

AUSTRALIAN CAPITAL TERRITORY

Children's Services Ordinance 1986

No. 13 of 1986

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SCHEDULE

AUSTRALIAN CAPITAL TERRITORY

Children's Services Ordinance 1986

No. 13 of 1986

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 29 May 1986.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

G. SCHOLES
Minister of State for Territories

An Ordinance relating to the welfare of Children

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *Children's Services Ordinance 1986*.¹

Commencement

2. (1) This section and section 1 shall come into operation on the day on which this Ordinance is notified in the *Gazette*.

(2) The remaining provisions of this Ordinance shall come into operation on such date as is, or such dates as respectively are, fixed by the Minister of State for Territories by notice in the *Gazette*.

Repeal and savings

3. (1) The Ordinances specified in the Schedule are repealed.

(2) Where a child is convicted of an offence in proceedings instituted before the commencement date, the court in which the proceedings were heard may make such orders in relation to the child as the court could have made if the proceedings had been instituted after the commencement date.

(3) Where, immediately before the commencement date, a child was a ward within the meaning of the *Child Welfare Ordinance 1957*, there shall be deemed to have been made, on the commencement date, an order under section 80 that the child be made a ward of the Director.

(4) Notwithstanding the repeal of the Ordinances specified in Part I of the Schedule, a licence granted under the repealed Ordinances and in force immediately before the commencement date—

- (a) subject to sections 122 and 123, remains in force for such period as it would have remained in force under the repealed Ordinances; and
- (b) for the purposes of the definition of “licence” in section 117, shall be deemed to be a licence under Part VII.

(5) Notwithstanding the repeal of the Ordinances specified in Part II of the Schedule, the Agreement and the Supplemental Agreement within the meaning of the repealed Ordinances—

- (a) shall continue in force until an agreement is entered into under Part XI with a Minister of State for the State of New South Wales; and
- (b) while they so continue in force, shall be deemed to have been entered into under Part XI.

(6) In this section, “commencement date” means the date fixed under section 2.

Interpretation

4. (1) In this Ordinance, unless the contrary intention appears—

“action” includes a suit or an original proceeding between parties but does not include a criminal proceeding;

“adopting parent” means—

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- (a) a person who has adopted another person by an order of adoption under the *Adoption of Children Ordinance 1965* or by a deed of adoption and, where—
 - (i) an order under that Ordinance has been made in favour of a husband and wife on their joint application; or
 - (ii) a husband and wife have, by deed, jointly adopted a child,
 - includes both the husband and wife; or
- (b) a person whose adoption of another person has effect under Part V of that Ordinance;

“agreement” means an agreement with a Minister of State for a State or another Territory entered into under section 176;

“approved home” means a home approved by the Director for the purposes of this Ordinance;

“attendance centre” means an attendance centre established or declared by the Minister under section 157;

“attendance centre order” means an order made by a court, in relation to a child, that requires the child, during such period, not exceeding one year, as the court specifies, to report at an attendance centre and to place himself or herself in the custody of the Director;

“barrister and solicitor” means a barrister and solicitor within the meaning of the *Legal Practitioners Ordinance 1970*;

“Chief Magistrate” has the same meaning as in the Magistrates Court Ordinance;

“child” means a person who has not attained the age of 18 years;

“childrens welfare” means the welfare of children in the Territory;

“conditional discharge order” means an order made by a court in respect of a child discharging the child subject to such conditions as the court specifies;

“Council” means the Childrens Services Council constituted by section 13;

“custody”, in relation to a child, means the physical control of the child;

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“dentist” means a person registered as a dentist under the *Dentists Registration Ordinance 1931*;

“Director” means the Director of Welfare holding office under Part II;

“Health Authority” means the Australian Capital Territory Health Authority;

“institution” means an institution established or declared by the Minister under section 157;

“Magistrates Court Ordinance” means the *Magistrates Court Ordinance 1930*;

“medical practitioner” means a person registered as a medical practitioner under the *Medical Practitioners Registration Ordinance 1930*;

“offence” includes an offence against a law of the Commonwealth;

“officer” means a person appointed by the Director to be an officer for the purposes of this Ordinance;

“parent”, in relation to a child—

- (a) includes a step-parent, adopting parent or guardian of the child and a person who is by law liable to maintain the child; and
- (b) does not include a parent in respect of whom a court has made an order that the parent be no longer a guardian of the child;

“place of safety” means a police station, a hospital or a place the occupier of which is prepared to receive and care for a child temporarily;

“probation order” means an order made by a court—

- (a) placing a child under the supervision of the Director or of some other person specified in the order for the period specified in the order; and
- (b) requiring the child to report to the supervisor at a place and at intervals specified by the supervisor;

“remand centre” has the same meaning as in the *Remand Centres Ordinance 1976*;

“repealed Ordinances” means the Ordinances repealed by this Ordinance;

“residential order” means an order—

- (a) that a child be placed—
 - (i) in an approved home; or
 - (ii) in the care of a person specified in the order, whether the person resides in the Territory or elsewhere; or
- (b) directing the child to live at such place, whether within or outside the Territory, as the Director from time to time determines;

“school” includes any place of education or training;

“shelter” means a shelter established or declared by the Minister under section 157;

“Standing Committee” means the Standing Committee of the Council;

“State institution” means an institution situated in a State or Territory with a Minister of State of which an agreement has been entered into, being an institution established or constituted under a law of the State or Territory as a place in which children may be detained;

“supervision order” means an order made by a court in respect of a child who has been declared to be in need of care—

- (a) placing the child under the supervision of the Director or of some other person specified in the order for the period specified in the order; and
- (b) requiring the child, a parent of the child or both the child and a parent of the child to report to the supervisor at a place and at intervals specified by the supervisor;

“supervisor”, in relation to a child in respect of whom a probation order or a supervision order is in force, means the person under whose supervision the child is placed by virtue of the order;

“the Court” means the Magistrates Court when known by virtue of section 20 as the Childrens Court;

“the school-leaving age” has the same meaning as in the *Education Ordinance 1937*;

“ward” means a child who is a ward of the Director by reason of an order or declaration made under this Ordinance and includes a child who becomes a ward of the Director by reason of the operation of sub-section 3 (3);

“Youth Advocate” means the Youth Advocate appointed under section 9.

(2) A reference in this Ordinance to the parents of a child or to one of the parents of a child shall, where the child has only one parent, be read as a reference to that parent.

(3) A reference in this Ordinance to the person in charge of a hospital shall be read as including a reference to a medical practitioner having authority to act on behalf of the person so in charge.

(4) A reference in this Ordinance to the person in charge of an approved home shall be read as including a reference to a person having authority to act on behalf of the person so in charge.

(5) A provision of this Ordinance referring to a shelter shall, in relation to the Jervis Bay Territory, be read as including a reference to a place of safety.

Matters to be considered concerning children

5. (1) In any proceedings in a court having jurisdiction in the Territory, whether the proceedings are under this Ordinance or under some other law, being proceedings against or concerning or affecting a child, the court shall, in the exercise of its jurisdiction or powers, seek to procure for the child such care, protection, control or guidance as will best lead to the proper development of the personality of the child and to the child's becoming a responsible and useful member of the community.

(2) In the exercise of a power, whether under this Ordinance or under some other law of the Territory, by a body, authority or person, being a power the exercise of which affects or concerns a child, the body, authority or person shall seek to procure for the child the matters referred to in sub-section (1).

(3) For the purpose of sub-sections (1) and (2), the court, body, authority or person shall have regard to such matters as seem to it or the person to be appropriate and, in particular, to such of the following as are appropriate:

- (a) the need to strengthen and preserve the relationship between the child and his or her parents and other members of his or her family;
- (b) the desirability of leaving the child in his or her own home;

- (c) the desirability of allowing the education, training or lawful employment of the child to be continued without interruption or disturbance;
- (d) the desirability of ensuring that the child is aware that he or she must bear responsibility for anything that he or she does that is contrary to law; and
- (e) the need to protect the community or a particular person from the violent or other unlawful acts of the child.

Courts to see that child understands proceedings

6. In any proceedings in a court having jurisdiction in the Territory, being proceedings to which a child is a party, and whether the proceedings are under this Ordinance or under some other law, the court shall endeavour to ensure that the child and any other parties present at the hearing understand the nature and purpose of the proceedings and of any order that the court proposes to make or has made.

PART II—ADMINISTRATION

Director of Welfare

7. (1) For the purposes of this Ordinance there shall be a Director of Welfare, who shall be appointed by the Minister.

(2) A person shall not be so appointed unless he or she is a person appointed or employed under the *Public Service Act 1922*.

Director to provide assistance

8. (1) For the purpose of assisting the parents of children, and others, to discharge their duties and responsibilities to children adequately, it is the duty of the Director to do such things as he or she may properly do, or is required by law to do, for the purpose of promoting the physical, mental, moral, spiritual and social development of children in a normal and healthy manner.

- (2) Without limiting the generality of sub-section (1), the Director may—
 - (a) make advice and guidance available to the parents of children and to others concerned with childrens welfare; and
 - (b) arrange for the provision of financial or other assistance to—

- (i) the parents of children, and others, for or in connection with childrens welfare and, as required, the welfare of particular children;
- (ii) organisations whose objects include the promotion of childrens welfare; and
- (iii) any person for the purposes of lessening the need to bring children before a court.

Youth Advocate

9. (1) For the purposes of this Ordinance there shall be a Youth Advocate, who shall be appointed by the Minister.

(2) In addition to the functions conferred on the Youth Advocate by this Ordinance, the Youth Advocate has—

- (a) the functions conferred on him or her by any other law of the Territory; and
- (b) such other functions, if any, relating to childrens welfare as are specified in the instrument of his or her appointment or as the Minister, by instrument in writing, from time to time determines.

(3) Subject to this Ordinance, a person appointed as the Youth Advocate holds office for such period, not exceeding 7 years, as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

(4) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Youth Advocate and a person shall not be appointed or re-appointed as the Youth Advocate for a period that extends beyond the date on which the person will attain the age of 65 years.

(5) The Minister shall issue to a person appointed under sub-section (1) a certificate signed by the Minister to the effect that the person is the Youth Advocate.

Acting appointments

10. (1) The Minister may appoint a person to act as Director or Youth Advocate—

- (a) during a vacancy in the office of Director or Youth Advocate, as the case may be, whether or not an appointment has been previously made to the office; or

- (b) during any period, or during all periods, when the Director or Youth Advocate, as the case may be, is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of his or her office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in circumstances specified in the instrument of appointment.

(3) Where a person is acting as Director or Youth Advocate in accordance with paragraph (1) (b) and the office of Director or Youth Advocate, as the case may be, becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The appointment of a person to act as Director or Youth Advocate ceases to have effect if the person resigns the appointment by writing signed by him or her and delivered to the Minister.

(5) While a person is acting as Director or Youth Advocate, the person has and may exercise all the powers, and shall perform all the functions, of the Director or Youth Advocate, as the case may be, under this Ordinance or under any other law.

(6) The validity of anything done by a person purporting to act under the preceding provisions of this section shall not be called in question on the ground that the occasion for the person's appointment had not arisen, that there is a defect or irregularity in or in connection with the person's appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

Appointment of officers

11. (1) The Director may, from time to time, appoint persons to be officers for the purposes of this Ordinance.

(2) The Director shall cause to be issued to each person appointed under sub-section (1) an identity card that specifies the name and appointment of the person and to which is attached a recent photograph of the person.

(3) A person who was appointed under sub-section (1) shall not, upon ceasing to be an officer, fail or refuse, without reasonable excuse, to return to the Director the identity card issued to the person.

(4) A person who contravenes sub-section (3) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

Advice and assistance by Director and Youth Advocate

12. The Director and the Youth Advocate shall give to the Council and the Standing Committee such advice or assistance as the Council or Standing Committee reasonably requests.

Childrens Services Council

13. (1) For the purposes of this Ordinance there is constituted a body to be known as the Childrens Services Council.

(2) The Council consists of—

- (a) the Director;
- (b) the Chief Magistrate or another magistrate nominated by the Chief Magistrate;
- (c) the Youth Advocate;
- (d) a person nominated by the Health Authority;
- (e) a police officer appointed by the Commissioner of Police of the Australian Federal Police;
- (f) a member of the House of Assembly nominated by that Assembly;
- (g) a court counsellor within the meaning of the *Family Law Act 1975* nominated by the Principal Director of Court Counselling referred to in section 37 of that Act;
- (h) a person nominated by the Australian Capital Territory Schools Authority; and
- (i) such other persons as the Minister from time to time appoints.

(3) The members of the Council, other than the members referred to in paragraphs (2) (a), (b), (c) and (e), shall be appointed by the Minister.

(4) The persons referred to in paragraph (2) (i) shall be persons concerned with, or persons associated with bodies, authorities or agencies concerned with, childrens welfare.

(5) The Director shall be the Chairman of the Council and shall preside at all meetings at which he or she is present.

(6) Meetings of the Council shall be convened by the Chairman or, in the Chairman's absence, by the Youth Advocate.

(7) Meetings of the Council shall be so convened that a period of not more than 3 months elapses between a meeting of the Council and the next meeting.

(8) If the Chairman is unable to attend a meeting of the Council, the members present shall elect one of their number to preside at that meeting.

(9) Five members of the Council form a quorum.

(10) Questions arising at a meeting of the Council shall be decided by the votes of a majority of the members present and voting.

(11) If the voting is equal, the Chairman or other person presiding has a casting vote.

(12) If a member of the Council other than the Chairman or the Youth Advocate is unable to attend a meeting of the Council, a person nominated for the purpose by the member may attend in the member's place and shall, in respect of that meeting, be regarded as a member of the Council, may vote and shall be taken into account in determining a quorum.

(13) The proceedings and decisions of the Council are not affected by reason of any failure to comply with a provision of this section.

Functions of Council

14. The functions of the Council are—

- (a) to consider matters related to childrens welfare referred to it by the Minister;
- (b) to consider any other matter related to childrens welfare;
- (c) to make recommendations concerning childrens welfare to a Minister, body, authority or agency concerned with the welfare of children;
- (d) to make recommendations to the Minister with respect to the granting of money, or the furnishing of other assistance, to a body, authority or agency concerned with childrens welfare;
- (e) to inform itself concerning matters related to childrens welfare;

- (f) to arrange meetings for the discussion of matters related to childrens welfare;
- (g) to prepare and issue papers related to childrens welfare; and
- (h) to arrange for the preparation of statistics with respect to any matter dealt with under this Ordinance or otherwise with respect to childrens welfare.

Annual reports

15. (1) The Youth Advocate shall, as soon as practicable after each 30 June, furnish to the Council a report as to the exercise of his or her powers and the performance of his or her duties and functions during the previous 12 months.

(2) The Council shall, as soon as practicable after each 30 June but not later than each 30 September, furnish to the Minister a report as to the operation of this Ordinance, and as to childrens welfare in the Territory, during the previous 12 months.

(3) The Minister shall cause a copy of each report furnished under subsection (2) to be laid before each House of the Parliament within 15 sitting days of the House after its receipt by the Minister and shall also cause a copy of each report to be laid before the House of Assembly.

Standing Committee of Council

16. (1) For the purposes of this Ordinance, there shall be a Standing Committee of the Council consisting of the members of the Council referred to in paragraphs 13 (2) (a), (c), (d) and (e).

(2) The Youth Advocate may invite other persons to attend a meeting of the Standing Committee but a person so invited is not entitled to vote at the meeting.

(3) The Youth Advocate shall be the Chairman of the Standing Committee.

(4) If the Youth Advocate is unable to attend a meeting of the Standing Committee, the members present shall elect a person to preside at that meeting.

(5) Three members of the Standing Committee form a quorum.

(6) The Youth Advocate may, and shall, if a member of the Standing Committee so requests, convene a meeting of the Standing Committee.

(7) Questions arising at a meeting of the Standing Committee shall be decided by the votes of a majority of the members present and voting.

(8) If the voting is equal, the person presiding has a casting vote.

(9) If a member of the Council referred to in paragraph 13 (2) (d) or (e) is unable to attend a meeting of the Standing Committee, the person nominating or appointing him or her, as the case may be, may appoint another person to attend that meeting and the person so appointed may attend and vote and shall be taken into account in determining a quorum.

