding in the Family Division, the Court must adjourn the hearing of the proceeding to enable that legal representation to be obtained.
- (5) With the leave of the Court, more than one child in the same proceeding may be represented by the same legal practitioner.

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- (6) The Court may only grant leave under sub-section (5) if satisfied that no conflict of interest will arise.
  - (7) If after having granted leave under sub-section (5) the Court is satisfied in the course of the proceeding that a conflict of interest has arisen, the Court may withdraw the leave previously granted.
  - (8) With the leave of the Court, a child (other than a child to whom a determination under sub-section (4) applies) may be represented in a proceeding in the Family Division by a person who is not—
    - (a) a legal practitioner; or
    - (b) a parent of the child.
  - (9) A person referred to in sub-section (8) who is granted leave to represent a child in a proceeding in the Family Division must act in accordance with any instructions given or wishes expressed by the child so far as it is practicable to do so having regard to the maturity of the child.
  - (10) A legal practitioner representing a child in any proceeding in the Court must act in accordance with any instructions given or wishes expressed by the child so far as it is practicable to do so having regard to the maturity of the child.
  - (11) A legal practitioner representing, in the Family Division, a child who is not mature enough to give instructions must—
    - (a) act in accordance with what he or she believes to be in the best interests of the child; and
    - (b) to the extent that it is practicable to do so, communicate to the Court the instructions given or wishes expressed by the child.
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- (12) Any process served on a child or the parent of a child requiring the child or parent (as the case requires) to attend the Court in a proceeding referred to in section 525(1) or 525(2) must contain or be accompanied by a notice—
- (a) setting out the circumstances in which a child is required to be legally represented; and
  - (b) stating the desirability of obtaining legal representation; and
  - (c) explaining how legal representation may be obtained.

**525. Proceedings in which child is required to be legally represented**

- (1) Subject to section 524, a child must be legally represented in the following proceedings in the Family Division—
- (a) application for an interim accommodation order;
  - (b) protection application;
  - (c) irreconcilable difference application;
  - (d) application for a temporary assessment order, (unless the Court grants leave for the application to proceed without notice to the other parties);
  - (e) application for—
    - (i) a therapeutic treatment order; or
    - (ii) a therapeutic treatment (placement) order;
  - (f) application for a permanent care order;
  - (g) application for the variation of an interim accommodation order;
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- (h) application for the variation or revocation of—
- (i) a temporary assessment order; or
  - (ii) a therapeutic treatment order; or
  - (iii) a therapeutic treatment (placement) order; or
  - (iv) a supervision order; or
  - (v) a custody to third party order; or
  - (vi) a supervised custody order; or
  - (vii) a custody to Secretary order; or
  - (viii) a permanent care order;
- (i) application in respect of a failure to comply with—
- (i) an interim accommodation order; or
  - (ii) an interim protection order; or
  - (iii) a supervision order; or
  - (iv) a supervised custody order;
- (j) application for the extension of—
- (i) a supervision order; or
  - (ii) a supervised custody order; or
  - (iii) a custody to Secretary order; or
  - (iv) a guardianship to Secretary order;
- (k) application for the revocation of—
- (i) a guardianship to Secretary order; or
  - (ii) a long-term guardianship to Secretary order;
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- (l) application for an order regarding the exercise of any right, power or duty vested in a person as joint custodian or guardian of a child;
  - (m) application for an order transferring a child protection order within the meaning of Schedule 1 to a participating State within the meaning of that Schedule;
  - (n) application for an order transferring a child protection proceeding within the meaning of Schedule 1 to the Children's Court in a participating State within the meaning of that Schedule;
  - (o) application for the revocation of the registration of a document filed under clause 19 of Schedule 1.
- (2) Subject to section 524, a child must be legally represented in the following proceedings in the Criminal Division—
- (a) proceeding with respect to bail if the informant or prosecutor or any person appearing on behalf of the Crown intends to oppose the grant of bail;
  - (b) proceeding under section 24 of the **Bail Act 1977**;
  - (c) hearing of a charge for an offence punishable, in the case of an adult, by imprisonment;
  - (d) review of a monetary penalty imposed by the Court in respect of an offence punishable, in the case of an adult, by imprisonment;
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- (e) application in respect of a breach of an accountable undertaking, bond, probation order, youth supervision order or youth attendance order imposed by the Court in respect of an offence punishable, in the case of an adult, by imprisonment.

**526. Interpreter**

If the Court is satisfied that a child, a parent of a child or any other party to a proceeding has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding, or participating in, the proceeding, it must not hear and determine the proceeding without an interpreter interpreting it.

**527. Explanation of and reasons for orders**

- (1) If the Court makes an order, it must explain the meaning and effect of the order as plainly and simply as possible and in a way which it considers the child, the child's parents and the other parties to the proceeding will understand.
- (2) An explanation under sub-section (1) must be given through an interpreter to any person referred to in that sub-section whom the Court considers has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding the explanation given by the Court.
- (3) Immediately after the Court makes an order to which this sub-section applies, the appropriate registrar must provide a written copy of the order in the prescribed form to—
  - (a) the child; and

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- (b) if the order is made by the Family Division—
    - (i) unless the Court otherwise orders, the child's parents; and
    - (ii) if the Court so orders, any other person with whom the child is living; and
  - (c) if the order is made by the Criminal Division—
    - (i) unless the Court otherwise orders, the child's parents if the child is under the age of 15 years; or
    - (ii) if the Court so orders, the child's parents if the child is of or above the age of 15 years; and
  - (d) the Secretary, in appropriate cases; and
  - (e) in the case of a permanent care order, the person who has, or persons who have, been granted custody and guardianship under the order.
- (4) Sub-section (3) applies to the following orders—
- (a) an interim accommodation order;
  - (b) a protection order;
  - (c) a temporary assessment order, (unless the Court made the order without notice being given to the child and the parent of the child);
  - (d) a therapeutic treatment order or a therapeutic treatment (placement) order;
  - (e) an order varying or revoking a supervision order;
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- (f) an order varying or revoking—
    - (i) a temporary assessment order; or
    - (ii) a therapeutic treatment order; or
    - (iii) a therapeutic treatment (placement) order;
  - (g) an order varying—
    - (i) a custody to third party order; or
    - (ii) a supervised custody order; or
    - (iii) a custody to Secretary order;
  - (h) an order extending—
    - (i) a supervision order; or
    - (ii) a supervised custody order; or
    - (iii) a custody to Secretary order; or
    - (iv) a guardianship to Secretary order;
  - (i) an order revoking—
    - (i) a custody to third party order; or
    - (ii) a supervised custody order; or
    - (iii) a custody to Secretary order; or
    - (iv) a guardianship to Secretary order; or
    - (v) a long-term guardianship to Secretary order;
  - (j) a permanent care order;
  - (k) an order granting or refusing bail;
  - (l) a sentencing order;
  - (m) an order made in respect of a breach of a sentencing order.
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- (5) The Secretary must provide a written copy of a temporary assessment order made without notice to the child and the parent of the child, to the child and the parent of the child immediately on exercising any power given to the Secretary under the order.
  - (6) If the Family Division makes a final order in a proceeding, it must—
    - (a) state in writing the reasons for the order; and
    - (b) cause the statement of reasons to be entered in the court register; and
    - (c) unless the Court otherwise orders, cause a copy of the written statement of reasons to be given or sent by post within 21 days after the making of the order to the child, the child's parents and the other parties to the proceeding.
  - (7) A person who receives a document under sub-section (3), (5) or (6) may lodge with the Court a statement to the effect that he or she has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding the document but that he or she could understand it if it were written in another language specified in the statement.
  - (8) The Court must, within one working day after a person lodges a statement under sub-section (7), cause a copy of the document to be sent by post to a translator for translation into the language specified in the statement.
  - (9) The Court must, within 21 days after a person lodges a statement under sub-section (7), cause a copy of the document written in the specified language to be given or sent by post to that person.
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- (10) Neither the explanation given of an order nor the statement of reasons for an order is part of the order.
  - (11) The explanation given of an order is not part of the reasons for the order.
  - (12) An order made by the Court in a proceeding is not invalidated by, nor liable to be challenged, appealed against, reviewed, quashed or called in question in any court on account of the failure of the Court to comply with a provision of this section in the proceeding.
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**PART 7.4—POWERS**

**528. Court to have powers of Magistrates' Court**

- (1) The Court has and may exercise in relation to all matters over which it has jurisdiction all the powers and authorities that the Magistrates' Court has in relation to the matters over which it has jurisdiction.
- (2) The **Magistrates' Court Act 1989** (except section 58 and Part 5) and the regulations made under that Act apply with any necessary modifications, unless the contrary intention appears in this Act or in any other Act, to the Children's Court and the proceedings of any Division of the Court and, without limiting the application of section 419, to the issue of process in the same manner and to the same extent as it applies to the Magistrates' Court and the proceedings of that Court and the issue of process.
- (3) In punishing a person for a contempt of court under section 133 or 134 of the **Magistrates' Court Act 1989** (as applied by sub-section (2) of this section) the Court must not order that a person under the age of 18 years be committed to prison but instead be committed to—
  - (a) in the case of a child of or above the age of 15 years, a youth justice centre; or
  - (b) in the case of a child under the age of 15 years, a youth residential centre.

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**529. Recall and cancellation of warrant**

- (1) A warrant issued by a registrar, magistrate or bail justice may be recalled and cancelled by—
  - (a) that registrar, magistrate or bail justice; or
  - (b) if issued by a registrar, the registrar for the time being at the venue of the Court at which it was issued or except in the case of—
    - (i) a warrant issued in accordance with an order under section 378(1)(e); or
    - (ii) a warrant to seize property to satisfy a fine issued under Schedule 3—  
any other registrar; or
  - (c) a magistrate.
- (2) If a warrant has been recalled and cancelled under sub-section (1), a fresh warrant may be issued for the same purpose as that for which the recalled warrant was issued.
- (3) A warrant to imprison or detain in a youth justice centre for non-payment of a fine (whether issued before or after the commencement of this section) or a warrant referred to in sub-section (1)(b)(i) or (1)(b)(ii) is null and void if it has not been executed within the period of 3 years after a warrant of that type was first issued against the person named in the warrant for the purpose specified in the warrant.
- (4) If a warrant referred to in sub-section (3) becomes null and void under that sub-section, the fine in respect of which it was issued, together with any associated fees and costs, ceases to be enforceable or recoverable if no part of the fine had been paid before the date on which the warrant became null and void.



- (5) Nothing in sub-section (3) or (4) prevents the issue, with the leave of the Court, of a fresh warrant for the same purpose as that for which a warrant that has become null and void under sub-section (3) was issued.
- (6) Despite sub-section (3), if under sub-section (5) a fresh warrant is issued, the fine in respect of which it was issued, together with any associated fees and costs, again becomes enforceable or recoverable as if there had been no cessation.

**530. Power to adjourn proceeding**

- (1) Subject to this section, the Court may, on the application of a party to a proceeding or without any such application, adjourn the hearing of the proceeding—
  - (a) to such times and places; and
  - (b) for such purposes; and
  - (c) on such terms as to costs or otherwise—as it considers necessary or just in the circumstances.
- (2) Without limiting sub-section (1), the Court may, on adjourning the hearing of a proceeding in the Family Division, require the child or his or her parent to enter into (whether orally or in writing) an undertaking to appear, or to produce the child, before the Court on the resumption of the hearing of the proceeding.
- (3) If the Court has adjourned the hearing of a proceeding to a particular time, it may order that the hearing be held or resumed before that time.
- (4) The Court may only make an order under sub-section (3) with the consent of all the parties or on the application of a party who has given reasonable notice of the application to the other party or parties.

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- (5) If the Court has adjourned the hearing of a proceeding to a particular time and, in the case of a proceeding in the Criminal Division, has remanded the child in custody or, in the case of a proceeding in the Family Division, has placed the child in a secure welfare service, it may by order direct that the child be brought before, or be brought to another place specified in the order where facilities exist to enable the child (by audio visual link within the meaning of Part IIA of the **Evidence Act 1958**) to appear before, the Court at any time before then in order that the hearing may be held or resumed.
  - (6) The officer in charge of the remand centre or secure welfare service or other officer in whose custody the child is must obey an order under sub-section (5).
  - (7) A child being removed from a remand centre or a secure welfare service to be brought before the Court or to another place in compliance with an order under sub-section (5) is, during the time of removal, deemed to be in the legal custody of the member of the police force, protective services officer or other officer having the custody of the child.
  - (8) The Court must proceed with as much expedition as the requirements of this Act and a proper hearing of the proceeding permit.
  - (9) The Court should avoid the granting of adjournments in Family Division proceedings to the maximum extent possible.

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- (10) The Court must not grant an adjournment of a proceeding in the Family Division unless it is of the opinion that—
- (a) it is in the best interests of the child to do so; or
  - (b) there is some other cogent or substantial reason to do so.
- (11) In deciding whether and for how long to adjourn a proceeding under this section, the Court must have regard to the requirements in sub-sections (8) to (10).

**531. Power to dispense with service**

- (1) The Secretary may apply to the Family Division for an order dispensing with service on a specified individual of an application, document or order or all applications, documents and orders—
- (a) that is or are required, or that may be required, under Chapter 4 or Schedule 1 to be served on that person in respect of a specified child; or
  - (b) that is or are required, or that may be required, under this Chapter to be served on that person in relation to proceedings in the Family Division in respect of a specified child.
- (2) The Court may make the order sought if it is satisfied by oath or affidavit of the Secretary that—
- (a) the individual specified in the application cannot be located after the Secretary has made reasonable efforts to discover his or her location; or
  - (b) there are exceptional circumstances.
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**532. Witness summonses**

- (1) The Family Division (on the application of a party or without that application) or a registrar may issue the following witness summonses—
  - (a) summons to give evidence;
  - (b) summons to produce documents or things;
  - (c) summons to give evidence and produce documents or things.
- (2) Any party to a proceeding in the Family Division may apply for the issue of a witness summons.
- (3) A witness summons may be directed to any person who appears to the Court or registrar issuing the summons to be likely—
  - (a) to be able to give material evidence for any party to the proceeding or the Court; or
  - (b) to have in the person's possession or control any documents or things which may be relevant on the hearing of the proceeding; or
  - (c) both to be able to give material evidence and to have in the person's possession or control any relevant documents or things.
- (4) A witness summons must require the person to whom it is directed to attend at a specified venue of the Court on a certain date and at a certain time—
  - (a) to give evidence in the proceeding; or
  - (b) to produce for examination at the hearing any documents or things described in the summons that are in the person's possession or control; or

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- (c) both to give evidence and produce for examination any documents or things described in the summons that are in the person's possession or control.
- (5) A witness summons must be served on a person a reasonable time before the return date by—
- (a) delivering a true copy of the summons to the person personally; or
  - (b) leaving a true copy of the summons for the person at the person's last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.
- (6) If it appears to the Court, by evidence on oath or by affidavit, that service cannot be promptly effected, the Court may make an order for substituted service.
- (7) If the person to be served with the witness summons is a company or registered body (within the meaning of the Corporations Act), the summons may be served on that person in accordance with section 109X or 601CX of that Act, as the case requires.
- (8) A person to whom a witness summons is directed is, subject to sub-section (9), excused from complying with the summons unless conduct money is given or tendered to the person at the time of service of the summons or a reasonable time before the return date.
- (9) It is not necessary to give or tender conduct money to a person to whom a witness summons is directed if the person will not reasonably incur any expenses in complying with the summons.
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- (10) Unless the Court or the registrar issuing the summons otherwise directs, a summons to produce documents or things or a summons to give evidence and produce documents or things permits the person to whom the summons is directed, instead of producing the document or thing at the hearing, to produce it, together with a copy of the summons, to the appropriate registrar not later than 2 days before the first day on which production is required.
- (11) If a document or thing is produced to the appropriate registrar under sub-section (10), he or she must—
- (a) if requested to do so, give a receipt to the person producing the document or thing; and
  - (b) produce the document or thing as the Court directs.
- (12) The production of a document or thing to the appropriate registrar under sub-section (10) in answer to a summons to give evidence and produce documents or things does not remove the requirement on the person to whom the summons is directed to attend for the purpose of giving evidence.
- (13) The Court may direct that a witness who has attended before the Court in answer to a witness summons is entitled to receive from the party who applied for the issue of the witness summons conduct money for each day of attendance.
- (14) Nothing in this section—
- (a) affects Division 3A of Part III of the **Evidence Act 1958** relating to books of account; or
  - (b) derogates from the power of the Court to certify that a witness be paid his or her expenses of attending before the Court.
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**533. Court may reserve question of law for  
determination by Supreme Court**

- (1) If a question of law arises in a proceeding before the Court, the Court, of its own motion or on the application of any person who is a party to the proceeding, may, with the consent of the President, reserve the question in the form of a special case stated for the opinion of the Supreme Court.
  - (2) If a question of law has been reserved for the opinion of the Supreme Court under subsection (1), the Court cannot—
    - (a) finally determine the matter until the opinion of the Supreme Court has been given; or
    - (b) proceed in a manner or make a determination that is inconsistent with the opinion of the Supreme Court on the question of law.
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**PART 7.5—RESTRICTION ON PUBLICATION OF  
PROCEEDINGS**

**534. Restriction on publication of proceedings**

- (1) A person must not publish or cause to be published—
- (a) except with the permission of the President, a report of a proceeding in the Court or of a proceeding in any other court arising out of a proceeding in the Court that contains any particulars likely to lead to the identification of—
    - (i) the particular venue of the Children's Court, other than the Koori Court (Criminal Division), in which the proceeding was heard; or
    - (ii) a child or other party to the proceeding; or
    - (iii) a witness in the proceeding; or
  - (b) except with the permission of the President, a picture as being or including a picture of a child or other party to, or a witness in, a proceeding referred to in paragraph (a); or
  - (c) except with the permission of the President, or of the Secretary under sub-section (3), any matter that contains any particulars likely to lead to the identification of a child as being the subject of an order made by the Court.

