



Australian Capital Territory

# Children and Young People Act 2008

A2008-19

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Australian Capital Territory

# Children and Young People Act 2008

**A2008-19**

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

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

## Chapter 1 Preliminary

### Part 1.1 Introduction

#### 1 Name of Act

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

#### 2 Commencement

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

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

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

- (2) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply in relation to this Act.
- (3) However, if any provision of this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.

#### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*mental health order*—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.' means that the term 'mental health order' is defined in the dictionary to that Act and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

#### **4 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

#### **5 Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1* Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg conduct, intention, recklessness and strict liability).

*Note 2* Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

#### **6 Application of Act to children and young people etc**

The functions under this Act may be exercised for a child or young person, or a young offender or young detainee—

- (a) who ordinarily lives in the ACT; or
- (b) who does not ordinarily live in the ACT, but who is in the ACT; or
- (c) about whom a report is made under—
  - (i) section 354 (Voluntary reporting of abuse and neglect) arising from something happening in the ACT; or

- (ii) section 356 (Offence—mandatory reporting of abuse) arising from something happening in the ACT; or
- (iii) section 362 (Prenatal reporting—anticipated abuse and neglect) if the pregnant woman ordinarily lives in the ACT or is in the ACT.

## **Part 1.2**                      **Objects, principles and considerations**

### **7**                      **Main objects of Act**

The objects of this Act include—

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

- (iii) rehabilitating and reintegrating Aboriginal and Torres Strait Islander young offenders; and
- (e) ensuring that services provided by, or for, government for the wellbeing, care and protection of children and young people—
  - (i) are centred on the needs of children and young people; and
  - (ii) are informed by processes which engage children and young people, wherever possible, and take their views and wishes into account; and
  - (iii) foster and promote the health, education, developmental needs, spirituality, self-respect, self-reliance and dignity of children and young people; and
  - (iv) respect the individual race, ethnicity, religion, disability, sexuality and culture of children and young people; and
- (f) ensuring that young offenders—
  - (i) receive positive support and opportunities to become rehabilitated and reintegrated community members; and
  - (ii) share responsibility for rehabilitation and reintegration with their parents and families, the community and the government in partnership; and
- (g) imposing standards that must be complied with for the delivery of services to children and young people; and
- (h) ensuring the protection of children and young people in employment.



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

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

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

*Note 2* For the care and protection chapters (see s 336), there are further provisions about how a decision-maker decides what is in the best interests of a child or young person (see s 349).

- (3) To remove any doubt, a reference in any section of this Act to the best interests of a child or young person does not limit this section.

**9 Principles applying to Act**

- (1) In making a decision under this Act in relation to a child or young person, a decision-maker must have regard to the following principles where relevant, except when it is, or would be, contrary to the best interests of a child or young person:
  - (a) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced;
  - (b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption;
  - (c) the child's or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics should be considered;

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

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

- (a) for the care and protection chapters—care and protection principles (see s 350);
  - (b) for ch 20—childcare services principles (see s 730).
- (2) A decision-maker exercising a function under this Act must, where practicable and appropriate, have qualifications, experience or skills suitable to apply the principles in subsection (1) in making decisions under the Act in relation to children and young people.

## 10 **Aboriginal and Torres Strait Islander children and young people principle**

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

- (a) the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community;
- (b) submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the chief executive as providing ongoing support services to the child or young person or the child's or young person's family;

- (c) Aboriginal and Torres Strait Islander traditions and cultural values (including kinship rules) as identified by reference to the child's or young person's family and kinship relationships and the community with which the child or young person has the strongest affiliation.

*Note* For decisions about placement of an Aboriginal or Torres Strait Islander child or young person with an out-of-home carer, see s 513 (Priorities for placement with out-of-home carer—Aboriginal or Torres Strait Islander child or young person).

## Part 1.3 Important concepts

### Division 1.3.1 Definitions

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

In this Act:

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

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

In this Act:

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

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

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

In this Act:

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

- (a) means the child's or young person's—
  - (i) parent, grandparent or step-parent; or
  - (ii) son, daughter, stepson or stepdaughter; or
  - (iii) sibling; or
  - (iv) uncle or aunt; or
  - (v) nephew, niece or cousin; and

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

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

In this Act:

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

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

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

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

## Division 1.3.2 Parental responsibility

### 15 What is *parental responsibility*?

In this Act:

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

- (a) daily care responsibility for the child or young person;
- (b) long-term care responsibility for the child or young person.

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

### 16 Parents have parental responsibility

- (1) Each parent of a child or young person has parental responsibility for the child or young person.
- (2) To remove any doubt, *parent* includes a parent who is not an adult.
- (3) This section is subject to the following sections:
  - (a) section 17 (Aspects of parental responsibility may be transferred);
  - (b) section 18 (Aspects of parental responsibility may be shared).

### 17 Aspects of parental responsibility may be transferred

- (1) Parental responsibility may be transferred from a person to someone else under—
  - (a) a family group conference agreement; or

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

- (b) an appraisal order including a temporary parental responsibility provision; or

*Note* Appraisal orders and temporary parental responsibility provisions are dealt with in s 372 and s 373.

- (c) emergency action; or

*Note* Emergency action is dealt with in pt 13.1.

- (d) a care and protection order including a parental responsibility provision; or

*Note* Care and protection orders are dealt with in ch 14.

- (e) a safe custody warrant; or

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

**Example—court order under another law**

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

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

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

- (2) If parental responsibility is transferred from a person to someone else—

- (a) only the aspect of parental responsibility expressly stated to be transferred is transferred; and

- (b) no-one else's parental responsibility, or aspect of parental responsibility, for the child or young person is diminished except to the extent expressly stated or necessary to give effect to the transfer.

## **18 Aspects of parental responsibility may be shared**

- (1) Parental responsibility may be shared between 2 or more people under—
  - (a) a family group conference agreement; or  
*Note* Family group conferences are dealt with in ch 3 and ch 12.
  - (b) a voluntary care agreement; or  
*Note* Voluntary care agreements are dealt with in pt 12.3.
  - (c) a care and protection order including a parental responsibility provision; or  
*Note* Care and protection orders are dealt with in ch 14.
  - (d) a court order (under this Act or another law in force in the Territory).
- (2) If parental responsibility is shared between 2 or more people, either of them may discharge the responsibility.
- (3) This section is subject to the following sections:
  - (a) section 475 (Chief executive sharing daily care responsibility);  
*Note* If the chief executive shares daily care responsibility for a child or young person, no other person with daily care responsibility for the child or young person may discharge the responsibility in a way that would be incompatible with the chief executive's discharge of the responsibility (see s 475 (2)).
  - (b) section 504 (Chief executive sharing long-term care responsibility);  
*Note* If the chief executive shares long-term care responsibility for a child or young person and under a parental responsibility provision is required to consult with each other person who shares long-term care responsibility for the child or young person in making a decision about a long-term matter for the child or young person, and another person who has long-term care responsibility for the child or young person disagrees with the chief executive's proposed decision, the person or chief executive may apply to the



Childrens Court for an order about the matter and the chief executive is required to not make the decision without the person's agreement (see s 504 (2)).

## **19 Daily care responsibility for children and young people**

- (1) A person who has *daily care responsibility* for a child or young person has responsibility for, and may make decisions about, the child's or young person's daily care.

### **Examples—daily care responsibilities and decisions**

- 1 where and with whom the child or young person lives
- 2 people with whom the child or young person may, or must not, have contact
- 3 arrangements for temporary care of the child or young person by someone else
- 4 everyday decisions, including, for example, about the personal appearance of the child or young person
- 5 daily care decisions about education, training and employment

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

- (2) A person who has daily care responsibility for a child or young person may do any of the following:
- (a) consent to a health care assessment of the child or young person's physical or mental wellbeing and have access to the assessment report;
  - (b) on the advice of a health professional—consent to health care treatment, not including surgery (other than surgery mentioned in paragraph (c)), for the child or young person;
  - (c) on the advice of a dentist—consent to dental treatment, including minor dental surgery, for the child or young person.
- (3) If the person makes a decision about the people with whom the child or young person may have contact, the person is also responsible for arrangements to give effect to the decision.

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

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

**Examples—par (a)**

- 1 A decision by a person who has daily care responsibility for a child about people with whom the child may or may not have contact is subject to a care and protection order that includes a contact provision about who may, or must not, have contact with the child.
- 2 A decision by a person who has daily care responsibility for a child or young person about where and with whom the child or young person lives is subject to a care and protection order that includes a residence provision.
- 3 The Childrens Court makes a care and protection order for a young person that includes a parental responsibility provision that a stated person who has daily care responsibility for the young person must exercise it in a stated way. The person's exercise of daily care responsibility for the young person is subject to the order.

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

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

*Note* A care plan for a child or young person is a written plan of the chief executive's proposals for the care and protection of the child or young person (see s 455).

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

## 20 Long-term care responsibility for children and young people

- (1) A person who has *long-term care responsibility* for a child or young person has—
- (a) responsibility for the long-term care, protection and development of the child or young person; and
  - (b) all the powers, responsibilities and authority a guardian of a child or young person has by law in relation to the child or young person.

### Examples—long-term care responsibilities

- 1 administration, management and control of the child's or young person's property
- 2 religion and observance of racial, ethnic, religious or cultural traditions
- 3 obtaining or opposing the issuing of a passport for the child or young person
- 4 long-term decisions about education, training and employment

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

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

*Note* Consent to minor dental surgery may be given by a person who has daily care responsibility for the child or young person (see s 19 (2) (c)).

- (3) This section does not limit the matters for which the person has responsibility in relation to the child or young person, but is subject to—

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

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

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

*Note 2* A care plan for a child or young person is a written plan of the chief executive's proposals for the care and protection of the child or young person (see s 455).

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

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

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

## **Chapter 2 Administration**

### *Notes to ch 2*

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8 (1)).

In making a decision under this chapter otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8 (2)).

## **Part 2.1 Chief executive**

### *Note to pt 2.1*

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

## **22 Chief executive's functions**

- (1) The chief executive has the following functions:
  - (a) providing, or assisting in providing, services directed to strengthening and supporting families in relation to the wellbeing, care and protection of their children and young people;
  - (b) supporting the community in preventing, or reducing, abuse and neglect of children and young people;
  - (c) providing, or assisting in providing, information to parents, kinship carers and foster carers, prospective kinship carers and foster carers, government agencies, non-government agencies and members of the community about the operation of this Act;
  - (d) providing, or assisting in providing, information to people who are required to report suspected abuse of children and young people to help them perform their legal obligation;

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

- (2) The chief executive has all the functions of an authorised person.

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

## 23 Chief executive instructions

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

## 24 Ministerial directions to chief executive

- (1) The Minister may give written directions to the chief executive about the exercise of functions under this Act.

### Example—direction

a direction to make policies or operating procedures to ensure that functions are exercised in accordance with a particular decision of the Supreme Court or a particular finding of a board of inquiry or royal commission

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

- (2) The chief executive must comply with a direction under this section.
- (3) A direction is a notifiable instrument.

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

## 25 Chief executive may ask for assistance, etc

- (1) The chief executive may ask a territory entity or an ACT education provider to provide assistance, facilities or services relevant to the physical or emotional wellbeing of a child or young person.
- (2) A territory entity or a government school or school-related institution that receives a request under subsection (1) must comply with the request promptly.
- (3) In this section:

*ACT education provider* means any of the following:

- (a) a government or non-government school under the *Education Act 2004*;
- (b) a school-related institution under the *Education Act 2004*;
- (c) a registered training organisation under the *Training and Tertiary Education Act 2003*;

- (d) a higher education provider under the *Training and Tertiary Education Act 2003*;
- (e) an ACT university declared to be established or recognised as a university under the *Training and Tertiary Education Act 2003*, section 88 (Declaration of ACT university).

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

- (a) an administrative unit;
- (b) a territory authority (other than the legal aid commission or the human rights commission);
- (c) a territory instrumentality;
- (d) a public employee (other than a judge or magistrate);
- (e) a police officer.

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

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

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

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



- (4) A person commits an offence if the person—
- (a) stops being an authorised person; and
  - (b) does not return the person’s identity card to the chief executive as soon as practicable, but not later than 7 days after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

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

## Part 2.2 Children and Youth Services Council

### 27 Establishment of council

The Children and Youth Services Council is established.

### 28 Functions of council

The Children and Youth Services Council has the following functions:

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

### 29 Council members

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

### 30 Appointment of council members

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

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

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

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

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

### **31 Appointment of chair and deputy**

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

### **32 Ending member appointments**

The Minister may end the appointment of a member of the Children and Youth Services Council—

- (a) for misbehaviour; or
- (b) if the member is convicted, or found guilty, in Australia of an indictable offence; or
- (c) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be an indictable offence; or
- (d) if the member is absent from 3 consecutive meetings of the council, otherwise than on approved leave; or
- (e) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

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

### **33 Presiding member at meetings**

- (1) The chair presides at all meetings at which the chair is present.
- (2) If the chair is absent, the deputy chair presides.

### **34 Quorum at meetings**

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

**35 Voting at meetings**

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

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

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

## Part 2.3 Official visitors

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

In this part:

*entitled child or young person*—

- (a) means a child or young person who is—
  - (i) detained in a detention place; or
  - (ii) confined at a therapeutic protection place; or
  - (iii) accommodated in a place of care; and
- (b) includes a young detainee who is 18 years old or older.