Functions of Standing Committee

17. The functions of the Standing Committee are to make proposals and recommendations as to the welfare of a particular child, including a recommendation to the Youth Advocate whether the Youth Advocate should, or should not, make an application to the Court for a declaration that the child is in need of care.

Assistance by authorities and agencies

18. An authority or agency established by a law of the Territory, being an authority or agency involved in the provision of welfare services to children, shall—

- (a) upon request by the Director or the Youth Advocate, make available to the Director or the Youth Advocate, as the case requires, such information, advice, guidance, assistance, documents, facilities or services as are necessary or desirable in connection with childrens welfare or with the welfare of a particular child; and
- (b) furnish to the Council or to the Standing Committee such information, advice, assistance or documents with respect to childrens welfare, or to the welfare of a particular child, as the Council or the Standing Committee reasonably requests.

Delegation

19. (1) The Director may, either generally or as otherwise provided by the instrument of delegation, in writing delegate to an officer or employee within the meaning of the *Public Service Act 1922* any of his or her powers under this Ordinance, other than—

- (a) this power of delegation; or

(b) a power exercisable by the Director in his or her capacity as a member of the Council or of the Standing Committee.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Ordinance, be deemed to have been exercised by the Director.

(3) A delegation under this section does not prevent the exercise of a power by the Director.

PART III—THE CHILDRENS COURT

Jurisdiction

20. The Magistrates Court has jurisdiction—

- (a) to hear and determine informations against children; and
- (b) to hear and determine applications and other proceedings under this Ordinance with respect to children,

and, when exercising that jurisdiction, shall be known as the Childrens Court.

Determination of jurisdiction by reference to age

21. For the purpose of determining the application of section 20 with respect to proceedings concerning a person (not being proceedings in relation to which section 24 applies), regard shall be had to the age of the person at the time of the commencement of the proceedings.

Procedure of Childrens Court

22. (1) Subject to this Ordinance and the regulations—

- (a) the *Magistrates Court Ordinance 1930* and rules and regulations under that Ordinance apply to and in relation to the Court in the exercise of its jurisdiction under section 20 in respect of proceedings under Part IV, other than section 68; and
- (b) the *Magistrates Court (Civil Jurisdiction) Ordinance 1982* and the regulations under that Ordinance apply to and in relation to the Court in the exercise of its jurisdiction under section 20 in respect of any other proceedings under this Ordinance.

(2) The Attorney-General may make regulations, not inconsistent with this Ordinance—

- (a) prescribing the procedure to be followed in proceedings in the Court in the exercise of its jurisdiction under section 20; and

- (b) prescribing all other matters that are necessary or convenient to be prescribed for the purposes of this Part.

PART IV—CHILD OFFENDERS

Division 1—General

Saving of other laws

23. Except as otherwise expressly provided by this Ordinance, this Part does not affect the operation of the common law or of any law in force in the Territory.

Determination of criminal jurisdiction by reference to age

24. (1) Subject to this section, for the purpose of determining whether an information alleging an offence by a person should be heard and determined by the Court, regard shall be had to the age of the person at the time of the alleged offence.

(2) Where a person was under the age of 18 years at the time of an alleged offence and between the ages of 18 years and 18 years 6 months at the time of the person's first appearance in the Court after having been charged with the alleged offence—

- (a) the person shall be dealt with in accordance with this Part until such time (if any) as the Court finds the offence proved;
- (b) for the purposes of so dealing with the person, this Part applies to and in relation to the person as if the person were a child; and
- (c) if the Court finds the offence proved, the person shall be dealt with as an adult.

(3) Where a person was under the age of 18 years at the time of an alleged offence and over the age of 18 years 6 months at the time of the person's first appearance in the Court after having been charged with the alleged offence, the person shall be dealt with as an adult.

Proceedings where child jointly charged with adult

25. (1) Where a child and a person who is not a child are jointly charged with an offence, section 20 applies to and in relation to proceedings against the child arising out of that charge as though the child had been charged separately.

(2) Section 20 does not apply in relation to the preliminary examination in respect of an indictable offence alleged to have been committed jointly by a child and a person who is not a child if the Chief Magistrate, having regard to the nature of the alleged offence and the time and expense involved in carrying out the preliminary examinations separately, so orders.

Transfer of proceedings

26. (1) If it appears to the Court when hearing an information against a child that the circumstances are such that the child should be dealt with under Part V, the Court may order that a copy of the papers, together with any report that the Court thinks fit to make, be furnished to the Youth Advocate.

(2) Where the Court makes an order under sub-section (1), the Court shall release the child into the custody of an authorised person within the meaning of Part V and either—

- (a) dismiss the information; or
- (b) adjourn the matter indefinitely.

(3) Where the Court adjourns the matter in pursuance of sub-section (2), the matter may be set down again for hearing at the request of the prosecutor, the child to whom the matter relates or the Youth Advocate.

Age of criminal responsibility

27. (1) A child who has not attained the age of 8 years shall, for all purposes, be presumed to be incapable of committing in the Territory an offence against a law in force in the Territory.

(2) There is a rebuttable presumption that a child who has attained the age of 8 years but has not attained the age of 14 years is incapable of committing in the Territory an offence against a law in force in the Territory by reason that the child did not have the capacity to know that the act or omission concerned was wrong.

Power to apprehend under-age children

28. (1) Where a police officer has reasonable grounds to believe that a person is a child who has not attained the age of 8 years and has done or is doing an act which, but for sub-section 27 (1), would constitute an offence, the police officer may apprehend the child, and for that purpose may use such force as is necessary and reasonable.

(2) For the purpose of exercising the power conferred by sub-section (1), the police officer may enter any premises, by force if necessary and reasonable,

at any time of the day or night for the purpose of arresting the child, and may search the premises for the child, if the police officer believes on reasonable grounds that the child has committed a serious offence within the meaning of Division 2 and is on the premises.

(3) Upon apprehending a child under sub-section (1), the police officer shall—

- (a) take the child to one of the child's parents; or
- (b) if it is not practicable to do so, place the child with a suitable person who is prepared to care for the child and notify the Youth Advocate that the police officer has done so.

Division 2—Criminal Proceedings against Children

Interpretation

29. (1) In this Division, unless the contrary intention appears—

“authorised officer” means the Commissioner of Police or a Deputy Commissioner of Police of the Australian Federal Police or a police officer authorised by one of those officers to act under this Division;

“police officer” includes a person holding office under an Ordinance or under regulations under an Ordinance and having power by virtue of that Ordinance or those regulations to arrest or detain a person or to take a person into his or her custody;

“serious offence” means an offence punishable by imprisonment for a period exceeding one year;

“to interview” includes to ask questions.

(2) For the purposes of this Division, a child is under restraint if the child is under restraint—

- (a) as a result of the child's having been lawfully arrested or detained; or
- (b) in respect of an offence and a police officer believes on reasonable grounds that—
 - (i) the child has committed the offence; or
 - (ii) he or she would be authorised under a law in force in the Territory to arrest the child for the offence.

(3) If a child is in the company of a police officer for a purpose connected with the investigation of an offence or a possible offence and the police officer would not allow the child to leave if the child wished to do so, whether or not the police officer has reasonable grounds for believing that the child has committed the offence and whether or not the child is in lawful custody in respect of the offence, the child is, for the purposes of this Division, under restraint.

(4) For the purposes of this Division, a child is not under restraint if the child is in the company of a police officer by the roadside, whether or not the child is in a motor vehicle, for a purpose connected with the investigation of an offence, not being a serious offence, arising out of the use of a motor vehicle.

(5) For the purposes of this Division, a child is in the company of a police officer for a purpose connected with the investigation of an offence if the child is waiting at a place at the request of a police officer for such a purpose.

(6) For the purposes of this Division, a reference to a child who has committed an offence includes a reference to a child who has committed an offence with another person or other persons.

Children not to be interviewed in certain circumstances

30. (1) Where a police officer—

- (a) suspects that a child may have committed a serious offence or an offence against the person or property;
- (b) believes, on reasonable grounds, that a child may be implicated in the commission of such an offence; or
- (c) is holding a child under restraint,

the police officer shall not interview the child in respect of an offence or cause the child to do anything in connection with the investigation of an offence—

(d) unless a person who is not a child or a police officer but is—

- (i) a parent of the child;
- (ii) a relative of the child acceptable to the child; or
- (iii) a barrister and solicitor acting for the child or some other appropriate person acceptable to the child,

is present; or

(e) unless—

- (i) the police officer has taken reasonable steps to secure the presence of a person referred to in paragraph (d);
- (ii) it was not practicable for such a person to be present within 2 hours after the person was requested to be present; and
- (iii) another person (who may be a police officer) who has not been concerned in the investigation of the offence is present.

(2) Sub-section (1) does not require a police officer—

- (a) to permit a person whom the police officer believes to be an accomplice of the child in respect of the offence to be present while the child is being interviewed, or is doing anything, in connection with the investigation of the offence; or
- (b) to take steps to procure the presence of a person referred to in paragraph (1) (d) whom the police officer believes to be an accomplice of the child in respect of the offence.

(3) A reference in sub-section (2) to an accomplice shall be read as including a reference to a person whom the police officer believes, on reasonable grounds, to be likely to secrete, lose, destroy or fabricate evidence relating to the offence.

(4) Sub-section (1) does not prevent a police officer from interviewing a child, or asking or causing a child to do a particular thing, where the police officer has reasonable grounds for believing that it is necessary to do so without delay in order to avoid danger of the death of, or serious injury to, any person or serious damage to property.

Limitation in respect of arrest of children

31. A police officer shall not, except in pursuance of a warrant, arrest a child for an offence unless he or she believes on reasonable grounds that—

- (a) the child has committed, or is committing, the offence;
- (b) the arrest is necessary or appropriate for one or more of the following purposes:
 - (i) ensuring the appearance of the child before the Court in respect of the offence;
 - (ii) preventing a continuance of, or a repetition of, the offence or the commission of a further offence;

- (iii) preventing the concealment, loss or destruction of evidence of the offence;
 - (iv) preserving the safety or physical well-being of the child; and
- (c) proceedings by summons would not effectively achieve a purpose specified in paragraph (b).

Notification of arrest, &c.

32. Where a police officer places a child under restraint, the police officer shall forthwith—

- (a) take all reasonable steps to cause a parent of the child to be notified, whether the parent resides in the Territory or not; and
- (b) if the police officer is not an authorised officer, notify an authorised officer.

Limitations in respect of criminal proceedings against children

33. (1) Subject to sub-section (4), a police officer shall not institute a prosecution against a child for an offence unless an authorised officer, being an officer not otherwise involved in the investigation of the alleged offence, has consented in writing to the institution of the prosecution and the consent has not been revoked.

(2) Sub-section (1) does not affect any requirement under any other law to obtain consent to a prosecution.

(3) For the purpose of determining whether he or she should consent to the prosecution of a child, an authorised officer shall have regard to such matters as seem to the officer to be relevant and, in particular, to each of the following:

- (a) the seriousness of the offence;
- (b) the evidence available as to the commission of the offence;
- (c) the circumstances in which the offence is alleged to have been committed;
- (d) whether the child has previously been found guilty or convicted of an offence, whether against a law in force in the Territory or elsewhere, and the seriousness or otherwise of that offence;
- (e) whether a warning has at any time been given to the child in the Territory by a police officer;
- (f) the age of the child;

- (g) the apparent maturity of the child;
- (h) the apparent mental capacity of the child;
- (i) whether the parents of the child appear able and prepared to exercise effective discipline and control over the child;
- (j) whether it would be sufficient to warn the child, at a police station, at home or otherwise, against the commission of the same or similar offences;
- (k) the prevalence of the same or similar offences;
- (l) whether the prosecution would be likely to be harmful to the child, or to be inappropriate, having regard to the personality of the child, the circumstances of living of the child or any other circumstances that the authorised officer considers should be taken into account.

(4) Where the offence is one the prosecution for which requires the consent of a person under any other law, the authorised officer shall—

- (a) make a recommendation with respect to the prosecution, having regard to the matters specified in sub-section (3); and
- (b) forward his or her recommendation, together with the papers and all other relevant material, to the person whose consent is required under that other law.

(5) The authorised officer shall not consent to the prosecution unless the authorised officer is satisfied, after having considered the matters referred to in sub-section (3), that a prosecution is justified.

(6) If an authorised officer consents to the prosecution of a child whom the authorised officer knows or believes has not previously been convicted of an offence, whether against a law in force in the Territory or elsewhere, the authorised officer shall record in writing his or her reasons for giving consent.

(7) Where a child is under restraint, an authorised officer shall, as soon as practicable and in any case within 48 hours after the child was placed under restraint, decide whether he or she will consent to a prosecution of the child and, if the authorised officer does not so consent, the child shall forthwith be released.

Procedure by summons

34. (1) A police officer shall not charge a child at a police station with an offence unless the police officer is satisfied that proceeding by way of a summons would not be effective.

(2) For that purpose, the police officer shall have regard to the need to achieve the purposes specified in paragraph 31 (b).

Parent to be informed of charge against child

35. Where a child is charged at a police station with an offence, the person who so charged the child shall forthwith take all reasonable steps to cause a parent of the child to be notified of the charge and of the time and place when the child will be brought before the Court, whether the parent resides in the Territory or not.

Identifying material

36. (1) In this section, “identifying material”, in relation to a child, means prints of the hands, fingers, feet or toes of the child, recordings of the voice of the child, photographs of the child, samples of the handwriting of the child or material from the body of the child.

(2) An authorised officer or a police officer for the time being in charge of a police station shall not take, or cause to be taken, identifying material of a child unless a magistrate has, under sub-section (4), approved the taking of the identifying material.

(3) An authorised officer or a police officer referred to in sub-section (2) may—

- (a)** make application to a magistrate in person; or
- (b)** if it is not practicable for the officer to do so, make application to a magistrate by telephone,

for approval to take identifying material of a child who is in lawful custody in respect of an offence or of a child against whom proceedings have been instituted by summons in respect of an offence.

(4) The magistrate may, if he or she thinks it proper in the circumstances, give his or her approval, in writing, for the taking of specified identifying material and shall send the writing to the applicant.

(5) The magistrate may inform the applicant by telephone of his or her approval and in that case the applicant may proceed under the approval notwithstanding that the written approval has not been given.

Criteria for bail

37. (1) The question whether a child who has been charged with an offence should be admitted to bail shall be considered by—

- (a) the police officer who charged the child, as soon as practicable after the child has been charged with the offence; and
- (b) where the child has not been admitted to bail—
 - (i) by the authorised officer when determining whether to give his or her consent under sub-section 33 (1) or when making a recommendation under sub-section 33 (4); and
 - (ii) by the Court when the child comes before the Court in connection with the offence.

(2) A child shall be admitted to bail unless the police officer, authorised officer or Court, as the case may be, having regard to the matters specified in sub-section (4) and to such other matters as the officer or Court considers relevant, is satisfied that the child should not be admitted to bail.

(3) Where a police officer determines that a child should be admitted to bail, the child shall enter into a recognisance, with or without sureties, to appear before the Court at the time and place named in the recognisance.

(4) For the purposes of sub-section (2), the following matters are specified:

- (a) the following matters related to the probability of the child appearing in court in respect of the offence if admitted to bail:
 - (i) the background and community ties of the child, having regard to the nature of the child's residence, schooling, employment (if any) and family situation and to the child's police record, if known;
 - (ii) the circumstances in which the alleged offence was committed, the nature and seriousness of the alleged offence, the severity of the penalty, the strength of the evidence against the child and other information relevant to the likelihood of the child absconding;

- (iii) any previous failure of the child to appear in court after having been granted bail;
- (b) the following matters relating to the interests of the child:
 - (i) the period that the child may be obliged to spend in custody if bail is refused and the conditions under which the child would be held in custody;
 - (ii) the need of the child to be free for the purposes of preparing for his or her appearance before the Court and obtaining legal advice and for other purposes;
 - (iii) the need of the child for physical protection, whether the need arises because the child is incapacitated by intoxication, injury or the use of drugs or arises from other causes;
 - (iv) the matters referred to in section 5;
- (c) the following matters related to the protection of the community:
 - (i) the likelihood of the child interfering with evidence, intimidating witnesses or hindering police inquiries;
 - (ii) if the child has been convicted of an offence—the likelihood, having regard to that conviction, of the child committing, while on bail, an offence involving violence or a serious offence;
 - (iii) where the child has previously been granted bail—any breach by the child of the conditions subject to which bail was granted; and
- (d) where a report has been furnished to the court under section 162 in respect of the child—that report.