**Penalty:**

- (a) In the case of a body corporate—500 penalty units;
- (b) In any other case—100 penalty units or imprisonment for 2 years.



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- (2) The Court in making an order may direct the Secretary not to grant permission under sub-section (3) with respect to the order.
  - (3) The Secretary may, in special circumstances, grant permission for the publication in relation to a child who is the subject of a custody to Secretary order, a guardianship to Secretary order or a long-term guardianship order of any matter that contains any particulars likely to lead to the identification of a child as being the subject of an order made by the Court.
  - (4) Without limiting the generality of sub-sections (1) and (3), the following particulars are deemed to be particulars likely to lead to the identification of a person—
    - (a) the name, title, pseudonym or alias of the person;
    - (b) the address of any premises at which the person resides or works, or the locality in which those premises are situated;
    - (c) the address of a school attended by the person or the locality in which the school is situated;
    - (d) the physical description or the style of dress of the person;
    - (e) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person;
    - (f) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;
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- (g) the recreational interests or the political, philosophical or religious beliefs or interests of the person;
  - (h) any real or personal property in which the person has an interest or with which the person is otherwise associated.
- (5) Sub-section (1) does not apply the publication of accounts of proceedings of the Court, where those accounts have been approved by the President.
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**PART 7.6—COURT OFFICERS**

**535. Principal registrar, registrars and deputy registrars**

- (1) There continues to be the following officers of the Court—
  - (a) a principal registrar employed under Part 3 of the **Public Administration Act 2004**;
  - (b) registrars;
  - (c) deputy registrars.
- (2) Any person who for the time being holds the office of registrar or deputy registrar of the Magistrates' Court also holds the office of registrar or deputy registrar (as the case requires) of the Children's Court.
- (3) The principal registrar, registrars and deputy registrars have the duties, powers and functions provided by this Act and the regulations.
- (4) The principal registrar may, by instrument, delegate to any registrar or class of registrar any function or power of the principal registrar under this Act or the regulations, except this power of delegation.
- (5) A deputy registrar may, subject to this Act and the regulations and to any directions of a registrar, exercise any of the powers or perform any of the functions of a registrar.

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**536. Appointment of Aboriginal elders or respected persons**

- (1) The Secretary to the Department of Justice may appoint a person who is a member of the Aboriginal community as an Aboriginal elder or respected person for the purpose of performing functions in relation to the Koori Court (Criminal Division) as set out in this Act.
- (2) An Aboriginal elder or respected person holds office for the period, and on the terms and conditions, determined by that Secretary and specified in the instrument of appointment.
- (3) An Aboriginal elder or respected person may resign from office by writing signed by him or her and delivered to that Secretary.

**537. Court register**

- (1) The principal registrar must cause a court register to be kept of all the orders of the Court and of such other matters as are directed by this Act to be entered in the court register.
- (2) An order made by the Court must be authenticated by the person who constituted the Court.
- (3) Any person may, with the approval of a magistrate and on payment of the prescribed fee, inspect that part of the court register that contains the final orders of the Court.
- (4) A party to a proceeding or such a party's legal practitioner may inspect without charge that part of the court register that relates to that proceeding.

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- (5) A document purporting to be an extract from the register and purporting to be signed by a registrar who certifies that in his or her opinion the extract is a true extract from the court register is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters appearing in the extract.

**538. Process**

- (1) Process may only be issued out of the Court by a registrar, except where otherwise provided by or under this or any other Act.
- (2) The principal registrar must, subject to the regulations, keep the original of all process issued out of the Court and must issue or cause to be issued as many copies as are necessary.
- (3) Process issued by a registrar may be recalled and cancelled by—
- (a) that registrar; or
  - (b) if issued by a registrar, the registrar for the time being at the venue of the Court at which it was issued; or
  - (c) if that registrar is dead or has ceased to hold office or cannot be located, a magistrate.
- (4) Service of any process issued out of the Court may be proved in any manner in which service of a summons to answer to a charge may be proved under section 35 of the **Magistrates' Court Act 1989**.

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**539. Powers of registrar**

- (1) A registrar has the following powers in addition to those conferred on him or her by this or any other Act—
- (a) power to issue any process out of the Court;
  - (b) power to administer an oath;
  - (c) with the consent of the parties to a proceeding in the Family Division, power to extend an interim accommodation order of a kind referred to in section 263(1)(a) or 263(1)(b) made in respect of a child appearing on a return date in relation to the proceeding;
  - (d) power to extend the bail of a person appearing on a return date in relation to a criminal proceeding in respect of which the person has been granted bail;
  - (e) power to endorse a warrant to arrest in accordance with section 62 of the **Magistrates' Court Act 1989**.
- (2) Sub-section (1)(c) does not empower a registrar to vary the amount or conditions of bail.

**540. Fees**

A registrar must demand and receive the prescribed fees.

**541. Extortion by and impersonation of court officials**

- (1) A court official must not extort, demand, take or accept from any person any unauthorised fee or reward.

Penalty: 60 penalty units.

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- (2) A court official must not pretend to be the holder of an office or position in or in relation to the Court which he or she does not hold.

Penalty: 60 penalty units.

- (3) A person who is not a court official must not pretend to be a court official.

Penalty: 60 penalty units.

**542. Protection of registrars**

The principal registrar, a registrar and a deputy registrar have in the performance of their duties the same protection and immunity as a magistrate has in the performance of his or her duties.

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**PART 7.7—COURT SERVICES**

**543. Youth justice officers**

- (1) The Secretary—
  - (a) has the duty of generally supervising all probation work under this Act; and
  - (b) has the powers and duties prescribed by or under this Act.
- (2) There are to be employed under Part 3 of the **Public Administration Act 2004** as many youth justice officers for the Court as are necessary to be employed.
- (3) A youth justice officer employed under subsection (2) has the powers and duties prescribed by or under this Act.
- (4) The Secretary may, by instrument published in the Government Gazette, appoint as an honorary youth justice officer any fit and proper person who is willing to exercise and perform the powers and duties given to honorary youth justice officers by or under this Act.
- (5) An honorary youth justice officer is not in respect of the office of honorary youth justice officer subject to the **Public Administration Act 2004**.
- (6) A youth justice officer is, in relation to a probation order, subject to the direction of the Court but otherwise he or she is subject to the direction and control of the Secretary.
- (7) The Secretary must co-ordinate the activities of youth justice officers.



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**544. Duties of youth justice officers**

- (1) It is the duty of a youth justice officer if required by the Criminal Division or the Secretary—
  - (a) to give the Court any assistance that it requires in relation to a child who has been found guilty of an offence, including preparing and furnishing it with a pre-sentence report prepared in accordance with section 572; or
  - (b) to visit and supervise any child as directed by the Court and in consultation and co-operation with the child's parents; or
  - (c) to perform such other duties as are prescribed by or under this or any other Act.
- (2) All registrars of the Court and all members of the police force must, in the prescribed manner, supply the Secretary or a youth justice officer nominated by the Secretary with any information concerning charges before the Criminal Division that are necessary for the purposes of this Act.
- (3) A youth justice officer must carry out any inquiries required under this section in such manner as to cause as little prejudice as possible to the reputations of the child concerned and of his or her parents.
- (4) A written report prepared under this section must not be tendered to or received by the Court until the Court is satisfied that the child is guilty of the offence charged.

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**545. Children's Court Liaison Office**

- (1) There continues to be a Children's Court Liaison Office.
- (2) Subject to the **Public Administration Act 2004**, there are to be appointed to the Children's Court Liaison Office as many court liaison officers and other persons as are necessary for the proper functioning of the Office.
- (3) The Children's Court Liaison Office has the following functions—
  - (a) to provide information and advice about the Court to children, families and the community;
  - (b) to co-ordinate the provision to the Court of any reports that are required;
  - (c) to collect and keep general information and statistics on the operation of the Court;
  - (d) to provide general advice and assistance to the Court;
  - (e) to undertake any research that is required to enable it to carry out its functions.

**546. Children's Court Clinic**

- (1) The Secretary to the Department of Justice may continue and maintain a Children's Court Clinic.
- (2) The Children's Court Clinic has the following functions—
  - (a) to make clinical assessments of children;
  - (b) to submit reports to courts and other bodies;
  - (c) to provide clinical services to children and their families.

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- (3) In addition to the functions mentioned in subsection (2) the Children's Court Clinic has any other functions that are prescribed.
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**PART 7.8—REPORTS TO THE COURT**

**Division 1—General**

**547. Reports to which Part applies**

This Part applies to the following types of reports—

- (a) protection reports;
- (b) disposition reports;
- (c) additional reports;
- (d) therapeutic treatment application reports;
- (e) therapeutic treatment (placement) reports;
- (f) pre-sentence reports;
- (g) group conference reports;
- (h) progress reports.

**548. Notification of requirement to submit report**

If the Court orders the Secretary or the Secretary to the Department of Justice or any other person to submit a report to which this Part applies, the registrar at the venue of the Court at which the order is made must, within one working day after the making of the order—

- (a) orally notify him or her of the making of the order; and
- (b) forward a copy of the order to him or her.

**549. Warning to be given to persons being interviewed**

The author of a report to which this Part applies must at the beginning of any interview being conducted by him or her in the course of preparing the report inform the person being interviewed that any information that he or she gives may be included in the report.

**550. Attendance at Court of author of report**

- (1) The author of a report to which this Part applies may be required to attend to give evidence at the hearing of the proceeding to which the report is relevant by a notice given in accordance with sub-section (2) by—
    - (a) the child in respect of whom the report has been prepared; or
    - (b) a parent of that child; or
    - (c) the Secretary; or
    - (d) the Court.
  - (2) A notice under sub-section (1) must be—
    - (a) in writing; and
    - (b) filed with the appropriate registrar or a court liaison officer at the proper venue of the Court as soon as possible and, if practicable, not later than 2 working days before the hearing.
  - (3) On the filing of a notice under sub-section (1), the registrar or court liaison officer must immediately notify the author of the report that his or her attendance is required on the return date.
  - (4) A person is guilty of contempt of court if, being the author of a report who has been required to attend the Court under sub-section (1), he or she fails, without sufficient excuse, to attend as required.
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- (5) The author of a report who has been required under sub-section (1) by the child or a parent of the child or the Secretary to attend at the hearing of a proceeding must, if required by the child or the parent or the Secretary (as the case requires), be called as a witness and may be cross-examined on the contents of the report.

**551. Disputed report**

- (1) If any matter in a report to which this Part applies is disputed by the child who is the subject of the report or, if the proceeding is in the Family Division, by a parent of the child, the Court must not take the disputed matter into consideration when determining the proceeding unless satisfied that the matter is true—
- (a) in the case of a proceeding in the Family Division, on the balance of probabilities; or
  - (b) in the case of a proceeding in the Criminal Division, beyond reasonable doubt.
- (2) If—
- (a) a report to which this Part applies, or any part of it, is disputed by the child who is the subject of the report or, if the proceeding is in the Family Division, by a parent of the child; and
  - (b) the author of the report does not attend the hearing of the proceeding despite having been required to attend under section 550(1)—

the Court must not take the report or the part in dispute into consideration when determining the proceeding unless the child or parent (as the case requires) consents to the report or the part in dispute being admitted into evidence.

**552. Confidentiality of reports**

- (1) A person who prepares or receives or otherwise is given or has access to a report to which this Part applies, or any part of such a report, must not, without the consent of the child who is the subject of the report or that child's parent, disclose any information contained in that report or part report (as the case requires) to any person who is not entitled to receive or have access to that report or that part (as the case requires).

Penalty: 10 penalty units.

- (2) Sub-section (1) is subject to any contrary direction by the Court.
- (3) Sub-section (1) does not prevent—
- (a) the Secretary; or
  - (b) a legal practitioner representing the Secretary or a protective intervener; or
  - (c) an employee representing the Secretary or his or her delegate in accordance with section 215(3)(c); or
  - (d) an honorary youth justice officer or an honorary youth parole officer to the extent necessary in connection with the exercise of his or her powers or the performance of his or her duties—

from being given or having access to a report to which this Part applies, or any part of such a report.

- (4) A reference in sub-section (1) to a report includes a reference to a copy of a report.

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**Division 2—Protection Reports**

**553. Protection reports**

If the Family Division requires further information to enable it to determine a protection application, it may order the Secretary to submit to the Court a protection report concerning the child who is the subject of the application.

**554. Secretary to forward report to Court**

If the Court orders the Secretary to submit a protection report to the Court, he or she must do so within 21 days and not less than 3 working days before the hearing.

**555. Content of protection report**

A protection report must only deal with matters that are relevant to the question of whether the child is in need of protection.

**556. Access to protection report**

- (1) If the Court orders the Secretary to prepare a protection report, the Secretary must, subject to sub-section (2), cause a copy of a protection report to be given before the hearing of the proceeding to each of the following—
    - (a) the child who is the subject of the report;
    - (b) that child's parent;
    - (c) the legal practitioners representing that child;
    - (d) the legal practitioners representing that child's parent;
    - (e) the protective intervener who made the protection application, if the protective intervener is not the Secretary;
    - (f) a party to the proceeding;
    - (g) any other person specified by the Court.
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- (2) The Court may by order restrict access to the whole of a protection report, or a part of the report specified in the order, by a person mentioned in sub-section (1)(a), (1)(b), (1)(f) or (1)(g) and specified in the order, if the Court is satisfied that information in the report, or the part of the report, may be prejudicial to the physical or mental health of the child or a parent of the child.
- (3) An application for an order under sub-section (2) may be made by—
  - (a) the Secretary; or
  - (b) a person mentioned in sub-section (1); or
  - (c) with the leave of the Court, any other person—and must be made not less than 2 working days before the hearing of the proceeding.
- (4) If the Court makes an order under sub-section (2), it must cause a copy of the order to be served on the persons mentioned in sub-section (1).
- (5) A person who receives a copy of a protection report or of part of a protection report under this section (part or all of which was not given to the child who is the subject of the report or to that child's parent on account of an order made under sub-section (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report or the part of it (as the case requires) that was not given to that child or parent.

Penalty: 10 penalty units.

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**Division 3—Disposition Reports and Additional Reports**

**557. Disposition reports**

- (1) The Secretary must prepare and submit to the Family Division a disposition report if—
  - (a) the Court becomes satisfied that—
    - (i) a child is in need of protection; or
    - (ii) there is a substantial and presently irreconcilable difference between the person who has custody of a child and the child to such an extent that the care and control of the child are likely to be seriously disrupted; or
    - (iii) there has been a failure to comply with a supervision order, a supervised custody order or an interim protection order; or
  - (b) the Secretary applies for a permanent care order; or
  - (c) the Secretary applies, or is notified that a person has applied—
    - (i) for the variation or revocation of a supervision order, a custody to third party order, a supervised custody order, a custody to Secretary order, an interim protection order or a permanent care order; or
    - (ii) for the extension of a supervision order, a supervised custody order, a custody to Secretary order or a guardianship to Secretary order; or
    - (iii) for the revocation of a guardianship to Secretary order or a long-term guardianship to Secretary order; or

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- (d) an interim protection order has expired or is about to expire; or
  - (e) the Court orders the Secretary to do so.
- (2) Unless the Court otherwise orders, the Secretary is not required under sub-section (1)(a)(i) or (1)(a)(ii) to prepare and submit to the Court a disposition report if the Court states that it does not propose to make a protection order or that it only proposes to make an order requiring a person to give an undertaking.