### 38 Official visitors—appointment

- (1) The Minister must appoint at least 1 official visitor.
  - (2) The Minister may appoint a person as an official visitor only if satisfied that the person has suitable qualifications or experience to exercise the functions of an official visitor.
  - (3) However, the Minister must not appoint a person as an official visitor unless the person—
    - (a) is not a public employee; and
    - (b) is a suitable entity.
- Note* Suitable entities are dealt with in pt 2.4.
- (4) An appointment as an official visitor must not be for longer than 3 years.

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

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

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

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

### **39 Official visitors—functions**

- (1) An official visitor's functions are—
- (a) to inspect—
    - (i) detention places (and places outside detention places where detainees are, or have been, directed to work or participate in an activity); and
    - (ii) therapeutic protection places; and
    - (iii) places of care; and
  - (b) to report to—
    - (i) the Minister under section 40; and
    - (ii) the chief executive under section 41 (2); and
  - (c) to receive and consider complaints from entitled children and young people, and others on their behalf; and
  - (d) to be available to talk with entitled children and young people; and
  - (e) to exercise any other function given to an official visitor under this Act or another territory law.

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

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

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

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

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

**Examples**

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

*Note 1* The Legislation Act, s 170 deals with the application of the privilege against selfincrimination.

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



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

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

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

- (1) If an official visitor believes on reasonable grounds that either of the following is not in accordance with this Act:
  - (a) the care provided to entitled children or young people at a detention place or therapeutic protection place;
  - (b) the living conditions, education or activities of entitled children or young people at a detention place or therapeutic protection place;

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

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

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

- (1) This section applies if an official visitor believes on reasonable grounds that either of the following is not in accordance with this Act or the out-of-home care standards:
  - (a) the care provided to entitled children or young people at a place of care;

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

*Note* The Minister may make out-of-home care standards under s 887.

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

## **42 Ending appointment of official visitors**

- (1) The Minister may end a person's appointment as an official visitor—
  - (a) for misbehaviour; or
  - (b) if the person—
    - (i) does not inspect a detention place, therapeutic protection place or place of care as required under the complaints guidelines made under section 43; and
    - (ii) continues to fail to inspect the place as required for 4 consecutive weeks; or
  - (c) if the person is not a suitable entity.
- (2) The Minister must end the person's appointment as official visitor—
  - (a) for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions; or
  - (b) if the person fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the person's functions.
- (3) A person's appointment as official visitor ends, by force of this section, if the person becomes a public employee.

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

### **43 Complaints guidelines**

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

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

### **44 Complaints to official visitors**

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

**45 Requests to see official visitor**

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

**46 Notice of complaints**

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

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

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

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

#### **48 Withdrawal of complaints**

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

- (c) has lapsed.

**Example—par (c)**

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

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

- (3) If the official visitor suspects on reasonable grounds that it is in the public interest that a withdrawn complaint be considered, the official visitor must—
- (a) refer the complaint to the human rights commission for consideration under the *Human Rights Commission Act 2005*, section 48 (3) (Consideration without complaint or appropriate complainant); and
  - (b) close the complaint; and
  - (c) tell the complainant about the referral and closing of the complaint.
- (4) If the official visitor refers the complaint to the human rights commission, the official visitor must give the human rights commission any information that the official visitor has in relation to the complaint.

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

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

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

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

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

**51 Complaints closed—frivolous, etc**

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

**52 Complaints closed—resolved**

- (1) This section applies if the official visitor—
  - (a) receives a complaint about a detention place, therapeutic protection place or place of care; and
  - (b) is satisfied that the complaint is resolved—
    - (i) with the operating entity for the place; and
    - (ii) to the satisfaction of the complainant.
- (2) The official visitor must close the complaint.

**53 Complaints closed—complainant left detention etc**

- (1) This section applies if the official visitor —
  - (a) receives a complaint about a detention place, therapeutic protection place or place of care; and
  - (b) is satisfied that the complainant—
    - (i) has left the detention place, therapeutic protection place or place of care; and
    - (ii) cannot be found after reasonable enquiry.
- (2) The official visitor must close the complaint.

**54 Complainant must be told if complaint closed**

- (1) This section applies if an official visitor closes a complaint, other than under section 48 (Withdrawal of complaints) or section 53 (Complaints closed—complainant left detention etc).
- (2) The official visitor must tell the complainant—
  - (a) that the official visitor has closed the complaint; and



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

**Example—reason for closing complaint**

the complaint has been referred to the human rights commission

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

**55 Information about complaints being investigated elsewhere**

- (1) This section applies if an official visitor has—
  - (a) referred a complaint under section 48 (3) (a) or section 49 (2); or
  - (b) given an investigative entity information under section 50 in relation to a complaint.
- (2) The official visitor may ask the entity investigating the complaint about the investigation of the complaint.
- (3) The entity must tell the official visitor about the investigation of the complaint.
- (4) The official visitor may tell the complainant about progress of the investigation of the complaint.

**56 Reopening complaints**

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

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

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

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

**58 Monthly reports by official visitors**

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

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

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

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

## Part 2.4 Suitable entities for purposes under Act

### 60 Definitions—Act and pt 2.4

(1) In this Act:

*suitability information*—see section 65.

*suitable entity*—see section 61.

(2) In this part:

*requirement notice*—see section 68 (2).

*suitability information notice*—see section 66 (2).

*suitable entities register*—see section 72.

### 61 Who is a *suitable entity*?

In this Act:

*suitable entity*, for a stated purpose, means an entity approved by the chief executive under section 63 as a suitable entity for the purpose.

#### Examples—suitable entities for purposes stated in Act

- 1 family group conference facilitators—someone appointed under s 78 by the chief executive
- 2 kinship carers—a family member or significant person authorised under s 516 by the chief executive
- 3 foster care service—an entity authorised under s 517 by the chief executive
- 4 foster carers for a stated child or young person—someone specifically authorised under s 518 by the chief executive
- 5 foster carers for any child or young person—someone generally authorised under s 519 by the chief executive
- 6 residential care services for any child or young person—an entity authorised under s 520 by the chief executive

7 childcare service licences—the proposed proprietor and each proposed controlling person for the childcare service (see s 746)

8 research projects—the researcher and any other person who is to have contact with children or young people for the project (see s 809)

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

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

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

*Note* If a form is approved under s 886 for this provision, the form must be used.

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

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

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

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

- (2) However, if the chief executive orally authorises a person or entity under section 516 (Authorisation of kinship carer—specific parental authority), section 518 (Authorisation of foster carer—specific parental authority) or section 519 (Authorisation of foster carer—general parental authority) in relation to a child or young person, the chief executive—
- (a) may, at the same time, orally approve the person or entity as a suitable entity in relation to the child or young person; and

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

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

- (1) In deciding whether an entity is a suitable entity for a stated purpose, the chief executive—
  - (a) must consider each of the following:
    - (i) suitability information under section 65 (1), definition of *suitability information*, paragraphs (a), (b) and (c) about the entity;
    - (ii) if the chief executive requires the entity to provide a reference or report under section 68 (2) (a)—the reference or report;
    - (iii) if the chief executive requires the entity to undergo a test or medical examination under section 68 (2) (b)—the result of the test or medical examination; and
  - (b) may consider suitability information under section 65 (1), definition of *suitability information*, paragraphs (d), (e), (f), (g) and (h) about the entity.
- (2) If the chief executive is considering suitability information under section 65 (1), definition of *suitability information*, paragraph (d) or (e), the chief executive must give the entity written notice of that fact.

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

**65 What is *suitability information*?**

(1) In this Act:

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

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

**Example**

the entity is a licensed proprietor of a childcare service and the licence is suspended for safety reasons under s 763 or under a law of another jurisdiction that substantially corresponds to s 763

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

- (c) any refusal of an application for a licence or other authority (however described) in relation to providing services for children or young people;

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

**Example**

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

**66 Chief executive may require suitability information**

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



**67 Chief executive need not decide suitability if information not provided**

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

**68 Chief executive may require test etc**

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

**Example—medical examination**

a psychiatric examination

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

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

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

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

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

*Note* *Suitability information* is defined in s 65.
- (2) The entity commits an offence if—
  - (a) the entity's suitability information under section 65 (1), definition of *suitability information*, paragraph (a), (b) or (c) changes; and

- (b) the entity does not tell the chief executive about the change as soon as practicable, but not later than 7 days after the change happens.

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

- (3) The entity commits an offence if—
  - (a) the chief executive gave the entity written notice that the suitability information under section 65 (1), definition of *suitability information*, paragraph (d) was being considered in deciding whether the entity was a suitable entity; and
  - (b) the entity becomes bankrupt or executes a personal insolvency agreement; and
  - (c) the entity does not tell the chief executive about the bankruptcy or agreement as soon as practicable, but not later than 7 days after the bankruptcy happens or agreement is executed.

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

- (4) The entity commits an offence if—
  - (a) the chief executive gave the entity written notice that the suitability information under section 65 (1), definition of *suitability information*, paragraph (e) was being considered in deciding whether the entity was a suitable entity; and
  - (b) any of the following occurs:
    - (i) a court convicts the entity, or finds the entity guilty, of an offence involving fraud or dishonesty;

**Example**

A conviction, or finding of guilt, against the entity under the Criminal Code, ch 3 (Theft, fraud, bribery and related offences).

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

- (ii) a tribunal, or an authority or person with the power to require the production of documents or the answering of questions, makes a finding against the entity about its honesty or integrity; and

**Example**

The discrimination commissioner substantiates a discrimination complaint under the *Human Rights Commission Act 2005*.

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

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

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

## 71 Chief executive may employ etc suitable entity

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

## 72 Suitable entities register

- (1) The chief executive must establish a register of suitable entities (a *suitable entities register*) for this Act.
- (2) A suitable entities register must include the following details for each suitable entity:
  - (a) the entity's name;
  - (b) the purpose for which the entity is approved;

(c) any other detail the chief executive considers appropriate.

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

## Chapter 3 Family group conferences

### Part 3.1 Family group conferences— general

#### 73 Definitions—Act

In this Act:

*family group conference*—see section 75.

*family group conference agreement*—see section 76.

*family group conference facilitator* means a family group conference facilitator appointed under section 78.

*participant*, for a family group conference, means a person who attends the conference at the invitation of the family group conference facilitator.

*parties*, for a family group conference agreement, means the participants who enter (or propose to enter) a family group conference agreement under section 85.

*relevant conference participant*, for a family group conference about a child or young person, means a participant who has parental responsibility for the child or young person.

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

**74 Family group conferences—objects**

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

- (a) encourage the child or young person and his or her family members, to take part in decisions affecting the child or young person; and
- (b) increase the support for the child or young person by his or her family members and significant people; and
- (c) make arrangements for the care of the child or young person to reduce the likelihood of the child or young person being in need of care and protection in the future.

**75 What is a *family group conference*?**

In this Act:

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

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

**76 What is a family group conference agreement?**

(1) In this Act:

*family group conference agreement* means an agreement that—

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

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

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



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

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

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

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

*Note* Chapter 25 contains further provisions about information secrecy and sharing.

## Part 3.2 Family group conferences— facilitators

### 78 Family group conference facilitators—appointment

- (1) The chief executive may appoint a person as a facilitator (a *family group conference facilitator*) for this chapter.

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

- (2) However, the chief executive may appoint a person to be a family group conference facilitator only if satisfied—
- (a) that the person has suitable qualifications and experience to exercise the functions of a family group conference facilitator; and
  - (b) if the person is not a public employee—that the person is a suitable entity to be a family group conference facilitator.

*Note* Suitable entities to provide services are dealt with in pt 2.4.

- (3) An appointment is a notifiable instrument.

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

### 79 Family group conference facilitators—functions

A family group conference facilitator has the function of facilitating each family group conference to which the facilitator is assigned by the chief executive under section 82.

#### **Examples—ways facilitator may facilitate family group conference**

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

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

*Note 1* A family group conference facilitator may give the chief executive protected information (including sensitive information) about a child or young person if the family group conference facilitator considers that giving the information is in the best interests of the child or young person (see s 851).

*Note 2* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

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

## Part 3.3                      Family group conferences— arrangement and conduct

### 80                      Family group conferences—criteria

- (1) The chief executive may arrange for a family group conference about a child or young person if satisfied that the family group conference may help to promote the wellbeing and best interests of the child or young person.

**Examples**

- 1 if a family group conference agreement is already in force for the child or young person and the chief executive considers that the agreement should be reviewed
- 2 if the child or young person is in out-of-home care and the chief executive considers that a family group conference may promote the child's or young person's contact with his or her family members or significant people
- 3 if the child or young person is about to be released from a detention place and the chief executive considers that a family group conference may help the child's or young person's transition back into the community

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

- (2) The chief executive may also arrange for a family group conference about a child or young person if the chief executive believes on reasonable grounds that—
- (a) the child or young person is in need of care and protection; and
  - (b) arrangements should be made to secure the child's or young person's care and protection.

**Examples**

- 1 The chief executive has appraised 3 child protection reports in relation to neglect of 2 year old Billy. Billy's parents have longstanding drug and alcohol use issues. The chief executive believes that Billy is in need of care

and protection and arranges a family group conference involving Billy's family members to formulate a plan for Billy's care and protection.

- 2 Jane is 14 years old and frequently absconds from her parent's home for extended periods because of conflict with her parents. The chief executive believes Jane is in need of care and protection and arranges a family group conference to ensure Jane's care and protection.
- 3 The chief executive appraises a child protection report of sexual abuse in relation to 8 year old Sally. The chief executive substantiates the abuse by Sally's stepfather and decides that Sally is in need of care and protection. The chief executive decides to arrange a family group conference for Sally's care and protection as an alternative to seeking a care and protection order for Sally.