(5) In paragraph (4) (c), a reference to an offence shall be read as including a reference to an offence against a law of the Commonwealth, of a State, of another Territory (including an external Territory) or of a country other than Australia.

(6) Nothing in this section affects any other right of a child to apply to be admitted to bail and, where a court is considering an application by a child to be admitted to bail, that court shall admit the child to bail unless that court, having regard to the matters specified in sub-section (4), is satisfied that the child should not be admitted to bail.

- (7) Where the Court orders that a child be admitted to bail, the Court may—
- (a) order that the child enter into a recognisance, with or without sureties, that the child will attend court at the date and time next required by the Court; and
 - (b) impose such further conditions as the Court considers—
 - (i) are appropriate, having regard to section 5;
 - (ii) appear likely to result in the appearance of the child before the Court on the date and at the time required by the Court; or
 - (iii) appear necessary in the interests of justice or for the prevention of crime.

Detention of children

38. (1) Subject to this section, a child who has been charged with an offence and is not admitted to bail shall, as soon as practicable, be taken to a shelter, and shall be detained there.

(2) In the case of the actual or apprehended violent behaviour of the child (whether in the shelter or elsewhere) or by reason of the seriousness of the offence with which the child is charged, an escape, or attempted escape, by the child from lawful detention, or for other good cause, the child may be taken to a remand centre and shall be detained there.

(3) A child who requires medical attention may be taken to a hospital and, if the person in charge of the hospital consents, be detained in the hospital.

(4) When a child who was detained in a hospital is discharged from hospital, the child shall—

- (a) in the case of a child to whom sub-section (2) applies—be taken to, and detained in, a remand centre; and
- (b) in any other case—be taken to, and detained in, a shelter.

(5) Where it is necessary to take the child from the place at which the child is detained to a court, or from a court to that place, the child shall not, unless it is impracticable to avoid doing so, be so taken in company with a person under detention who is not a child and shall not be placed at the court in a room in which another person under detention who is not a child is placed.

Arrested children to be brought promptly before the Court

39. (1) Where a child has been charged with an offence and has not been released from custody, a police officer shall bring the child before the Court as soon as practicable and in any case within 48 hours after the arrest.

(2) If the child is not so brought before the Court, the child shall forthwith be released from custody.

Exclusion of evidence unlawfully obtained

40. (1) Where, in proceedings against a child in respect of an offence, the court is satisfied that evidence tendered to the court was obtained in contravention of, or in consequence of a contravention of, a provision of this Ordinance in relation to the child, the court shall refuse to admit that evidence in the proceedings unless it is satisfied that—

- (a) admission of the evidence is substantially in the public interest as regards the administration of criminal justice; and
- (b) that interest would outweigh any prejudice to the rights of any person, including the child, that has occurred or is likely to occur as a result of the contravention or the admission of the evidence.

(2) The matters to which a court may have regard in deciding whether it should admit the evidence that was obtained in contravention of, or in consequence of a contravention of, a provision of this Ordinance in relation to the child include—

- (a) the seriousness of the offence to which the evidence relates, the difficulty of detecting the offender, the need to apprehend the offender and the need to preserve evidence of the facts;
- (b) the nature and seriousness of the contravention; and
- (c) the extent to which the evidence might have been lawfully obtained.

(3) This section is in addition to, and not in substitution for, any other law or rule under which a court may refuse to admit evidence.

Summary disposal of certain cases

41. (1) Subject to this section and to section 43, where—

- (a) a child is charged before the Court with an indictable offence; and
- (b) the Court is of the opinion that the case can properly be disposed of summarily,

the Court may hear and determine the charge summarily.

(2) Sub-section (1) does not apply to an offence that is punishable by imprisonment for life.

(3) Before forming an opinion whether or not a case properly be disposed of summarily, the Court shall have regard to such matters as it considers relevant and, in particular, to each of the following:

- (a) any relevant representations made by the defendant;
- (b) any relevant representations made by the prosecutor in the presence of the defendant;
- (c) the facts of the case;
- (d) the seriousness of the alleged offence;
- (e) the circumstances in which the offence is alleged to have been committed;
- (f) the age of the child;
- (g) the apparent maturity of the child;
- (h) the apparent mental capacity of the child;
- (i) the suitability of the penalties that the Court is empowered to impose;
- (j) the difficulty of any question of law that is likely to arise.

Committal for trial in certain cases

42. Where a child is charged before the Court with an indictable offence and—

- (a) the Court is not empowered to hear and determine the charge summarily; or
- (b) the Court is so empowered but decides not to hear and determine the charge summarily,

the Court shall deal with the charge in accordance with the provisions of the Magistrates Court Ordinance relating to indictable offences.

Child may elect to be committed for trial

43. (1) The Court shall not exercise its powers under sub-section 41 (1) without the consent of the child.

(2) Before proceeding to hear the charge, the Court shall inform that child, and any parent of the child who is present, of the provisions of sub-section (1).

(3) If a parent is not present, the Court may adjourn the hearing so as to enable a parent to be present.

(4) If a parent is not present at the adjourned hearing, the Court may continue the hearing.

(5) The Court may, at any time, adjourn the hearing to enable the child or a parent of the child to obtain legal advice.

Committal of guilty child to Supreme Court

44. (1) Where the Court convicts a child of an indictable offence, the Court may, where it appears to it that, by reason of the character and antecedents of the child, it is desirable that sentence be passed on the child by the Supreme Court, by order commit the child to the Supreme Court for sentence.

(2) The Supreme Court may deal with a child committed for sentence under sub-section (1) in any way in which it might have dealt with the child if the child had been convicted of the offence before the Supreme Court.

(3) Before the Court makes an order under sub-section (1), the Court shall have regard to any report furnished to the Court in pursuance of section 162.

Childrens Court to give reasons

45. Where the Court decides not to hear and determine a charge summarily and commits a child to the Supreme Court, the Court shall state the reasons for its decision and cause those reasons to be entered in the records of the Court.

Remission of matter by Supreme Court

46. (1) Where a child is convicted by the Supreme Court of an offence, the Supreme Court may remit the case to the Childrens Court.

(2) The Childrens Court may deal with a child remitted under sub-section (1) in any way in which it might have dealt with the child if the child had been convicted of the offence in that Court.

(3) Where the Supreme Court remits a case under sub-section (1)—

- (a) the Supreme Court may give directions as to the custody of the child, or the child's release on bail, until the child is brought before the Childrens Court; and

- (b) the Registrar of the Supreme Court shall cause to be transmitted to the Clerk of the Magistrates Court a certificate stating—
 - (i) the nature of the offence;
 - (ii) that the child has been convicted of the offence; and
 - (iii) that the case has been remitted to be dealt with under this section.

Division 3—Disposition of Young Offenders

Disposition of young offenders

47. (1) Where a child has been convicted of an offence by the Court, the Court shall, as soon as practicable and, in any case, within 6 months after the date of the conviction, make one or more of the following orders:

- (a) an order reprimanding the child;
- (b) a conditional discharge order;
- (c) an order imposing a penalty provided by law with respect to the offence;
- (d) any other order that the Court is empowered by any other law to make with respect to the offence;
- (e) where a fine is not provided by law with respect to the offence, an order imposing a fine not exceeding \$1,000;
- (f) where reparation or compensation is not provided for by law with respect to the offence, an order that the child make reparation by way of money payment, or pay compensation, in respect of any loss suffered or expense incurred by reason of the offence, but so that the total amount of reparation or compensation does not exceed \$1,000;
- (g) a probation order;
- (h) an attendance centre order;
- (i) a residential order having effect for such period, not exceeding 2 years, as the Court specifies;
- (j) an order committing the child to a State institution in a specified State or Territory for such period, not exceeding 2 years, as the Court specifies;

- (k) an order committing the child to an institution for such period, not exceeding 6 months, as the Court specifies.

(2) A probation order may be expressed to commence to have effect when an order under paragraph (1) (i), (j) or (k) ceases to have effect.

(3) A conditional discharge order shall specify the period, being a period not exceeding 6 months, within which the conditions of the order are to be complied with.

Disposition without proceeding to conviction

48. Where the Court is satisfied that a charge against a child is proved but, in the circumstances, and having regard to—

- (a) the provisions of section 5;
- (b) the welfare of the child;
- (c) the facts of the case;
- (d) the seriousness of the offence;
- (e) the circumstances in which the offence was committed;
- (f) age of the child;
- (g) the apparent maturity of the child;
- (h) the apparent mental capacity of the child; or
- (i) the health of the child,

the Court is of the opinion that it should not proceed to a conviction, the Court shall, as soon as practicable but, in any case, within 6 months—

- (j) dismiss the charge; or
- (k) make one or more of the orders referred to in paragraph 47 (1) (a), (b), (f) or (g) notwithstanding that a conviction has not been entered.

Prohibition on certain orders

49. (1) The Court shall not make an order—

- (a) for the imprisonment of a child;
- (b) releasing a child upon the child giving security to be of good behaviour; or
- (c) of a kind referred to in paragraph 47 (1) (h), (i), (j) or (k)—

- (i) in a case where the Court is not empowered to sentence an adult to imprisonment;
- (ii) unless the Court is satisfied that, in the circumstances, no other order that might be made is appropriate; or
- (iii) for a period longer than the period of imprisonment that could have been imposed in respect of the offence if the offence had been committed by an adult.

(2) Nothing in paragraph (1) (b) affects the power of the Court under section 556A or 556B of the Crimes Act 1900 of the State of New South Wales in its application in the Territory.

Variation or revocation of conditional discharge order

50. Where the Court has made a conditional discharge order in respect of a child, application may be made to the Court by the child or a parent of the child for the revocation or variation of the order.

Breach of conditional discharge orders

51. (1) If a child fails to comply with a condition of a conditional discharge order made in respect of the child, the Court may, at any time, by order served on the child or on a parent of the child, direct that the child appear before the Court at the time and place specified in the notice.

(2) If the child does not appear before the Court as directed, the Court may issue a warrant for the apprehension of the child.

(3) The Court may make, with respect to the child with respect to which the conditional discharge order was made—

- (a) an order revoking the conditional discharge order, together with one or more of the orders set out in sub-section 47 (1), other than a further conditional discharge order; or
- (b) an order that the conditional discharge order continue, for such period as the Court specifies, whether with or without a variation in the conditions.

(4) When making an order under sub-section (3), the court shall, in addition to any other matters that the Court considers should be taken into account, take into account—

- (a) the fact that the conditional discharge order was made;

- (b) anything done under the conditional discharge order; and
 - (c) any other order made in respect of the offence in respect of which the conditional discharge order was made and anything done in pursuance of that other order.
- (5) The Court shall not make, under sub-section (3)—
- (a) an order of the kind set out in paragraph 47 (1) (c), (d), (e), (h), (i), (j) or (k) unless the Court has first convicted the child of the offence with respect to which the conditional discharge order was made; or
 - (b) an order imposing a penalty which, when taken together with the penalty previously imposed in respect of the offence in respect of which the conditional discharge order was made, exceeds the maximum penalty the Court could have imposed in respect of that offence.

(6) The Court shall not specify, under paragraph (3) (b), a period that would result in the total period for which the conditional discharge order is in force exceeding 6 months.

Fines and like orders

52. (1) In this section, “fine” includes pecuniary penalty, costs or other amount of money ordered to be paid.

(2) Before a court makes an order imposing a fine on a child, the Court shall have regard to the ability of the child to comply with the order.

(3) The Court may, when making an order imposing a fine on a child, of its own motion or on application by or on behalf of the child, by order—

- (a) allow time for the payment of the fine; or
- (b) direct payment of the fine to be made by instalments.

(4) A child against whom an order referred to in sub-section (2) has been made may, at any time, apply to the Court for an order as mentioned in sub-section (3) or for the variation of such an order.

(5) The powers conferred on the Court by this section are in addition to, and not in derogation of, any other powers possessed by the Court.

Breach of orders imposing fines, &c.

53. (1) Where a child in respect of whom an order under paragraph 47 (1) (e) or (f) is made fails to obey the order, the Court may, at any time, by order

served on the child or on a parent of the child, direct that the child appear before the Court at the time and place specified in the order.

(2) If the child does not appear before the Court as directed, the Court may issue a warrant for the apprehension of the child.

Enforcement of payment of fines, &c.

54. (1) In this section, "fine" includes pecuniary penalty, costs or other amount of money ordered to be paid.

(2) Subject to this section, an order of the Court imposing a fine on a child may be enforced by any means provided by law for the enforcement of a like order of the Magistrates Court.

(3) The Court shall not make an order for the imprisonment of a child in default of payment of a fine.

(4) A warrant shall not be issued committing a child to prison by reason of any failure of the child to pay a fine.

(5) Subject to sub-section (6), where a child fails to comply with an order imposing a fine, the Court may make one or more of the following orders:

- (a) an order remitting the fine or reducing the amount of the fine;
- (b) an order allowing time, or further time, for the payment of the fine;
- (c) an order of the kind referred to in paragraph 47 (1) (a), (b), (c), (d), (g) or (h);
- (d) an order that the child be placed in a shelter for such period, not exceeding 30 days, as the Court specifies;
- (e) an order committing the child to an institution or State institution in a specified State or Territory for such period, not exceeding 30 days, as the Court specifies.

(6) The Court shall not make an attendance centre order or an order as referred to in paragraph (5) (d) or (e) unless it is satisfied that the failure of the child to comply with the order imposing the fine was, in the circumstances, unreasonable.

Probation orders

55. (1) A probation order may contain one or more of the following conditions and provisions:

- (a) a condition requiring the child to take part in discussions with the supervisor with respect to the welfare of the child, in particular whether the child should receive some form of treatment, or participate in some form of educational, vocational or recreational activity or other activity, having as its object the welfare of the child; and
- (b) such other conditions and provisions as the Court considers to be desirable in the interests of the welfare of the child, in particular conditions and provisions having as their object the avoidance of a repetition of the offence or of the commission of further offences.

(2) Subject to sub-section (3), the Court shall not specify a period that exceeds one year as the period for which a probation order is to remain in force.

(3) Where the Court considers that it is necessary to do so, the Court may specify a period not exceeding 2 years as the period for which a probation order is to remain in force.

Probation orders—entry and inspection by supervisor

56. (1) Where a child who is the subject of a probation order resides with a person who has the care, custody and control of the child, the supervisor of the child may, on reasonable grounds and at a reasonable time—

- (a) enter the premises where the child resides; and
- (b) inspect the premises and the child.

(2) Where a child who is the subject of a probation order resides with a person other than a person who has the care, custody and control of the child, the supervisor may enter the premises where the child resides and inspect the premises and the child if, and only if, the entry and inspection is made—

- (a) with the consent of the occupier of the premises; or
- (b) in pursuance of a warrant issued under this section.

(3) Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that—

- (a) a child the subject of a probation order is residing on premises otherwise than with a person who has the care, custody and control of the child; and
- (b) it is necessary in the interests of the child for the premises and the child to be inspected,

and the information sets out those grounds, the magistrate may issue a search warrant authorising the supervisor of the child, with such assistance as he or she thinks necessary and if necessary by such force as is reasonable—

(c) to enter upon or into the premises; and

(d) to inspect the premises and the child.

(4) A magistrate shall not issue a warrant under this section unless—

(a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and

(b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

Attendance centre orders

57. (1) Where the Court makes an attendance centre order in respect of a child, the order—

(a) shall specify the number of occasions on which the child is to report at the attendance centre or that the child is to report on such number of occasions in each week as the Director from time to time specifies;

(b) shall specify the day on which and the time at which the child is to report on the first occasion; and

(c) may contain such other recommendations with respect to the child's attendance as the Court determines.

(2) The duration of each period during which the child is to place himself or herself in the custody of the Director shall be as determined by the Director.

(3) All the periods of custody need not be of the same duration but the periods shall not be longer than 60 hours in the aggregate in a week.