**558. Content of disposition report**

A disposition report must include—

- (a) the draft case plan, if any, prepared for the child; and
- (b) recommendations, where appropriate, concerning the order which the Secretary believes the Court ought to make and concerning the provision of services to the child and the child's family; and
- (c) if the report recommends that the child be removed from the custody or guardianship of his or her parent, a statement setting out the steps taken by the Secretary to provide the services necessary to enable the child to remain in the custody or under the guardianship of the parent; and
- (d) any other information—
  - (i) that the Court directs to be included; or
  - (ii) that the regulations require to be included.

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**559. Access to disposition report**

- (1) If a disposition report is required under section 557(1) or the Court orders a disposition report, the Secretary must, subject to sub-section (2), cause a copy of the disposition report to be given before the hearing of the proceeding to each of the following—
  - (a) the child who is the subject of the report;
  - (b) that child's parent;
  - (c) the legal practitioners representing that child;
  - (d) the legal practitioners representing that child's parent;
  - (e) the protective intervener who made the protection application, if the protective intervener is not the Secretary;
  - (f) a party to the proceeding;
  - (g) any other person specified by the Court.
- (2) The Court may by order restrict access to the whole of a disposition report, or a part of the report specified in the order, by a person mentioned in sub-section (1)(a), (1)(b), (1)(f) or (1)(g) and specified in the order, if the Court is satisfied that information in the report, or the part of the report, may be prejudicial to the physical or mental health of the child or a parent of the child.
- (3) An application for an order under sub-section (2) may be made by—
  - (a) the Secretary; or
  - (b) a person mentioned in sub-section (1); or
  - (c) with the leave of the Court, any other person—

and must be made not less than 2 working days before the hearing of the proceeding.

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- (4) If the Court makes an order under sub-section (2), it must cause a copy of the order to be served on the persons mentioned in sub-section (1).
- (5) A person who receives a copy of a disposition report or of part of a disposition report under this section (part or all of which was not given to the child who is the subject of the report or to that child's parent on account of an order made under sub-section (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report or the part of it (as the case requires) that was not given to that child or parent.

Penalty: 10 penalty units.

**560. Additional report**

If in any proceeding in which a disposition report is required under section 557(1) the Family Division is of the opinion that an additional report is necessary to enable it to determine the proceeding, it may order the preparation and submission to the Court of an additional report by—

- (a) the Secretary; or
- (b) the Secretary to the Department of Justice; or
- (c) another person specified by the Court.

**561. Access to additional report**

- (1) If the Court orders an additional report from a person other than the Secretary to the Department of Justice, the author of the report must, subject to sub-section (2), within 21 days and not less than 3 working days before the hearing forward the report to the proper venue of the Court and a copy to each of the following—
  - (a) the child who is the subject of the report; and

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- (b) that child's parent; and
  - (c) the legal practitioners representing that child; and
  - (d) the legal practitioners representing that child's parent; and
  - (e) the Secretary, if the Secretary is not the author of the report; and
  - (f) a party to the proceeding; and
  - (g) any other person specified by the Court.
- (2) The author of a report is not under sub-section (1) required to forward copies of the report in accordance with paragraph (a), (b), (f) or (g) of that sub-section if—
- (a) he or she is of the opinion that information contained in the report may be prejudicial to the physical or mental health of the child or a parent of the child; or
  - (b) the child or a parent of the child or another party to the proceeding notifies him or her of his or her objection to the forwarding of copies of the report.
- (3) If because of sub-section (2) the author of a report is not required to forward a copy of the report to a person in accordance with sub-section (1), he or she may forward to that person a copy of part of the report.
- (4) If because of sub-section (2) the author of a report does not forward copies of the report in accordance with sub-section (1)(a), (1)(b), (1)(f) or (1)(g)—
- (a) he or she must inform the appropriate registrar or the other persons referred to in that sub-section of that fact; and
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- (b) the Court may by order direct the appropriate registrar to forward a copy of the report or of a specified part of the report, together with a copy of the order, to a person named or described in the order as soon as possible and before the hearing.
- (5) A person who receives a copy of a report or of part of a report under this section (part or all of which was not forwarded to the child who is the subject of the report or to that child's parent because of sub-section (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report or the part of it (as the case requires) that was not forwarded to that child or parent.

Penalty: 10 penalty units.

**562. Access to additional reports prepared by Secretary to Department of Justice**

- (1) If the Court orders an additional report from the Secretary to the Department of Justice, the Secretary to the Department of Justice must within 21 days and not less than 3 working days before the hearing forward the report to the proper venue of the Court.
- (2) If the Secretary to the Department of Justice is of the opinion that information contained in the report will be or may be prejudicial to the physical or mental health of the child or a parent of the child, the Secretary to the Department of Justice may forward a statement to the Court to that effect with the report.

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- (3) Subject to sub-section (4), the Court must release a copy of the report to each of the following—
- (a) the child who is the subject of the report; and
  - (b) that child's parent; and
  - (c) the Secretary; and
  - (d) the legal practitioners representing that child; and
  - (e) the legal practitioners representing that child's parent; and
  - (f) the legal representative of the Secretary or an employee authorised by the Secretary to appear in proceedings before the Family Division; and
  - (g) a party to the proceeding; and
  - (h) any other person specified by the Court.
- (4) Despite sub-section (3), if after having regard to the views of the parties to the proceedings, and any statement of the Secretary to the Department of Justice under sub-section (2)—
- (a) in the case of the release of the report to the Secretary, the Court is satisfied that the release of the report or a particular part of the report to the Secretary may cause significant psychological harm to the child, the Court may—
    - (i) refuse to release the report or part of the report to the Secretary; or
    - (ii) determine a later time for the release of the report or part of the report to the Secretary; or
    - (iii) release the report to the Secretary;
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- (b) in the case of the release of the report to any other person, the Court is satisfied that the release of the report or a particular part of the report to the person will be prejudicial to the development or mental health of the child, the physical or mental health of the parent or the physical or mental health of that person or any other party, the Court may—
  - (i) refuse to release the report or part of the report to the person; or
  - (ii) determine a later time for the release of the report or part of the report to the person; or
  - (iii) release the report to the person.
- (5) The Court may impose conditions in respect of the release of a report under this section.

**Division 4—Therapeutic Treatment Application Reports**

**563. Therapeutic treatment application reports**

If the Family Division requires further information to enable it to determine an application for a therapeutic treatment order or an application for a variation, revocation or extension of a therapeutic treatment order, it may order the Secretary to submit to the Court a therapeutic treatment application report concerning the child who is the subject of the application.

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**564. Content of therapeutic treatment application report**

A therapeutic treatment application report must include—

- (a) information sufficient to assist the Court to determine whether the order should be made; and
- (b) recommendations concerning the order that the Secretary believes the Court ought to make, including, if appropriate, the conditions of that order; and
- (c) except in the case of an application for revocation of a therapeutic treatment order, a statement by the Secretary that therapeutic treatment is available for the child; and
- (d) any other information that the Court directs to be included.

**565. Secretary to forward report to Court**

If the Court orders the Secretary to submit a therapeutic treatment application report to the Court, he or she must do so within 21 days and not less than 3 working days before the hearing.

**566. Access to therapeutic treatment application report**

- (1) If the Court orders the Secretary to prepare a therapeutic treatment application report, the Secretary must, subject to sub-section (2), cause a copy of a therapeutic treatment application report to be given before the hearing of the proceeding to each of the following—
  - (a) the child who is the subject of the report;
  - (b) that child's parent;
  - (c) the legal practitioner representing that child;

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- (d) the legal practitioner representing that child's parent;
  - (e) a party to the proceeding;
  - (f) any other person specified by the Court.
- (2) The Court may by order restrict access to the whole of a therapeutic treatment application report, or a part of the report specified in the order, by a person mentioned in sub-section (1)(a), (1)(b), 1(e) or (1)(f) and specified in the order, if the Court is satisfied that information in the report, or the part of the report, may be prejudicial to the physical or mental health of the child or a parent of the child.
- (3) An application for an order under sub-section (2) may be made by—
  - (a) the Secretary; or
  - (b) a party to the proceeding; or
  - (c) a person mentioned in sub-section (1); or
  - (d) with the leave of the Court, any other person—and must be made not less than 2 working days before the hearing of the proceeding.
- (4) If the Court makes an order under sub-section (2), it must cause a copy of the order to be served on the persons mentioned in sub-section (1).
- (5) A person who receives a copy of a therapeutic treatment application report or of part of a therapeutic treatment application report under this section (part or all of which was not given to the child who is the subject of the report or to that child's parent on account of an order made under sub-section (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report or

the part of it (as the case requires) that was not given to that child or parent.

Penalty: 10 penalty units.

## **Division 5—Therapeutic Treatment (Placement) Reports**

### **567. Therapeutic treatment (placement) reports**

If the Family Division requires further information to enable it to determine an application for a therapeutic treatment (placement) order or an application for a variation, revocation or extension of a therapeutic treatment (placement) order, it may order the Secretary to submit to the Court a therapeutic treatment (placement) report concerning the child who is the subject of the application.

### **568. Content of therapeutic treatment (placement) report**

A therapeutic treatment (placement) order report must include—

- (a) information sufficient to assist the Court to determine whether the order should be made; and
- (b) recommendations concerning the order that the Secretary believes the Court ought to make, including, if appropriate, the conditions of that order; and
- (c) any other information that the Court directs to be included.

### **569. Secretary to forward report to Court**

If the Court orders the Secretary to submit a therapeutic treatment (placement) report to the Court, he or she must do so within 21 days and not less than 3 working days before the hearing.

**570. Access to therapeutic treatment (placement) report**

- (1) If the Court orders the Secretary to prepare a therapeutic treatment (placement) report, the Secretary must, subject to sub-section (2), cause a copy of a therapeutic treatment (placement) report to be given before the hearing of the proceeding to each of the following—
  - (a) the child who is the subject of the report;
  - (b) that child's parent;
  - (c) the legal practitioners representing that child;
  - (d) the legal practitioners representing that child's parent;
  - (e) a party to the proceeding;
  - (f) any other person specified by the Court.
- (2) The Court may by order restrict access to the whole of a therapeutic treatment (placement) report, or a part of the report specified in the order, by a person mentioned in sub-section (1)(a), (1)(b), (1)(e) or (1)(f) and specified in the order, if the Court is satisfied that information in the report, or the part of the report, may be prejudicial to the physical or mental health of the child or a parent of the child.
- (3) An application for an order under sub-section (2) may be made by—
  - (a) the Secretary; or
  - (b) a party to the proceeding; or
  - (c) a person mentioned in sub-section (1); or
  - (d) with the leave of the Court, any other person—

and must be made not less than 2 working days before the hearing of the proceeding.

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- (4) If the Court makes an order under sub-section (2), it must cause a copy of the order to be served on the persons mentioned in sub-section (1).
  - (5) A person who receives a copy of a therapeutic treatment (placement) report or of part of a therapeutic treatment (placement) report under this section (part or all of which was not given to the child who is the subject of the report or to that child's parent on account of an order made under sub-section (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report or the part of it (as the case requires) that was not given to that child or parent.

Penalty: 10 penalty units.

### **Division 6—Pre-Sentence Reports**

#### **571. Court may order pre-sentence report**

- (1) If the Criminal Division finds a child guilty of an offence it may, before passing sentence, order a pre-sentence report in respect of the child and adjourn the proceeding to enable the report to be prepared.
- (2) The Criminal Division must order a pre-sentence report if it is considering making a youth residential centre order or a youth justice centre order.
- (3) If it appears to the Court that a child found guilty of an offence is intellectually disabled, the Court must, before passing sentence, order a pre-sentence report in respect of the child and adjourn the proceeding to enable the report to be prepared.

- (4) If a declaration of eligibility in respect of the child has been issued under section 8 of the **Intellectually Disabled Persons' Services Act 1986**, a pre-sentence report prepared in accordance with an order under sub-section (3) must include a copy of that declaration and specify services which are available under that Act and appropriate for the child and which are designed to reduce the likelihood of the child committing further offences.

**572. Who prepares pre-sentence reports?**

A pre-sentence report must be prepared by—

- (a) the Secretary; or
- (b) the Secretary to the Department of Justice.

**573. Contents of pre-sentence report**

- (1) A pre-sentence report may set out all or any of the following matters but no others—
- (a) the sources of information on which the report is based;
  - (b) the circumstances of the offence of which the child has been found guilty;
  - (c) any previous sentencing orders in respect of the child involving the Secretary;
  - (d) the family circumstances of the child;
  - (e) the education of the child;
  - (f) the employment history of the child;
  - (g) the recreation and leisure activities of the child;
  - (h) medical and health matters relating to the child.

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- (2) Any statement made in a pre-sentence report must be relevant—
- (a) to the offence of which the child has been found guilty in the proceeding before the Court; and
  - (b) to the sentencing order (if any) recommended in the report.
- (3) The author of a pre-sentence report may, in his or her report, recommend an appropriate sentencing order for the child who is the subject of the report.
- (4) If a recommendation is made under subsection (3) for a probation order, a youth supervision order or a youth attendance order, it must state—
- (a) whether, and if so where, the recommended service or program is available; and
  - (b) the proposed date of commencement of the child's participation in the recommended service or program; and
  - (c) the child's suitability for the recommended service or program; and
  - (d) the child's attitude towards the recommended service or program.

**574. Pre-sentence report to be filed with registrar**

A pre-sentence report must be filed with the appropriate registrar at least 4 working days before the return date and in any event no later than 21 days after the report was ordered by the Court.



**575. Access to pre-sentence reports**

- (1) The author of a pre-sentence report must, within the period referred to in section 574, send a copy of the report to—
    - (a) the child who is the subject of the report; and
    - (b) the legal practitioners representing the child; and
    - (c) any other person whom the Court has ordered is to receive a copy of the report.
  - (2) The author of a pre-sentence report is not under sub-section (1) required to send copies of the report in accordance with paragraph (a) or (c) of that sub-section if—
    - (a) he or she is of the opinion that information contained in the report may be prejudicial to the physical or mental health of the child; or
    - (b) the child notifies him or her of the child's objection to the forwarding of copies of the report.
  - (3) If because of sub-section (2) the author of a pre-sentence report is not required to send a copy of the report to a person in accordance with sub-section (1), he or she may forward to that person a copy of part of the report.
  - (4) If because of sub-section (2) the author of a pre-sentence report does not send copies of the report in accordance with paragraph (a) or (c) of sub-section (1)—
    - (a) he or she must inform the appropriate registrar of that fact; and
    - (b) the Court may by order direct the appropriate registrar to forward a copy of the report or of a specified part of the report, together with a copy of the order, to a person named or
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described in the order as soon as possible  
and before the hearing.

- (5) A person who receives a copy of a pre-sentence report or of part of a pre-sentence report under this section (part or all of which was not sent to the child who is the subject of the report because of sub-section (2)) must not, unless otherwise directed by the Court, disclose to that child any information contained in the report or the part of it (as the case requires) that was not sent to that child.

Penalty: 10 penalty units.

### **Division 7—Group Conference Reports**

#### **576. Group conference report**

If the Criminal Division finds a child guilty of an offence and defers sentencing the child for the purposes of a group conference, it must order a group conference report.

#### **577. Who prepares group conference reports?**

A group conference report must be prepared by the convenor of the group conference.

#### **578. Content of group conference report**

A group conference report must set out the following matters—

- (a) the child's participation in the group conference;
- (b) the results of the group conference including the outcome plan (if any) agreed to by the child;
- (c) any other matters that the Court specified to be addressed in the group conference.

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**579. Group conference report to be filed with registrar**

A group conference report must be filed with the appropriate registrar at least 4 working days before the return date and in any event no later than the date fixed by the Court.