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

## **81 Family group conferences—criteria for review conference**

- (1) This section applies if a family group conference agreement is in force for a child or young person.
- (2) The chief executive must arrange for a family group conference to review the family group conference agreement if the chief executive is—
  - (a) required to do so in the agreement; or
  - (b) asked to do so by—
    - (i) the child or young person; or
    - (ii) a participant in the family group conference at which the family group conference agreement was reached.
- (3) However, the chief executive is not required to arrange a family group conference under subsection (2) (b) if the chief executive—
  - (a) has already arranged a conference to review the agreement because of a request under subsection (2) (b); or

- (b) considers it is not in the best interests of the child or young person to do so.

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

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

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

- (1) A family group conference facilitator for a family group conference must take all reasonable steps to invite the following people to the conference:
  - (a) the chief executive;
  - (b) if the family group conference facilitator is satisfied that the child or young person can understand and take part in the conference—the child or young person;
  - (c) each parent of the child or young person, unless the family group conference facilitator considers that it would not be in the best interests of the child or young person for the parent to attend;

- (d) each other person (if any) who has parental responsibility for the child or young person, unless the family group conference facilitator considers that it would not be in the best interests of the child or young person for the person to attend;

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

- (e) any person with an interest in, or knowledge of, the care, wellbeing or development of the child or young person who the family group conference facilitator considers should attend the conference.
- (2) If a child or young person invited to a family group conference does not take part in the conference, the family group conference facilitator must take all reasonable steps—
    - (a) to find out the views and wishes of the child or young person; and
    - (b) to make the views and wishes of the child or young person known to each other person taking part in the conference; and
    - (c) to ensure that the views and wishes of the child or young person are considered in reaching any agreement at the conference.
  - (3) Subsection (2) does not create any requirement for a child or young person to express a view or wish about any matter.
  - (4) A participant may not be represented at a family group conference by a lawyer.

- (5) However, for a participant mentioned in subsection (1) (b), (c), (d) or (e), a support person chosen by the participant may attend the family group conference to assist the participant if the family group conference facilitator considers the support person appropriate and capable of giving the participant assistance.

**Example—assistance**

assisting the participant to express his or her views

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

**84 Family group conferences—compliance with standards**

A family group conference facilitator must conduct a family group conference in a way that complies with the family group conference standards (if any).

*Note* The Minister may make family group conference standards under s 887.

**85 Family group conferences—parties reach agreement**

- (1) This section applies if the family group conference facilitator for a family group conference about a child or young person is satisfied that the chief executive and all relevant conference participants (the *parties*) have reached agreement about an issue relating to the wellbeing of the child or young person.

*Note* **Relevant conference participant** means a participant who has parental responsibility for the child or young person (see s 73).

- (2) The facilitator may propose that the parties enter into a family group conference agreement detailing the agreed arrangements for the wellbeing of the child or young person.



- (3) Before the parties enter into a family group conference agreement—
- (a) the facilitator must—
    - (i) give the relevant conference participants an opportunity to get legal advice about the meaning and effect of the proposed family group conference agreement; and
    - (ii) if the facilitator is satisfied that the child or young person has sufficient maturity and developmental capacity to understand the proposed family group conference agreement—
      - (A) find out and consider the child’s or young person’s views and wishes about the proposed family group conference agreement; and
      - (B) if the proposed family group conference agreement is about a young person who is school-leaving age or older—give the young person an opportunity to get legal advice about the meaning and effect of the proposed family group conference agreement; and
  - (b) for a family group conference agreement reached at a family group conference arranged under section 80 (2) (Family group conferences—criteria)—the chief executive must be satisfied that the proposed family group conference agreement is in the best interests of the child or young person.

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

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

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

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

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

- (1) This section applies if the family group conference facilitator for a family group conference about a child or young person—
- (a) has, under section 85—
    - (i) proposed that the parties enter into a family group conference agreement; and
    - (ii) given the relevant conference participants an opportunity to get legal advice; and
    - (iii) if required, found out and considered the child’s or young person’s views and wishes; and
  - (b) for a young person who is school-leaving age or older—is satisfied under section 86 that the young person either—
    - (i) agrees to the proposed family group conference agreement; or
    - (ii) does not have sufficient maturity or developmental capacity to understand and agree to the proposed family group conference agreement.
- (2) The facilitator must encourage the parties to enter into the proposed family group conference agreement by putting the agreement in writing and seeking—

- (a) the signatures of the parties; and
  - (b) the signature of any other participant who agrees with the arrangements in the agreement.
- (3) If the child or young person (not being a young person mentioned in subsection (1) (b)) agrees to the proposed family group conference agreement, the child or young person may also sign the agreement.

**88 Family group conferences—outcome report**

- (1) Within 28 days after a family group conference ends, the family group conference facilitator must give a written report about the outcome of the conference (the *family group conference outcome report*) to—
- (a) the chief executive; and
  - (b) the child or young person; and
  - (c) each person invited to attend the conference.
- (2) A family group conference outcome report must include the following:
- (a) details of when and where the conference took place;
  - (b) the name of—
    - (i) the family group conference facilitator; and
    - (ii) each person invited to the conference and whether they attended; and
    - (iii) the name of anyone else who was not a participant but who provided information or a report to the conference.
- (3) If the conference resulted in a family group conference agreement, the family group conference outcome report must include a copy of the agreement.

- (4) Despite anything else in this section, the family group conference facilitator must not give a copy of the family group conference outcome report, or a copy of the family group conference agreement, to the child or young person if the facilitator believes on reasonable grounds—
- (a) that it would not be in the child's or young person's best interests to be given information contained in the report or agreement; or
  - (b) that the child or young person is not able to understand the report or agreement.

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

A family group conference agreement takes effect—

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

**90 Family group conference agreements—implementation**

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

*Note 1* The Minister may make family group conference standards under s 887.

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

## Chapter 4 Children and young people and criminal matters—general

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

In this Act:

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

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

### 92 Overview of the criminal matters chapters

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

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

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

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

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

- (1) The criminal matters chapters apply to young offenders and young detainees who are adults in the same way as they apply to young offenders and young detainees who are under 18 years old.
- (2) However, the following provisions apply only to young detainees who are under 18 years old:
  - (a) section 185 (2) (m) (Register of young detainees);
  - (b) section 255 (Strip searches of young detainees under 18 years old—no-one with parental responsibility available);
  - (c) section 267 (Body searches of young detainees under 18 years old—no-one with parental responsibility available).

- (3) Also, certain requirements of the following provisions are different for young detainees who are under 18 years old and young detainees who are adults:
- (a) section 113 (Transfer—notifying people responsible for or nominated by young detainees);
  - (b) section 157 (Detention—notifying people responsible for or nominated by young detainees);
  - (c) section 182 (Injury etc—notifying people responsible for or nominated by young detainees);
  - (d) section 207 (Notice of segregation directions—safe room and other);
  - (e) section 221 (Notice of decision about segregation direction);
  - (f) section 237 (Alcohol and drug testing of young detainees);
  - (g) section 251 (Notice of strip and body searches—person responsible for or nominated by young detainee);
  - (h) section 254 (Strip searches on admission to detention place);
  - (i) section 266 (People present at body searches).

## **94 Youth justice principles**

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

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



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

**Example**

Convention on the Rights of the Child

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

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

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

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

- (2) A person who is at least 18 years old but under 21 years old is a *young detainee* if any of the following apply to the person and the person is required to be held in the chief executive's custody:
- (a) the person is—
    - (i) in custody following arrest; or
    - (ii) remanded in custody under the *Crimes (Sentence Administration) Act 2005*; or
    - (iii) in detention under the *Crimes (Sentencing) Act 2005*; for an offence committed, or allegedly committed, when the person was under 18 years old;
  - (b) the person is—
    - (i) in custody following arrest; or
    - (ii) remanded in custody under the *Crimes (Sentence Administration) Act 2005*; for a breach, or alleged breach, of a sentencing order that is supervised by the chief executive;
  - (c) the person is otherwise in custody or detention under this Act or another territory law or a law of the Commonwealth or a State.

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

## 96 Who is a *youth detention officer*?

In the criminal matters chapters:

*youth detention officer* means an authorised person to whom the chief executive has delegated functions of a youth detention officer under the criminal matters chapters.

*Note* A person is an authorised person for this Act if the chief executive delegates a power under the Act to the person.

**97 Treating doctors—health service appointments**

- (1) The chief executive responsible for the administration of the *Health Act 1993* must appoint a doctor (a ***treating doctor***) for each detention place.
- (2) The treating doctor's functions are—
  - (a) to provide health services to young detainees; and
  - (b) to protect the health of young detainees (including preventing the spread of disease at detention places).
- (3) A treating doctor appointed for a detention place must be available to provide health services at the detention place at least once each week.
- (4) The treating doctor may give written directions to the chief executive for subsection (2) (b).
- (5) The chief executive must ensure that each direction under subsection (4) is complied with unless the chief executive believes on reasonable grounds that compliance would undermine security or good order at the detention place.

**98 Health professionals—non-treating functions**

- (1) The chief executive may, orally or in writing, authorise a health professional (a ***non-treating health professional***) to exercise non-treating functions under the criminal matters chapters.

*Note* ***Health professional*** includes a doctor and nurse registered under the *Health Professionals Act 2004* (see dict).

- (2) In this section:

***non-treating function*** does not include a health service or other function mentioned in section 97.

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

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

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

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

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

## **Chapter 5 Criminal matters—transfers**

### **Part 5.1 Transfers within ACT**

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

##### **101 Directions to escort officers**

- (1) For the criminal matters chapters, the chief executive may give directions to an escort officer in relation to a young detainee, including directions to take the young detainee into custody or to a place stated in the direction.
- (2) Without limiting the authority that may be given by a direction under subsection (1), the direction authorises the escort officer to have custody of, and deal with, the young detainee in accordance with the direction.

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

- (1) This part is additional to, and does not limit, any other power of a court or other entity to require a young detainee or other child or young person to be brought before the court or entity.
- (2) Without limiting subsection (1), the chief executive must arrange for a young detainee or child or young person in the chief executive's custody to be brought before a court or other entity in accordance with any order or direction (however described) of the court or entity.

## **Division 5.1.2 Escorting young detainees etc**

### **103 Arrangements for escorting people**

The chief executive may make an arrangement for escorting a child, a young person or a young detainee as required under this Act with—

- (a) the chief executive responsible for administering the *Corrections Management Act 2007*; and
- (b) the chief police officer.

### **104 Escort officer functions etc**

- (1) This section applies if, under a law in force in the Territory (other than part 5.2 (Interstate transfers)), a young detainee required to be held in the chief executive's custody is to be escorted anywhere by an escort officer.
- (2) To remove any doubt—
  - (a) the escort officer is authorised to have custody of the young detainee for the purpose of escorting the young detainee; and
  - (b) the young detainee is also taken to be in the chief executive's custody; and
  - (c) an escort officer may, for the purpose of escorting the young detainee, exercise any function under this Act that the officer may exercise in relation to a young detainee admitted at a detention place.

#### **Examples—functions—par (c)**

- 1 functions delegated to the officer by the chief executive (for example, giving directions to young detainees)
- 2 youth detention officer's functions under ch 7 (Criminal matters—search and seizure at detention places), including any use of force in accordance with div 6.6.4

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

### **105 Escorting arrested person to court etc**

- (1) This section applies if an arrested person—
  - (a) has not been released on bail; and
  - (b) is in police custody; and
  - (c) is required by law to be brought before a court or tribunal.
- (2) A police officer may require an escort officer to bring the arrested person before the court or tribunal.
- (3) The escort officer must bring the arrested person before the court or tribunal and, for that purpose, may—
  - (a) take the arrested person into custody; and
  - (b) arrange for the arrested person to be detained under this Act until the arrested person is brought before the court or tribunal.
- (4) In this section:  
*arrested person* means—
  - (a) a child or young person who is arrested; or
  - (b) someone else who is under 21 years old and is arrested in relation to an offence he or she is alleged to have committed when under 18 years old.

### **106 Custody etc during proceedings**

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

- (a) the safe custody of the young detainee for the purposes of the proceeding; and

- (b) that the young detainee does not obstruct or hinder the proceeding.

### **107 Executing warrants of commitment or remand etc**

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

### **108 Other powers not limited**

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

#### **Examples—other provisions**

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

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

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



## **Division 5.1.3 Transfers to health facilities**

### **109 Transfers to health facilities**

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

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

- (2) The chief executive must have regard to the advice of a treating doctor when considering whether to make a direction under subsection (1).
- (3) The chief executive may direct an escort officer to escort the young detainee to or from the health facility, or while at the facility.
- (4) The young detainee may be discharged from the health facility only if—
  - (a) the health professional in charge of the young detainee’s care approves the discharge; or
  - (b) the chief executive directs that the young detainee be removed from the facility.

**Example—direction for removal of young detainee from health facility**

where the young detainee is a danger to the safety of people at the facility

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

- (5) The chief executive must have regard to the health of the young detainee when considering whether to make a direction under subsection (4).

- (6) The chief executive may give a direction for ensuring that a young detainee discharged from a health facility under subsection (4) is returned to a detention place stated in the direction.
- (7) For chapter 8 (Criminal matters—discipline at detention places), this section is taken to provide an entitlement for each young detainee in relation to health care.

### **Division 5.1.4 Transfers of young detainees who become adults**

#### **110 Application—div 5.1.4**

This division applies to a young detainee serving a sentence of imprisonment or otherwise in custody at a detention place who is an adult.