(4) The days on which and the times at which the child is required to report at the attendance centre after the first occasion shall be as the Director determines but the Director shall have regard to any general directions given by the Court.

(5) The days on which and the times at which the child is required to report, and the period during which he or she is to remain in custody, shall be such as

to avoid interference with the education or training of the child or with any genuine religious observance by the child.

(6) The Director may, for good cause, excuse a child from attendance on a particular occasion or on all occasions in a particular week.

Duties of child under attendance centre order

58. (1) A child the subject of an attendance centre order is, subject to this Ordinance, subject to the reasonable control, direction and supervision of the Director or of an authorised person while the child is—

- (a) attending an attendance centre;
- (b) outside the attendance centre in pursuance of a direction of the Director; and
- (c) travelling between the attendance centre and a place outside the attendance centre at which the child is directed to be.

(2) A child shall, while he or she is subject to control, direction and supervision in accordance with sub-section (1)—

- (a) engage in such work;
- (b) take part in such activities (whether physical or otherwise);
- (c) attend such classes or groups of persons; or
- (d) undergo such education or training,

as the Director considers to be in the interests of the child.

(3) Before giving directions to a child under this section, the Director shall take into account the religious beliefs, and any conscientious beliefs, of the child.

(4) A child shall not be required to work under the control, direction or supervision of a person who would benefit by the work performed by the child in any way otherwise than as a member of the community or of a group within the community.

(5) A child is not entitled to any remuneration in respect of work performed in pursuance of this section.

(6) In exercising his or her powers under this section, the Director shall take into account any recommendation made by the Court when the attendance centre order was made.

(7) In this section, "authorised person" means a person declared by the Director in writing to be an authorised person for the purposes of this section.

Compensation

59. (1) In this section—

"Compensation Ordinance" means the *Workmen's Compensation Ordinance 1951*;

"overtime" has the same meaning as in the Compensation Ordinance.

(2) While a child is working pursuant to an attendance centre order the Compensation Ordinance applies in relation to the child as if—

- (a) the child, in so working, were employed by the Commonwealth under a contract of service;
- (b) paragraph (d) of the definition of "workman" in sub-section 6 (1) of the Compensation Ordinance were omitted;
- (c) for sub-paragraph (1) (c) (i) of the First Schedule to the Compensation Ordinance there were substituted the following sub-paragraph:
 - "(i) of an amount equal to the sum first mentioned in sub-paragraph (b); or"; and
- (d) sub-paragraphs 2 (b) (i) and (ii) of the First Schedule to the Compensation Ordinance were omitted.

(3) Notwithstanding the provisions of paragraph 1A in the First Schedule to the Compensation Ordinance, for the purposes of the application of that Ordinance in accordance with sub-section (2), the prescribed amount applicable to a child in respect of a week, for the purposes of sub-paragraph 1 (b) of that Schedule, is—

- (a) in the case of a child who, immediately before the day on which the liability of the Commonwealth under the Compensation Ordinance to pay compensation to or in respect of the child arose—
 - (i) was carrying on a business on his or her own account; or
 - (ii) was unemployed and was not carrying on a business on his or her own account but who, at any time during the period of 12 months ending immediately before the day on which that liability arose, was employed or was carrying on a business on his or her own account,

the amount calculated by dividing by 52 the amount that is equal to the income of the child during the period of 12 months ending immediately before the day on which that liability arose;

- (b) in the case of a child who was unemployed immediately before the day on which the liability of the Commonwealth under the Compensation Ordinance to pay compensation to or in respect of the child arose, not being a child referred to in paragraph (a)—nil; and
- (c) in any other case—an amount equal to the income of the child in respect of the period of 7 days ending immediately before the day on which the liability of the Commonwealth under the Compensation Ordinance to pay compensation to or in respect of the child arose.

(4) A reference in paragraph (3) (c) to income, in relation to a child, shall not be read as including a reference to—

- (a) a payment in respect of overtime;
- (b) an allowance that is intermittent or is payable in respect of special expenses incurred or likely to be incurred by the child; or
- (c) where the child had more than one occupation during the period of 7 days referred to in that paragraph—income derived by the child from an occupation other than his or her principal occupation.

(5) Where—

- (a) the Commonwealth would, but for this sub-section, be liable under the Compensation Ordinance to pay an amount of compensation to, or in respect of, a child in relation to a period, being the whole or a part of a period during which the child is totally incapacitated for work; and
- (b) a person who is an employer of the child is liable, by reason of the child's total incapacity for work, to make a payment to the child by way of salary or wages in relation to that first-mentioned period,

the Commonwealth shall not be liable to pay that amount under the Compensation Ordinance but shall pay to the employer so much of that amount as does not exceed the amount payable to the child by the employer, and the balance (if any) of that amount shall be taken to be compensation payable by the Commonwealth under the Compensation Ordinance to or in respect of the child in relation to that first-mentioned period.

(6) Notwithstanding the preceding provisions of this section, no amount is payable in respect of a child—

- (a) if the child was employed only in work of a casual nature; or
- (b) in the case of a child who was unemployed—unless the child was qualified to receive an unemployment benefit under the *Social Security Act 1947*.

Breach of attendance centre orders

60. A person in respect of whom an attendance centre order is in force who—

- (a) fails to report at an attendance centre or other place as required by the Director;
- (b) contravenes any rule applicable at the attendance centre at which the child is required to report;
- (c) contravenes sub-section 58 (2);
- (d) leaves an attendance centre at a time when he or she should be there;
or
- (e) refuses to work or neglects or mismanages his or her work,

shall be deemed to have failed to comply with the attendance centre order.

Breach of probation, attendance centre or residential orders

61. (1) If a person with respect to whom a probation order, an attendance centre order or a residential order is made fails, without reasonable excuse, to comply with the order or with a condition of the order, the person is guilty of an offence against this section.

(2) Where a person is convicted of an offence against this section or the Court finds such an offence to be proved but does not proceed to a conviction, the Court may make one or more of the following orders:

- (a) an order that the Court is empowered to make, by this Ordinance or any other law, with respect to the offence in relation to which the order mentioned in sub-section (1) was made;
- (b) an order—
 - (i) revoking or varying the order referred to in sub-section (1); or
 - (ii) directing the person to comply with the order referred to in sub-section (1) in so far as it has not been complied with.

(3) When making an order under paragraph (2) (a), the Court shall, in addition to any other matters that the Court considers should be taken into account, take into account—

- (a) the fact that the probation order, the attendance centre order or the residential order (in this sub-section and sub-section (4) referred to as the “original order”) was made;
- (b) anything done under the original order; and
- (c) any other order made in respect of the offence in respect of which the original order was made and anything done in pursuance of that other order.

(4) The Court shall not make, under paragraph (2) (a), an order imposing a penalty which, when taken together with the penalty previously imposed in respect of the offence in respect of which the original order was made, exceeds the maximum penalty the Court could have imposed in respect of the offence.

(5) Where—

- (a) the Court makes or varies a probation order under sub-section (2) in respect of a child; and
- (b) there is in force another order of the kind referred to in sub-section 47 (1) in respect of the child,

the Court may order that the probation order is to commence to have effect when the other order ceases to have effect.

Revocation and variation of certain orders

62. (1) Subject to sub-section (5), where the Court has made a conditional discharge order, a probation order, an attendance centre order or a residential order in respect of a child, or an order committing a child to an institution or a State institution (in this section referred to as the “previous order”), the Court may, on an application by the Youth Advocate or any other person, by order revoke or vary the previous order or make another order in substitution for the previous order.

(2) The applicant shall cause a copy of the application to be served—

- (a) on the Youth Advocate;
- (b) if practicable, on at least one of the parents of the child concerned, whether the parent is resident in the Territory or not;
- (c) on the child concerned; and

(d) on any other person that the Court directs.

(3) The previous order as varied or the order made in substitution for the previous order shall be an order of the kind mentioned in sub-section 47 (1) but the Court shall have regard to the circumstances at the time of the hearing.

(4) Subject to sub-section (3), the Court may make any order that appears to the Court to be appropriate.

(5) Where a probation order has been made in respect of a child without convicting the child of an offence, the Court shall not make—

- (a) an order of the kind referred to in paragraph 47 (1) (c), (d) or (e), in respect of the child; or
- (b) an attendance centre order or a residential order in respect of the child or an order committing the child to an institution or a State institution,

unless the Court first convicts the child of the offence.

(6) This section has effect notwithstanding that the child is, whether under an order of a court or otherwise, for the time being living outside the Territory.

Division 4—Miscellaneous

Powers of Supreme Court

63. Where a child is convicted of an offence by the Supreme Court, the Supreme Court may—

- (a) make such other order with respect to the child; and
- (b) issue such warrants, and do such other acts or things,

as the Childrens Court could have made, issued or done if the child had been convicted by that Court.

Adjournment of criminal proceedings

64. (1) Where the hearing of a charge against a child is adjourned by the Court, the adjournment shall not, except in special circumstances, be for a period that exceeds 21 days.

(2) Where the Court adjourns the proceedings, the Court may—

- (a) by order—

- (i) release the child if the child and one of his or her parents give an undertaking satisfactory to the Court that the child will be present at the next hearing;
 - (ii) release the child on bail; or
 - (iii) place the child in the custody of a suitable person;
- (b) order that the child be placed in a shelter or remand centre; or
- (c) if the person in charge of a hospital or approved home consents, order that the child be placed in the hospital or approved home.

(3) In determining whether to release a child on bail, the Court shall have regard to the matters specified in sub-section 37 (4).

(4) The Court shall not order that a child be placed in a remand centre unless the Court is satisfied that, by reason of the actual or apprehended violent behaviour of the child, the seriousness of the offence, an escape or attempted escape by the child from lawful detention or for other good cause, it is necessary or desirable so to place the child.

Placing in shelter, &c.

65. (1) Where the Court commits a child to a State institution, the child shall be placed in a shelter or remand centre until he or she is removed to the institution.

(2) The child shall not be kept in the shelter or remand centre for more than 14 days unless the Court so orders or the Director approves in writing.

(3) An order committing a child to a State institution is sufficient authority for an officer or police officer to do one or more of the following:

- (a) subject to any contrary provision in the order—
 - (i) take the child to a shelter or remand centre;
 - (ii) take the child from one shelter or remand centre to another;
 - (iii) take the child from a shelter to a remand centre or from a remand centre to a shelter;
- (b) take the child to the State institution;
- (c) take the child to the State or Territory specified in the order for the purposes of detention in the institution.

Children in remand centres

66. Where a child is in a remand centre in pursuance of this Ordinance, the *Remand Centres Ordinance 1976* applies to and in relation to the child as though the child were a detainee within the meaning of that Ordinance.

Remission of time to be spent in institution

67. Where a child has been committed to an institution, the Director may, unless the Court otherwise ordered when so committing the child, having regard to the child's excellence in conduct and industry or to special circumstances, reduce the period specified by the Court under that paragraph by not more than one-third of the period so specified.

Director may grant leave for special purposes

68. (1) The Director may, by instrument in writing, on such terms and conditions as he or she thinks fit, grant leave of absence to a child who has been committed to an institution or placed in a shelter for any reason he or she thinks fit, including one or more of the following:

- (a) the education and training of the child;
- (b) the employment of the child;
- (c) a compassionate reason;
- (d) the health of the child;
- (e) the recreation of the child;
- (f) the participation by the child in a community project or an attendance centre program.

(2) Any period for which a child is outside an institution in pursuance of leave of absence granted under this section shall, for the purposes of this Ordinance, be taken to be a period for which the child was in the institution.

(3) Where the Director—

- (a) refuses to grant leave of absence to a child; or
- (b) grants leave of absence to a child for a period that is less than the period requested in respect of the child,

the child or a parent of the child may appeal to the Court.

(4) On the hearing of an appeal under this section, the Court may by order confirm, vary or set aside the decision of the Director and may make such other orders as the Court considers necessary.

Other rights and freedoms not affected

69. (1) This Part, in so far as it protects a child, is in addition to and not in derogation of any rights and freedoms of the child under any other law in force in the Territory and it is not intended to exclude or limit the operation of such a law in so far as it is capable of having effect concurrently with this Part.

(2) Nothing in this Ordinance affects the Royal prerogative of mercy.

PART V—CHILD CARE PROCEEDINGS

Division 1—Preliminary

Authorised persons

70. For the purposes of this Part, “authorised person” means—

- (a) a person for the time being appointed in writing by the Minister to be an authorised person for the purposes of this Part; or
- (b) a police officer.

Children in need of care

71. (1) For the purposes of this Part, a child is in need of care if—

- (a) the child—
 - (i) has been physically injured (otherwise than by accident); or
 - (ii) has been sexually abused,

by one of the child's parents or by a member of the household in which the child lives or there is a likelihood that he or she will so suffer such physical injury or sexual abuse;

- (b) the child—
 - (i) has been physically injured (otherwise than by accident); or
 - (ii) has been sexually abused,

by a person other than a person mentioned in paragraph (a), or there is a likelihood that the child will so suffer such physical injury or sexual

abuse, and the child's parents are unable or unwilling to protect him or her from the injury or abuse;

- (c) by reason of the circumstances in which the child is living or in which the child is found—
 - (i) the health of the child has been impaired or there is a likelihood that it will be impaired; or
 - (ii) the child has suffered, or is likely to suffer, psychological damage of such a kind that his or her emotional or intellectual development is or will be endangered;
- (d) the child is engaging in behaviour that is, or is likely to be, harmful to him or her and his or her parents or guardian are unable or unwilling to prevent the child from engaging in that behaviour;
- (e) there is no appropriate person to care for the child because—
 - (i) the child has been abandoned by his or her parents or guardian;
 - (ii) the child's parents or guardian cannot, after reasonable enquiries have been made, be found; or
 - (iii) the child's parents are dead and he or she has no guardian;
- (f) there is serious incompatibility between the child and one of his or her parents or between the child and his or her guardian; or
- (g) the child is required by law to attend school and is persistently failing to do so and the failure is, or is likely to be, harmful to the child.

(2) In the application of this Part, an authorised person, the Youth Advocate or the Court shall have regard to the degree of injury, abuse, impairment, likelihood, incompatibility or failure and shall disregard any of those things that, in the circumstances, appears to be not sufficiently serious or substantial to justify action under this Part.

Where person apparently a child

72. For the purposes of this Part—

- (a) a person who appears to an authorised person, to the Youth Advocate or to the Court, as the case may be, to be a child may be dealt with under this Part as if he or she were a child and the provisions of this Part that refer to a child have effect in relation to the person accordingly; and

- (b) if it becomes known that the person is not a child—
 - (i) no further proceedings with respect to the person shall be taken under this Part; and
 - (ii) if, by reason of the application of any provision of this Part, the person is in an approved home, a hospital, a shelter or a State institution or is in the custody of a person, that provision ceases to have effect with respect to the person and the person is entitled to be released.

Division 2—Child Care Proceedings Generally

Proceedings with respect to children in need of care

73. (1) If it appears to an authorised person that a child is in need of care and the circumstances are such that action under this sub-section should be taken immediately to safeguard the welfare of the child, the authorised person may take the child into his or her custody and place the child in a shelter or, if the person in charge of an approved home or a hospital consents, the approved home or hospital.

(2) Sub-section (1) has effect with respect to a child who is in the Territory notwithstanding that the usual place of living of the child is not in the Territory.

(3) The authorised person shall, as soon as is reasonably practicable, notify the Youth Advocate of the name and age of the child, the name of the shelter, approved home or hospital in which the person has placed the child, of the time when the child was taken into custody and of any other relevant circumstances.

(4) The Youth Advocate shall record in writing particulars of all notifications under sub-section (3) and of any action that he or she has taken in relation to them.

(5) The authorised person shall, as soon as is reasonably practicable, take all reasonable steps to cause a parent of the child to be notified, whether the parent is resident in the Territory or not, of the time when the child was taken into custody, the name of the shelter, approved home or hospital in which the person has placed the child and of the other relevant circumstances notified to the Youth Advocate under sub-section (3).

Children in hospital

74. (1) If it appears to an authorised person that a child who is in a hospital is in need of care, or would, upon leaving the hospital, be in need of care, and that it is necessary to take urgent action to safeguard the welfare of the child,

the authorised person may, in writing, direct that the child be detained in the hospital and, subject to this Ordinance, the child shall be detained accordingly.