**580. Access to group conference report**

The author of a group conference report must, within the period referred to in section 579 send a copy of the report to—

- (a) the child who is the subject of the report; and
  - (b) the legal practitioner representing the child;  
and
  - (c) any other person whom the Court has ordered is to receive a copy of the report.
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**PART 7.9—CHILDREN AND YOUNG PERSONS  
INFRINGEMENT NOTICE SYSTEM**

**581. CAYPINS procedure**

- (1) The procedure set out in Schedule 3 may be used instead of commencing a proceeding against a child for—
  - (a) an offence for which an infringement notice or a penalty notice within the meaning of Schedule 3 could be issued; or
  - (b) a prescribed offence within the meaning of that Schedule.
- (2) If a child may be prosecuted for an offence in respect of which an infringement notice may be issued—
  - (a) a reference in an Act to enforcement under Schedule 7 to the **Magistrates' Court Act 1989** includes a reference to enforcement under Schedule 3 to the **Children, Youth and Families Act 2005**; and
  - (b) a reference to a courtesy letter served under Schedule 7 to the **Magistrates' Court Act 1989** includes a reference to a courtesy letter served under Schedule 3 to the **Children, Youth and Families Act 2005**.

**582. Certain agencies may give information for enforcement purposes**

- (1) In this section, "**specified agency**" means a person or body—
  - (a) that holds information that may be of use in the enforcement of court orders and fines; and

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(b) that is stated by regulations made for the purposes of this section to be a specified agency—

but does not include a person or body listed in section 90A(1) of the **Melbourne City Link Act 1995**.

- (2) Words and expressions used in this section have the same meanings as in section 124A of the **Magistrates' Court Act 1989** and Schedule 3 to this Act.
  - (3) A registrar of the Court, the sheriff and any contractor or sub-contractor supporting the functions of the sheriff may, for the purpose of the enforcement of court orders and fines, request information that may assist in carrying out that purpose from any person or body.
  - (4) On the written request of a registrar of the Court, the sheriff or any contractor or sub-contractor supporting the functions of the sheriff, a specified agency may give the person or body making the request access to any information held by the agency that may be of use in the enforcement of court orders and fines.
  - (5) A person who obtains access to any information as a result of a request made under this section—
    - (a) may use the information to enforce court orders and fines; but
    - (b) is otherwise subject to all the requirements and restrictions concerning the use and disclosure of the information that apply to the person who provided, or granted access to, the information in response to the request.
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**PART 7.10—GENERAL**

**583. Witness who has previously appeared in Children's Court**

(1) If a person is called as a witness in any legal proceeding within the meaning of section 3 of the **Evidence Act 1958** (other than a proceeding in the Children's Court) and the person—

- (a) has appeared before the Court charged with an offence; or
- (b) has been the subject of an application to the Family Division for a protection order—

no question regarding—

- (c) that charge or any order made in respect of that charge; or
- (d) that application or any appearance of the person before the Court in respect of, or consequent on, that application—

is to be asked of the person after the end of 3 years from the date of the charge, application or appearance (whichever last happens).

(2) Sub-section (1) does not apply if—

- (a) the question is relevant to the facts in issue in the proceeding or to matters necessary to be known in order to determine whether or not those facts existed; or
- (b) the Court considers that the interests of justice require that the question be asked.

(3) A person referred to in sub-section (1) must not be asked any question about any application made to the Family Division other than an application for a protection order.

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**584. Defendant or other person who has previously appeared in Children's Court**

(1) If—

- (a) a person has appeared before the Court charged with an offence; or
- (b) an application has been made to the Family Division for a protection order in respect of the person—

the fact of the charge or of any order made in respect of the charge or of the application or of any appearance of the person before the Court in respect of, or consequent on, the application must not be given in evidence against the person in any legal proceeding within the meaning of section 3 of the **Evidence Act 1958** (other than a proceeding in the Children's Court) after the end of 3 years from the date of the charge, application or appearance (whichever last happens).

(2) Sub-section (1) does not apply if that fact is relevant—

- (a) to the facts in issue in the proceeding; or
- (b) to matters necessary to be known in order to determine whether or not those facts existed.

(3) Despite sub-section (1), if a person is found guilty by a court of an offence, evidence may be given to the court of an order of the Criminal Division in relation to an offence committed by the person, if the order was made not more than 10 years before the hearing at which it is sought to be proved.

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**585. Transfer of proceedings from Magistrates' Court to Children's Court**

- (1) If before or during the hearing of a charge for an offence it appears to the Magistrates' Court that the defendant is a child or was a child when the proceeding for the offence was commenced in the Magistrates' Court, the Magistrates' Court must discontinue the proceeding and order that it be transferred to the Children's Court and in the meantime it may—
  - (a) permit the defendant to go at large; or
  - (b) grant the defendant bail conditioned for the appearance of the defendant before the Children's Court at the time and place at which the proceeding is to be heard; or
  - (c) remand the defendant in a remand centre until the proceeding is heard by the Children's Court.
- (2) In exercising a power conferred by sub-section (1)(b) or (1)(c) the Magistrates' Court must exercise the power in accordance with this Act as if it were the Children's Court.

**586. Supreme Court or County Court may exercise sentencing powers of Children's Court**

The powers that the Supreme Court or the County Court may exercise in sentencing a child for an indictable offence include the power to make any sentencing order which the Children's Court may make under this Act but an order that the child be detained in a youth residential centre or youth justice centre must be made in accordance with Subdivision (4) of Division 2 of Part 3 of the **Sentencing Act 1991**.



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**587. Notice required to be filed if child is taken into safe custody or apprehended without warrant**

If under the provisions of this Act (other than section 172(3)) a child is taken into safe custody or apprehended without a warrant and that child is required to be brought before the Court, the person who took the child into safe custody or apprehended the child must file with the appropriate registrar as soon as possible after doing so and before the child is brought before the Court a notice setting out the grounds for taking the child into safe custody or apprehending the child.

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**PART 7.11—RULES**

**588. Rules**

- (1) The President together with 2 or more magistrates for the Court may jointly make Rules for or with respect to the prescription of forms for the purposes of the Family Division of the Court.
- (2) A rule under sub-section (1) must not be inconsistent with a provision made by or under this or any other Act, whether the provision was made before or after the making of the rule.

**589. Rules of court**

The President together with 2 or more magistrates for the Court may jointly make rules of court for or with respect to—

- (a) requirements for the purposes of Part IIA of the **Evidence Act 1958** for or with respect to—
  - (i) the form of audio visual or audio link;
  - (ii) the equipment, or class of equipment, used to establish the link;
  - (iii) the layout of cameras;
  - (iv) the standard, or speed, of transmission;
  - (v) the quality of communication;
  - (vi) any other matter relating to the link;
- (b) applications to the Court under Division 2 or 3 of Part IIA of the **Evidence Act 1958**;
- (c) any matter relating to the practice and procedure of the Court under Part IIA of the **Evidence Act 1958**.

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**590. Rules of court—Koori Court (Criminal Division)**

The President together with 2 or more magistrates for the Court may jointly make rules of court for or with respect to—

- (a) any matter relating to the practice and procedure of the Koori Court (Criminal Division); and
- (b) the transfer of proceedings to and from the Koori Court (Criminal Division).

**591. Disallowance**

The power of the President together with 2 or more magistrates for the Court to jointly make rules of court, whether that power is conferred by this or any other Act, is subject to the rules being disallowed by a House of the Parliament in accordance with section 23 of the **Subordinate Legislation Act 1994**.

**592. Practice notes**

- (1) The President may from time to time issue practice directions, statements or notes for the Court in relation to proceedings in the Family Division or the Criminal Division or any class of proceeding in the Family Division or the Criminal Division or in relation to the exercise by a registrar of any jurisdiction, power or authority vested in the registrar as registrar under Schedule 3.
  - (2) Practice directions, statements or notes issued under sub-section (1) must not be inconsistent with any provision made by or under this or any other Act.
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## **CHAPTER 8—GENERAL**

### **PART 8.1—SERVICE OF DOCUMENTS**

#### **593. Service of documents**

- (1) If by or under this Act a person is required to serve a document and no provision is made, other than in this section, as to how the document is to be served, the document must be served on the person to be served—
  - (a) by delivering a true copy of the document to that person personally; or
  - (b) by sending by registered post a true copy of the document addressed to that person at that person's last known place of residence or business; or
  - (c) by leaving a true copy of the document for that person at that person's last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.
- (2) If it appears to the Court, by evidence on oath or by affidavit, that service cannot be promptly effected, the Court may make an order for substituted service.
- (3) If the person to be served is a company or registered body (within the meaning of the Corporations Act), the document may be served on that person in accordance with section 109X or 601CX of that Act, as the case requires.

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**594. Service on parent or child or other person**

If this Act requires a notice of an application or hearing to be served on a child or a parent of a child or other person in accordance with this section, the notice may be served—

- (a) by posting, not less than 14 days before the hearing date stated in the notice, a true copy of the notice addressed to the parent or the child or the person (as the case requires) at the last known place of residence or business of the parent or the child or the person; or
- (b) by delivering, not less than 5 days before the hearing date stated in the notice, a true copy of the notice to the parent or the child or the person (as the case requires); or
- (c) by leaving, not less than 5 days before the hearing date stated in the notice, a true copy of the notice for the parent or the child or the person (as the case requires) at the last known place of residence or business of the parent or the child or the person with a person who apparently resides or works there and who apparently is not less than 16 years of age.

**595. Proof of service**

- (1) Service of a document may be proved by—
  - (a) evidence on oath; or
  - (b) affidavit; or
  - (c) declaration.
- (2) Evidence of service must identify the document served and state the time and manner in which service was effected.

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- (3) A document purporting to be an affidavit or declaration under sub-section (1)(b) or (1)(c) is admissible in evidence and, in the absence of evidence to the contrary, is proof of the statements in it.

**596. Person may cause document to be served**

If by or under this Act a person is required or permitted to serve a document, the person may serve the document by causing it to be served by another person.

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**PART 8.2—POWERS OF SECRETARY IN RELATION TO  
MEDICAL SERVICES**

**597. Powers of Secretary in relation to medical services  
and operations**

- (1) The Secretary may at any time order that a person—
  - (a) in the care or custody of the Secretary as the result of—
    - (i) an interim accommodation order; or
    - (ii) a custody to Secretary order; or
    - (iii) a guardianship to Secretary order; or
    - (iv) a long-term guardianship to Secretary order; or
    - (v) a therapeutic treatment (placement) order;
  - (b) in the legal custody of the Secretary as provided by section 483; or
  - (c) placed with a suitable person or suitable persons or in an out of home care service as a result of an interim accommodation order; or
  - (d) in safe custody under section 241, 268(5), 269(3), 269(4), 270(5), 270(6), 291(4), 313 or 314—

be examined to determine his or her medical, physical, intellectual or mental condition.
- (2) The Minister and the Minister administering Division 1 of Part II of the **Health Act 1958** may make arrangements for the provision of any necessary medical, dental, psychiatric, psychological or pharmaceutical services to persons referred to in sub-section (1) or to any

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class or classes of those persons or to any other persons placed in an out of home care service.

- (3) On the advice of a registered medical practitioner that medical treatment or a surgical or other operation or admission to hospital is necessary in the case of a child referred to in sub-section (1)(a)(ii), (1)(a)(iii), (1)(a)(iv), (1)(a)(v) or (1)(b), the Minister, the Secretary or any person (other than an officer or employee) authorised by the Secretary to do so may consent to the medical treatment or the surgical or other operation or the admission to hospital even if the child's parent objects.
- (4) The Minister, the Secretary or any person (other than an employee) authorised by the Secretary to do so may consent to medical treatment or a surgical or other operation or admission to hospital in the case of a child who is not referred to in sub-section (1)(a)(ii), (1)(a)(iii), (1)(a)(iv), (1)(a)(v) or (1)(b) if—
  - (a) the child is placed in an out of home care service or with a suitable person or suitable persons as the result of—
    - (i) having been taken into safe custody under section 241, 268(5), 269(3), 269(4), 270(5), 270(6), 291(4), 313 or 314; or
    - (ii) an interim accommodation order; and
  - (b) a registered medical practitioner has advised that the medical treatment or operation or admission to hospital is necessary to avoid a serious threat to the health of the child; and



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- (c) the child's parent—
    - (i) refuses to give his or her consent; or
    - (ii) cannot be found within a time which is reasonable in the circumstances.
  - (5) An authorisation under sub-section (3) or (4)—
    - (a) must be made by instrument; and
    - (b) may be made to the holder of an office or position or to any person for the time being acting in or performing the duties of an office or position.
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**PART 8.3—TAKING CHILD INTO SAFE CUSTODY**

**598. Circumstances in which child may be taken into safe custody**

- (1) If a magistrate is satisfied by evidence on oath or by affidavit by the Secretary or by a member of the police force that—
  - (a) an undertaking entered into under section 530(2) has not been complied with; or
  - (b) a child is absent without lawful authority or excuse from the place in which the child had been placed under an interim accommodation order, a custody to third party order or a supervised custody order or by the Secretary under section 173 or from the lawful custody of a member of the police force or other person; or
  - (c) a child or a child's parent or the person who has the care of a child is refusing to comply with a lawful direction of the Secretary under section 173 as to the placement of the child—

the magistrate may issue a search warrant for the purpose of having the child taken into safe custody.

- (2) A child taken into safe custody under a warrant issued under sub-section (1)(a) must be brought before the Court as soon as practicable and, in any event, within one working day after the child was taken into safe custody.
- (3) Despite anything to the contrary in this Act but subject to sub-section (2), a child taken into safe custody under this section must be taken by the member of the police force who executed the warrant to the place specified in the warrant or, if

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no place is so specified, to a place determined by the Secretary or, in the absence of any such determination, to any place referred to in section 173.

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Part 8.4—Jurisdiction of Supreme Court

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**PART 8.4—JURISDICTION OF SUPREME COURT**

**599. Supreme Court—limitation of jurisdiction**

It is the intention of sections 328 and 424 to alter  
or vary section 85 of the **Constitution Act 1975**.

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**PART 8.5—REGULATIONS**

**600. Regulations**

- (1) The Governor in Council may make regulations for or with respect to—
  - (a) reports for the purposes of this Act; and
  - (b) the earnings of a person detained in a youth residential centre or youth justice centre; and
  - (c) the remission of sentences of detention in a youth residential centre or youth justice centre; and
  - (d) the appointment, powers, duties and functions of persons responsible for youth supervision programs; and
  - (e) the appointment, powers, duties and functions of youth justice officers; and
  - (f) the appointment, powers, duties and functions of youth parole officers; and
  - (g) prescribing the terms and conditions to be included in parole orders; and
  - (h) prescribing standards to be observed—
    - (i) for the protection, care or accommodation of persons placed in the care or custody or under the guardianship, control or supervision of the Secretary; and
    - (ii) in performing any function, supplying any service or otherwise carrying out the objects of this Act; and

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- (i) the registration of community services and prescribing standards to be observed for the protection, care or accommodation of persons placed in out of home care services and in the conduct, management and control of community services; and
  - (j) the care, control and management of persons placed in out of home care services or in the custody or under the guardianship of the Secretary; and
  - (k) the conduct, management and supervision of community services, youth residential centres, youth justice centres, remand centres, youth justice units and any other institutions or places established under this Act or under the control of the Secretary; and
  - (l) the care, control and management of persons in youth residential centres, youth justice centres, remand centres and youth justice units or otherwise in the legal custody of the Secretary; and
  - (m) the entitlements of persons detained in remand centres, youth residential centres or youth justice centres or of children detained in police gaols or other places prescribed for the purposes of section 347 and the responsibility of the Secretary, the Chief Commissioner of Police or any other person with respect to those entitlements; and
  - (n) the management, good order and security of remand centres, youth residential centres or youth justice centres in which persons are detained or of police gaols or other places prescribed for the purposes of section 347 in which children are detained; and
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- (o) searches under section 486 and manner of dealing with articles or things seized, including the forfeiture of articles or things to the Crown; and
  - (p) the particulars of the use of isolation to be recorded under section 488(6); and
  - (q) providing for the admission of ministers of religion to community services, youth residential centres, youth justice centres, remand centres, youth justice units and any other institutions or places established under this Act or under the control of the Secretary for the purpose of the spiritual welfare and pastoral care of persons accommodated or detained in those places; and
  - (r) prescribing regions of the State for the purpose of Division 1 of Part 5.2 and Division 7 of Part 5.3; and
  - (s) all matters necessary for the good order, discipline, safe custody and health of children in respect of whom a youth attendance order is in force; and
  - (t) the variation by the Secretary under section 402 of details relating to the dates and times of attendance at a youth justice unit; and
  - (u) the conduct, management and supervision of youth supervision programs; and
  - (v) the conduct and management of group conference programs; and
  - (w) prescribing the nature of reasonable directions which may be given by the Secretary in relation to youth attendance orders; and
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- (x) the establishment and maintenance of the central register; and
  - (y) prescribing institutions or places in which children remanded in custody by a court or a bail justice may be placed; and
  - (z) Division 5 of Part 5.3 generally including—
    - (i) the matters to be specified in applications or orders made or notices given under that Division; and
    - (ii) the manner of making applications under section 377; and
    - (iii) the procedure of the Court and of the appropriate registrar under that Division; and
    - (iv) securing the attendance of a child before the Court and the production of documents by a child to the Court under that Division; and
    - (v) the functions of the appropriate registrar under that Division; and
  - (za) prescribing forms; and
  - (zb) prescribing fees for the purposes of section 537(3); and
  - (zc) prescribing the fees, costs and charges payable in respect of the exercise by a registrar of any jurisdiction, power or authority vested in the registrar as registrar under Schedule 3; and
  - (zd) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
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- (2) Regulations made under this Act may be made—
- (a) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
    - (i) wholly or partially or as amended by the regulations; or
    - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; and
  - (b) so as to apply—
    - (i) at all times or at a specified time; or
    - (ii) throughout the whole of the State or in a specified part of the State; or
    - (iii) as specified in both sub-paragraphs (i) and (ii); and
  - (c) so as to confer a discretionary authority on a specified court official or a specified class of court official; and
  - (d) so as to provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations providing for the imposition of fees; and
  - (e) so as to impose a penalty not exceeding 10 penalty units for a contravention of the regulations.
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Part 8.6—Repeals and Transitional Provisions

s. 601

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**PART 8.6—REPEALS AND TRANSITIONAL PROVISIONS**

**601. Repeal of Children and Young Persons Act 1989**

The **Children and Young Persons Act 1989** is **repealed**.