#### **111 Transfers to correctional centres—under 21 years old**

- (1) The chief executive may, on the chief executive's own initiative or on application, direct that a young detainee to whom this division applies be transferred to a correctional centre.
- (2) However, the chief executive must not give a direction under subsection (1) unless satisfied that the transfer is in the best interests of the young detainee or other young detainees.
- (3) In deciding whether the transfer is in the best interests of the young detainee or other young detainees, the chief executive must consider the following:
  - (a) the young detainee's views and wishes;
  - (b) the young detainee's maturity and any known history;
  - (c) the young detainee's developmental capacity;
  - (d) if the young detainee is serving a sentence—the time remaining to be served by the young detainee;

- (e) the behaviour of the young detainee, particularly if it presents a risk to the safety of other young detainees or staff at the detention place;
  - (f) whether the young detainee is likely to be vulnerable in a correctional centre;
  - (g) the availability of services or programs appropriate for the young detainee at the correctional centre;
  - (h) whether the young detainee is more likely to be rehabilitated in the detention place or correctional centre.
- (4) The chief executive may also consider any other relevant matter.
  - (5) If the chief executive gives a direction under this section for a young detainee, the chief executive may direct an escort officer to escort the young detainee from the detention place to the correctional centre.
  - (6) The young detainee must be dealt with as a detainee under the *Corrections Management Act 2007* once the young detainee is admitted to the correctional centre.

## **112 Transfers to correctional centres—21 year olds**

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

## **Division 5.1.5 Notifying people of transfers**

### **113 Transfer—notifying people responsible for or nominated by young detainees**

- (1) This section applies if a young detainee is transferred under—
  - (a) division 5.1.3 (Transfers to health facilities); or
  - (b) division 5.1.4 (Transfers of young detainees who become adults).
- (2) If the young detainee is under 18 years old, the chief executive must take reasonable steps to tell someone who has daily care responsibility, or long-term care responsibility, for the young detainee about the transfer.
- (3) If the chief executive and someone else share daily care responsibility, or long-term care responsibility, for the young detainee, the chief executive must act under subsection (2) in relation to the other person.
- (4) If the young detainee is 18 years old or older, the chief executive must take reasonable steps to tell the young detainee's nominated person about the transfer.

## Part 5.2 Interstate transfers

### Division 5.2.1 Interstate transfer generally

#### 114 Definitions—pt 5.2

In this part:

*Minister of a State* means—

- (a) for a State other than the Northern Territory—a Minister of the Crown of the State; or
- (b) for the Northern Territory—a person holding ministerial office under the *Northern Territory (Self-Government) Act 1978*.

*person responsible*, for a young offender, means—

- (a) a parent of the young offender or someone else who has daily care responsibility, or long-term care responsibility, for the young offender; or
- (b) a person who has the care of the young offender, whether or not the person has parental responsibility (however described) for the young offender; or
- (c) for a young offender who is detained—a person who had the care of the young offender before the young offender was detained, whether or not the person has, or had, parental responsibility (however described) for the young offender.

*receiving State* means the State to which a young offender is transferred.

*sending State* means the State from which a young offender is transferred.

*transfer agreement*—see section 115.

*transfer arrangement*—see section 116.

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

*transfer order*—see section 120.

*young offender* means a person who—

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

## **115 General agreements with other jurisdictions**

- (1) The Minister may enter into an agreement (a *transfer agreement*) with a Minister of a State, or a person authorised to enter into a transfer arrangement for the Minister, providing generally for the transfer of young offenders—
  - (a) from or to the ACT; or
  - (b) through the ACT from a State to another State.
- (2) A transfer agreement relating to a State must not be entered into unless a declaration under subsection (3) has been notified under the Legislation Act in relation to the State.
- (3) The Minister may, in writing, declare that a State has enacted legislation dealing with the interstate transfer of young offenders.
- (4) A declaration is a notifiable instrument.

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

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**116 Transfer arrangements—general**

- (1) If a transfer agreement with a Minister of a State is in force, the chief executive may make an arrangement (a *transfer arrangement*) with the Minister, or a person authorised to enter into a transfer arrangement for the Minister, for the transfer of a particular young offender—
  - (a) from the ACT to the State; or
  - (b) to the ACT from the State.
- (2) The chief executive may also make a transfer arrangement with the Minister, or a person authorised to enter into a transfer arrangement for the Minister, to fix a mistake in a transfer arrangement.
- (3) The chief executive may only make a transfer arrangement for a particular young offender from the ACT to a State in the circumstances mentioned in section 117.

**117 Power to arrange for transfers**

- (1) The chief executive may make a transfer arrangement for the transfer of a young offender from the ACT to a State—
  - (a) on application by the young offender or a person responsible for the young offender; or
  - (b) if the chief executive has daily care responsibility, or long-term care responsibility, for the young offender.
- (2) However, the chief executive may only make a transfer arrangement for the transfer of a young offender from the ACT to a State if—
  - (a) the chief executive believes on reasonable grounds that the transfer is appropriate, having regard to all the circumstances, including—

- (i) the place or intended place of residence of the parents of the young offender and other people (if any) who have daily care responsibility, or long-term care responsibility, for the young offender, or the young offender's family members; and
  - (ii) the present and future education, training or employment of the young offender; and
  - (iii) the medical needs of the young offender; and
  - (iv) the safety, health and wellbeing of the young offender; and
- (b) either—
- (i) the young offender agrees to the transfer; or
  - (ii) the chief executive decides that the particular circumstances of the case indicate that the transfer should be arranged without the young offender's agreement; and
- (c) the young offender has been given independent legal advice about the effect of the transfer arrangement; and
- (d) the chief executive is satisfied that there is no appeal pending against an order of a Childrens Court to which the young offender is subject.
- (3) In deciding whether to arrange for the transfer of a young offender on an application under subsection (1) (a), the chief executive may ask the following people for relevant information:
- (a) the young offender;
  - (b) a person responsible for the young offender.
- (4) The chief executive may refuse to make a transfer arrangement if information asked for is not supplied within the time stated by the chief executive.



- (5) The chief executive may make a transfer arrangement to transfer a young offender from the ACT to a State other than under subsection (1) if—
- (a) the young offender is detained in a detention place; and
  - (b) the chief executive believes on reasonable grounds that the behaviour of the young offender in the detention place puts at risk the safety, health or wellbeing of other people detained in the detention place or of staff at the detention place; and
  - (c) the young offender has been given independent legal advice about the effect of the transfer arrangement; and
  - (d) the chief executive is satisfied that there is no appeal pending against an order of the Childrens Court to which the young offender is subject.
- (6) This section does not apply to a transfer arrangement to fix a mistake.

**118 Transfer arrangements—facilities must be adequate**

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

**119 Transfer arrangements—content**

- (1) A transfer arrangement for the transfer of a young offender from or to the ACT must—
- (a) be in writing; and
  - (b) provide for the acceptance of, and means of dealing with, the young offender in the receiving State; and

- (c) state each order of a court of the sending State to which the young offender is subject (including an order required by a previous transfer arrangement with the Territory or with a State to be treated as having been made by a court of the sending State).
- (2) For each order mentioned in subsection (1) (c), the transfer arrangement must state—
- (a) the way that the order must operate in the receiving State, which must be as similar as possible to the way that it would operate in the sending State if the transfer arrangement were not made; and
  - (b) the maximum time for which the order may operate, which must not be longer than the maximum time for which it could operate in the sending State if the transfer arrangement were not made; and
  - (c) any entitlement of the young offender to a reduction in detention in the sending State and how that entitlement must operate in the receiving State, which must be as similar as possible to the way that it would operate in the sending State if the transfer arrangement were not made; and
  - (d) that a young offender who is subject to a nonprobation period may be treated as being subject to an equivalent nonparole period, if the laws of the receiving State do not provide for nonprobation periods.
- (3) A reference in this section to an order of a court is a reference to a sentence, detention, probation, parole or other order, that could be made or imposed by the court.

## **120 Custody of person on transfer order**

- (1) If the chief executive makes a transfer arrangement under this Act for the transfer of a young offender from the ACT to a State in the custody of a transfer escort, the chief executive must make a written order (a *transfer order*) that—
  - (a) directs the person who has custody of the young offender to deliver the young offender to the custody of the transfer escort; and
  - (b) authorises the transfer escort to take and keep custody of the young offender for the purpose of transferring the young offender to the place in the receiving State, and to the custody, mentioned in the transfer arrangement.
- (2) The authority given to a transfer escort by a transfer order is given only to a transfer escort who is—
  - (a) a police officer; or
  - (b) a corrections officer; or
  - (c) a youth detention officer; or
  - (d) a person acting as a transfer escort with the approval of the chief executive.

## **121 Custody pending interstate transfer**

If the chief executive makes a transfer arrangement under this Act for the transfer of a young offender from the ACT to a State in the custody of a transfer escort mentioned in section 120 (2), the young offender may be detained in a detention place until the young offender is delivered to the transfer escort.

**122 Transfer to ACT in custody of transfer escort**

- (1) This section applies if, under a transfer arrangement for the transfer of a young offender to the ACT, a transfer escort authorised under the arrangement brings the young offender into the ACT.
- (2) While in the ACT, the transfer escort is authorised to take and keep custody of the young offender to transfer the young offender to the place in the ACT, and to the custody, stated in the transfer arrangement.

**123 Powers of transfer escorts**

- (1) A transfer escort escorting a young offender under a transfer order may, to keep custody of the young offender under the order—
  - (a) give the young offender any direction that the transfer escort believes on reasonable grounds is necessary and reasonable; and
  - (b) use force in accordance with division 6.6.4 (Use of force).
- (2) A transfer escort escorting a young offender under a transfer order may conduct a scanning search, frisk search or ordinary search of the young offender if the transfer escort suspects on reasonable grounds that the young offender may be carrying a prohibited thing.
- (3) The following provisions apply, with any necessary changes and any changes prescribed by regulation, in relation to a search under this section:
  - (a) part 7.2 (Searches generally);
  - (b) part 7.3 (Scanning, frisk and ordinary searches);
  - (c) part 7.9 (Seizing property).

**124 Offence—escapes during transfer**

A person commits an offence if—

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

Maximum penalty: imprisonment for 6 months.

**Division 5.2.2 Transfer of sentence or order**

**125 Transfer from ACT of sentence or order**

- (1) This section applies if a young offender is transferred from the ACT to a State under a transfer arrangement.
- (2) From the time the young offender arrives in the State, a sentence imposed on, or order made in relation to, the young offender in the ACT before that time, ceases to have effect in the ACT except for—
  - (a) an appeal against or review of a conviction, judgment, sentence or order made, imposed or fixed by a Territory court; and
  - (b) taking into account a period of detention served before that time by the young offender or a reduction of the period of detention granted before that time; and
  - (c) taking into account anything done before that time by the young offender in carrying out the order; and
  - (d) allowing for a remittance of money to the Territory that is or has been paid in discharge or partial discharge of the sentence or order.

**126 Transfer to ACT of sentence or order**

- (1) This section applies if a young offender is transferred to the ACT from a State under a transfer arrangement.
- (2) From the time the young offender arrives in the ACT—
  - (a) a sentence imposed on, or order made in relation to, the young offender by a court of the sending State and stated in the transfer arrangement must be considered as having been imposed or made by the Territory court stated in the transfer arrangement; and
  - (b) a sentence or order considered by a previous transfer arrangement with the Territory, or with a State, to have been imposed or made by a court of the sending State, which is a sentence or order stated in the transfer arrangement under which the young offender is transferred to the ACT, must be considered as having been imposed or made by the Territory court stated in the transfer arrangement; and
  - (c) a direction given or order made by a court of the sending State concerning the time when anything must be done under an order made by a court of that State is, as far as practicable, to be considered as having been given or made by the Territory court stated in the transfer arrangement.
- (3) A sentence, order or direction has effect in the ACT as stated in the transfer arrangement and the laws of the Territory apply as if the Territory court stated in the transfer arrangement—
  - (a) had, at the relevant time, power to impose the sentence and to make or give the order or direction; and
  - (b) did in fact impose the sentence and make or give the order or direction when it was imposed, made or given.

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## **Division 5.2.3 Transit through ACT**

### **127 Chief executive may receive young offenders**

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

### **128 Lawful custody for transit through ACT**

- (1) This section applies if a young offender is brought into the ACT by a transfer escort authorised by a transfer agreement to have custody of the young offender.
- (2) While in the ACT, the transfer escort is authorised to take and keep custody of the young offender for the transfer.
- (3) The chief executive may, at the request of the transfer escort and on receiving from the transfer escort written authority for the transfer of the young offender as provided in the transfer agreement—
  - (a) receive and detain the young offender at a detention place under the custody and for the time that the transfer escort requests, if reasonably necessary for the transfer; and
  - (b) at the end of that time, deliver the young offender into the custody of the transfer escort.

### **129 Escapees may be apprehended without warrant**

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

**130 Escapes to be brought before magistrate**

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

**131 Court may arrange transfer of apprehended escapees**

- (1) A young offender who is apprehended under a warrant under section 130 must, as soon as practicable, be brought before—
  - (a) if the young offender is 18 years old or older—the Magistrates Court; or
  - (b) in any other case—the Childrens Court.
- (2) The Magistrates Court or Childrens Court may order that the young offender —
  - (a) be delivered to the custody of a transfer escort; or
  - (b) be detained for not longer than 7 days until a transfer escort is available from the sending State to carry out the transfer arrangement or an order made by a court of the State.
- (3) If a young offender who is the subject of an order made by a magistrate is not, under the order, delivered into the custody of a transfer escort before the end of 7 days after the day the order is made, the order has no further effect.
- (4) If an order ceases to have further effect under subsection (3), a further order may be made under subsection (2).