(2) Sub-section (1) has effect with respect to a child who is in a hospital in the Territory notwithstanding that the usual place of living of the child is not in the Territory.

(3) The authorised person shall, as soon as is reasonably practicable, notify the Youth Advocate of the name and age of the child, of the name of the hospital, of the time at which the direction under sub-section (1) was given and of any other relevant circumstances.

(4) The Youth Advocate shall record in writing particulars of all notifications under sub-section (3) and of any action that he or she has taken in relation to them.

(5) The authorised person shall, as soon as is reasonably practicable, take all reasonable steps to cause a parent of the child to be notified, whether the parent is resident in the Territory or not, of the name of the hospital, of the time at which the direction under sub-section (1) was given and of the other relevant circumstances notified to the Youth Advocate under sub-section (3).

Youth Advocate may direct release of the child

75. (1) Upon a notification being made as provided by section 73 or 74, the Youth Advocate may direct that the child be released immediately and, if the Youth Advocate does not so direct, the Youth Advocate shall forthwith notify a magistrate of the name and age of the child, of the shelter, approved home or hospital in which the child is and of any other relevant circumstances.

(2) If, at the expiration of 48 hours after the child was taken into custody under sub-section 73 (1) or a direction was given under sub-section 74 (1), action under this section has not been taken by a magistrate, the child shall forthwith be released.

(3) A magistrate may by order authorise the detention of the child in the shelter, approved home or hospital for such period, not exceeding 72 hours reckoned from the time when the magistrate gives the authority, as the magistrate specifies or may direct that the child be released.

(4) Subject to sub-section (5), a magistrate may act under sub-section (3) without any formal hearing and upon the information given to him or her by the Youth Advocate and the magistrate is not required, before so acting, to hear any person on behalf of the child or his or her parents.

(5) Where the child, a parent of the child or another person having custody of the child applies to a magistrate to be heard, the magistrate shall not act under sub-section (3) without hearing the child, parent or person, whether by way of a formal hearing or otherwise.

(6) If—

- (a) a magistrate or the Youth Advocate directs that the child be released; or
- (b) the period of 72 hours referred to in sub-section (3) expires,

the child shall, subject to section 80, be released, as soon as is reasonably practicable, and reasonable steps taken to return the child to his or her usual place of living.

Application to Court for detention order

76. (1) If a magistrate authorises the detention of the child, the Youth Advocate shall forthwith make appropriate enquiries as to the welfare of the child and may make an application to the Court for an order under sub-section (3).

(2) Where the Youth Advocate makes an application under sub-section (1), the child shall, unless the Court otherwise orders, continue to be detained in a shelter, approved home or hospital.

(3) The Court may make an order—

- (a) that the child be no longer detained;
- (b) authorising the continued detention of the child in the shelter, approved home or hospital or his or her detention in some other shelter, approved home or hospital; or
- (c) placing the child in the custody of a suitable person.

(4) An order under paragraph (3) (b) or (c) remains in force for such period, not exceeding 7 days, as the Court specifies in the order.

(5) The Court may, upon application by the Youth Advocate, make one further order extending the period specified in the previous order by not more than 7 days.

Procedure on application

77. (1) Notification of an application under section 76 shall, if practicable, be given to the person having the custody of the child and to at least one of the

child's parents, whether the person or parent is resident in the Territory or elsewhere.

(2) The child and each person notified under sub-section (1) shall be the respondents to the application.

Application for declaration that a child is in need of care

78. (1) The Youth Advocate may make an application to the Court for a declaration that a child, being a child who is in the Territory or ordinarily resides in the Territory, is in need of care.

(2) Before making such an application, the Youth Advocate shall consult the Standing Committee.

Application to be served on parents

79. (1) A copy of an application under section 78 shall, if reasonably practicable, be served on—

- (a) at least one of the child's parents, whether the parent is resident in the Territory or elsewhere;
- (b) if the child has, or appears to have, attained the age of 8 years—on the child; and
- (c) on any other person that the Court directs.

(2) The child, whether served with a copy of the application or not, and a parent or the parents on whom a copy of the application has been served shall be the respondents to the application.

Hearing and determination of application

80. (1) The Court hearing an application under section 78 with respect to a child—

- (a) subject to sub-section (2), may make a declaration that the child is in need of care; and
- (b) where the Court makes that declaration, shall make one or more of the orders specified in section 83 with respect to the child,

or may dismiss the application.

(2) The Court shall not make a declaration that the child is in need of care unless the Court is satisfied that the child is unlikely to receive suitable care unless the Court makes an order of the kind referred to in sub-section 83 (1).

(3) The question whether a child is in need of care or is unlikely to receive suitable care shall be decided on the balance of probabilities.

(4) If an order is not made under this section within 6 months after the making of the application, the application lapses and the child, if he or she is detained under this Part, shall forthwith be released.

Adjournment of hearing

81. (1) The Court may adjourn a hearing under section 80 from time to time but so that a period of adjournment does not, unless the Court considers it necessary, exceed 21 days.

(2) The Court may, by order, direct that, during the period of an adjournment, the child—

- (a) live, or continue to live, at home;
- (b) be placed, or remain, in the care of a specified suitable person;
- (c) live, or continue to live, if the person in charge of the home consents, in an approved home;
- (d) live, or continue to live, in a shelter; or
- (e) be detained, if the person in charge of the hospital consents, in a specified hospital.

Child care conference

82. (1) Where the Court adjourns an application under section 78, the Court may direct that the Youth Advocate convene a conference to consider the welfare of the child, to be attended by one or more of the following persons:

- (a) if the Court so orders, the child;
- (b) a parent of the child;
- (c) a person who is or may be concerned with the welfare of the child;
- (d) with the leave of the Court, a barrister and solicitor acting for a person referred to in paragraph (a), (b) or (c).

(2) The Youth Advocate shall attend and preside at the conference and shall report the result of the conference to the Court.

(3) The Youth Advocate shall keep a record in writing of the proceedings at the conference.

(4) Evidence of anything said, or of any admission made, at a conference is not admissible in proceedings before a court except with—

- (a) the consent of all the persons who attended the conference; or
- (b) the leave of the court.

(5) A person who attends a conference under this section shall not, otherwise than provided by this section, disclose any information furnished to the conference or anything said at the conference.

(6) A person who contravenes sub-section (5) is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000, or imprisonment for a period not exceeding 12 months, or both.

Care orders

83. (1) For the purposes of section 80, the following orders are specified:

- (a) a supervision order;
- (b) a residential order;
- (c) an order committing a child to a State institution in a specified State or Territory for such period as the Court determines;
- (d) an order committing a child to an institution for such period as the Court determines;
- (e) an order that a child become a ward of the Director.

(2) An order of the kind specified in sub-section (1) shall specify a period during which the order is to have effect.

(3) An order of the kind specified in paragraph (1) (c), (d) or (e) shall not be made unless the Court is satisfied that no other order specified in sub-section (1) would be in the interests of the welfare of the child.

(4) A supervision order may contain one or more of the following provisions:

- (a) a provision requiring the child, a parent of the child or both a child and a parent of the child to take part in discussions with the supervisor with respect to the welfare of the child, in particular whether the child should receive some form of educational, vocational or recreational activity or other activity, having as its object the welfare of the child; and

- (b) such other provisions as the Court considers to be in the interests of the welfare of the child.

(5) A supervision order may be expressed to have effect when a residential order or an order of the kind specified in paragraph (1) (c) or (d) ceases to have effect.

(6) The Court may include in a supervision order provisions to be complied with by a parent of the child, being a parent on whom a copy of the application under section 78 was served, whether or not the parent resides in the Territory.

(7) An order that the child become a ward of the Director may provide that the Director or another person who has the care of the child shall not, if it is practicable to consult a parent of the child, exercise a power in respect of the ward except after consulting a parent of the child.

Access

84. (1) Where the Court makes an order of the kind specified in paragraph 83 (1) (b), (c), (d) or (e) in respect of a child, the Court may, at the time of making the order or at any time while the order is in force, on application made to it, by order grant to the applicant access to the child.

(2) Before making an order under sub-section (1), the Court shall have regard to such matters as it thinks appropriate and, in particular, shall have regard to the wishes of the child if the child is capable of expressing them and to the conduct and wishes of the parent or of any other person concerned.

Residential orders and supervision orders—entry and inspection by Director, &c.

85. (1) Where a child who is the subject of a residential order or a supervision order resides with a person who has the care, custody and control of the child—

- (a) in the case of a child the subject of a residential order—the Director or an officer; and
- (b) in the case of a child the subject of a supervision order—the supervisor of the child,

may, on reasonable grounds and at a reasonable time—

- (c) enter the premises where the child resides; and
- (d) inspect the premises and the child.

(2) Where a child who is the subject of a residential order or a supervision order resides with a person other than a person who has the care, custody and control of the child—

- (a) in the case of a child the subject of a residential order—the Director or an officer; and
- (b) in the case of a child the subject of a supervision order—the supervisor of the child,

may enter the premises where the child resides if, and only if, the entry and inspection is made—

- (c) with the consent of the occupier of the premises; or
- (d) in pursuance of a warrant issued under this section.

(3) Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that—

- (a) a child the subject of a residential order or a supervision order is residing on premises otherwise than with a person who has the care, custody and control of the child; and
- (b) it is necessary in the interests of the child for the premises and the child to be inspected,

and the information sets out those grounds, the magistrate may issue a search warrant authorising—

- (c) in the case of a child the subject of a residential order—the Director or an officer; and
- (d) in the case of a child the subject of a supervision order—the supervisor of the child,

with such assistance as he or she thinks necessary and if necessary by such force as is reasonable—

- (e) to enter upon or into the premises; and
- (f) to inspect the premises and the child.

(4) A magistrate shall not issue a warrant under this section unless—

- (a) the informant or some other person has given to the magistrate either orally or by affidavit, such further information (if any) as the

magistrate requires concerning the grounds on which the issue of the warrant is being sought; and

- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

Placing in shelter, &c.

86. (1) Subject to sub-section (2), a child who has been committed to a State institution by an order under paragraph 80 (1) (b) may be placed in an approved home or shelter until he or she is removed to the institution.

(2) The child shall not be kept in the approved home or shelter for more than 14 days unless the Court so orders or the Director approves in writing.

(3) An order committing a child to a State institution is sufficient authority for an officer to do one or more of the following:

- (a) subject to any contrary provision in the order—
 - (i) take the child to an approved home or a shelter;
 - (ii) take the child from one approved home or shelter to another;
- (b) take the child to the State institution;
- (c) take the child to the State or Territory specified in the order for the purposes of detention in the institution.

Applications by other persons

87. (1) If the Youth Advocate has not made an application under section 78 with respect to a child, a person may, after consultation with the Youth Advocate, seek the leave of the Court to make such an application.

(2) The Court shall hear the person and the Youth Advocate and may make an order granting leave to the person to make the application.

(3) Where a person makes an application under section 78 in pursuance of leave granted under this section—

- (a) a copy of the application shall be served on the Youth Advocate and the Youth Advocate may appear and be heard in the proceedings; and
- (b) sections 79, 80, 81 and 82 apply to and in relation to an application made in pursuance of this section in like manner as they apply to an application made by the Youth Advocate.

Review of orders on application

88. (1) Where the Court has made an order under section 80 with respect to a child (in this section referred to as the “previous order”), the Court may, on an application by the Youth Advocate or any other person, by order revoke or vary the previous order or make another order in substitution for the previous order.

(2) Before making an application under this section the Youth Advocate may consult the Standing Committee.

(3) The previous order as varied or the order made in substitution for the previous order shall be an order that the Court is empowered to make under section 80 but the Court shall have regard to the circumstances at the time of the hearing.

(4) Subject to sub-sections (3) and (5), the Court may make any order that appears to the Court to be appropriate.

(5) If the Court considers that the child is no longer in need of care, the Court shall revoke the order.

(6) This section has effect notwithstanding that the child is, whether under an order of a court or otherwise, for the time being living outside the Territory.

(7) This section applies to and in relation to an order made on appeal from an order under section 80.

Periodical review of orders

89. (1) Where the Court—

- (a) makes an order under section 80; or
- (b) makes an order in substitution for such an order,

and that order is still in force, the Youth Advocate shall, within 2 months before the expiration of each period of 12 months after the making of that order, apply to the Court for a review of the order.

(2) The Youth Advocate shall serve with each copy of the application a statement as to any matter that the Youth Advocate considers to be relevant concerning the child.

(3) If the Court considers that the child is no longer in need of care, the Court shall revoke the order.

(4) The Court may, in determining an application under sub-section (1)—

- (a) by order—
 - (i) direct that the order continue in force for such period as the Court specifies;
 - (ii) vary the order; or
 - (iii) revoke the order; or
- (b) make an order of the kind specified in section 83 in substitution for the order.

(5) The Court shall not give a direction or vary or make an order under sub-section (4) unless it is satisfied that the child is unlikely to receive suitable care unless the Court so acts.

(6) This section has effect notwithstanding that the child is, whether under an order of a court or otherwise, for the time being living outside the Territory.

(7) This section applies to and in relation to an order made on appeal from an order under section 80.

(8) If the Youth Advocate does not make an application under sub-section (1) in respect of an order, the order ceases to have effect at the expiration of the period of 12 months after the making of that order.

Service of applications for review

90. A copy of an application under section 88 or 89 shall be served—

- (a) on the Youth Advocate;
- (b) if practicable, on at least one of the parents of the child concerned, whether the parent is resident in the Territory or not;
- (c) if the child has attained the age of 8 years, on the child concerned; and
- (d) on any other person that the Court directs.

Application of Part

91. The provisions of this Part relating to applications under section 78 apply, so far as applicable, to and in relation to the hearing of an application under section 88 or 89.

Order to resolve disagreements

92. (1) Where a disagreement arises between a parent of a child and a person having, under this Ordinance, the care of the child, an application may be made to the Court for an order resolving the disagreement.

(2) The application may be made by the child, by the parent or by the person having the care of the child.

(3) Where an order of the kind specified in paragraph 83 (1) (e) has been made with respect to the child, the application may be made by the Director.

(4) Each other person by whom the application might have been made shall be the respondents to the application and each of them shall be served with a copy of the application.

(5) On the hearing of the application, the provisions of this Part relating to applications under section 78 apply, so far as applicable and subject to any directions of the Court, to and in relation to the hearing.

Procedure at hearing

93. (1) The following provisions of this section have effect with respect to the hearing and determination of an application or other proceeding under this Part.

(2) Subject to this Ordinance, the procedure to be followed in proceedings shall be as directed by the Court.

(3) The Court is not bound by the rules of evidence and may inform itself in any manner it thinks fit.

(4) It is not competent for a child or a parent of a child to admit that the child is in need of care.

(5) The Court may hear submissions that any of the following persons wishes to make:

- (a) the Youth Advocate or other applicant;
- (b) a parent or other relative of the child concerned;
- (c) the barrister and solicitor representing the child;
- (d) a person appointed under section 166 to be the next friend of the child;
- (e) any person whom the Court considers is able to inform it on any matter relevant to determining the application or proceeding.

(6) Submissions on behalf of the Youth Advocate or a person referred to in paragraph (a), (b), (d) or (e) may be made by a barrister and solicitor representing the Youth Advocate or other person.

(7) A child the subject of proceedings may make representations in person to the Court, whether or not the child is legally represented, and the Court shall receive and consider the representations.

(8) The Court may, for good cause, order that a person (including the child concerned or a parent of the child concerned) shall not be present in the room where the Court is sitting during the whole or such part of the hearing as the Court determines.

(9) The validity of an order under this Part is not affected by reason of any failure to comply with any of the preceding provisions of this section.

Division 3—Child Care Agreements

Child care agreements

94. (1) The Director may, at the request of a parent of a child, approve the parent's placing the child under the care and in the custody of a suitable person, whether in the Territory or elsewhere.

(2) In considering whether to give his or her approval, the Director shall:

- (a) consider what assistance to the child is possible while the child is in the care of his or her parent; and
- (b) where the child is capable of understanding the proposed arrangement—
 - (i) endeavour to ensure that the child does so understand; and
 - (ii) receive and consider such representations as the child wishes to make to the Director.