**602. Amendment of Community Services Act 1970**

In the **Community Services Act 1970**—

- (a) in section 1, after "**Services**" insert "**(Attendance at School)**";
- (b) in section 3, the definitions of "care", "community service", "employee", "Part", "police gaols", "prescribed", "prison", "prisoner", "Superintendent" and "trainee" are **repealed**;
- (c) sections 4, 5 and 6 are **repealed**;
- (d) sections 7, 9 and 10 are **repealed**;
- (e) Parts I and II are **repealed**;
- (f) Divisions 1A, 1B, 1C and 2 of Part III are **repealed**;
- (g) Parts VI and VII are **repealed**;
- (h) sections 200A and 200AB are **repealed**;
- (i) in section 203, paragraphs (a), (c), (d), (e), (f), (g), (j), (p), (q), (u), (ya), (yb), (aa), (ab) and (ac) are **repealed**;
- (j) Schedule Two is **repealed**.

**603. Amendment of Children and Young Persons Act 1989**

- (1) In section 143 of the **Children and Young Persons Act 1989** for "child" (wherever occurring) **substitute** "person".

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Part 8.6—Repeals and Transitional Provisions

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- (2) In section 148 of the **Children and Young Persons Act 1989** for—
    - (a) "child" (wherever occurring) **substitute** "person"; and
    - (b) in sub-section (3)(b)(ii) for "child's" **substitute** "person's".
  - (3) In section 160(3)(f) of the **Children and Young Persons Act 1989** **omit** "other".
  - (4) In section 184(2) of the **Children and Young Persons Act 1989**—
    - (a) in paragraph (a) **omit** "or revoking";
    - (b) for paragraph (c) **substitute**—
      - "(c) an order revoking the youth attendance order and imposing any sentencing order that the Court thinks just but must not make an order for the person to be kept in custody for a period longer than the period of the breached youth attendance order."
  - (5) In section 185(5) of the **Children and Young Persons Act 1989**—
    - (a) in paragraph (d) **omit** ", or revoking the youth attendance order";
    - (b) for paragraph (f) **substitute**—
      - "(f) an order revoking the youth attendance order and imposing any sentencing order that the Court thinks just but must not make an order for the person to be kept in custody for a period longer than the period of the breached youth attendance order."
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**604. Amendment of Child Wellbeing and Safety Act 2005**

- (1) In section 3 of the **Child Wellbeing and Safety Act 2005**—
  - (a) for the definition of "central register" **substitute—**  
' "**central register**" has the same meaning as it has in the **Children, Youth and Families Act 2005**;';
  - (b) for the definition of "out of home care service" **substitute—**  
' "**out of home care service**" has the same meaning as it has in the **Children, Youth and Families Act 2005**;';
  - (c) for the definition of "performance standards" **substitute—**  
' "**performance standards**" means performance standards under Division 4 of Part 3.3 of the **Children, Youth and Families Act 2005**;'.
- (2) For section 33(5)(a) of the **Child Wellbeing and Safety Act 2005** **substitute—**  
"(a) a child is a child protection client if the child is the subject of a protective intervention report within the meaning of the **Children, Youth and Families Act 2005**; and".

**605. Repeal of Koori Court (Criminal Division) provisions of this Act**

- (1) In section 3(1) of this Act, the definitions of "Aboriginal elder or respected person" and "Children's Koori Court officer" are **repealed**.
- (2) Section 3(4) of this Act is **repealed**.
- (3) Section 504(3)(c) of this Act is **repealed**.

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Part 8.6—Repeals and Transitional Provisions

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- (4) In sections 504(5) and 522 (2) of this Act for "more than one Division" **substitute** "both Divisions".
- (5) In section 504(7) of this Act for "any Division" **substitute** "either Division".
- (6) Sections 517, 518, 519 and 520 of this Act are **repealed**.
- (7) In section 528(2) of this Act for "any Division" **substitute** "both Divisions".
- (8) Sections 536 and 590 of this Act are **repealed**.

**606. Transitional and saving provisions**

Schedule 4 has effect.

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## SCHEDULES

### SCHEDULE 1

Sections 338, 515, 525, 531

#### TRANSFER OF CHILD PROTECTION ORDERS AND PROCEEDINGS

##### PART 1—INTRODUCTORY

##### 1. Purpose of Schedule

The purpose of this Schedule is to provide for the transfer of child protection orders and proceedings between Victoria and another State or a Territory of Australia or between Victoria and New Zealand—

- (a) so that children who are in need of protection may be protected despite moving from one jurisdiction to another; and
- (b) so as to facilitate the timely and expeditious determination of court proceedings relating to the protection of a child.

##### 2. Definitions

(1) In this Schedule—

**"Children's Court"**—

- (a) in relation to Victoria, means the Children's Court of Victoria; and
- (b) in relation to a State other than Victoria, means the court with jurisdiction to hear and determine a child protection proceeding at first instance;

**"child protection order"**, in relation to a child, means a final order made under a child welfare law or an interstate law that gives—

- (a) a Minister of the Crown in right of a State; or
- (b) a government department or statutory authority;  
or

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(c) a person who is the head of a government department or statutory authority or otherwise holds an office or position in, or is employed in, a government department or statutory authority; or

(d) an organisation or the chief executive (by whatever name called) of an organisation—

responsibility in relation to the guardianship, custody or supervision of the child, however that responsibility is described;

**"child protection proceeding"** means any proceeding brought in a court under a child welfare law for—

(a) the making of a finding that a child is in need of protection or any other finding (however described) the making of which is under the child welfare law a prerequisite to the exercise by the court of a power to make a child protection order; or

(b) the making of a child protection order or an interim order or for the variation or revocation or the extension of the period of such an order;

**"child welfare law"** means—

(a) Chapter 4 of this Act; or

(b) a law of another State that, under an Order in force under sub-clause (2), is declared to be a child welfare law for the purposes of this Schedule; or

(c) a law of another State that substantially corresponds to Chapter 4 of this Act;

**"interim order"** means—

(a) an order made under clause 17; or

(b) an equivalent order made under an interstate law;

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**"interstate law"** means—

- (a) a law of another State that, under an Order in force under sub-clause (3), is declared to be an interstate law for the purposes of this Schedule; or
- (b) a law of another State that substantially corresponds to this Schedule;

**"interstate officer"**, in relation to a State other than Victoria, means—

- (a) the holder of an office or position that, under an Order in force under sub-clause (4), is declared to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Schedule; or
- (b) the person holding the office or position to which there is given by or under the child welfare law of that State principal responsibility for the protection of children in that State;

**"participating State"** means a State in which an interstate law is in force;

**"sending State"** means the State from which a child protection order or proceeding is transferred under this Schedule or an interstate law;

**"State"** means—

- (a) a State or a Territory of Australia; or
- (b) New Zealand;

**"working day"**—

- (a) in relation to a court, means a day on which the offices of the court are open; and
  - (b) in relation to the Secretary, means a day on which the principal office of the Department is open.
- (2) The Governor in Council, by Order published in the Government Gazette, may declare a law of a State (other than Victoria) to be a child welfare law for the purposes of this Schedule if satisfied that the law substantially corresponds to Chapter 4 of this Act.



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- (3) The Governor in Council, by Order published in the Government Gazette, may declare a law of a State (other than Victoria) to be an interstate law for the purposes of this Schedule if satisfied that the law substantially corresponds to this Schedule.
  - (4) The Governor in Council, by Order published in the Government Gazette, may declare an office or position in a State (other than Victoria) to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Schedule.

**PART 2—TRANSFER OF CHILD PROTECTION ORDERS**

**Division 1—Administrative Transfers**

**3. When Secretary may transfer order**

- (1) The Secretary may transfer a child protection order (the "home order") to a participating State if—
  - (a) in his or her opinion a child protection order to the same or a similar effect as the home order could be made under the child welfare law of that State; and
  - (b) the home order is not subject to an appeal to the Supreme Court or the County Court; and
  - (c) the relevant interstate officer has consented in writing to the transfer and to the proposed terms of the child protection order to be transferred (the "proposed interstate order"); and
  - (d) any person whose consent to the transfer is required under clause 4 has so consented; and
  - (e) the child who is the subject of the order has not given written notice of opposition to the decision to transfer the order in accordance with clause 6(3)(b) and the Secretary certifies in writing that he or she made all reasonable efforts to ensure that the child had an opportunity to seek legal advice in relation to the decision.
- (2) The Secretary may include in the proposed interstate order any conditions that could be included in a child protection order of that type made in the relevant participating State.

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- (3) In determining whether a child protection 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 Secretary must not take into account the period for which it is possible to make such an order in that State.
  - (4) The Secretary must determine, and specify in the proposed interstate order—
    - (a) the type of order under the child welfare law of the participating State that the proposed interstate order is to be; and
    - (b) the period for which it is to remain in force.
  - (5) The period must be—
    - (a) if the same period as that of the home order is possible for the proposed interstate order under the child welfare law of the participating State commencing on, and including, the date of the registration of the interstate order in that State, that period; or
    - (b) in any other case, as similar a period as is possible under that law but in no case longer than the period of the home order.

**4. Persons whose consent is required**

- (1) For the purposes of clause 3(1)(d) but subject to sub-clause (2), if the home order is a custody to Secretary order, supervision order or a supervised custody order, consent to a transfer under this Division is required from the child's parents and any other person who is granted access to the child under the order.
- (2) If a parent of the child or any other person who is granted access to the child under the order is residing in, or is intending to reside in, the relevant participating State, consent to the transfer is not required from that parent or other person or from any other parent or other person who is granted access to the child under the order who consents to the child residing in that State.

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**5. Secretary to have regard to certain matters**

In determining whether to transfer a child protection order to a participating State under this Division, the Secretary must—

- (a) as far as possible, make decisions having regard to the principles in Part 1.2 of Chapter 1 and the following principles—
  - (i) the best interests of the child must be given paramount importance;
  - (ii) the child (except if his or her participation would be detrimental to his or her safety or wellbeing) must be encouraged and (through consultation and discussion) given adequate opportunity to participate fully in the decision-making process and must be given a copy of any proposed case plan relating to the transfer and sufficient notice of any meeting proposed to be held;
  - (iii) the family of the child (except if its participation would be detrimental to the safety or wellbeing of the child) must be encouraged and (through consultation and discussion) given adequate opportunity to participate fully in the decision-making process and must be given a copy of any proposed case plan relating to the transfer and sufficient notice of any meeting proposed to be held; and
- (b) have regard to whether the Secretary or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child; and
- (c) have regard to the fact that it is preferable that a child is subject to a child protection order made under the child welfare law of the State where the child resides; and
- (d) have regard to any sentencing order under any Act, other than a fine, in force in respect of the child or any criminal proceeding pending against the child in any court.

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**6. Notification to child and his or her parents**

- (1) If the Secretary has decided to transfer a child protection order to a participating State under this Division, the Secretary must cause—
- (a) the parent of the child who is the subject of the order; and
  - (b) if the child is of or above the age of 7 years, the child—

to be served with a notice of the decision as soon as practicable but in any event no later than 3 working days after making it.

- (2) A notice under sub-clause (1) served on a parent of the child must, in addition to providing notice of the decision, inform the parent that—
- (a) the decision may be reviewed on its merits by the Victorian Civil and Administrative Tribunal or on certain grounds by the Supreme Court; and
  - (b) the application for review must be made, and the relevant documents served on the Secretary, within 28 days after the date of the decision or, in the case of an application to the Victorian Civil and Administrative Tribunal, the later day on which a statement of reasons for the decision is given or refused to be given under the **Victorian Civil and Administrative Tribunal Act 1998**; and
  - (c) a request under section 45(1) of the **Victorian Civil and Administrative Tribunal Act 1998** for a written statement of reasons for the decision must be made in writing within 28 days after the date of the decision; and
  - (d) the parent may make an application for review and provide details of how such an application may be made.
- (3) A notice under sub-clause (1) served on the child must, in addition to providing notice of the decision, inform the child that—
- (a) the child may seek legal advice in relation to the decision; and

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- (b) the child may oppose the decision by writing, or by a legal practitioner writing on his or her behalf, to the employee nominated in the notice within 28 days after service of the notice and stating the fact that the child opposes the decision; and
  - (c) if notice of opposition is given to the nominated employee in accordance with paragraph (b), the order cannot be transferred by the Secretary under this Division.
- (4) The Secretary must make all reasonable efforts to ensure that a child on whom a notice is served under sub-clause (1) has an opportunity to seek legal advice in relation to the decision to transfer the child protection order.
  - (5) Service of a notice on a person is not required under sub-clause (1) if it cannot be effected after making all reasonable efforts.

**7. Limited period for judicial review of decision**

- (1) A proceeding in the Supreme Court for judicial review of a decision of the Secretary to transfer a child protection order to a participating State under this Division must be instituted, and written notice of it must be served on the Secretary, within 28 days after the date of the decision of the Secretary.
- (2) Subject to sub-clause (1), a proceeding referred to in that sub-clause must be brought in accordance with the rules of the Supreme Court.
- (3) The Supreme Court cannot extend the time limit fixed by sub-clause (1).
- (4) The institution of a proceeding referred to in sub-clause (1) and service of written notice of it on the Secretary stays the operation of the decision pending the determination of the proceeding.

**Division 2—Judicial Transfers**

**8. When Court may make order under this Division**

The Court may make an order under this Division transferring a child protection order to a participating State if—

- (a) an application for the making of the order is made by the Secretary; and

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- (b) the child protection order is not subject to an appeal to the Supreme Court or the County Court; and
- (c) the relevant interstate officer has consented in writing to the transfer and to the proposed terms of the child protection order to be transferred.

**9. Service of application**

The Secretary must as soon as possible cause a copy of an application for an order transferring a child protection order to a participating State to be sent by post or given to any person to whom he or she would have been required under Chapter 4 of this Act to send or give a copy of an application made by him or her for the variation of the order sought to be transferred.