(5) In this section:

*transfer escort*, for a young offender being transferred through the ACT from a State to another State under a transfer agreement, means—

- (a) the transfer escort authorised by the transfer agreement to have custody of the young offender; or
- (b) if the young offender has escaped or attempted to escape—1 or more of the following people:
  - (i) the transfer escort;
  - (ii) a police officer of the sending State;
  - (iii) a person appointed in writing by the Minister of the sending State, or a person authorised to enter into a transfer arrangement for that Minister, to be a transfer escort to carry out an order of a court of the sending State.

## **132 Search warrants for escapees**

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

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

*transfer escort* means the transfer escort authorised by the transfer agreement to have custody of the young offender.

## **Division 5.2.4 Revocation of transfer orders**

### **133 Revocation of transfer order—offence during transfer**

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

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

**134 Revocation of transfer order by chief executive**

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

**135 Chief executive may consider reports etc**

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

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

## Chapter 6 Criminal matters—detention places

### Part 6.1 Detention places—general

#### 136 Application—ch 6

This chapter applies to young detainees.

*Note* *Young detainee*—see s 95.

#### 137 Definitions—ch 6

In this chapter:

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

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

*case management plan*, for a young detainee, means the young detainee's case management plan maintained under section 188.

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

*prohibited thing* means a thing declared to be a prohibited thing under section 148.

*register of young detainees* means the register kept under section 185.

*security classification*, for a young detainee, means the young detainee's security classification under section 190.

*visiting conditions*, at a detention place, means conditions declared under section 228 in relation to the place.

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

*young remandee*—see the *Crimes (Sentence Administration) Act 2005*, dictionary.

*youth detention policy* means a youth detention policy made by the chief executive under section 143.

### 138 Treatment of young detainees generally

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

- (a) to respect and protect the young detainee's human rights;
- (b) to ensure the young detainee's decent, humane and just treatment;
- (c) to preclude torture or cruel, inhuman or degrading treatment;
- (d) to ensure the young detainee is not subject to further punishment (in addition to deprivation of liberty) only because of the conditions of detention;

- (e) to ensure the young detainee's conditions in detention comply with section 141 (Detention places—minimum living conditions);
- (f) to promote, as far as practicable, the young detainee's reintegration into society;
- (g) for a young detainee who is a young offender—to promote, as far as practicable, the young detainee's rehabilitation.

### **139 Treatment of young remandees**

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

**Example—par (2) (a)**

a convicted young person remanded in custody for sentencing

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

**140 Treatment of certain young detainees**

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

**141 Detention places—minimum living conditions**

- (1) To protect the human rights of young detainees in detention at detention places, the chief executive must ensure, as far as practicable (including during any emergency declared under section 149), that conditions at detention places meet at least the following minimum standards:
  - (a) young detainees must have access to sufficient nutritional food and drink to avoid hunger and poor nourishment;
  - (b) young detainees must have access to sufficient suitable clothing that does not degrade or humiliate young detainees;
  - (c) young detainees must have access to suitable facilities for personal hygiene;
  - (d) young detainees must have suitable accommodation and bedding for sleeping in reasonable privacy and comfort;
  - (e) young detainees must have reasonable access to the open air and exercise;



- (f) young detainees must have reasonable access to telephone, mail and other facilities for communicating with people in the community;
- (g) young detainees must have reasonable opportunities to receive visits from family members, significant people and accredited people;

*Note 1* **Accredited person**—see s 137.

*Note 2* One family member or a significant person may visit for at least 1 hour each week (see s 177).

*Note 3* For further provisions about access, see div 6.6.5.

- (h) young detainees must have reasonable opportunities to communicate with their lawyers;
- (i) young detainees must have reasonable access to news and education services and facilities to maintain contact with society;
- (j) young detainees must have access to suitable health services and health facilities;
- (k) young detainees must have reasonable opportunities for religious, spiritual and cultural observances.

**Example—par (k)**

observances and practices relating to religious or spiritual beliefs, including Aboriginal and Torres Strait Islander spiritual beliefs

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

- (2) Part 6.5 applies to living conditions at detention places.

## Part 6.2 Administration

### Division 6.2.1 Administration—general

#### 142 Detention places—declaration

- (1) The Minister may declare a place to be a detention place.
- (2) A declaration is a notifiable instrument.

##### Example—declaration

the declaration of a place, including a buffer zone surrounding a secure perimeter, to be a detention place

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

*Note 2* The power to make an instrument includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48.)

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

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

#### 143 Youth detention policies and operating procedures

- (1) The chief executive may make youth detention policies and operating procedures, consistent with this Act, to facilitate the effective and efficient management of detention services for young detainees.

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

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

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

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

**144 Exclusion of matters from notified youth detention policies etc**

- (1) The chief executive may exclude from a youth detention policy or operating procedure notified or available for inspection in accordance with section 143 any matter that the chief executive believes on reasonable grounds would be likely to disclose—
- (a) information that may endanger public safety or security or good order at a detention place; or
  - (b) anything prescribed by regulation.
- (2) If subsection (1) applies to a youth detention policy or operating procedure—
- (a) the policy or procedure must contain a statement about the effect of this section; and
  - (b) the excluded matter must be available for inspection, on request, by any of the following:
    - (i) a judge;
    - (ii) a magistrate;

- (iii) a member of the Legislative Assembly;
  - (iv) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
  - (v) the public advocate;
  - (vi) the ombudsman;
  - (vii) an official visitor;
  - (viii) anyone to whom this section applies because of a declaration under subsection (3).
- (3) The Minister may declare that this section applies to a stated person.
- (4) A declaration is a notifiable instrument.

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

**145 Copies of Act, policies etc to be available for inspection at detention place**

The chief executive must ensure copies of the following are available for inspection by young detainees at each detention place:

- (a) this Act;
- (b) youth detention policies and operating procedures available under section 143.

**146 Chief executive directions**

- (1) The chief executive may give reasonable directions in relation to a young detainee about anything related to the criminal matters chapters.
- (2) Without limiting subsection (1), the chief executive may give a direction that the chief executive considers necessary and reasonable in relation to any of the following:
- (a) the wellbeing or safety of the young detainee or anyone else;

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

#### **147 Prohibited areas**

- (1) The chief executive may, in writing, declare an area of a detention place to be a prohibited area if the chief executive believes on reasonable grounds that the declaration is necessary or prudent to ensure 1 or more of the following:
- (a) the safety of anyone at the detention place;
  - (b) security or good order at a detention place;
  - (c) that the best interests of detainees are protected.
- Note* The power to make an instrument includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48.)
- (2) The chief executive must take all reasonable steps to ensure that the prohibited area is brought to the attention of all young detainees.

## **148 Prohibited things**

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

### **Examples—prohibited things**

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

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

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

- (2) A declaration is a notifiable instrument.

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

## **149 Declaration of emergency**

- (1) This section applies if the chief executive believes on reasonable grounds that an emergency (including an imminent emergency) exists in relation to a detention place that threatens or is likely to threaten—
- (a) good order or security at the place; or
  - (b) the safety of anyone at the place or elsewhere.
- (2) The chief executive may declare that an emergency exists in relation to the detention place for a stated period of not more than—
- (a) 3 days; or

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

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## **150 Emergency powers**

- (1) While an emergency is declared under section 149 in relation to a detention place, the chief executive may do 1 or more of the following:
  - (a) restrict any activity at the place;
  - (b) restrict access in, or to or from, the place or any part of the place;
  - (c) restrict communications between a young detainee and anyone else;

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

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

*Note* Section 141 (Detention places—minimum living conditions) continues to apply during an emergency (see s 141 (1)).

### **151 Arrangements with police**

- (1) The chief executive may make arrangements with the chief police officer for police assistance in relation to the administration of the criminal matters chapters.
- (2) Subject to any arrangement under this section, the chief police officer must comply, as far as practicable, with any request by the chief executive for police assistance mentioned in subsection (1).
- (3) A police officer providing assistance under this section may exercise any function exercisable by a youth detention officer under the criminal matters chapters in accordance with any direction by the chief executive.

### **152 Assistance from other chief executives**

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

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

- 1 development of a case management plan for a young detainee under s 188
- 2 provision of an assessment or advice in relation to a health, education or other matter
- 3 arrangements for search dogs



4 escorting a young detainee to and from court or leave

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

- (2) The chief executive must comply with the request as far as practicable.
- (3) A corrections officer providing assistance under this section may exercise any function exercisable by a youth detention officer under the criminal matters chapters in accordance with any direction by the chief executive.

## Part 6.3 Inspection at detention places

### 153 Inspections by judicial officers, Assembly members etc

- (1) This section applies to each of the following:
- (a) a judge;
  - (b) a magistrate;
  - (c) a member of the Legislative Assembly;
  - (d) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
  - (e) the public advocate;
  - (f) the ombudsman.

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

- (2) A person mentioned in subsection (1) may, at any reasonable time, enter and inspect—
- (a) a detention place; or
  - (b) a place outside a detention place where a detainee is, or has been, directed to work or participate in an activity.

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

a time when an emergency declaration is in force

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

**154 Relationship with other inspection laws**

- (1) The criminal matters chapters must be construed and administered in a way that is consistent with an inspection law unless the contrary intention appears from this Act or that law.
- (2) The criminal matters chapters are taken to be consistent with an inspection law to the extent that they are capable of operating concurrently with that law.
- (3) The chief executive may make arrangements with a person responsible for the exercise of functions under an inspection law to ensure, as far as practicable, the safety of an inspector (however described) or anyone else affected by the exercise of the function in relation to a young detainee or detention place.
- (4) A person exercising a function under an inspection law in relation to a young detainee or detention place must exercise the function in accordance with any reasonable direction by the chief executive in relation to—
  - (a) the safety of anyone at the detention place; or
  - (b) security or good order at the detention place.

- (5) In this section:

*inspection law* means an Act that provides for the entry and inspection of premises, or the search of people or premises.

**Examples—inspection laws**

- *Crimes Act 1900*
- *Emergencies Act 2004*
- *Food Act 2001*
- *Public Health Act 1997*

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

## Part 6.4 Admission to detention places

### 155 Meaning of *admission*—pt 6.4

In this part:

*admission*, of a young detainee to a detention place, means admission of the young detainee to the place for detention.

### 156 Authority for detention

- (1) A young detainee must not be admitted to, or detained at, a detention place unless the detention is authorised by a warrant or other authority (however described), under a territory law or a law of the Commonwealth or a State.

#### Examples—other authority authorising detention

- 1 a young detainee refused bail by an authorised person under the *Bail Act 1992*
- 2 a young detainee in immigration detention under the *Migration Act 1958* (Cwlth)
- 3 an interstate young detainee on leave in the ACT held in custody overnight

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

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

- (2) Before a young detainee is admitted to a detention place, the chief executive must be given the warrant or other authority for the detention.
- (3) The validity of a young detainee's detention at a detention place is not affected by a defect or irregularity in or in relation to the warrant or the evidence of other authority for the detention.

**157 Detention—notifying people responsible for or nominated by young detainees**

- (1) If a young detainee who is under 18 years old is detained at a detention place, the chief executive must take reasonable steps to tell someone who has daily care responsibility, or long-term care responsibility, for the young detainee about—
  - (a) the young detainee’s admission to a detention place; and
  - (b) if the young detainee is required to appear before a court or tribunal—the time and place of each appearance.
- (2) If the chief executive and someone else share daily care responsibility, or long-term care responsibility, for the young detainee, the chief executive must act under subsection (1) in relation to the other person.
- (3) If a young detainee who is 18 years old or older is detained at a detention place, the chief executive must take reasonable steps to tell the young detainee’s nominated person about the matters mentioned in subsection (1) (a) and (b).

**158 Identification of young detainees**

- (1) For the identification of a young detainee admitted to a detention place, the chief executive may direct that all or any of the following be taken of or from the young detainee:
  - (a) prints of the young detainee’s hands or fingers;
  - (b) a photograph or video recording;
  - (c) a buccal swab or saliva sample;
  - (d) anything else prescribed by regulation.

- (2) Anything taken from a young detainee under subsection (1) must be destroyed if—
- (a) the young detainee is found not guilty of any offence to which the detention relates, other than on the ground of unsoundness of mind; or
  - (b) a proceeding for any offence to which the detention relates is discontinued or dismissed.
- (3) However, subsection (2) does not apply if, for any part of the period of detention for an offence, the young detainee was also being detained for another offence—
- (a) of which the young detainee has been convicted; or
  - (b) for which a proceeding (including any appeal proceeding) is still pending.

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

## **159 Information—entitlements and obligations**

- (1) As soon as practicable after a young detainee is admitted to a detention place, the chief executive must take reasonable steps to explain the following to the young detainee:
- (a) the young detainee's entitlements and obligations under this Act;
  - (b) the case management plan arrangements;
  - (c) the role of official visitors;
  - (d) the procedures for seeking information and making complaints to official visitors;
  - (e) which areas of the detention place are prohibited areas;

*Note* Prohibited areas are declared under s 147.

- (f) if the young detainee is a national of a foreign country—that the young detainee may ask the chief executive to tell a diplomatic or consular representative of the country about the detention;
- (g) anything else the chief executive considers necessary or desirable.