(3) Where the suitable person agrees to receive a child under sub-section (1), a parent of the child and the Director shall enter into an agreement in writing with respect to the care and custody of the child.

(4) An agreement under sub-section (3) shall be expressed to be in force for a period, not exceeding 3 months, specified in the agreement.

(5) The parties to an agreement under sub-section (3) may agree to extend the period specified in the agreement for one or 2 further periods, neither of which shall exceed 6 months.

(6) Where—

- (a) a child is placed under the care of a person in pursuance of this section; or
- (b) a child is placed in the care of a person or organization, or committed to an institution, in pursuance of an order under section 80,

the Director may enter into an agreement with the person or organization, or the person in charge of the institution, with respect to the care and custody of the child.

(7) Where the Director—

- (a) refuses to give his or her approval under sub-section (1); or
- (b) refuses to agree to extend an agreement under sub-section (5),

the parent of the child may appeal to the Court.

(8) On the hearing of an appeal under this section, the Court may by order confirm, vary or set aside the decision of the Director and may make such other order as the Court considers necessary.

Agreements not void

95. An agreement under section 94 is not void or voidable because a parent who is a party to it has not attained the age of 18 years.

Consent of child over the school-leaving age

96. An agreement under section 94 with respect to a child who has attained the school-leaving age shall not be made without the consent of the child, unless the child is incapable of giving consent.

Determination and expiration of agreements

97. (1) A party to an agreement under section 94 may determine the agreement by giving to the other party not less than 21 days' notice in writing.

(2) Where an agreement under section 94 expires or is determined, the person having the custody of the child shall, as soon as practicable and in any case within 21 days after the expiration or determination of the agreement, cause the child to be returned—

- (a) to the parent or other person in whose custody the child was before the agreement was entered into; or

- (b) if there is an order in force placing the child in the custody of some other person—to that other person.

Payment of expenses

98. The Director may pay to a person who is caring for a child in pursuance of an agreement under section 94 such amount as the Director determines in respect of the expenses of the person in caring for the child.

Contributions by parents

99. (1) Where the Court makes an order of the kind specified in paragraph 83 (1) (b), (c), (d) or (e) in respect of a child, the Court may also order that the parents of the child pay such amount by way of contribution to the cost of the care of the child as the Court, having regard to the financial circumstances of the parents, determines.

(2) An agreement under sub-section 94 (3) may require the parent of the child to pay such amount by way of contribution to the cost of the care of the child as the Director, having regard to the financial circumstances of the parent, determines.

(3) An amount payable by virtue of this section—

- (a) shall not exceed the amount paid under section 98 in respect of the child; and
- (b) is a debt due to the Commonwealth.

Division 4—Miscellaneous

Orders to be furnished to Director

100. The Court shall cause a copy of an order under this Part to be furnished to the Director and to the Youth Advocate.

Dispensing with service

101. The Court may, by order, dispense with service of a notice, order or other instrument under this Part upon a particular person or may make an order for substituted service of such a notice, order or instrument.

Procedure where child voluntarily enters a place of safety

102. (1) Where a child voluntarily enters a place of safety (not being a police station) otherwise than with the consent of a parent of the child, the occupier or person in charge of the place shall, as soon as practicable but in any case within 12 hours—

- (a) where the child has, or appears to the occupier or person in charge to have, attained the age of 8 years—seek the permission of the child to notify a parent of the child that the child is in the place of safety and, where the child grants permission, notify the parent accordingly; and
- (b) where the child has not, or does not appear to the occupier or person in charge to have, attained that age—notify a parent of the child that the child is in the place of safety.

Penalty: \$500.

(2) Where a child who voluntarily enters a place of safety referred to in sub-section (1)—

- (a) has, or appears to the occupier or person in charge to have, attained the age of 8 years;
- (b) does not grant permission under paragraph (1) (a); and
- (c) remains in the place of safety for more than 12 hours,

the occupier or person in charge shall notify a police officer or the Youth Advocate that the child is in the place of safety and of any relevant circumstances.

Penalty: \$500.

(3) Where the place of safety referred to in sub-section (1) is a place the occupier of which regularly receives and cares for children temporarily, the occupier shall, as soon as practicable, but in any case within 12 hours, after the child enters the place, notify the Youth Advocate that the child is in the place of safety and of any relevant circumstances.

Penalty: \$1,000.

(4) The Youth Advocate shall make enquiries as to the welfare of the child and shall consider whether he or she should make an application to the Court under Division 2.

(5) The Youth Advocate shall, as soon as practicable after being notified under sub-section (2) or (3), notify a parent of the child that the child is in a place of safety.

Notification of children in need of care and of child abuse

103. (1) Where a person, on reasonable grounds, suspects that there exist, have existed or may come into existence with respect to a child such

circumstances as may make it appropriate that proceedings should be taken with respect to the child under this Part, the person may notify the Youth Advocate of those circumstances or may cause the Youth Advocate to be so notified.

(2) Where—

- (a) a medical practitioner, dentist, nurse, police officer, teacher or person employed to counsel children in a school, in the course of practising his or her profession or carrying on his or her calling in the Territory;
- (b) a person employed in the Department or by the Health Authority whose duties include matters relating to children's welfare, in the course of performing those duties; or
- (c) a person providing child care at premises in respect of which a licence under Part VII is in force, in the course of providing that care,

on reasonable grounds, suspects that a child has suffered physical injury (otherwise than by accident) or has been sexually abused, the person shall notify the Youth Advocate accordingly or cause the Youth Advocate to be so notified.

Penalty: \$1,000 or imprisonment for 6 months, or both.

Record of notifications

104. The Youth Advocate shall keep a record of each notification made to him or her under section 103 and shall include in the record particulars of any action that he or she takes in consequence of the notification.

Protection of persons making notifications

105. (1) Where a person in good faith notifies the Youth Advocate as provided by section 103—

- (a) the notification shall, for all purposes, be taken not to be a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct;
- (b) no civil or criminal liability is incurred by reason only of the making of the notification;
- (c) subject to sub-sections (2) and (3), the notification is not admissible in evidence in any proceedings in a court and evidence of its contents is not so admissible; and

(d) subject to sub-section (2), a person shall not be compelled in any proceedings to produce the notification or a copy of, or extract from, the notification or to disclose, or give any evidence of, any of the contents of the notification.

(2) Paragraph (1) (c) or (d) does not apply—

(a) in proceedings before the Court under this Part in relation to the child concerned or before a court hearing an appeal from a decision of the Court in any such proceedings; or

(b) with respect to a charge or allegation made in proceedings against a person in relation to the person's exercising any of his or her powers, or performing any of his or her duties or functions, under this Ordinance.

(3) Paragraph (1) (c) does not apply where a notification is tendered in evidence, or evidence in respect of a notification is given, by the person by whom the notification was, or was caused to be, given.

Cessation of Part

106. (1) This Part and any order or agreement under this Part cease to have effect with respect to a child upon the child attaining the age of 18 years and, if the child is being detained under this Part, the child shall forthwith be released.

(2) Sub-section (1) does not require the release of a person who—

(a) has been convicted of an offence and, in relation to the conviction, is detained under an order, determination, direction, declaration or decision of a court, including a court of a State or of another Territory; or

(b) has been charged with an offence and is so detained in relation to the charge.

PART VI—WARDS

Marriage of wards

107. If a person who is a ward marries before attaining the age of 18 years, the person ceases to be a ward.

Director to be guardian of wards

108. (1) Notwithstanding any other law in force in the Territory relating to the guardianship of children, the Director is the guardian of a child who is a ward to the exclusion of the parent or person who would otherwise be the guardian of the child.

(2) Sub-section (1) has effect both within and beyond the Territory.

Incidents of wardship

109. (1) While a child is a ward of the Director, the Director has, subject to this Ordinance, the care of the child to the exclusion of the parents or other guardian of the child and has the same rights, powers, duties, obligations and liabilities as a natural parent of the child would otherwise have.

(2) In particular, the Director—

- (a) is entitled to the custody of the ward;
- (b) is responsible for providing or arranging for the provision of the necessities and amenities of life of the ward, including the maintenance and accommodation of the ward and recreation and entertainment for the ward; and
- (c) is responsible for the well-being generally of the ward.

Placement in homes, &c.

110. (1) The Director may place a ward in the care of—

- (a) a parent or relative of the child or with some other suitable person (whether in the Territory or elsewhere);
- (b) the person in charge of an approved home;
- (c) the person in charge of a hospital (whether in the Territory or elsewhere);
- (d) the person in charge of a home (whether in the Territory or elsewhere) for the accommodation of children; or
- (e) the person in charge of some other appropriate place (whether in the Territory or elsewhere).

(2) A person who has the care of a child so placed in his or her care is entitled to the custody and control of the child and has the responsibilities specified in paragraphs 109 (2) (b) and (c).

Religion

111. (1) The Director may make such decisions as he or she considers to be in the interests of a ward with respect to religious matters concerning the ward.

(2) In making such a decision, the Director shall take into account, so far as they can be ascertained after reasonable enquiry—

- (a) any wishes of the ward;
- (b) any religious upbringing of the child before the child became a ward;
and
- (c) any wishes of a parent of the ward or of a former guardian of the ward.

Visits to wards

112. (1) The Director or an officer may, at reasonable times, visit a ward.

(2) A person who has the care of a ward shall permit the Director or officer visiting the ward in pursuance of sub-section (1) to interview the ward in private and to make such inspections and examinations as the Director or officer considers necessary.

(3) An officer shall, before interviewing a ward or making an inspection or examination as mentioned in sub-section (2), produce to the person who has the care of the ward the instrument of his or her appointment as an officer.

(4) Where a person who has the care of a ward does not comply with the requirements of sub-section (2), the Director may remove the ward from the person's care.

Wards running away

113. (1) In this section, "authorised officer" means an officer for the time being authorised by the Director to act under this section.

(2) An authorised officer may, with such force as is necessary for the purpose, apprehend a ward who has run away, or has been unlawfully removed, from his or her proper custody and shall return the ward to his or her former custody.

(3) A police officer may, if the authorised officer so requests, with such force as is necessary for the purpose, assist an authorised officer in the apprehension of a ward under sub-section (2).

Property of wards

114. (1) The Court may, upon application by the Director, make an order—

- (a) empowering the Director to manage, control or deal with the property of a ward; or
- (b) appointing the Public Trustee as manager of the property of a ward.

(2) An order under sub-section (1) may include such incidental or supplementary provisions as are necessary to give effect to the order.

(3) The Court shall not make an order under sub-section (1) with respect to property if there is some other person, not being the ward, empowered to manage, control or deal with the property.

(4) The Director shall cause a copy of an application under this section to be served on such persons as the Court directs and the procedure upon the hearing of the application shall be as the Court directs.

Payments to ex-wards

115. Where the Director considers it proper to do so, he or she may arrange for the provision of financial or other assistance, on such terms and conditions as he or she thinks fit, to a person who was at any time a ward.

Wards from outside the Territory

116. (1) The Director may, on request by or on behalf of the authority having the custody or control in a State or in another Territory of a child who, under a law in force in the State or Territory, is a ward and has entered or is about to enter the Australian Capital Territory, in writing declare the child to be a ward of the Director.

(2) Where the Director makes a declaration under sub-section (1), the child, while in the Australian Capital Territory, shall be deemed to be a ward of the Director by virtue of an order under section 80 and this Ordinance applies to and in relation to the child accordingly.

(3) A declaration under sub-section (1) ceases to have effect if the child ceases to be under the custody and control of the authority previously having custody and control of the child.

(4) Where, in the opinion of the Director, the law of a State or another Territory contains a provision corresponding to sub-section (1), the Director may request the authority having the custody and control of wards in that State

or Territory to declare to be a ward under that law a child who has been declared a ward under this Ordinance.

(5) Where a declaration is in force in respect of a child in pursuance of a request under sub-section (4), the functions and duties conferred or imposed on the Director by this Ordinance in relation to the child shall be deemed to have been suspended.

(6) Sub-section (5) does not apply to the exercise by the Director of a function or duty in respect of a child in pursuance of an arrangement made under sub-section (7) with respect to the child.

(7) The Director may, on behalf of the Commonwealth, make financial or other arrangements with an authority referred to in sub-section (1) or (4) with respect to a child while the child is a ward of that authority or of the Director, as the case requires.

(8) The Director may make arrangements for the return of a child who has become a ward of the Director under this section to his or her former custody.

PART VII—CHILDREN'S DAY CARE SERVICES

Interpretation

117. (1) In this Part, unless the contrary intention appears—

“licence” means a licence under this Part;

“licensee” means the holder of a licence;

“service to the community” includes service to a section of the community.

(2) Subject to sub-section (3), for the purposes of this Part a person is providing child care if the person provides care for a child or a number of children—

(a) where—

(i) the care is provided on a business basis or on a community service basis; and

(ii) the care is provided at a place which is not the place of living for the time being of any of the children being cared for on that basis; and

- (b) of all the children for whom care is being provided at that place at any one time (including those not being cared for on a business basis or on a community service basis)—
 - (i) the number of children who have not attained the age of 6 years exceeds 4; or
 - (ii) the number of children who have not attained the age of 12 years exceeds 8.
- (3) This Part does not apply to or in relation to—
 - (a) foster care;
 - (b) care provided in a place under the control of the Department;
 - (c) care provided, whether during school hours or not, by the Australian Capital Territory Schools Authority;
 - (d) care provided by a person in the course of conducting a school that is registered under the *Education Ordinance 1937*; or
 - (e) care provided for children as patients in a hospital.
- (4) For the purposes of sub-section (2)—
 - (a) care is provided for children on a business basis if it is provided in the course of carrying on a business of caring for children or it is provided incidentally to the carrying on of some other business;
 - (b) care is provided for children on a community service basis if it is provided as a service to the community or it is provided incidentally to providing some other service to the community;
 - (c) a child who is received at a place in an emergency or in unexpected circumstances shall not be taken into account unless and until the child has been cared for at the premises for 2 consecutive days; and
 - (d) a child is being cared for at a place notwithstanding that the child is temporarily absent from that place.

Licensing of child care

118. (1) Subject to section 119, a person shall not provide child care, whether for reward or otherwise, at any premises unless a licence is in force in respect of those premises.

Penalty: (a) in the case of a body corporate—\$10,000; and

(b) in the case of a natural person—\$2,000.

(2) Subject to section 199, a person who provides child care at premises in respect of which a licence is in force shall not fail to comply with a condition to which the licence is subject.

Penalty: (a) in the case of a body corporate—\$5,000; and

(b) in the case of a natural person—\$1,000.

Exemptions

119. (1) The Minister may, by instrument in writing, exempt specified child care or child care of a specified class from the application of this Part where the Minister considers it desirable to do so, having regard to any one or more of the following:

- (a) the circumstances in which the child care is being or is to be provided;
- (b) the number of children cared for or likely to be cared for;
- (c) the nature of the premises at which the child care is being or is to be provided;
- (d) the days on which and the times at which the child care is being or is to be provided.

(2) An exemption under sub-section (1) shall, unless sooner revoked, remain in force for the period specified in the instrument.

(3) The Minister may, by instrument in writing, revoke or vary an exemption.

(4) The Minister shall not revoke or vary an exemption which relates to specified child care unless the Minister has, at least 28 days before doing so, given to the person providing the child care an opportunity of stating reasons why the exemption should not be revoked.

(5) A copy of an instrument under this section shall be published in the *Gazette* within 21 days after the date the instrument is made.

(6) The Minister shall cause a copy of an instrument published under sub-section (5) to be laid before each House of the Parliament within 15 sitting days of that House after the instrument was published.

(7) If either House of the Parliament, within 15 sitting days of that House after a copy of an instrument has been laid before that House in pursuance of

sub-section (5), passes a resolution disapproving the exemption, or the revocation or variation of exemption, contained in the instrument the exemption, revocation or variation shall not have any force or effect on or after the day on which the resolution was passed.

Licences

120. (1) The Minister may, upon application by a person for a licence in respect of premises—

- (a) grant the licence; or
- (b) by notice in writing served on the applicant, refuse to grant the licence.

(2) An application under this section shall—

- (a) be in writing;
- (b) contain the prescribed particulars; and
- (c) be accompanied by the determined fee.

(3) The Minister shall determine the period, being a period not exceeding 2 years, for which a licence under this section is to be granted.