**10. Type of order**

- (1) If the Court determines to transfer a child protection order (the "home order") under this Division, the proposed terms of the child protection order to be transferred (the "proposed interstate order") must be terms that could be the terms of a child protection order made under the child welfare law of the participating State and that the Court believes to be—
  - (a) to the same or a similar effect as the terms of the home order; or
  - (b) otherwise in the best interests of the child.
- (2) The Court may include in the proposed interstate order any conditions that could be included in a child protection order of that type made in the relevant participating State.
- (3) In determining 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 Court must not take into account the period for which it is possible to make such an order in that State.
- (4) The Court must determine, and specify in the proposed interstate order, the period for which it is to remain in force.
- (5) The period must be any period that is possible for a child protection order of the type of the proposed interstate order under the child welfare law of the participating State commencing on, and including, the date of its registration in that State and that the Court considers to be appropriate.

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**11. Court to have regard to certain matters**

- (1) The Court must not make an order under this Division unless it has received and considered a report by the Secretary that contains the matters required by section 558 to be included in a disposition report.
- (2) In determining what order to make on an application under this Division the Court must have regard to—
  - (a) whether the order is in the best interests of the child; and
  - (b) whether the Secretary or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child; and
  - (c) the fact that it is preferable that a child is subject to a child protection order made under the child welfare law of the State where the child resides; and
  - (d) any information given to the Court by the Secretary under clause 12.
- (3) Section 559 applies to a report referred to in sub-clause (1) as if it were a disposition report required under section 557(1).

**12. Duty of the Secretary to inform the Court of certain matters**

If the Secretary is aware that—

- (a) a sentencing order under any Act, other than a fine, is in force in respect of the child who is the subject of an application under this Division; or
- (b) a criminal proceeding is pending against that child in any court—

the Secretary must, as soon as possible, inform the Court of that fact and of the details of the sentencing order or pending criminal proceeding.

**13. Appeals**

- (1) A party to an application for an order under this Division or the Attorney-General, if he or she appeared or was represented in the proceeding under section 215(2), may appeal to the Supreme Court, on a question of law, from a final order made in that proceeding transferring, or refusing to transfer, a child protection order to a participating State.

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- (2) An appeal under sub-clause (1)—
    - (a) must be instituted, and (except where instituted by the Secretary) written notice of it must be served on the Secretary, within 10 working days after the day on which the order complained of was made; and
    - (b) operates as a stay of an order transferring the child protection order to a participating State.
  - (3) Subject to sub-clause (2), an appeal under sub-clause (1) must be brought in accordance with the rules of the Supreme Court.
  - (4) The Supreme Court cannot extend the time limit fixed by sub-clause (2)(a).
  - (5) The Supreme Court must hear and determine the appeal as expeditiously as possible.
  - (6) After hearing and determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court with or without any direction in law.
  - (7) An order made by the Supreme Court on an appeal under sub-clause (1), other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.
  - (8) Pending the hearing of the appeal the Supreme Court may—
    - (a) make any interim accommodation order that the Children's Court has jurisdiction to make; or
    - (b) make any variation of the child protection order that the Children's Court would have jurisdiction to make on an application made under Chapter 4 of this Act.
  - (9) Section 330 applies to an appeal under sub-clause (1) as if—
    - (a) a reference to section 328 or 329 were a reference to this clause; and
    - (b) references to the County Court were omitted.
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**PART 3—TRANSFER OF CHILD PROTECTION PROCEEDINGS**

**14. When Court may make order under this Part**

- (1) The Court may make an order under this Part transferring a child protection proceeding pending in the Court to the Children's Court in a participating State if—
  - (a) an application for the making of the order is made by the Secretary; and
  - (b) the relevant interstate officer has consented in writing to the transfer.
- (2) The proceeding is discontinued in the Court on the registration in the Children's Court in the participating State in accordance with the interstate law of an order referred to in sub-clause (1).

**15. Service of application**

The Secretary must as soon as possible cause a copy of an application for an order transferring a child protection proceeding to the Children's Court in a participating State to be served on—

- (a) the child's parent or other person with whom the child is living; and
- (b) if the child is of or above the age of 12 years, the child.

**16. Court to have regard to certain matters**

- (1) In determining whether to make an order transferring a proceeding under this Part the Court must have regard to—
  - (a) whether the order is in the best interests of the child; and
  - (b) whether any other proceedings relating to the child are pending, or have previously been heard and determined, under the child welfare law in the participating State; and
  - (c) the place where any of the matters giving rise to the proceeding in the Court arose; and
  - (d) the place of residence, or likely place of residence, of the child, his or her parents and any other people who are significant to the child; and

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- (e) whether the Secretary or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child; and
  - (f) the fact that it is preferable that a child is subject to a child protection order made under the child welfare law of the State where the child resides; and
  - (g) any information given to the Court by the Secretary under sub-clause (2).
- (2) If the Secretary is aware that—
- (a) a sentencing order under any Act, other than a fine, is in force in respect of the child who is the subject of the proceeding to which an application under this Part relates; or
  - (b) a criminal proceeding is pending against that child in any court—

the Secretary must, as soon as possible, inform the Court of that fact and of the details of the sentencing order or pending criminal proceeding.

**17. Interim order**

- (1) If the Court makes an order transferring a proceeding under this Part, the Court may also make an interim order.
- (2) An interim order—
  - (a) may release the child or place the child into the care of any person, subject to any conditions that the Court considers to be appropriate; and
  - (b) may give responsibility for the supervision of the child to the interstate officer in the participating State or any other person in that State to whom responsibility for the supervision of a child could be given under the child welfare law of that State; and
  - (c) remains in force for the period (not exceeding 30 days) specified in the order.
- (3) The Children's Court in the participating State may revoke an interim order in accordance with the relevant interstate law.

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**18. Appeals**

- (1) A party to an application for an order under this Part or the Attorney-General, if he or she appeared or was represented in the proceeding under section 215(2), may appeal to the Supreme Court, on a question of law, from a final order made in that proceeding transferring, or refusing to transfer, a child protection proceeding to the Children's Court in a participating State.
- (2) An appeal under sub-clause (1)—
  - (a) must be instituted, and (except where instituted by the Secretary) written notice of it must be served on the Secretary, within 3 working days after the day on which the order complained of was made; and
  - (b) operates as a stay of an order transferring the child protection proceeding to a participating State but not of any interim order made at the same time as the order.
- (3) Subject to sub-clause (2), an appeal under sub-clause (1) must be brought in accordance with the rules of the Supreme Court.
- (4) The Supreme Court cannot extend the time limit fixed by sub-clause (2)(a).
- (5) The Supreme Court must hear and determine the appeal as expeditiously as possible.
- (6) After hearing and determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court with or without any direction in law.
- (7) An order made by the Supreme Court on an appeal under sub-clause (1), other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.
- (8) The Supreme Court may—
  - (a) make an order staying the operation of any interim order made at the same time as the order that is the subject of the appeal or may, by order, vary or revoke, or extend the period of, that interim order; and
  - (b) make any interim accommodation order pending the hearing of the appeal that the Children's Court has jurisdiction to make.

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- (9) Section 330 applies to an appeal under sub-clause (1) as if—
- (a) a reference to section 328 or 329 were a reference to this clause; and
  - (b) references to the County Court were omitted.

#### **PART 4—REGISTRATION**

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

- (1) Subject to sub-clause (3), the Secretary must as soon as possible file in the Court for registration a copy of a child protection order transferred to Victoria under an interstate law.
- (2) Subject to sub-clause (3), the Secretary must as soon as possible file in the Court for registration a copy of an order under an interstate law to transfer a child protection proceeding to Victoria, together with a copy of any interim order made in relation to that order.
- (3) The Secretary must not file in the Court a copy of a child protection order or of an order to transfer a child protection proceeding if—
  - (a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is subject to appeal or review or a stay; or
  - (b) the time for instituting an appeal or seeking a review has not expired—under the interstate law.

##### **20. Notification by appropriate registrar**

The appropriate registrar must immediately notify the appropriate officer of the Children's Court in the sending State and the interstate officer in that State of—

- (a) the registration of any document filed under clause 19; or
- (b) the revocation under clause 22 of the registration of any document so filed.

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**21. Effect of registration**

- (1) A child protection order registered in the Court under this Part must be taken for all purposes (except for the purposes of appeal) to be a protection order of the relevant type made by the Court on the day on which it is registered and it may be varied or revoked, or the period of the order extended, or a breach of it dealt with, under Chapter 4 of this Act accordingly.
- (2) An interim order registered in the Court under this Part must be taken for all purposes (except for the purposes of appeal) to be an interim accommodation order made by the Court on the day on which it is registered, even if it includes terms that could not be terms of an interim accommodation order.
- (3) An interim order registered in the Court under this Part cannot be varied, or the period of the order extended, under Division 5 of Part 4.8 of this Act but nothing in this sub-clause prevents the Court from making a new interim accommodation order under section 270 (without being limited to the circumstances for an application for a new order set out in that section) and revoking the interim order.
- (4) Despite sub-clause (3), a breach of an interim order registered in the Court under this Part may be dealt with under Chapter 4 of this Act in the same way as a breach of any other interim accommodation order.
- (5) If an order under an interstate law to transfer a child protection proceeding to Victoria is registered under this Part, the proceeding must be taken to have been commenced in the Court on the day on which the order is registered.

**22. Revocation of registration**

- (1) An application for the revocation of the registration of any document filed under clause 19 may be made to the Court by—
  - (a) the Secretary; or
  - (b) the child concerned; or
  - (c) a parent of the child concerned; or
  - (d) a party to the proceeding in the Children's Court in the sending State in which the decision to transfer the order or proceeding (as the case requires) was made.

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- (2) The appropriate registrar must cause a copy of an application under sub-clause (1) to be sent by post or given as soon as possible to—
    - (a) the relevant interstate officer; and
    - (b) any person by whom such an application could have been made.
  - (3) The Court may only revoke the registration of a document filed under clause 19 if satisfied that it was inappropriately registered because—
    - (a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) was at the time of registration subject to appeal or review or a stay; or
    - (b) the time for instituting an appeal or seeking a review had not expired—under the interstate law.
  - (4) The appropriate registrar must cause any document filed in the Court under clause 19 to be sent to the Children's Court in the sending State if the registration of the document is revoked.
  - (5) The revocation of the registration of a document does not prevent the later re-registration of that document.

**PART 5—MISCELLANEOUS**

**23. Effect of registration of transferred order**

- (1) On an order being registered in a participating State under an interstate law, the child protection order made by the Court under Chapter 4 of this Act ceases to have effect.
- (2) Despite sub-clause (1), an order that has ceased to have effect by force of that sub-clause is revived if the registration of the child protection order transferred from Victoria is revoked in the participating State under the interstate law.
- (3) The period for which a child protection order is revived is the balance of the period for which it would have remained in force but for the registration of the transferred order.

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**24. Transfer of Court file**

The appropriate registrar must cause all documents filed in the Court in connection with a child protection proceeding, and an extract from any part of the court register that relates to a child protection proceeding, to be sent to the Children's Court in a participating State if—

- (a) the child protection order or proceeding is transferred to the participating State; and
- (b) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is not subject to appeal or review or a stay; and
- (c) the time for instituting an appeal or seeking a review has expired—

under this Schedule.

**25. Hearing and determination of transferred proceeding**

In hearing and determining a child protection proceeding transferred to the Court under an interstate law, the Court—

- (a) is not bound by any finding of fact made in the proceeding in the Children's Court in the sending State before its transfer; and
- (b) may have regard to the transcript of, or any evidence adduced in, the proceeding referred to in paragraph (a).

**26. Disclosure of information**

- (1) Despite anything to the contrary in this Act, the Secretary may disclose to an interstate officer any information that has come to his or her notice in the performance of duties or exercise of powers under this Act if the Secretary considers that it is necessary to do so to enable the interstate officer to perform duties or exercise powers under a child welfare law or an interstate law.
- (2) Any information disclosed to the Secretary under a provision of a child welfare law or an interstate law that substantially corresponds to sub-clause (1) must be taken for the purposes of any provision of this Act relating to the disclosure of information to have been information given directly to a protective intervener in Victoria instead of to an interstate officer.

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**27. Discretion of Secretary to consent to transfer**

- (1) If, under an interstate law, there is a proposal to transfer a child protection order to Victoria, the Secretary may consent or refuse to consent to the transfer and the proposed terms of the child protection order to be transferred.
- (2) If, under an interstate law, there is a proposal to transfer a child protection proceeding to the Children's Court in Victoria, the Secretary may consent or refuse to consent to the transfer.

**28. Evidence of consent of relevant interstate officer**

A document, or a copy of a document, purporting—

- (a) to be the written consent of the relevant interstate officer to—
  - (i) the transfer of a child protection order to a participating State and to the proposed terms of the child protection order to be transferred; or
  - (ii) the transfer of a child protection proceeding pending in the Court to the Children's Court in a participating State; and
- (b) to be signed by the relevant interstate officer or his or her delegate—

is admissible in evidence in any proceeding under this Schedule and, in the absence of evidence to the contrary, is proof that consent in the terms appearing in the document was duly given by the relevant interstate officer.

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**SCHEDULE 2**

Section 492

**INTERSTATE TRANSFER OF YOUNG OFFENDERS**

**1. Definitions**

In this Schedule—

**"agreement"** means an agreement between the Minister and a Minister of another State under clause 2;

**"arrangement"** means an arrangement made under clause 3 for the transfer of a young offender from Victoria to another State, or to Victoria from another State;

**"Minister"**, in relation to a State other than Victoria, means—

- (a) except where the other State is the Australian Capital Territory or the Northern Territory of Australia—a Minister of the Crown of that State; and
- (b) where the other State is the Australian Capital Territory—a Minister of the Crown of the Commonwealth; and
- (c) where the other State is the Northern Territory of Australia—a person holding Ministerial office, as defined in section 4(1) of the Northern Territory (Self-Government) Act 1978 of the Commonwealth;

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

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

**"State"** means any State or Territory of the Commonwealth;

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**"young offender"** means a person—

- (a) in another State who—
  - (i) is under the age of 18 years; or
  - (ii) is of or above the age of 18 years but under the age of 21 years and who has committed or is alleged to have committed an offence when the person was under the age of 18 years—

and who has been dealt with under a law which applies in that State and which relates to the welfare or punishment of such a person; or

- (b) in Victoria who—
  - (i) is subject to an order made under paragraph (f), (g), (h), (i) or (j) of section 360(1), whether the order was made by the Children's Court or by some other court; or
  - (ii) is under the age of 21 years and is serving a sentence of detention in a youth justice centre; or
  - (iii) is under the age of 21 years and has been released on parole under this Act; or
- (c) who is in Victoria and is subject to an arrangement for the transfer of the person to Victoria or is being transferred through Victoria from one State to another under an agreement.

**2. Minister may enter into general agreement**

The Minister may enter into a general agreement with a Minister of another State for the transfer of young offenders—

- (a) into or out of Victoria; and
- (b) through Victoria from one State to another.

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**3. Secretary may make arrangements**

If the Minister enters into an agreement with a Minister of another State, the Secretary may make an arrangement with the Minister of the other State, or with a person authorised by that Minister as provided in the agreement, for the transfer of a particular young offender—

- (a) to that State from Victoria; or
- (b) to Victoria from that State.

**4. Arrangement for transfer out of Victoria**

- (1) The Secretary must not make an arrangement for the transfer of a young offender from Victoria to another State unless—

- (a) the young offender or a parent of the young offender applies for the transfer to be made; and
- (b) the Secretary is of the opinion that the transfer is appropriate in all the circumstances including—
  - (i) the place or intended place of residence of the parents; and
  - (ii) the education, further education, training or employment; and
  - (iii) the medical or other needs—of the young offender; and
- (c) the young offender has been given independent legal advice as to the effect of the arrangement and consents to it; and
- (d) the Secretary is satisfied that there is no appeal pending against an order of a court to which the young offender is subject.

- (2) For the purposes of deciding whether or not to arrange for the transfer of a young offender from Victoria to another State, the Secretary may ask—

- (a) the young offender; or
- (b) the parents of the young offender—

for any necessary information, and the young offender or parents must supply the information within the time specified by the Secretary.

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**5. Arrangement for transfer to Victoria**

The Secretary must not make an arrangement for the transfer of a young offender from another State to Victoria unless the Secretary is satisfied that there are adequate facilities in Victoria for the young offender to be accepted and dealt with as provided in the arrangement.