**Examples—par (g)**

- 1 youth detention policies and operating procedures relevant to the young detainee
- 2 the scope and effect of the chief executive's directions

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

- (2) The explanation under subsection (1)—
  - (a) may be in general terms; and
  - (b) as far as practicable, must be in language the young detainee can readily understand.
- (3) The chief executive must arrange for the assistance of an interpreter in complying with subsection (1) or (2) if the chief executive believes on reasonable grounds that the young detainee is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in English.
- (4) Without limiting subsection (3), the assistance of the interpreter may be provided by telephone.
- (5) The chief executive must tell a diplomatic or consular representative of a foreign country about the detention of a national of that country, if asked by the young detainee or if the chief executive, after making reasonable inquiries, considers it in the best interests of the young detainee to do so.

## 160 Initial assessment

- (1) The chief executive must ensure that—
  - (a) each young detainee admitted to a detention place is assessed as soon as practicable, and in any event within 24 hours after admission, to identify any immediate—
    - (i) physical or mental health needs or risks (including any risk of self-harm); and
    - (ii) safety or security needs or risks; and
  - (b) any needs and risks identified by the assessment are addressed.

*Note* For an initial assessment, the chief executive may direct a youth detention officer to strip search a young detainee (see s 254).

- (2) In particular, the chief executive must ensure that any ongoing needs and risks are addressed in the young detainee's case management plan (if any).

## 161 Health assessment

- (1) The assessment under section 160 of a young detainee's physical health needs and risks must be made by a treating doctor or a nurse.
- (2) The assessment under section 160 of a young detainee's mental health needs and risks may be made by a treating doctor, a nurse or another suitable health professional.

*Note* The *Mental Health (Treatment and Care) Act 1994* also includes provision for assessment orders, and emergency detention and care, under that Act.

- (3) An assessment under section 160 made by a health professional other than a treating doctor must be reviewed by a treating doctor.
- (4) A treating doctor who makes an assessment or reviews an assessment made under section 160 must give a report of the assessment to the chief executive.



**162 Alcohol and drug tests on admission**

- (1) For an assessment under section 160, the chief executive may direct the young detainee, orally or in writing, to provide a test sample.
- (2) Division 6.7.2 (Alcohol and drug testing—detainees) applies in relation to the direction and any sample given under the direction.

**163 Security classification**

The chief executive must arrange for a young detainee to be given a security classification under section 190 (Security classification—basis etc) as soon as practicable after the young detainee's admission to a detention place.

**164 Case management plan**

- (1) The chief executive must arrange for a case management plan to be prepared for a young detainee (other than a young remandee) as soon as practicable after the young detainee's admission to a detention place.
- (2) The chief executive may prepare a case management plan for a young detainee at a detention place who is a young remandee.

*Note* The scope of case management plans, and the criteria for deciding whether to maintain one for a young remandee, are set out in s 188.

**165 Entries in register of young detainees**

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

*Note* The chief executive must keep a register of young detainees at a detention place (see s 185).

**166 Requirements and considerations about placement and separation of young detainees**

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

- (d) that it is in the best interests of young detainees to be separated from co-offenders.
- (5) When deciding where to place a young detainee, the chief executive may also consider any security classification given to the young detainee under section 163.

## **Part 6.5**                      **Living conditions at detention places**

*Note to pt 6.5*

Anything expressed in this part to be an entitlement for ch 8 (Criminal matters—discipline at detention places) is not affected by anything that happens under that chapter.

### **167**                      **Food and drink**

- (1) The chief executive must ensure that—
  - (a) sufficient nutritional food and drink are provided for young detainees to avoid hunger and poor nourishment; and
  - (b) meals are provided for young detainees at times consistent with the cultural norms of Australia; and
  - (c) clean drinking water is provided to meet the needs of young detainees.
- (2) The chief executive must also ensure, as far as practicable, that allowance is made for the religious, spiritual and cultural needs of young detainees in relation to the provision of food and drink.
- (3) If a doctor (other than a non-treating doctor) prescribes a particular diet for a young detainee, the chief executive must ensure that reasonable steps are taken to provide the young detainee with that diet.
- (4) A youth detention policy or operating procedure may include provision for any of the following:
  - (a) the nutritional standards to be met by food and drink for young detainees;
  - (b) the provision of nutritional advice about food and drink provided to young detainees;

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

### **168 Clothing**

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

### **169 Personal hygiene**

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

### **170 Sleeping areas**

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

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

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

### 171 Treatment of convicted and non-convicted young detainees

- (1) Without limiting section 143 (Youth detention policies and operating procedures), the chief executive must make a youth detention policy or operating procedure providing for different treatment of convicted young detainees and non-convicted young detainees.

#### Example

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

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

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

- (2) For chapter 8, a young detainee's entitlement in relation to treatment in detention includes anything expressed to be an entitlement in a youth detention policy or operating procedure made for subsection (1).
- (3) In this section:

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

**172 Access to open air and exercise**

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

**173 Communication with family and others**

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

- (d) family members;
  - (e) other people with whom the young detainee may communicate under the criminal matters chapters.
- (5) For chapter 8, subsections (1) to (4) are taken to provide an entitlement for each young detainee in relation to communication generally with other people.
- (6) However, this section is subject to the following:
- (a) section 174 (Telephone calls);
  - (b) section 175 (Mail);
  - (c) section 177 (Visits by family members etc);
  - (d) section 178 (Contact with accredited people).

#### **174 Telephone calls**

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



- (6) However, the chief executive may give directions denying or limiting the use of a telephone by a young detainee for a call mentioned in subsection (2) or (3) if the chief executive suspects on reasonable grounds that—
- (a) the call may—
    - (i) undermine security or good order at a detention place; or
    - (ii) revictimise a victim; or
    - (iii) circumvent any process for investigating complaints or reviewing decisions under this Act; or
    - (iv) have the purpose of causing community distress; or
    - (v) cause harm to the young detainee; or
  - (b) the direction is necessary and reasonable to safeguard the best interests of the young detainee.
- (7) Also, subsections (2) and (3) are subject to—
- (a) section 200 (Monitoring telephone calls etc); and
  - (b) any operating procedure mentioned in subsection (8).
- (8) An operating procedure may include provision regulating the following in relation to young detainees' telephone calls:
- (a) the times for making or receiving calls;
  - (b) the frequency and length of calls;
  - (c) payment for the cost of calls made.

**175 Mail**

- (1) The chief executive must ensure, as far as practicable, that young detainees can send and receive as much mail as they wish.
- (2) A young detainee may send mail to, and receive mail from any family member, significant person or other person nominated by the young detainee by written notice given to the chief executive.
- (3) For chapter 8, subsection (2) is taken to provide entitlements for each young detainee in relation to mail.
- (4) However, the chief executive may give directions denying or limiting the sending or receiving of mail by a young detainee if the chief executive suspects on reasonable grounds that—
  - (a) the mail may—
    - (i) undermine security or good order at a detention place; or
    - (ii) revictimise a victim; or
    - (iii) circumvent any process for investigating complaints or reviewing decisions under this Act; or
    - (iv) have the purpose of causing community distress; or
    - (v) cause harm to the young detainee; or
  - (b) the direction is necessary and reasonable to safeguard the best interests of the young detainee.
- (5) Also, subsections (1) and (2) are subject to—
  - (a) section 201 (Monitoring ordinary mail); and
  - (b) section 202 (Monitoring protected mail); and
  - (c) any operating procedure mentioned in subsection (6).

- (6) An operating procedure may include provision regulating the following in relation to young detainees' mail:
- (a) the way mail is sent or received;
  - (b) the provision of writing and other material for sending mail;
  - (c) the storage, and return to the detainee, of mail for which a direction is given under subsection (4).

**176 News and education**

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

**177 Visits by family members etc**

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

*Note* A young detainee has a right to reasonable opportunities to receive visits from family members and significant people (see s 141 (1) (g)).

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

## 178 Contact with accredited people

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

*Note* **Accredited person**—see s 137.

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

## 179 Visits—protected communications

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

- (a) a lawyer representing the young detainee;
- (b) an official visitor;
- (c) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
- (d) the public advocate;
- (e) the ombudsman;

- (f) a person prescribed by regulation.

*Note 1* Electronic communications between a young detainee and a person mentioned in this section must not be monitored, see s 200.

*Note 2* For restrictions on monitoring mail between a young detainee and a person mentioned in this section, see s 202.

## **180 Health care**

- (1) The chief executive must ensure that—
- (a) young detainees have a standard of health care equivalent to that available to other people in the ACT; and
  - (b) arrangements are made to ensure the provision of appropriate health services for young detainees; and
  - (c) conditions in detention promote the health and wellbeing of young detainees; and
  - (d) as far as practicable, young detainees are not exposed to risks of infection.
- Note* The chief executive may direct that a young detainee be transferred to a health facility (see s 109).
- (2) In particular, the chief executive must ensure that young detainees have access to—
- (a) regular health checks; and
  - (b) timely treatment where necessary, particularly in urgent circumstances; and
  - (c) hospital care where necessary; and
  - (d) as far as practicable—
    - (i) specialist health services from health professionals; and

- (ii) necessary health care programs, including rehabilitation programs.

*Note* The chief executive may also ask for a health report about a young detainee (see s 186).

- (3) For chapter 8, subsections (1) and (2) are taken to provide an entitlement for each young detainee in relation to health care.
- (4) A regulation may make provision in relation to health services for young detainees, including provision about the following:
  - (a) the provision of health service clinics for young detainees;
  - (b) appointments for young detainees with health professionals;
  - (c) rehabilitation for young detainees who suffer personal injury arising out of or in the course of their detention;
  - (d) security arrangements for young detainees visiting health professionals or health facilities, particularly outside detention places.
- (5) For chapter 8, a young detainee's entitlement in relation to health care includes anything expressed to be an entitlement in a regulation made for subsection (4).

**181 Chief executive's consent to medical treatment for young detainees**

- (1) This section applies if—
  - (a) a young detainee is a child or young person; and
  - (b) the young detainee needs medical treatment that requires the consent of a person who has daily care responsibility for the young detainee; and
  - (c) the chief executive does not have daily care responsibility for the young detainee; and

- (d) despite reasonable inquiries, the chief executive is unable to locate a person who has daily care responsibility for the young detainee.
- (2) The chief executive may consent to medical treatment for the young detainee if delaying the treatment until a person who has daily care responsibility for the young detainee can be located would be detrimental to the young detainee's health.
- (3) To remove any doubt, this section does not affect any right of a child or young person to consent to their own health care treatment.

**182 Injury etc—notifying people responsible for or nominated by young detainees**

- (1) This section applies if a young detainee has a condition that requires—
  - (a) clinical care for not less than 24 hours; or
  - (b) the young detainee's transfer under section 109 (Transfers to health facilities); or
  - (c) anything else prescribed by regulation.
- (2) If the young detainee is under 18 years old, the chief executive must take reasonable steps to tell a person who has daily care responsibility or long-term care responsibility for a young detainee about the condition.
- (3) If the chief executive and another person share daily care responsibility or long-term care responsibility for the young detainee, the chief executive must act under subsection (2) in relation to the other person.
- (4) If the young detainee is 18 years old or older, the chief executive must take reasonable steps to tell the young detainee's nominated person about the condition.



## 183 Religious, spiritual and cultural needs

- (1) The chief executive must ensure, as far as practicable, that provision is made at detention places for the religious, spiritual and cultural needs of young detainees.

### Examples—religious, spiritual or cultural needs

- 1 observances and practices relating to religious or spiritual beliefs, including Aboriginal or Torres Strait Islander spiritual beliefs
- 2 observances or practices arising because a person belongs to a particular culture

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

- (2) In particular, the chief executive must ensure, as far as practicable, that young detainees have reasonable access to—
- (a) ministers of religion and other people with standing in a particular culture whom young detainees wish to see for religious, spiritual or cultural purposes; and
  - (b) religious services at the detention place; and
  - (c) books and other articles associated with their religious, spiritual or cultural practices.
- (3) However, the chief executive may give directions denying or limiting a young detainee's access under subsection (1) or (2) if the chief executive suspects on reasonable grounds that it may—
- (a) undermine security or good order at a detention place; or
  - (b) revictimise a victim; or
  - (c) circumvent any process for investigating complaints or reviewing decisions under this Act; or
  - (d) have the purpose of causing community distress.

- (4) A young detainee must not be required to receive a visit from anyone representing a particular religion, spiritual belief or culture, or attend any related service or practice, if the young detainee does not wish to do so.
- (5) For chapter 8, subsections (1) and (2) are taken to provide an entitlement for each young detainee in relation to religious, spiritual and cultural needs.
- (6) In this section:
  - minister of religion* means—
    - (a) a person registered under the *Marriage Act 1961* (Cwlth), part 4.1 (Authorised celebrants); or
    - (b) a person prescribed by regulation.