(4) A licence shall—

- (a) specify the period for which the licence is to remain in force; and
- (b) include conditions as to—
 - (i) the maximum number of children for whom care may be provided under the licence; and
 - (ii) the ages of the children for whom care may be provided under the licence.

(5) A licence is subject to such other conditions as the Minister thinks fit and specifies in the licence, including but not limited to conditions as to:

- (a) the number of the persons under whose control the children for whom care is provided will be placed;
- (b) the qualifications of the persons mentioned in paragraph (a);
- (c) the measures to be taken for the health and safety of the children;
- (d) the buildings and facilities to be used at the premises at which the care is provided;

- (e) the insurance of the licensee in respect of any liability of the licensee arising out of or relating to the provision of the care at those premises;
- (f) the activities to be provided for the benefit of the children; and
- (g) the management of those premises.

(6) Subject to this Ordinance, a licence remains in force for the period specified in the licence as the period for which the licence is granted.

Emergency suspension of licences

121. Where the Minister is satisfied that there exists an emergency by reason of which it is desirable to suspend a licence immediately, the Minister may, by notice in writing served on the licensee, suspend the licence for such period, being a period that does not exceed 14 days, as is specified in the notice.

Direction to comply with conditions

122. (1) Where the Minister is satisfied that a condition to which a licence is subject has not been complied with, the Minister may, by notice in writing served on the licensee, inform the licensee that the Minister is so satisfied and that, if the licensee does not forthwith comply with the condition, steps may be taken for the revocation or suspension of the licence.

(2) The Minister may, having regard to an explanation so furnished, vary or revoke a condition to which the licence is subject.

Cancellation, &c., of licences

123. (1) The Minister may, upon application by a licensee—

- (a) cancel the licence;
- (b) suspend the licence for the period specified in the application;
- (c) vary, in the manner specified in the application, a condition to which the licence is subject; or
- (d) revoke a condition to which the licence is subject, being a condition specified in the application.

(2) Where a licensee is convicted of an offence under sub-section 118 (2), the Minister may by notice in writing cancel the licence.

(3) The Minister may, by notice in writing served on a licensee, require the licensee to show cause why—

- (a) the licence should not be—
 - (i) cancelled; or
 - (ii) suspended for the period specified in the notice;
- (b) a condition to which the licence is subject should not be varied in the manner specified in the notice; or
- (c) the licence should not be made subject to a condition specified in the notice; or
- (d) a condition specified in the notice and to which the licence is subject should not be revoked.

(4) The Minister may, not less than 28 days after the date of service of a notice under sub-section (3), by notice in writing served on the licensee—

- (a) cancel the licence;
- (b) suspend the licence for the period specified in the first-mentioned notice or for some other period to which the licensee consents;
- (c) vary a condition of the licence in the manner specified in the first-mentioned notice or in some other manner to which the licensee consents;
- (d) include in the licence the condition specified in the first-mentioned notice or some other condition to the inclusion of which the licensee consents; or
- (e) revoke the condition specified in the first-mentioned notice or some other condition to the revocation of which the licensee consents.

(5) A notice under sub-section (4) has effect from and including the date on which it is served or such later date as is specified in the notice.

Removal of child from unlicensed care

124. (1) If a person is providing child care for a child at premises in respect of which a licence is not, for the time being, in force, the Director or an officer may—

- (a) request a parent of the child to remove the child from the premises; or
- (b) remove the child from the premises and—
 - (i) place the child in the custody of a parent or of a relative of the child; or

- (ii) if the Director or officer considers it more appropriate to do so, deliver the child to a suitable person who is prepared to care for the child.

(2) A direction under paragraph (1) (a) may be given by any appropriate means of communication, including by telephone.

(3) Where, in pursuance of paragraph (1) (b), a child is placed in the custody of a person other than a parent of the child, the Director or an officer shall notify a parent of the child forthwith of the child's whereabouts.

Inspection of licensed premises

125. (1) The Director or an officer may, at any reasonable time, enter and inspect premises specified in a licence.

(2) The Director or an officer is not entitled to remain in or on premises referred to in sub-section (1) unless the Director or officer, on request by the occupier of the premises, produces evidence of his or her appointment as Director or officer, as the case requires.

PART VIII—EMPLOYMENT OF CHILDREN

Interpretation

126. (1) In this Part, "young child" means a person who has not attained the school-leaving age.

(2) For the purposes of this Part—

- (a) if a person causes or permits a child to participate or assist in a business, trade, calling or occupation carried on for private profit, the person shall be deemed to employ the child and shall be so deemed whether or not the child receives payment or other reward for his or her participation or assistance; and
- (b) "employer" and "employment" have corresponding meanings.

Employment of children in certain businesses, &c.

127. A person shall not employ a child in a prescribed business, trade, calling or occupation if the child has not attained the age prescribed in respect of that business, trade, calling or occupation.

Penalty: (a) in the case of a body corporate—\$10,000; and

- (b) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both.

Employment of young children

128. (1) Except as provided by this Part, a person shall not employ a young child.

- Penalty:
- (a) in the case of a body corporate—\$5,000; and
 - (b) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both.

(2) Sub-section (1) does not apply with respect to the employment of a young child in or in connection with a school, provided that any applicable law or any applicable industrial award, order, determination or agreement is complied with.

Light work excepted

129. (1) Subject to this Part, sub-section 128 (1) does not apply with respect to the employment of a young child—

- (a) on baby-sitting;
- (b) on going on errands;
- (c) on casual work in or around a private home;
- (d) on golf-caddying;
- (e) on clerical work;
- (f) on gardening;
- (g) on selling, delivering or distributing newspapers or advertising matter;
- (h) for the purposes of or in relation to entertainment at a place used for providing entertainment or amusement;
- (i) for the purpose of entertainment at a place used for sporting activities;
- (j) for the purpose of singing, dancing, playing a musical instrument or for some similar purpose;
- (k) as a performer in a radio, television or film program or production, or a like program or production, not being in the nature of a news item;
- (l) as a model;
- (m) as the subject of photography, whether still or moving;

(n) in or in connection with a circus; or

(o) on any other prescribed work.

(2) Sub-section (1) does not have effect with respect to the employment of a young child for more than 10 hours in any one week unless the proposed employer has, not less than 7 days before the employment commences, given to the Director a notice setting out—

(a) the name and address, and the date of birth, of the young child;

(b) the nature and place of the proposed employment;

(c) the name and address of a parent of the young child;

(d) the name and address of the proposed employer;

(e) the proposed hours and days of work;

(f) the proposed duration of the employment;

(g) the name of the school, if any, attended by the young child; and

(h) the reasons for proposing to employ the young child.

Family businesses excepted

130. Subject to this Part, sub-section 128 (1) does not apply with respect to the employment of a young child in or in connection with a business, trade, occupation or calling carried on by a parent of the young child or by a company of which a parent of the young child is a director.

Employment not to interfere with schooling, &c.

131. Sections 129 and 130 do not have effect with respect to the employment of a young child if the employment—

(a) constitutes a breach of the *Education Ordinance 1937* by or with respect to the young child; or

(b) is likely to prejudice the health, safety or personal or social development of the young child or the ability of the young child to benefit from his or her education or training.

Copies of notices to be given

132. The Director shall, forthwith after receiving a notice under sub-section 129 (2), furnish a copy of the notice to the Secretary within the meaning of the *Education Ordinance 1937*.

Dangerous employment

133. (1) The Director may, on the application of a person who proposes to employ a young child where the employment involves the child engaging in activities dangerous to the health or safety of the child, consent to the employment of the child.

(2) The Director may refuse to grant consent under sub-section (1) where the Director has reasonable grounds for believing that the proposed employment would be likely to prejudice the health or safety of the young child.

(3) The consent of the Director under sub-section (1) may be expressed to be subject to such conditions as the Director thinks fit, being conditions relating to the preservation of the health and safety of the child.

(4) A person shall not, except with the consent of the Director, employ a young child where the employment involves the child engaging in activities dangerous to the health or safety of the child.

Penalty: (a) in the case of a body corporate—\$25,000; and

(b) in the case of a natural person—\$5,000 or imprisonment for 2 years, or both.

(5) A person to whom consent under sub-section (1) has been given shall not fail to comply with any conditions subject to which the consent was given.

Penalty: (a) in the case of a body corporate—\$10,000; and

(b) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both.

(6) Where the Director gives consent under sub-section (1), the Director shall furnish a copy of the consent to the Secretary within the meaning of the *Education Ordinance 1937*.

Regulation of employment of children

134. (1) The Director may, by notice in writing served on an employer—

- (a) prohibit the employer from employing or continuing to employ a child specified in the notice if the Director believes, on reasonable grounds, that the employment is, or is likely to be, prejudicial to the health, safety or personal or social development of the child or the ability of the child to benefit from his or her education or training; or

- (b) specify conditions to be complied with by the employer with respect to the employment of a child specified in the notice, being conditions designed to preserve the health, safety or personal or social development of the child or the ability of the child to benefit from his or her education or training.

(2) A person shall not employ a child in contravention of a notice under paragraph (1) (a).

- Penalty: (a) in the case of a body corporate—\$5,000; and
- (b) in the case of a natural person—\$1,000 or imprisonment for 12 months, or both.

(3) Where the Director has specified conditions to be complied with by the employer of a child with respect to the employment of the child, a person employing the child shall not fail to comply with a condition so specified.

- Penalty: (a) in the case of a body corporate—\$5,000; and
- (b) in the case of a natural person—\$1,000.

Duty of employers of children

135. An employer of a child shall do all things necessary and reasonable to ensure the health and safety of the child.

- Penalty: (a) in the case of a body corporate—\$10,000; and
- (b) in the case of a natural person—\$2,000.

Child not to render certain measures ineffective

136. A child shall not do a thing, or fail to do a thing, that renders less effective anything done by the child's employer for the purpose of complying with section 135 or for the purpose of securing compliance with a condition to which the employment is subject.

Part subject to certain provisions of Education Ordinance

137. This Part has effect subject to sections 9 and 16 of the *Education Ordinance 1937*.

PART IX—OFFENCES

Presumption of age

138. Where a person is charged with an offence against this Ordinance or the regulations with respect to a person who is alleged in the charge not to have attained a specified age and the second-mentioned person appears to the Court not to have attained that age, there is a rebuttable presumption that the second-mentioned person has not attained that age.

Neglect, &c., of children

139. (1) A person shall not—

- (a) ill-treat a child who is in the person's custody or under the person's control; or
- (b) fail, otherwise than for financial reasons, to provide adequate and proper lodging, food or clothing, or nursing, medical or dental care and attention, for a child who is in the person's custody.

Penalty: \$5,000, or imprisonment for 2 years, or both.

(2) A person shall not, knowingly or recklessly, leave a child unattended in such circumstances and for such a time that the child could suffer injury or sickness or otherwise be in danger.

Penalty: \$2,000, or imprisonment for 12 months, or both.

(3) A police officer, a medical practitioner or an officer may take such steps as appear to him or her to be necessary (including entering any building, place or vehicle, with such force as is necessary) for the immediate safeguarding of a child who has been ill-treated or neglected as mentioned in sub-section (1) or has been left unattended as mentioned in sub-section (2).

(4) An action does not lie against a person by reason of the person having acted pursuant to sub-section (3) in good faith and with reasonable care in the circumstances.

(5) Sub-section (3) does not affect the operation of Part V.

Unauthorised removal of children

140. A person shall not, without lawful authority, remove or cause or procure to be removed a child from the care of a person into whose care or custody the child has been placed under this Ordinance.

Penalty: \$1,000, or imprisonment for 6 months, or both.

False statements

141. A person shall not, for the purposes of, or for a purpose connected with, this Ordinance, knowingly make a statement that is false or misleading in a material particular.

Penalty: \$1,000, or imprisonment for 6 months, or both.

Tattooing of children

142. A person shall not in any manner tattoo any part of the body of a child unless the person has first obtained the written permission of a parent of the child to tattoo the child in that manner on that part of the child's body.

Penalty: \$1,000.

PART X—APPEALS

Interpretation

143. In this Part, "order" includes declaration and decision.

Jurisdiction of Supreme Court

144. (1) The appellate jurisdiction of the Supreme Court with respect to orders of the Magistrates Court under this Ordinance extends to the hearing and determination of the following appeals and no others, namely:

- (a) an appeal, by the child against whom the order was made, from an order made under Part IV, other than an order made under section 44 or section 68;
- (b) an appeal, by the child charged, from a decision of the Court under section 48 that the charge against the child was proved;
- (c) an appeal, by a party to the proceedings in which the order was made, from an order of the Court made under Part V or under section 68, 114 or 166;
- (d) an appeal, by way of order to review, by the informant from an order of the Court dismissing an information under Part IV;
- (e) an appeal, by way of order to review, by the child against whom the order was made, from an order made under Part IV;
- (f) an appeal, by way of order to review, by the informant from a decision of the Court to dispose of a case summarily under section 41;

- (g) an appeal, by way of order to review, by the informant from a decision of the Court not to commit a child to the Supreme Court for sentence under section 44.

(2) Nothing in this Part limits the operation of Part XI of the Magistrates Court Ordinance or any other Ordinance that makes provision with respect to the appellate jurisdiction of the Supreme Court.

Application of Magistrates Court Ordinance

145. (1) The provisions of Division 2 of Part XI of the Magistrates Court Ordinance, other than section 219, apply to and in relation to an appeal of the kind referred to in paragraph 144 (1) (a) or (b) as if—

- (a) the appeal were an appeal to which that Division applied;
- (b) the appeal were an appeal to which section 214 of that Ordinance applied; and
- (c) a reference in that Division to the Magistrates Court were a reference to the Childrens Court.

(2) Part XIXA of the *Magistrates Court (Civil Jurisdiction) Ordinance 1982* applies to and in relation to an appeal of the kind referred to in paragraph 144 (1) (c) as if it were an appeal from a judgment or order of a kind specified in sub-section 282C (2) of that Ordinance.

(3) The provisions of Division 3 of Part XI of the Magistrates Court Ordinance apply to and in relation to an appeal of the kind referred to in paragraph 144 (1) (d), (e), (f) or (g) as if it were an appeal from—

- (a) in the case of an appeal of the kind referred to in paragraph 144 (1) (d)—an order of the kind specified in paragraph 219B (a) of that Ordinance;
- (b) in the case of an appeal of the kind referred to in paragraph 144 (1) (e)—an order of the kind specified in paragraph 219B (c) of that Ordinance;
- (c) in the case of an appeal of the kind referred to in paragraph 144 (1) (f)—a decision of the kind specified in paragraph 219B (f) of that Ordinance; and
- (d) in the case of an appeal of the kind referred to in paragraph 144 (1) (g)—a decision of the kind specified in section 219B (e) of that Ordinance.

Barring of appeal if order to review granted

146. Where an order *nisi* to review a decision of the kind referred to in paragraph 144 (1) (d) or (e) has been granted under Division 3 of Part XI of the Magistrates Court Ordinance in its application under this Part—

- (a) the person obtaining the order *nisi* is not entitled to make any other appeal to the Supreme Court under this Part against that decision; and
- (b) if the person has served on the Clerk of the Magistrates Court notice of appeal to the Supreme Court against that decision, the notice of appeal shall be deemed to have been withdrawn.

Orders that Supreme Court may make

147. (1) On an appeal of the kind referred to in paragraph 144 (1) (a), (b) or (c), the Supreme Court shall not make an order other than an order that could have been made by the Childrens Court in the proceedings appealed from.

(2) On an appeal of the kind referred to in paragraph 144 (1) (d) or (e), the Supreme Court may make any order that could have been made by the Childrens Court in the proceedings appealed from.

Review by Administrative Appeals Tribunal

148. (1) Application may be made to the Tribunal for a review of a decision of the Minister—

- (a) refusing to grant, or granting subject to conditions, a licence under section 120;
- (b) determining the period for which a licence under section 120 is to be granted;
- (c) varying or revoking a condition under sub-section 122 (2); or
- (d) cancelling, suspending, varying or revoking a licence under section 123.

(2) Application may be made to the Tribunal for a review of a decision of the Director—

- (a) making a determination under section 98;
- (b) refusing to grant, or granting subject to conditions, his or her consent under section 133; or

- (c) under section 134, prohibiting, or specifying conditions with respect to, the employment of a child.