**6. Provisions to be made in each arrangement**

- (1) An arrangement for the transfer of a young offender to or from Victoria must—
  - (a) provide for the acceptance and means of dealing with the young offender in the receiving State; and
  - (b) specify each order of a court of the sending State to which the young offender is subject (including an order deemed by a previous arrangement with Victoria or with another State to have been made by a court of the sending State); and
  - (c) for each order specified under paragraph (b)—
    - (i) specify the way in which it is to operate in the receiving State, which must be as similar as possible to the way in which it would operate in the sending State if the arrangement were not made; and
    - (ii) specify the maximum time for which it is to operate, which must not be longer than the maximum time for which it would operate in the sending State if the arrangement were not made.
- (2) An arrangement made by the Secretary for the transfer of a young offender from Victoria to another State must provide for the escort under clause 7(1)(b) to be authorised in that State to hold, take and keep custody of the young offender for the purpose of transferring the young offender to the place and the custody specified in the arrangement.
- (3) A reference in sub-clause (1) to an order of a court of a sending State is a reference to any sentence, period of detention, probation, parole or other order which could be made or imposed by that court.

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**7. Transfer order made under an arrangement**

- (1) If the Secretary makes an arrangement under this Schedule for the transfer of a person to another State, he or she must make a transfer order which—
  - (a) directs the person who has the custody of the young offender to deliver the young offender to the custody of the escort; and
  - (b) authorises the escort to take and keep custody of the young offender for the purpose of transferring the young offender to the place in the receiving State and to the custody specified in the arrangement.
- (2) A reference in sub-clause (1) to a person having the custody of a young offender is a reference to—
  - (a) a person in charge of a remand centre, youth residential centre, youth justice centre or youth justice unit; or
  - (b) a person in charge of any other establishment conducted and managed by the Department; or
  - (c) any other person who has custody of the young offender.
- (3) A reference in sub-clause (1) to an escort is a reference to a youth justice officer, a member of the police force or a person appointed by the Secretary by an instrument in writing to be an escort for the purposes of this Schedule, or any two or more of them.

**8. Transfer to Victoria in custody of escort**

If under an arrangement for the transfer of a young offender to Victoria an escort authorised under the arrangement brings the young offender to Victoria, the escort, while in Victoria, is authorised to hold, take and keep custody of the young offender for the purpose of transferring the young offender to the place in Victoria and to the custody specified in the arrangement.

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**9. Reports**

- (1) For the purpose of forming an opinion or exercising a discretion under this Schedule, the Secretary may be informed as he or she thinks fit and, in particular, may have regard to reports from any person who has or has had the custody or supervision of a young offender in Victoria or in another State.
- (2) Reports of any person who has or has had the custody or supervision of a young offender may be sent to a Minister of another State who has entered into an agreement or to a person authorised under an agreement to make arrangements with the Secretary.

**10. Transfer of sentence or order with transferee**

If under an arrangement a young offender is transferred from Victoria to another State, then from the time the young offender arrives in that State any sentence imposed on, or order made in relation to, the young offender in Victoria before that time ceases to have effect in Victoria except—

- (a) in relation to any period of detention served by the young offender before that time; or
- (b) in relation to any part of the order carried out in respect of the young offender before that time; or
- (c) in relation to the remittance of money to the Minister which is paid in discharge or partial discharge of a sentence of default detention or default imprisonment originally imposed on the young offender by a court in Victoria.

**11. Sentence etc. deemed to have been imposed in this State**

If under an arrangement a young offender is transferred to Victoria from another State, then from the time the young offender arrives in Victoria—

- (a) any sentence imposed on, or order made in relation to, the young offender by a court of the sending State and specified in the arrangement is deemed to have been imposed or made; and
- (b) any sentence or order deemed by a previous arrangement with Victoria or with another State to have been imposed or made by a court of the sending State and specified in the arrangement under which the young offender is transferred to Victoria is deemed to have been imposed or made; and

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- (c) any direction or order given or made by a court of the sending State concerning the time when anything to be done under an order made by a court of that State commences is, so far as practicable, deemed to have been given or made—

by the court in Victoria specified in the arrangement and, except as otherwise provided in this Schedule, has effect in Victoria as specified in the arrangement in accordance with clause 6, and the laws of Victoria apply, as if that court had had power to impose the sentence and give or make the directions or orders, and did in fact impose the sentence and give or make the directions or orders.

**12. Lawful custody for transit through Victoria**

- (1) The Secretary may authorise the person in charge of a remand centre, youth residential centre, youth justice centre or youth justice unit or any other person to receive young offenders being transferred through Victoria from one State to another.
- (2) If under an agreement for the transfer of young offenders through Victoria from one State to another, a young offender is brought into Victoria by an escort authorised as provided in the agreement—
- (a) while in Victoria, the escort is authorised to take, hold and keep custody of the young offender for the purposes of the transfer; and
- (b) a person authorised under sub-clause (1) may at the request of the escort and on receiving from the escort written authority for the transfer as provided in the agreement—
- (i) receive and detain the young offender in the custody and for the time the escort requests, if it is reasonably necessary for the purposes of the transfer; and
- (ii) at the end of that time deliver the young offender into the custody of the escort.

**13. Escape from custody of person being transferred**

- (1) A young offender being transferred through Victoria from one State to another in the custody of an escort and who escapes from that custody may be apprehended without warrant by the escort, any member of the police force or any other person.

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- (2) If a young offender being transferred through Victoria from one State to another in the custody of an escort—
- (a) has escaped and been apprehended; or
  - (b) has attempted to escape—
- the young offender may be taken before a magistrate who may by warrant under his or her hand order the young offender to be detained in custody at a remand centre, youth residential centre or youth justice centre.
- (3) A warrant issued under sub-clause (2) may be executed according to its tenor.
- (4) A young offender who is the subject of a warrant under sub-clause (2) must as soon as possible be brought before the Magistrates' Court or the Children's Court (as the case requires) which may order—
- (a) that the young offender be delivered to the custody of an escort; or
  - (b) that the young offender be detained for no longer than 7 days until an escort is available from the sending State to carry out the arrangement or any orders made by a court of that State.
- (5) If a young offender who is the subject of an order under sub-clause (4)(b) is not, in accordance with the order, delivered into the custody of an escort within a period of 7 days from the making of the order, the order has no further effect.
- (6) A reference in this clause to an escort in relation to a young offender being transferred through Victoria from one State to another under an agreement is a reference to—
- (a) the escort authorised in the manner provided for in the agreement; or
  - (b) if the young offender has escaped or attempted to escape—
    - (i) that escort; or
    - (ii) a member of the police force of the sending State; or
    - (iii) a person appointed by the Minister of the sending State by instrument in writing to be an escort for the purposes of carrying out any orders of a court of the sending State—
- or any two or more of them.
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**14. Escape from custody—penalty**

(1) A young offender—

- (a) who is in custody under an arrangement made for his or her transfer from Victoria to another State; and
- (b) who was subject before the arrangement to detention in Victoria; and
- (c) who escapes or attempts to escape from that custody while he or she is not within Victoria or the receiving State—

is guilty of an offence and is liable to imprisonment for a term not exceeding six months or to detention in a youth residential centre or youth justice centre for a term not exceeding six months, to be served after the end of any term of detention to which he or she was subject at the time of the escape or attempt to escape.

(2) Without limiting the generality of section 483, that section applies to a person—

- (a) who is in custody under an arrangement for the transfer of the person from Victoria to another State; and
- (b) who escapes from that custody while he or she is not within Victoria or the receiving State—

in the same way as it applies to a person who escapes, attempts to escape or is absent without lawful authority from a remand centre, youth residential centre or youth justice centre in which he or she is lawfully detained or from the custody of any person in whose custody the person may be.

**15. Revocation of order of transfer on escape from custody**

The Magistrates' Court or Children's Court may revoke an order made under an arrangement for the transfer of a young offender from Victoria to another State on application made to it under this clause by the Secretary that the young offender has, while being transferred, committed—

- (a) the offence of escaping or attempting to escape; or
- (b) any other offence—

whether—

- (c) the offence was an offence against the law of Victoria or of the receiving State or of a State through which the young offender was being transferred; or

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- (d) a charge has been filed or a conviction secured in respect of the offence or not.

**16. Revocation of order of transfer by consent**

- (1) The Secretary may revoke an order for the transfer of a young offender from Victoria to another State—
- (a) at any time before the young offender is delivered in the receiving State into the custody specified in the arrangement; and
  - (b) only with the consent of the young offender and of the Minister or other person in the receiving State with whom the Secretary made the arrangement.
- (2) If the Secretary revokes an order under sub-clause (1), the Secretary may make a further arrangement with the receiving State for the return of the young offender to Victoria.
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**SCHEDULE 3**

Sections 529, 581, 582, 592, 600

**CHILDREN AND YOUNG PERSONS INFRINGEMENT NOTICE  
SYSTEM**

**PART 1—INTRODUCTORY**

**1. Application of Schedule**

- (1) The procedures set out in this Schedule may be used for the enforcement of infringement penalties and penalties imposed by penalty notices.
- (2) If the procedures set out in this Schedule are used, they apply without prejudice to the application of so much of any other procedure as is consistent with this Schedule.
- (3) The procedures set out in Part 2 may be used in relation to any infringement notice, whenever issued.
- (4) The procedures set out in Part 3 apply to penalty notices and prescribed offences despite anything to the contrary in a Code.

**2. Definitions**

In this Schedule—

**"appropriate officer"**, in relation to an infringement notice or penalty notice or an infringement penalty, means—

- (a) a person who is the enforcement agency; or
- (b) a person appointed by the enforcement agency as an appropriate officer for the purposes of the notice or the class of notice; or
- (c) a prescribed person or a person who is a member of a prescribed class of person;

**"certificate"** means a certificate under clause 5(1)(b);

**"Code"** means a Code within the meaning of section 32 of the **Interpretation of Legislation Act 1984**;

**"continuing offence provision"** means a prescribed provision of an Act or a Code;

**"courtesy letter"** means a notice served under clause 3(1);

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**"enforcement agency"**, in relation to an infringement notice or penalty notice or an infringement penalty, means—

- (a) a person or body authorised by or under an Act to take proceedings for the offence in respect of which the notice was issued; or
- (b) a person by whom, or body by which, a person or body referred to in paragraph (a) is employed or engaged to provide services if the taking of the proceedings referred to in that paragraph would occur in the course of that employment or in the course of providing those services; or
- (c) a prescribed person or body or a person who, or body that, is a member of a prescribed class of person or body; or
- (d) a prescribed administrative unit; or
- (e) a prescribed group of people;

**"enforcement order"** means an order under clause 7(3)(e), 8(2)(c), 8(2)(d), 8(2)(e) or 9(5);

**"fine"** includes any costs that may be required to be paid under this Schedule by the child on whom the infringement notice was served;

**"infringement notice"** means an infringement notice under a prescribed provision of—

- (a) any Act or statutory rule; or
- (b) any local law made under the **Local Government Act 1989**; or
- (c) any Commonwealth Act or subordinate instrument that applies as a law of Victoria;

**"infringement penalty"** means the amount specified in an infringement notice as payable in respect of the offence for which the infringement notice was issued;

**"penalty notice"** means a penalty notice under a prescribed provision of an Act or a Code;

**"prescribed offence"** means an offence within the meaning of, or prescribed under, a prescribed provision of an Act or a Code;

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**"registrar"** means principal registrar, registrar or deputy registrar;

**"statutory rule"** has the same meaning as in the **Subordinate Legislation Act 1994**.

**PART 2—INFRINGEMENT NOTICES**

**3. Courtesy letters**

- (1) If it appears to an appropriate officer that an infringement penalty has not been paid before the end of the time specified in the infringement notice, the officer may serve a notice (a "courtesy letter") on the child on whom the infringement notice was served.
- (2) A courtesy letter must state—
  - (a) that the child on whom it is served has a further 28 days in which to pay the infringement penalty together with any prescribed costs; and
  - (b) that in default of payment, the child may be dealt with under this Part; and
  - (c) that the child may obtain further information from a person or agency specified in the letter.
- (3) If—
  - (a) the enforcement agency is prepared to accept payment of the infringement penalty and costs by instalments; and
  - (b) the payment of the infringement penalty would result in the loss of demerit points under the **Road Safety Act 1986**—the courtesy letter must also contain a warning that entering into an arrangement to pay the infringement penalty and costs by instalments will result in the loss of demerit points under that Act.
- (4) A courtesy letter may contain any other information that is prescribed for the purposes of this sub-clause.
- (5) If a child is served with a courtesy letter in relation to an infringement notice, the time for payment of the infringement penalty is extended until the end of 28 days after service of the courtesy letter.

- (6) The infringement penalty together with the prescribed costs may be paid within the extended period as if the infringement notice or law under which the notice was served also required the payment of those costs.
- (7) A child who has been served with a courtesy letter may decline to be dealt with under this Part by serving a written statement to that effect on the officer or person specified for that purpose in the letter within 28 days after service of the letter.

**4. Agreeing to pay by instalments has same effect as a full payment**

- (1) This clause applies in respect of an offence that would result in a child losing demerit points under the **Road Safety Act 1986** if the child were convicted of the offence.
- (2) For the purposes of the **Road Safety Act 1986**, the child is to be taken as paying the infringement penalty in respect of the offence on entering into an arrangement to pay the infringement penalty and costs by instalments.

**5. Registration of infringement penalties**

- (1) An enforcement agency may seek to have an infringement penalty registered by providing to a registrar—
  - (a) a document in the form required by the regulations containing the details required by the regulations in relation to a child—
    - (i) who has not paid an infringement penalty; or
    - (ii) who has entered into an arrangement to pay an infringement penalty by instalments but who has subsequently failed to comply with the arrangement; and
  - (b) a certificate in the prescribed form signed by an appropriate officer and certifying that in respect of the child referred to in the document the requirements set out in sub-clause (2), and any other prescribed requirements, have been satisfied.

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- (2) A certificate under sub-clause (1)(b) must certify that—
- (a) an infringement notice has been served on the child;  
and
  - (b) a courtesy letter has been served on the child after the end of the time specified in the infringement notice as the time within which the infringement penalty may be paid; and
  - (c) a period of at least 28 days has passed since the courtesy letter was served; and
  - (d) the infringement penalty and any prescribed costs had not been paid before the certificate was issued; and
  - (e) if the child entered into an arrangement to pay the infringement penalty and any prescribed costs by instalments—
    - (i) the child has failed to comply with the arrangement; and
    - (ii) a specified amount still remains to be paid under the arrangement; and
  - (f) the child has not, under clause 3(7), declined to be dealt with under this Part; and
  - (g) a charge in relation to the offence has not been filed;  
and
  - (h) a charge may still be filed in relation to the offence, having regard to the time when the offence is alleged to have been committed; and
  - (i) if the infringement notice was served under section 87 of the **Road Safety Act 1986**, the child was at the time of the alleged offence—
    - (i) the owner of the vehicle within the meaning of Part 7 of that Act; or
    - (ii) the person in charge of the vehicle as shown in a statement or declaration supplied in accordance with section 86(3)(a), 86(3)(aab) or 86(3)(ab) of that Act; and
  - (j) if the infringement notice was issued in respect of an offence to which section 66 of the **Road Safety Act 1986** applies, the child was at the time of the alleged offence—
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- (i) the owner of the motor vehicle within the meaning of section 66 of that Act; or
    - (ii) the driver of the motor vehicle as shown in a statement or declaration supplied in accordance with section 66(3)(a), 66(3)(aab) or 66(3)(ab) of that Act; and
  - (k) if the infringement notice was issued in respect of an offence against section 73(1) of the **Melbourne City Link Act 1995**, the child was at the time of the alleged offence—
    - (i) the owner of the vehicle within the meaning of Part 4 of that Act; or
    - (ii) the driver of the vehicle as shown in a statement or declaration supplied in accordance with section 87(3)(a), 87(3)(aab) or 87(3)(ab) of that Act; and
  - (l) if the infringement notice was issued in respect of an offence under section 204 of the **Mitcham-Frankston Project Act 2004**, the child was at the time of the trip to which the alleged offence relates—
    - (i) the owner of the vehicle within the meaning of that Act; or
    - (ii) the driver of the vehicle as shown in a statement supplied under section 199 or 219 of that Act.
  - (3) If it appears to the registrar from the certificate provided under sub-clause (1)(b) that the requirements listed in sub-clause (2) and any other prescribed requirements have been satisfied in relation to a child referred to in the document provided with the certificate, the registrar may register the infringement penalty or the part of the infringement penalty together with any prescribed costs for the purpose of enforcement under this Part.
  - (4) Despite sub-clause (3), the registrar must not register an infringement penalty that is for an amount less than the amount, if any, specified by the regulations for the purposes of this sub-clause.