## **Part 6.6 Management and security**

### **Division 6.6.1 Management and security—general**

#### **184 Compliance with chief executive's directions**

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

#### **185 Register of young detainees**

- (1) The chief executive must keep a register containing details of each young detainee at a detention place.
- (2) The register must include the following details in relation to each young detainee:
  - (a) the young detainee's full name, including any assumed name;
  - (b) the young detainee's age and date of birth;
  - (c) the young detainee's sex;

*Note* For transgender and intersex young detainees, see s 189.
  - (d) the authority for the detention of the young detainee;
  - (e) the period of authorised detention;
  - (f) for a young detainee under a sentence of imprisonment—details of the sentence, including any combination sentence;
  - (g) the current place of detention;
  - (h) the security classification for the young detainee;
  - (i) the case management plan (if any) for the young detainee;
  - (j) details of any known condition of the young detainee that requires, or is likely to require, a health service;

- (k) details of anything taken from the young detainee under section 158 (Identification of young detainees);
- (l) details of property the young detainee has at the detention place;
- (m) for a young detainee who is under 18 years old—details of people who have daily care responsibility, or long-term care responsibility, for the young detainee and details of notifications under this Act of those people;
- (n) for a young detainee who is 18 years old or older—details of a person nominated by the young detainee (the ***nominated person***) to whom the chief executive can give any notifications required under—
  - (i) section 113 (Transfer—notifying people responsible for or nominated by young detainees); or
  - (ii) section 157 (Detention—notifying people responsible for or nominated by young detainees); or
  - (iii) section 182 (Injury etc—notifying people responsible for or nominated by young detainees); or
  - (iv) section 207 (2) (c) (Notice of segregation directions—safe room and other); or
  - (v) section 237 (5) (c) (Alcohol and drug testing of young detainees); or
  - (vi) section 251 (Notice of strip and body searches—person responsible for or nominated by young detainee);
- (o) for a young detainee who is 18 years old or older—details of any notifications given to the young detainee’s nominated person;

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

**Examples—other things chief executive may consider necessary or appropriate**

- 1 young detainee's nutritional or health needs
- 2 young detainee's need for spectacles, contact lens, crutches, prosthesis or other artificial aids
- 3 young detainee's language or literacy difficulties
- 4 any cultural background or religious affiliation identified by the young detainee

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

**186 Health reports**

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

- (5) The health schedule must include—
- (a) a summary of—
    - (i) the young detainee’s condition and health risks, including any likelihood of the condition resulting in a medical emergency or the onset of significant health problems and any associated symptoms; and
    - (ii) a treatment regime for the young detainee; and
  - (b) details of any medicine approved by the chief executive under section 187 for use by the young detainee.

**Examples—s (5)**

- 1 Young detainee D has diabetes. The health schedule for D explains the type of diabetes, the treatment required, any likely medical emergency or significant health problem and the associated symptoms, such as hypoglycaemia.
- 2 Young detainee P has epilepsy. The health schedule for P explains the type of epilepsy, the treatment required, and the symptoms and consequences of any failure to maintain the treatment regime.

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

- (6) A youth detention policy or operating procedure may include provision in relation to the health schedule, including provision in relation to any of the following:
- (a) the content of the schedule and, in particular, any statement about the young detainee’s health risks and treatment regime;
  - (b) the people who may access the health schedule and the circumstances for access.
- (7) The chief executive must ensure that the relevant chief executive’s report and the health schedule is available only to people authorised by the chief executive.

(8) In this section:

**health record**—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

**personal health information**—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

**relevant chief executive** means a chief executive whose administrative unit is responsible for any provision of the following Acts:

- (a) the *Corrections Management Act 2007*;
- (b) the *Crimes (Sentence Administration) Act 2005*;
- (c) the *Disability Services Act 1991*;
- (d) the *Health Act 1993*;
- (e) the *Mental Health (Treatment and Care) Act 1994*.

*Note* Compliance with a request under this section does not involve a contravention of a privacy principle under the *Health Records (Privacy and Access) Act 1997* (see that Act, s 5).

## **187 Use of medicines**

(1) The chief executive may approve the use of a medicine, other than a prescription only medicine, by a young detainee.

*Note* The taking of an unauthorised medicine by a young detainee is a behaviour breach (see s 287).

(2) The chief executive may seek the advice of a treating doctor before approving the use of a medicine, other than a prescription only medicine, by a young detainee.

(3) If the chief executive approves the use of a medicine by a young detainee, the chief executive must ensure that the details of the approval, and the reasons for it, are recorded in relation to the young detainee in the register kept under section 185.

- (4) In this section:

*prescription only medicine*—see the *Medicines, Poisons and Therapeutic Goods Act 2007*, section 11.

**188 Case management plans—scope etc**

- (1) The chief executive—
- (a) must maintain an individual case management plan for each young detainee other than a young remandee; and
  - (b) may maintain an individual case management plan for a young detainee who is a young remandee.
- (2) In deciding whether to maintain a case management plan for a young remandee, the chief executive—
- (a) must consider the following:
    - (i) the period of remand;
    - (ii) the young remandee’s age and development;
    - (iii) the young remandee’s educational needs;
    - (iv) any special needs of the young remandee; and
  - (b) may consider any other relevant matter.
- (3) A case management plan for a young detainee must—
- (a) outline education and training and activities for the young detainee; and
  - (b) be based on an assessment of the needs, capacities and disposition of the young detainee; and
  - (c) be consistent with the resources available to the chief executive to manage the young detainee; and



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

**189 Transgender and intersex young detainees—sexual identity**

- (1) This section applies to a transgender or intersex young detainee.
- (2) On admission to a detention place—
  - (a) the young detainee may tell the chief executive the sex the young detainee chooses to be identified with; or
  - (b) if the young detainee fails to make a choice under paragraph (a)—the chief executive may choose the sex the young detainee is to be identified with having regard to the presentation of the young detainee on admission to the place.

*Note* **Fail** includes refuse, see the Legislation Act, dict, pt 1.

- (3) The chief executive may, on application by the young detainee, approve a change in the sex the young detainee chooses to be identified with, having regard to any report obtained under subsection (4) or (5).
- (4) Before making a decision under subsection (2) (b) or (3), the chief executive must obtain a report by a non-treating doctor or other non-treating health professional about the young detainee's sexual identity.
- (5) The chief executive may also obtain a report by a non-treating doctor or non-treating health professional about the young detainee's sexual identity chosen under subsection (2) (a) if the chief executive believes on reasonable grounds that obtaining the report—
  - (a) is in the best interests of the young detainee; and

- (b) is necessary to make a decision in relation to the young detainee's placement or case management.
- (6) The chief executive must—
  - (a) give the young detainee written notice of a decision by the chief executive under subsection (2) or (3); and
  - (b) ensure that the young detainee's sex chosen under this section is entered in the register of young detainees.
- (7) For criminal matters chapters, the sex of the young detainee is taken to be the young detainee's sex entered in the register of young detainees under subsection (6) (b).

**Examples—effect of this section**

The conduct of searches of the young detainee, and the allocation of accommodation and hygiene facilities for the young detainee, would be on the basis that the young detainee was a person of the sex chosen and entered in the register of young detainees.

*Note 1* The young detainee may require that either a male or female conduct a search (see s 250 (2) (Searches—transgender and intersex young detainees)).

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

**190 Security classification—basis etc**

- (1) The chief executive—
  - (a) must give a young detainee a security classification; and
  - (b) may review the classification at any time.
- (2) When deciding a young detainee's security classification, the chief executive must consider the following:
  - (a) the reason for the detention, including the nature of any offence for which the young detainee is detained;

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

## **191 Property of young detainees**

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

- (4) A youth detention policy may make provision in relation to a young detainee's property, including provision in relation to the following:
- (a) storage of the property;
  - (b) access to, and use of, the property;
  - (c) transfer of the property;
  - (d) compensation for loss of, or damage to, the property;
  - (e) return of the property to the young detainee.

- (5) In this section:

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

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

## **192 Possession of prohibited things**

- (1) A young detainee commits an offence if the young detainee possesses a prohibited thing.

Maximum penalty: 5 penalty units.

- (2) Subsection (1) does not apply if the chief executive approves the young detainee's possession of the thing.

## **193 Mandatory reporting of threats to security etc at detention place**

- (1) This section applies if—
- (a) an adult who works or provides services at a detention place (whether paid or unpaid) suspects on reasonable grounds that a young detainee or anyone else at the detention place—
    - (i) poses a significant threat to security or good order at the detention place; or

- (ii) has something concealed on him or her that is a prohibited thing or that may be used by the young detainee in a way that may involve a risk to the personal safety of anyone at the detention place; and
- (b) the person's reasons for the suspicion arise from information obtained by the person during the course of, or because of, the person's work or providing of services at the detention place.

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

- 1 a youth detention officer
- 2 a health professional
- 3 a community-based youth worker
- 4 a teacher

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

- (2) The person must, as soon as practicable after forming the suspicion, report to the chief executive—
  - (a) the name or description of the young detainee; and
  - (b) the reasons for the person's suspicion.

**194 Trust accounts of young detainees**

- (1) The chief executive must ensure that money belonging to a young detainee is held for the detainee in a trust account.
- (2) The chief executive may deduct amounts from a young detainee's trust account for payment of any fine or reparation that must be paid as a result of disciplinary action against the young detainee.
- (3) A regulation may make provision in relation to the operation or maintenance of trust accounts.
- (4) In this section:

***disciplinary action***—see section 317.

## **195 Register of searches and uses of force**

- (1) The chief executive must keep a register of—
  - (a) searches under any of the following:
    - (i) section 254 (Strip searches on admission to detention place);
    - (ii) section 258 (Strip searches directed by chief executive);
    - (iii) section 264 (Body searches directed by chief executive);
    - (iv) section 275 (Searches—premises and property generally);
    - (v) section 276 (Searches of young detainee cells—privileged material);
    - (vi) section 277 (Searches of young detainee cells—suspected privileged material); and
  - (b) incidents involving the use of force under division 6.6.4.
- (2) For subsection (1) (a), the register must contain the following details in relation to each search:
  - (a) the name of the young detainee searched;
  - (b) the reason for the search;
  - (c) when and where the search was conducted;
  - (d) the name of each person present at any time during the search;
  - (e) if, under section 260 (4), section 266 (5) or section 270 (4), a requirement for a youth detention officer or assistant to be the same sex as the young detainee was not complied with—the chief executive’s reasons for believing the requirement did not apply;

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

## **Division 6.6.2      Monitoring**

### **196      Disapplication of Listening Devices Act**

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

## **197 Monitoring—general considerations**

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

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

## **198 Notice of monitoring**

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



## **199 Monitoring at detention places**

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

### **Examples—monitoring**

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

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

## **200 Monitoring telephone calls etc**

- (1) This section applies in relation to an electronic communication with a young detainee, other than a protected electronic communication.
- (2) The chief executive may do either or both of the following in relation to the communication:
  - (a) monitor the communication;
  - (b) record the communication.
- (3) The chief executive must tell the parties to the communication that the communication might be monitored and recorded.
- (4) If the communication reveals information about the commission of an offence, the chief executive must give the information to the chief police officer.
- (5) In this section:

***electronic communication*** means communication by—

  - (a) telephone, email or fax; or
  - (b) any other electronic means.

*protected electronic communication* means an electronic communication between a young detainee and any of the following:

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

**201 Monitoring ordinary mail**

- (1) The chief executive may open and search a young detainee's mail, other than protected mail.
- (2) The chief executive may read a young detainee's ordinary mail only if the chief executive suspects on reasonable grounds that the mail—
  - (a) may undermine security or good order at a detention place; or
  - (b) may revictimise a victim; or
  - (c) may circumvent any process for investigating complaints or reviewing decisions under this Act; or
  - (d) may not be in the best interests of the young detainee.
- (3) However, the chief executive may make a youth detention policy or operating procedure in relation to reading a random selection of young detainees' ordinary mail.
- (4) In this section:

*ordinary mail* means mail other than protected mail.

***protected mail*** means mail between a young detainee and any of the following:

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

***search*** includes search—

- (a) with any device using electronic or other technology; and
- (b) by physical means; and
- (c) with the assistance of a search dog.

## **202 Monitoring protected mail**

- (1) The chief executive may open and search a young detainee's protected mail in the young detainee's presence if the chief executive suspects on reasonable grounds that the mail contains—
  - (a) something that may physically harm the addressee; or
  - (b) a prohibited thing.
- (2) However, the chief executive must not read a young detainee's protected mail without the young detainee's written consent.
- (3) In this section:

***search***—see section 201.

## **203 Mail searches—consequences**

- (1) Subject to section 280 (Seizing mail etc), a young detainee’s mail, once searched, must be delivered to the addressee as soon as practicable.
- (2) If a search of a young detainee’s mail reveals information about, or evidence of the commission of an offence, the chief executive must give the information to the chief police officer.

## **Division 6.6.3 Segregation**

### **Subdivision 6.6.3.1 General**

#### **204 Definitions—div 6.6.3**

In this division:

*external reviewer* means a person appointed as an external reviewer under section 309.

*health segregation direction* means a segregation direction given under section 214.

*safe room segregation direction* means a direction under section 209.

*segregation*, of a young detainee—

- (a) means the restriction or denial of the young detainee’s opportunity—
  - (i) to go into, or be in, a particular part of a detention place; or
  - (ii) to associate with other young detainees; and
- (b) includes separate confinement.

*segregation direction* means—

- (a) for division 6.6.3, a direction under any of the following:
  - (i) section 209 (Segregation—safe room);
  - (ii) section 212 (Segregation—safety and security);
  - (iii) section 213 (Segregation—protective custody);
  - (iv) section 214 (Segregation—health etc); and
- (b) for subdivision 6.6.3.4, a direction under any of the following:
  - (i) section 212 (Segregation—safety and security);
  - (ii) section 213 (Segregation—protective custody);
  - (iii) section 214 (Segregation—health etc).

**205 Purpose of segregation under div 6.6.3**

To remove any doubt, segregation under this division must not be used for punishment or disciplinary purposes.