PART XI—MISCELLANEOUS

Division 1—Powers of entry and search

Interpretation

149. For the purposes of this Division, a thing is connected with a particular offence if it is—

- (a) a thing with respect to which the offence has been connected;
- (b) a thing that will afford evidence of the commission of the offence; or
- (c) a thing that was used, or intended to be used, for the purpose of committing the offence.

(2) A reference in this Division to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed.

(3) In this Division, “authorised officer” means an officer authorised by the Director for the purposes of this Division, or a police officer.

Search and seizure

150. The Director or an authorised officer may enter upon land or upon or into any premises or a vessel or vehicle, and may search for and seize any thing that he or she believes on reasonable grounds to be connected with an offence against this Ordinance that is found on the land, or on or in the premises, vessel or vehicle if, and only if, the search and seizure is made by the authorised officer—

- (a) in pursuance of a warrant issued under section 151;
- (b) in circumstances of seriousness and urgency, in accordance with section 152; or
- (c) after obtaining the consent of the occupier of the land or premises or of the person in charge of the vessel or vehicle to the entry.

Search warrants

151. (1) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be upon any land or upon or in any premises, vessel or vehicle a thing of a particular kind

connected with a particular offence against a provision of this Ordinance, and the information sets out those grounds, a Magistrate may issue a search warrant authorising the Director, or authorised officer named in the warrant, with such assistance as is reasonably necessary and such force as is reasonably necessary—

- (a) to enter upon the land or upon or into the premises, vessel or vehicle;
 - (b) to search the land, premises, vessel or vehicle for things for that kind; and
 - (c) to seize any thing of that kind found upon the land or upon or in the premises, vessel or vehicle that he or she believes on reasonable grounds to be connected with that offence.
- (2) A Magistrate shall not issue a warrant under sub-section (1) unless—
- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought, and
 - (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (3) There shall be stated in a warrant issued under this section—
- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which entry and search are authorised;
 - (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
 - (c) a description of the kind of things authorised to be seized; and
 - (d) a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

Entry in emergencies

152. The Director or an authorised officer may enter upon any land, or upon or into any premises, vessel or vehicle, on or in which the Director or officer believes on reasonable grounds that any thing connected with an offence against this Ordinance is situated and may search for and seize any such thing that he or she finds in the course of that search, or upon the land or upon or in the premises, vessel or vehicle, as the case may be, if—

- (a) the Director or authorised officer believes, on reasonable grounds, that it is necessary to do so for the purposes of this Ordinance; and
- (b) the search or entry is made in circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of a warrant issued under section 151.

Consent to entry

153. (1) Before obtaining the consent of a person—

- (a) for the purposes of sub-section 56 (2)—the supervisor;
- (b) for the purposes of sub-section 85 (2)—the Director, officer or supervisor, as the case requires; or
- (c) for the purposes of paragraph 150 (c)—the Director or authorised officer, as the case requires,

shall inform the person that the person may refuse to give his or her consent.

(2) Where—

- (a) the supervisor, for the purposes of sub-section 56 (2);
- (b) the Director, officer or supervisor, for the purposes of sub-section 85 (2); or
- (c) the Director or authorised officer, for the purposes of paragraph 150 (c),

obtains the consent of a person, the supervisor, Director, officer or authorised officer as the case requires, shall ask the person to sign a written acknowledgment—

- (d) of the fact that the person has been informed that he or she may refuse to give his or her consent;
- (e) of the fact that the person has given his or her consent; and
- (f) of the day on which, and the time at which, the person gave his or her consent.

(3) An entry by a supervisor, the director, an officer or an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

(4) Where it is material, in any proceedings, for a court to be satisfied of the voluntary consent of a person for the purposes of sub-section 56 (2), or 85 (2) or paragraph 150 (c) and an acknowledgment, in accordance with sub-section (2), signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such a consent.

Obstruction

154. A person shall not hinder or obstruct another person in the exercise by that other person of his or her powers, or the performance of his or her duties or functions, under this Ordinance.

Penalty: \$2,000 or imprisonment for 12 months, or both.

Division 2—General

Notification of decisions

155. (1) Where the Director makes a decision referred to in section 148 he or she shall, within 28 days of the date of the decision, cause notice in writing to be given to the persons whose interests are affected by the decision, setting out the decision and giving reasons for the decision.

(2) A statement by the Director under sub-section (1) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, a person whose interests are affected by the decision to which the statement relates is entitled to apply to the Administrative Appeals Tribunal for a review of the decision.

(3) The validity of a decision to which a statement under sub-section (1) relates shall not be taken to be affected by a failure to comply with sub-section (2).

Breach of residential order

156. A person in respect of whom a residential order under Part IV or V is in force who—

- (a) where the order is an order that the person be placed in an approved home or that the person live at such place as the Director determines—fails to comply with the reasonable lawful directions of the person in charge of the approved home or place; or

- (b) where the order is an order that the person be placed in the care of a suitable person—fails to comply with the reasonable lawful directions of that person,

shall be deemed to have failed to comply with the order.

Establishment, &c., of shelters, &c.

157. The Minister may, for the purposes of this Ordinance—

- (a) establish shelters, attendance centres and institutions; and
- (b) in writing, declare that a place which is, at the date of commencement of this Ordinance, used as a shelter, an attendance centre or an institution, in relation to the care of children, is to be a shelter, an attendance centre or an institution, as the case requires, for the purposes of this Ordinance.

Medical examinations and surgical operations

158. (1) This section applies in relation to a child who—

- (a) is in an institution in pursuance of an order under paragraph 47 (1) (k);
- (b) has been placed in an approved home, a shelter or a remand centre; or
- (c) is a ward.

(2) The Director may, on reasonable grounds, arrange that a child in relation to whom this section applies be examined by a medical practitioner or by a dentist.

(3) The Director may consent to medical treatment that he or she is advised by a medical practitioner, or dental treatment that he or she is advised by a dentist, is in the interests of the health of a child in relation to whom this section applies.

(4) Sub-section (3) has effect notwithstanding any objection by or lack of consent of a parent of the child concerned.

Child's name may be given

159. Where—

- (a) a child has been given a warning by a police officer in respect of an act that constitutes an offence against a law of the Commonwealth or of the Territory; or

- (b) a child has been charged with an offence against a law of the Commonwealth or of the Territory,

and the Commissioner of Police or a police officer authorised by him or her is satisfied on reasonable grounds that a person has suffered loss by reason of that act or offence, the Commissioner or officer may furnish to the person the name, age and address of the child and particulars of the act or offence.

Notifications

160. A notification under this Ordinance may be given by any appropriate means, including by telephone or any other form of communication by electronic means.

Court may direct Minister to make certain determinations

161. (1) The Youth Advocate or any other person may apply to the Court for an order directing the Minister to make a determination with respect to a child under clause 3 of the Agreement (including that clause as applying by virtue of sub-clause 3 (6) of the Supplemental Agreement), being the Agreement and Supplemental Agreement within the meaning of the repealed Ordinances.

(2) On the hearing of an application under this section the Court shall, if it considers it in the interests of the child, by order direct the Minister to make the determination.

(3) The procedure in connection with an application under this section is as the Court directs.

Powers of courts with respect to reports

162. (1) A court hearing any proceedings in respect of or against a child may order the Director or a person employed by the Health Authority whose duties relate to children's welfare to furnish to the court a report as to the child and the Director or the person shall, notwithstanding any other law of the Territory, furnish a report accordingly.

(2) For the purpose of giving effect to an order under sub-section (1), the person referred to in that sub-section may do one or more of the following:

- (a) visit and interview the child;
- (b) interview a parent of the child;

- (c) interview a schoolteacher or other person concerned with the education or welfare of the child;
- (d) require the child to submit to being interviewed by a medical practitioner or other specified person.

(3) Where a report is furnished in good faith to the Director or person referred to in sub-section (1) by a medical practitioner or other person following an interview as mentioned in paragraph (2) (d), the report shall, for all purposes, be taken not to be a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct.

Reports to be made available

163. (1) Unless the court otherwise orders, a copy of a report furnished under section 162 shall be made available to the child, a parent of the child and a barrister and solicitor acting for the child or for a parent of the child.

(2) The person furnishing a report under section 162 may be called as a witness by a party to the proceedings.

Right of appearance

164. At the hearing in any court—

- (a) of an information or complaint against a child; or
- (b) of an application, proceeding or matter under this Ordinance or in relation to which this Ordinance applies,

the Director or the Youth Advocate, or a person authorised by the Director or Youth Advocate for the purposes of this section, is entitled to appear and be heard and may call witnesses.

Matters before Childrens Court

165. So far as practicable, the sittings of the Court shall be so arranged that the extent to which children are able to associate with each other within the precincts of the Court while awaiting hearing, and the extent to which parents and other persons are obliged to be in common waiting rooms pending the hearing of proceedings, are kept to a minimum.

Next friend of child

166. (1) A court may, if it thinks it to be in the interests of a child to do so and if the person consents, by order appoint a person to be the next friend of the child for the purpose of proceedings under this Ordinance in respect of the child.

(2) The next friend may, on behalf of the child, bring any application or other proceedings in a court under this Ordinance or in relation to which this Ordinance applies that the child might have brought and defend, on behalf of the child, any proceedings brought against the child, whether under this Ordinance or otherwise.

(3) In proceedings, an order for costs may be made in favour of or against a next friend in the same circumstances as the order might have been made with respect to the child.

(4) In this section, "proceedings" includes an appeal and an application for an order to review.

Representation of children

167. (1) Where, in proceedings in a court under this Ordinance or in relation to which this Ordinance applies—

- (a) a child is not separately represented by a barrister and solicitor; and
- (b) it appears to the court that the child should be so represented,

the court may, of its own motion or on the application of any person (including the child)—

- (c) adjourn the proceedings in order that the child may obtain legal representation; and
- (d) give such advice and assistance to the child as may be necessary to enable the child to obtain legal representation.

(2) In this section, "proceedings" includes an appeal and an application for an order to review.

Attendance of parents at court

168. (1) Except as otherwise provided by this section, a parent of a child who is the subject of proceedings before the Court shall, if notice of the proceedings has been served on the parent or if he or she is otherwise aware of the proceedings, attend the Court during the hearing and determination of the proceedings.

(2) A notice of the proceedings under this section shall—

- (a) state the time, date and place of the hearing of the proceedings; and

- (b) state that, if the parent does not attend the Court at the hearing of the proceedings, a warrant may be issued to bring the parent before the Court.

(3) If notice of the proceedings has been served on a parent of the child but, without reasonable cause, neither parent attends the Court at the hearing of the proceedings, the Court may direct a warrant to issue to bring the parent before the Court.

(4) The Court may admit to bail a person in respect of whom a warrant has been so issued on the person's entering into a recognizance, with or without a surety or sureties, to attend the Court during the hearing and determination of the proceedings.

(5) The application of this section extends to a parent whose place of living is outside the Territory.

Proceedings not open to public

169. (1) Subject to sub-section (2), a person other than a person specified in this section is not entitled to be present at the hearing of proceedings in the Court:

- (a) an officer of the Court;
- (b) a party to the proceedings, the barrister and solicitor by whom the party is represented or an employee of the barrister and solicitor;
- (c) a parent or other person having the care of a child in respect of whom the proceedings are taken or any other person whom the Court admits as a representative of the child;
- (d) the Director or a person authorised by the Director for the purposes of this section;
- (e) the Youth Advocate or a person authorised by the Youth Advocate for the purposes of this section;
- (g) a person who has, or a representative of a body, authority or agency which has, furnished a report under section 162;
- (h) a person attending for the purpose of preparing a news report of the proceedings and authorised by his or her employer so to attend.

(2) Nothing in sub-section (1) applies to or in relation to a person required or permitted to be present by this Ordinance or by the Court.

Restrictions on publication of reports of proceedings

170. (1) A person shall not print or publish by any means a report or account of any proceedings under this Ordinance or in relation to which this Ordinance applies if the printing or publication discloses the identity of the child concerned or of a member of his or her family, or enables the identity of the child concerned or of a member of his or her family to be ascertained.

(2) A person who contravenes sub-section (1) is guilty of an offence punishable—

- (a) in the case of a body corporate—by a fine not exceeding \$25,000; and
- (b) in the case of a natural person—by a fine not exceeding \$5,000, or imprisonment for a period not exceeding 2 years, or both.

(3) Proceedings for an offence against this section shall not be commenced except by, or with the consent in writing of, the Attorney-General or the Director of Public Prosecutions.

Protection of children in other courts

171. (1) The Supreme Court may, in relation to proceedings before that court concerning a child, order that section 169 apply to and in relation to those proceedings, and that section thereupon so applies.

(2) The powers conferred upon the Supreme Court by virtue of sub-section (1) are in addition to any other powers possessed by that court.

Confidentiality

172. (1) A person shall not, otherwise than for the purposes of this Ordinance or as required by law, make a record of or divulge or communicate to any person any information or document, being information or a document that the first-mentioned person acquired under or by virtue of this Ordinance.

Penalty: \$2,000 or imprisonment for a period not exceeding 12 months, or both.

(2) This section does not affect the operation of any other law relating to the confidentiality of information or documents.

Evidentiary certificates

173. In proceedings under this Ordinance—

- (a) a certificate purporting to be signed by an authorised officer stating—

- (i) that he or she was, on a date or during a period specified in the certificate, an authorised officer; and
- (ii) that, on the date specified in the certificate, he or she consented to the prosecution of the person specified in the certificate for the offence specified in the certificate and that consent has not been revoked,

is evidence of the matters stated in the certificate;

- (b) a certificate purporting to be signed by the Director stating that, on a date or during a period specified in the certificate, the person specified in the certificate was a ward of the Director is evidence of the matters stated in the certificate; and
- (c) a certificate purporting to be signed by the Director stating that—
 - (i) on the date specified in the certificate, the person specified in the certificate was committed to the shelter, approved home, institution or State institution specified in the certificate;
 - (ii) on the date specified in the certificate, the period for which the person was so committed had not expired or been reduced; and
 - (iii) on the date or during the period specified in the certificate, the Director had not granted leave of absence to the person or had granted the leave of absence at the times or during the periods specified in the certificate,

is evidence of the matters stated in the certificate.

Power of Minister to determine fees

174. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Ordinance.

Exemption from court fees

175. No court fees are payable under section 292 of the *Magistrates Court (Civil Jurisdiction) Ordinance 1982* in respect of proceedings instituted under this Ordinance.

Minister may enter into agreements

176. The Minister may, from time to time, enter into an agreement with a Minister of State of a State or of another Territory with respect to—

- (a) the transfer of children who have been dealt with under this Ordinance to State institutions in that State or Territory; and
- (b) the reception into the Territory and the detention in shelters and institutions of children who have been dealt with under a law of that State or Territory with respect to the welfare or punishment of children.

Regulations

177. (1) The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters that this Ordinance requires or permits to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

(2) Without limiting the generality of sub-section (1), the regulations may—

- (a) make provision for or with respect to—
 - (i) the keeping of registers and records by or in relation to; and
 - (ii) the conditions to be included in licences granted to, persons providing child care to which Part VII applies; and
- (b) make provision for or with respect to—
 - (i) the duties of persons in charge of shelters, attendance centres and institutions;
 - (ii) the health and safety of children attending attendance centres or detained in shelters and institutions;
 - (iii) travel and transport arrangements for children attending attendance centres; and
 - (iv) the periods to be taken into account when calculating the time to be spent in the custody of the Director as mentioned in sub-section 57 (2); and
- (c) prescribe penalties, not exceeding a fine of \$500, in respect of offences against the regulations.

SCHEDULE

Section 3

ORDINANCES REPEALED

PART I

Child Welfare Ordinance 1957

Child Welfare Ordinance 1962

Child Welfare Ordinance 1968

Child Welfare Ordinance 1969

Child Welfare Ordinance 1971

Child Welfare Ordinance 1973

Child Welfare (Amendment) Ordinance 1979

Child Welfare (Amendment) Ordinance (No. 2) 1979

Child Welfare (Amendment) Ordinance 1982

PART II

Child Welfare Agreement Ordinance 1941

Child Welfare Agreement Ordinance 1962

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 4 June 1986.