Note: See section 373 for maximum fines that may be imposed by the Court.



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- (5) The enforcement agency may, by notice in the prescribed form filed with the registrar at any time before an infringement penalty or a part of an infringement penalty is registered under sub-clause (3) in relation to a child, request the registrar not to register the infringement penalty or part.
  - (6) A registrar must comply with a request made in accordance with sub-clause (5).

**6. Child's options**

- (1) On registering an infringement penalty or a part of an infringement penalty together with any prescribed costs, the registrar must cause to be sent by post to the child to whom the infringement penalty was issued at the address contained in the document provided under clause 5(1)(a) or any other address given by that child a notice in writing setting out the matters referred to in sub-clauses (2), (3) and (4).
  - (2) A child may—
    - (a) pay to the Court the amount of the infringement penalty or part and any prescribed costs on or before the date specified in the notice; or
    - (b) make an application referred to in clause 7; or
    - (c) appear before the registrar on the date specified in the notice; or
    - (d) request that consideration of the matter be deferred to another date so that the child may appear before the registrar; or
    - (e) decline to be dealt with by the registrar and request that the matter of the alleged offence in respect of which the infringement notice was issued be heard and determined by the Court; or
    - (f) do nothing and leave the matter of the infringement notice to be dealt with by the registrar on the date specified in the notice.
  - (3) In addition to sub-clause (2), a child may provide to the registrar information in writing by or on behalf of the child in relation to—
    - (a) the child's employment or school attendance;
    - (b) the child's personal and financial circumstances.
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- (4) If a child wishes to exercise the option referred to in sub-clause (2)(e)—
    - (a) the child must notify the registrar on or before the date specified in the notice under sub-clause (1); and
    - (b) on receipt of the child's notification, the registrar must cancel the registration of the infringement penalty and remit the infringement notice to the enforcement agency.
  - (5) Nothing in this Part prohibits an enforcement agency from filing a charge with the Court in respect of an infringement notice that has been remitted to it under sub-clause (4)(b).

**7. Applications concerning payment of fine**

- (1) A child against whom an infringement penalty or part of an infringement penalty has been registered may apply to the registrar personally or in writing or in any other manner approved by the registrar for one or more of the following—
  - (a) an order that the time within which the fine is to be paid be extended; or
  - (b) an order that the fine be paid by instalments; or
  - (c) an order for the variation of an instalment order; or
  - (d) an order that payment of the fine not be enforced.
- (2) An application under sub-clause (1)(d) must be made in the prescribed form.
- (3) On receipt of an application under sub-clause (1), the registrar may do one or more of the following—
  - (a) allow additional time for the payment of the fine or the balance of the fine;
  - (b) direct payment of the fine to be made by instalments;
  - (c) direct payment of the fine or instalments to be made at the time or times specified by the registrar;
  - (d) vary the amount of instalments;
  - (e) order that the fine not be enforced.
- (4) If the registrar orders that a fine not be enforced, the registrar must give notice of the order and a copy of the application for the order to the enforcement agency within 3 working days after the making of the order.

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**8. Enforcement order**

- (1) If—
- (a) the child against whom an infringement penalty or part of an infringement penalty has been registered has not paid the infringement penalty and does not decline to be dealt with by the registrar; and
  - (b) an order under clause 7 has not been made—
- the registrar must consider the matter on the date specified in the notice under clause 6.
- (2) After hearing the child, if the child appears before the registrar, and after considering any information provided to the registrar under clause 6(3), the registrar may—
- (a) if the child contests the matter of the alleged offence in respect of which the infringement notice was issued or declines to be dealt with by the registrar, cancel the registration of the infringement penalty and remit the infringement notice to the enforcement agency; or
  - (b) defer making a decision to a later date on which the child is to appear before the registrar; or
  - (c) make an order confirming the infringement penalty and order that the child pay to the Court the amount of the infringement penalty or part and any prescribed costs; or
  - (d) make an order reducing the infringement penalty and order that the child pay to the Court the amount of the infringement penalty or part as so reduced and any prescribed costs; or
  - (e) if the registrar is satisfied that it is appropriate to do so, order that payment of the amount of the infringement penalty and any costs that remain unpaid not be enforced.
- (3) In exercising his or her discretion under sub-clause (2), the registrar must have regard to the age and personal and financial circumstances of the child.
- (4) An order made under sub-clause (2) must not require payment of an amount exceeding the amount of a fine that the Court may impose under section 373.

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- (5) An enforcement order is deemed to be an order of the Court—
    - (a) in the case of an order made under sub-clause (2)(c) or (2)(d), on the expiry of 28 days after the making of the order unless an application is made under clause 9 within that period;
    - (b) in the case of an order made under sub-clause (2)(e) or clause 7(3)(e), on the expiry of 14 days after the making of the order unless an application is made under clause 9 within that period.
  - (6) Not later than 3 working days after the making of an enforcement order, the registrar must cause a notice in the prescribed form to be sent by post to the child against whom the order is made at the address contained in the document provided under clause 5(1)(a) or any other address given by the child.
  - (7) If the registrar orders that payment of the amount of the infringement penalty and any costs that remain unpaid not be enforced, the registrar must give notice of the order and a copy of any information provided by the child under clause 6(3) to the enforcement agency not later than 3 working days after the making of the order.
  - (8) A child against whom an enforcement order is made may apply for an order under clause 7.

**9. Court review of enforcement order**

- (1) If the registrar makes an order under clause 8(2)(c) or 8(2)(d), the child may, by notice in writing to the Court within 28 days after the registrar's decision, apply to the Court for a review of the registrar's order.
  - (2) If the registrar makes an order under clause 7(3)(e) or 8(2)(e), the enforcement agency may, by notice in writing to the Court within 14 days after the date of the order, apply to the Court for a review of the registrar's order.
  - (3) On receipt of a notice under sub-clause (1) or (2), the registrar must cause notice of the time and place of hearing of the review to be given or sent to the child and the enforcement agency.
  - (4) On a review under this clause, the child and the enforcement agency are entitled to appear.
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(5) On a review under this clause, the Court may make an order—

- (a) confirming the registrar's order; or
- (b) requiring the child to pay an amount not exceeding the amount that the Court may impose under section 373; or
- (c) that payment of the amount of the infringement penalty and any costs that remain unpaid not be enforced.

**10. Enforcement hearing**

(1) If—

- (a) an order is made under clause 7, 8(2)(c), 8(2)(d) or 9(5) in respect of a child; and
- (b) for a period of more than one month the child defaults in the payment of an amount ordered to be paid or of any instalment under an instalment order—

the Court may, by notice in writing served on the child, require the child to appear before the Court at a specified time and place for an enforcement hearing.

(2) On an enforcement hearing, the Court may make any order that it could make under section 373.

**11. Effect of enforcement order**

(1) If an enforcement order is made in relation to an offence alleged to have been committed by a child—

- (a) the child is not thereby to be taken to have been convicted of the offence; and
- (b) the child is not liable to any further proceedings for the alleged offence; and
- (c) the making of the order does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence; and
- (d) payment in accordance with the order is not an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(2) Any amount recovered as a result of the making of an enforcement order is to be dealt with in the same way as an amount recovered as a result of a conviction.

- (3) Despite anything to the contrary in this clause, the making of an enforcement order in relation to an offence which is a traffic infringement within the meaning of the **Road Safety Act 1986** does not prevent the incurring of demerit points under section 25 of that Act in relation to that infringement.
- (4) Despite anything to the contrary in this clause, the making of an enforcement order—
  - (a) may be recorded for the purposes of a heavy vehicle registration suspension scheme within the meaning of section 89(7) of the **Road Safety Act 1986**; and
  - (b) does not prevent the suspension of the registration of a vehicle under that scheme.

#### **12. Expiry of enforcement order**

- (1) An enforcement order expires—
  - (a) if an order is made under clause 7(3)(a), 7(3)(b), 7(3)(c) or 7(3)(d) in relation to the enforcement order—
    - (i) on the payment in full of the fine; or
    - (ii) if one or more payments are made under the order but the fine is not paid in full, 3 years after the receipt of the last payment; or
    - (iii) in any other case, 3 years after the making of the order under clause 7(3);
  - (b) if a warrant to seize property has been issued in respect of the order, on that warrant becoming void under section 529;
  - (c) if an order is made directing that an infringement penalty and any costs that remain unpaid not be enforced or an order is made under clause 7(3)(e), on the making of that order;
  - (d) in any other case, 3 years after the order was made.
- (2) If both sub-clauses (1)(a) and (1)(b) apply, the enforcement order expires on the warrant to seize property becoming void.
- (3) If an enforcement order expires as a result of this clause, any amount still outstanding in respect of the fine for which it was made ceases to be enforceable or recoverable.
- (4) On the expiry of an enforcement order, any warrant to seize property that was issued in respect of that order is void.

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- (5) An enforcement order that has expired may be reinstated by the registrar on the application of the enforcement agency.
  - (6) Despite sub-clause (3), if an enforcement order is reinstated, the fine in respect of which it was made again becomes enforceable or recoverable as if there had been no cessation.
  - (7) Sub-clause (1) does not apply to a reinstated enforcement order.
  - (8) A reinstated enforcement order expires 3 years after it was reinstated.
  - (9) This clause does not apply to an enforcement order in respect of which a warrant has been issued under the Service and Execution of Process Act 1992 of the Commonwealth.

**13. Service of documents**

- (1) All documents required or permitted by this Part to be given or served, may be served personally or by post or in any other prescribed manner.
- (2) If a courtesy letter is served by post it must be addressed—
  - (a) to the last known place of residence or business of the child alleged to have committed the offence; or
  - (b) if the infringement notice was served under section 87 of the **Road Safety Act 1986**—
    - (i) to the last address of the owner of the vehicle within the meaning of Part 7 of that Act; or
    - (ii) if a statement or declaration has been supplied under section 86(3)(a), 86(3)(aab) or 86(3)(ab) of that Act, to the last address of the person alleged in that statement or declaration to have been in charge of the vehicle; or
  - (c) if the infringement notice was issued in respect of an offence to which section 66 of the **Road Safety Act 1986** applies—
    - (i) to the last address of the owner of the motor vehicle within the meaning of section 66 of that Act; or
    - (ii) if a statement or declaration has been supplied under section 66(3)(a), 66(3)(aab) or 66(3)(ab) of that Act, to the last address of the person alleged in that statement or declaration to have been the driver of the motor vehicle; or

- (d) if the infringement notice was issued in respect of an offence against section 73(1) of the **Melbourne City Link Act 1995**—
  - (i) to the last address of the owner of the vehicle within the meaning of Part 4 of that Act; or
  - (ii) if a statement or declaration has been supplied under section 87(3)(a), 87(3)(aab) or 87(3)(ab) of that Act, to the last address of the person alleged in that statement or declaration to have been the driver of the vehicle.
- (3) Any other document served by post under this Part must be addressed—
  - (a) to the address for service given by the person on whom the document is to be served; or
  - (b) if no address for service has been given, to the address contained in the document provided under clause 5(1)(a).

### **PART 3—PENALTY NOTICES**

#### **14. Application of Part 2 to penalty notices**

Part 2, with any necessary modifications, applies to penalty notices and prescribed offences as if—

- (a) any reference in that Part to an infringement notice were a reference to a penalty notice; and
- (b) for clause 11(1)(a) there were substituted the following—
  - "(a) the person is not thereby to be taken to have been convicted of the offence, except as provided in clause 15; and".

#### **15. Deemed conviction where failure to do act or thing**

If a penalty notice has been served on a child in relation to a prescribed offence constituted by a failure to do a particular act or thing and—

- (a) the child pays the infringement penalty together with any prescribed costs after the end of the period specified in the penalty notice but before an enforcement order is made under this Part in relation to the prescribed offence but does not do the act or thing and at the date of payment that act or thing was still able to be done, the obligation to do that act or



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thing continues and the relevant continuing offence provision applies in relation to the continued failure to do the act or thing as if, on the day on which the child made the payment, the child had been convicted of an offence constituted by a failure to do the act or thing; or

- (b) an enforcement order is made and at the date on which the enforcement order was made that act or thing had not been done and was still able to be done, the obligation to do that act or thing continues and the relevant continuing offence provision applies in relation to the continued failure to do that act or thing as if, on the day on which the enforcement order was made, the child had been convicted of an offence constituted by a failure to do the act or thing.
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**SCHEDULE 4**

Section 606

**TRANSITIONAL AND SAVING PROVISIONS**

**1. Definitions**

In this Schedule—

**"commencement day"** means the day on which section 601 of the new Act comes into operation;

**"former Act"** means **Children and Young Persons Act 1989**;

**"new Act"** means **Children, Youth and Families Act 2005**.

**2. General transitional provisions**

- (1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) This Schedule applies despite anything to the contrary in any other provision of the new Act.

**3. Superseded references**

On and from the commencement day unless the context otherwise requires, in any Act (other than the new Act), or in any instrument made under any Act or in any other document of any kind—

- (a) a reference to the former Act must be read as a reference to the new Act; and
- (b) a reference to a probation officer, responsible officer or supervisor within the meaning of the former Act must be read as a reference to a youth justice officer; and
- (c) a reference to a youth supervision unit must be read as a reference to a youth justice unit; and
- (d) a reference to a youth training centre must be read as a reference to a youth justice centre; and
- (e) a reference to a youth training centre order must be read as a reference to a youth justice centre order.

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**4. Superseded references to Community Services Act 1970**

On and from the commencement day unless the context otherwise requires, in any Act (other than the new Act), or in any instrument made under any Act or in any other document of any kind a reference to the **Community Services Act 1970**—

- (a) to the extent that the reference relates to a provision of the **Community Services Act 1970** re-enacted (with or without modifications) in the **Children, Youth and Families Act 2005**, is deemed to be a reference to the **Children, Youth and Families Act 2005**; and
- (b) to the extent that the reference relates to any other provision of the **Community Services Act 1970**, is deemed to be a reference to the **Community Services (Attendance at School) Act 1970**.

**5. Saving of references**

If a provision of an Act that is repealed by the new Act required a reference in an Act, subordinate instrument or other instrument or document to a person or body to be construed as a reference to another person or body, the repeal of that provision does not affect the construction of that reference in that Act, instrument or document, unless the contrary intention appears.

**6. Registration of existing out of home carers**

- (1) An out of home care service must notify the Secretary in writing within one month after the commencement day of each person who on the commencement day—
  - (a) is approved by the out of home care service to act as a foster carer; or
  - (b) is employed or engaged by the out of home care service—
    - (i) as a carer for children; or
    - (ii) as a provider of services to children (within the meaning of section 74) at an out of home care residence managed by the service.
- (2) A notice under this section must include the prescribed information (if any).

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- (3) The Secretary must record in the register of out of home carers the required information in respect of each person of whom notice is given under this clause as if the notice was given under Division 2 of Part 3.4.

**7. Review of child care agreements**

- (1) Despite anything to the contrary in section 139, that section applies in respect of a short-term child care agreement existing on the commencement day as if a reference in section 139(1)(a) to the end of the first 6 months of the agreement were a reference to the end of 12 months after the commencement day.
- (2) Despite anything to the contrary in section 152, that section applies in respect of a long-term child care agreement existing at the commencement day as if a reference in section 152(1)(b) to the end of the first 6 months of the agreement were a reference to the end of 12 months after the commencement day.

**8. Transitional regulations**

- (1) The Governor in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the new Act.
- (2) A provision mentioned in sub-clause (1) may be retrospective in operation to the commencement day or a day after the commencement day.
- (3) Regulations under this clause have effect despite anything to the contrary in any Act other than the new Act or in any subordinate instrument.
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<b>Endnotes</b>
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**ENDNOTES**

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 6 October 2005*

*Legislative Council: 15 November 2005*

The long title for the Bill for this Act was "to provide for community services to support children and their families, to provide for the protection of children, to make provision in relation to children who have been charged with, or who have been found guilty of, offences, to continue The Children's Court of Victoria as a specialist court dealing with matters relating to children, to repeal the **Children and Young Persons Act 1989**, to amend the **Community Services Act 1970** and other Acts and for other purposes."

**Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 6 October 2005*

*Legislative Council: 15 November 2005*

*Absolute majorities:*

*Legislative Assembly: 27 October 2005*

*Legislative Council: 23 November 2005*