**206 Segregation not to affect minimum living conditions**

- (1) The segregation of a young detainee under this division is not to affect the standards applying to the young detainee under section 141 (Detention places—minimum living conditions).
- (2) However, subsection (1) does not prevent the application of the standards in a way that is necessary and reasonable for the purpose of the segregation.

**207 Notice of segregation directions—safe room and other**

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

- (c) stating when the direction takes effect; and
  - (d) stating how long the direction lasts; and
  - (e) explaining that the direction may be reviewed or revoked—
    - (i) for a safe room segregation direction—under section 211 (Review of safe room segregation directions); or
    - (ii) for another segregation direction—under subdivision 6.6.3.4 (Review of certain segregation directions).
- (2) A notice under subsection (1) must be given as soon as practicable to—
- (a) the young detainee; and
  - (b) if the young detainee is under 18 years old—a parent or someone who has daily care responsibility, or long-term care responsibility, for the young detainee; and
  - (c) if the young detainee is 18 years old or older—the young detainee’s nominated person; and
  - (d) the public advocate.

### **Subdivision 6.6.3.2 Safe room segregation**

#### **208 Designation of safe rooms**

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

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

**209 Segregation—safe room**

- (1) The chief executive may direct that a young detainee be segregated from other young detainees by separate confinement in a safe room if—
  - (a) the chief executive believes on reasonable grounds that the segregation is necessary to prevent an imminent risk of the young detainee harming himself or herself; and
  - (b) the chief executive has—
    - (i) tried less restrictive ways to prevent an imminent risk of the young detainee harming himself or herself but the less restrictive ways have not been successful; or
    - (ii) considered less restrictive ways to prevent an imminent risk of the young detainee harming himself or herself but the less restrictive ways were not appropriate.
- (2) When considering whether to make the direction, the chief executive must have regard to the young detainee's age, sex, maturity, cultural identity physical and mental health and any history of abuse.
- (3) The chief executive may give the direction at any time, on the chief executive's own initiative.
- (4) The chief executive must revoke the direction if the chief executive believes on reasonable grounds that the grounds for making the direction no longer exist.

**210 Safe room segregation directions—privacy**

- (1) The confining of a young detainee under a safe room segregation direction, and any force used to compel compliance with the direction, must not be done in the presence or sight of another young detainee.
- (2) However, subsection (1) does not apply if the chief executive believes on reasonable grounds that—
  - (a) there is an imminent and serious threat to the personal safety of the young detainee or someone else; and
  - (b) compliance with subsection (1) would exacerbate the threat.

**211 Review of safe room segregation directions**

- (1) The chief executive must review a safe room segregation direction—
  - (a) after it has been in effect for 2 hours; and
  - (b) at the end of every subsequent 2 hour period for which it is in effect.
- (2) When reviewing a direction under subsection (1)(b), the chief executive must—
  - (a) seek the advice of a health professional (other than a non-treating health professional) about the action the chief executive should take under subsection (4); and
  - (b) have regard to that advice in deciding what action to take.
- (3) The chief executive may also review a safe room segregation direction at any other time, on the chief executive's own initiative or on request by the young detainee.



- (4) After reviewing a safe room segregation direction under subsection (1) or (3), the chief executive must do 1 of the following:
  - (a) confirm the direction;
  - (b) make a further safe room segregation direction if the grounds for making the direction exist;
  - (c) revoke the direction under section 209 (4);
  - (d) make a direction under section 109 that the young detainee be transferred to a health facility.
- (5) To remove any doubt, the chief executive may make more than 1 further safe room segregation direction after a review.

### **Subdivision 6.6.3.3 Other segregation**

#### **212 Segregation—safety and security**

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

**213 Segregation—protective custody**

- (1) The chief executive may direct that a young detainee be segregated from other young detainees if the chief executive believes on reasonable grounds that the segregation is necessary or prudent to protect the young detainee's safety.
- (2) The chief executive may give the direction at any time, on the chief executive's own initiative or on request by the young detainee.
- (3) The chief executive must revoke the direction if the chief executive believes on reasonable grounds that the protection mentioned in subsection (1) is no longer necessary or prudent.

**214 Segregation—health etc**

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

**215 Interstate segregated detainees transferred to ACT**

- (1) This section applies if—
  - (a) an interstate segregation direction applies to a young detainee;  
and
  - (b) the young detainee is transferred (however described) into custody at a detention place in the ACT.
- (2) Despite the transfer, the interstate segregation direction—
  - (a) continues to apply in relation to the young detainee—
    - (i) as if it were a segregation direction under this division;  
and
    - (ii) with any necessary changes, and any change prescribed by regulation; and
  - (b) subject to this division, ends 3 days after the day the young detainee is taken into custody at the detention place.
- (3) In this section:

*interstate segregation direction* means a direction or order (however described) that—

  - (a) corresponds substantially to a segregation direction under this division; and
  - (b) is in force under a law of the Commonwealth, a State or another Territory that is declared by regulation to be a corresponding law for this section.

### Subdivision 6.6.3.4 Review of certain segregation directions

#### 216 Meaning of *segregation direction*—subdiv 6.6.3.4

In this subdivision:

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

- (a) section 212 (Segregation—safety and security);
- (b) section 213 (Segregation—protective custody);
- (c) section 214 (Segregation—health etc).

#### 217 Internal review of segregation directions

- (1) The chief executive—
  - (a) may review a segregation direction (the *original segregation direction*) at any time, on the chief executive’s own initiative or on request by the young detainee; and
  - (b) must review the direction before any transfer of the young detainee to a correctional centre or elsewhere; and
  - (c) must review the direction—
    - (i) before the end of 7 days after it has been in force (the *initial review*); and
    - (ii) before the end of 7 days after the day of the initial review; and
    - (iii) before the end of each subsequent period of 14 days while it remains in force; and
  - (d) for a health segregation direction—must review the direction on request by a treating doctor.
- (2) After reviewing the original segregation direction, the chief executive may—
  - (a) confirm the direction; or

- (b) make a further segregation direction under the same provision that the original segregation direction was made under if the grounds for making the direction exist; or
  - (c) revoke the original segregation direction under section 212 (3), section 213 (3) or section 214 (2).
- (3) When acting under subsection (2) in relation to a health segregation direction, the chief executive must have regard to any advice by a treating doctor given in relation to the segregation.
- (4) To remove any doubt, the chief executive may make more than 1 further segregation direction after a review.

## **218 End of segregation directions**

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

- (a) 28 days after the day it is given; or
- (b) if a further segregation direction has been given after review under section 217—90 days after the day the further segregation direction, or latest further segregation direction, is given.

## **219 Application for review of segregation directions**

- (1) A young detainee may apply to an external reviewer for a review of a segregation direction under section 220.

*Note* If a form is approved under s 886 for this provision, the form must be used.

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

## **220 External review of segregation directions**

- (1) On application under section 219, an external reviewer may—
  - (a) review the segregation direction; or
  - (b) refuse to review the direction.
- (2) Chapter 9 (Criminal matters—conduct of disciplinary reviews) applies, with any necessary changes, in relation to the review as if it were a review under that chapter.
- (3) After completing a review, the external reviewer may—
  - (a) confirm the direction under review; or
  - (b) give any direction the chief executive may give under the section authorising the direction under review, either by—
    - (i) amending the direction under review; or
    - (ii) setting aside the direction under review and making a direction in substitution for the direction set aside.

## **221 Notice of decision about segregation direction**

- (1) This section applies if an external reviewer has made a decision under section 220 in relation to an application by a young detainee to review a segregation direction.
- (2) The external reviewer must give prompt written notice of the external reviewer's decision to—
  - (a) the young detainee; and
  - (b) if the young detainee is under 18 years old—a parent or someone who has daily care responsibility, or long-term care responsibility, for the young detainee; and
  - (c) if the young detainee is 18 years old or older—the young detainee's nominated person; and
  - (d) the chief executive.

- (3) If the external reviewer refuses to review the segregation direction, the notice must include the reasons for the refusal.

*Note* Under the *Administrative Decisions (Judicial Review) Act 1989*, a person aggrieved by an administrative decision made under an enactment may apply to the Supreme Court for a review of the decision. Subject to any order of the court, the making of the application does not affect the operation of the decision or prevent its implementation (see s 16).

### **Subdivision 6.6.3.5 Register of segregation directions**

#### **222 Register of segregation directions**

- (1) The chief executive must keep a register containing the following details in relation to each segregation direction given:
- (a) the name of the young detainee who is subject to the direction;
  - (b) the reason for the direction;
  - (c) the period for which the direction is in effect;
  - (d) details of people notified of the segregation direction under section 207 (Notice of segregation directions—safe room and other);
  - (e) details of any force used to compel compliance with the direction, and why force was used;
  - (f) details of any confirmation of a segregation direction, or of any other direction, made under subdivision 6.6.3.4 (Review of certain segregation directions);
  - (g) anything else prescribed by regulation.
- (2) The register may contain any other details the chief executive considers relevant.

- (3) The register must be available for inspection by any of the following:
- (a) a judge;
  - (b) a magistrate;
  - (c) an official visitor;
  - (d) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
  - (e) the public advocate;
  - (f) the ombudsman;
  - (g) a person prescribed by regulation.

## **Division 6.6.4 Use of force**

### **223 Managing use of force**

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

#### **Example**

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

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

- (2) The chief executive must also ensure, as far as practicable, that—
- (a) youth detention officers do not use force in relation to a young detainee without first considering the following:



- (i) the young detainee's age, sex, physical and mental health and any history of abuse;
  - (ii) if the proposed force involves any restraint of the young detainee—the physical and developmental capacity of the young detainee; and
- (b) the use of force in relation to a young detainee is not observed by any other young detainee.
- (3) However, a youth detention officer need not comply with subsection (2) if, in urgent circumstances, the officer believes on reasonable grounds that doing so would create a risk of injury to the officer, the young detainee or anyone else.
- (4) The chief executive must ensure that a young detainee injured by the use of force under this division is examined as soon as practicable by a treating doctor and that appropriate health care is available to the young detainee.
- (5) Without limiting subsection (4), the chief executive must give a child or young person the opportunity to be examined by a treating doctor or a nurse after any use of force in relation to the child or young person.
- (6) The chief executive must make a youth detention policy or operating procedure in relation to the use of force, including provision in relation to the following:
  - (a) the circumstances, and by whom, force may be used;
  - (b) the kinds of force that may be used;
  - (c) the use of restraints.

*Note* The power to make a youth detention policy or operating procedure includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48).

## **224 Authority to use force**

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

- (a) the officer believes on reasonable grounds that the purpose for which force may be used cannot be achieved in another way; and
- (b) the force is necessary and reasonable for any of the following:
  - (i) to compel compliance with a direction given in relation to a young detainee by the chief executive;
  - (ii) to prevent or stop the commission of an offence or behaviour breach;
  - (iii) to prevent unlawful damage, destruction or interference with property;
  - (iv) to defend the person or someone else;
  - (v) to prevent a young detainee from inflicting self-harm;
  - (vi) to prevent a young detainee from escaping.

## **225 Application of force**

- (1) A youth detention officer may use force under this division only if the officer—
  - (a) gives a clear warning of the intended use of force; and
  - (b) allows enough time for the warning to be observed; and
  - (c) uses no more force than is necessary and reasonable in the circumstances; and
  - (d) uses force, as far as practicable, in a way that reduces the risk of causing injury.

- (2) However, the youth detention officer need not comply with subsection (1) (a) or (b) if, in urgent circumstances, the officer believes on reasonable grounds that doing so would create a risk of injury to the officer, the young detainee or anyone else.

**Example—urgent circumstances**

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

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

**226 Use of restraint**

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

## **227 Monthly reports about use of force**

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

## **Division 6.6.5 Access to detention places**

### **228 Visiting conditions**

- (1) The chief executive may declare conditions that apply in relation to visits to a detention place.

#### **Examples—conditions declared**

- 1 the times and duration of visits
- 2 the number of visitors allowed
- 3 the circumstances in which visitors may be monitored

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

- (2) A declaration is a disallowable instrument.

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

*Note 2* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### **229 Notice of visiting conditions**

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

- (a) a notice is prominently displayed at each entrance to the place open to visitors to the effect that visiting conditions apply at the place; and
- (b) a copy of the visiting conditions is available for inspection on request by visitors at the place.

**230 Taking prohibited things etc into detention place**

- (1) A person commits an offence if the person—
  - (a) takes a prohibited thing into a detention place; or
  - (b) gives a prohibited thing to a young detainee; or
  - (c) removes a prohibited thing from a detention place.

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

- (2) Subsection (1) does not apply to any action approved by the chief executive.
- (3) In this section:  
*give* includes send.

*prohibited thing* includes something the person intends a detainee to use for making a prohibited thing or use otherwise in relation to a prohibited thing.

**231 Directions to visitors**

- (1) The chief executive may, orally or in writing, give a direction to a visitor at a detention place to do, or not do, something if the chief executive believes on reasonable grounds that the direction is necessary and reasonable—
  - (a) to ensure compliance with the visiting conditions; or

(b) for security or good order at a detention place.

*Note* The chief executive may also direct a youth detention officer to search a visitor (see s 274).

(2) A person commits an offence if the person fails to comply with a direction given to the person under this section.

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

(3) An offence against this section is a strict liability offence.

(4) Subsection (2) does not apply if the person takes reasonable steps to comply with the direction.

## **232 Directions to leave detention place etc**

(1) The chief executive may direct a person at a detention place—

(a) not to enter the place; or

(b) if the person is already in the place—to leave the place.

(2) However, the chief executive may give the direction only if—

(a) the chief executive suspects on reasonable grounds that—

(i) the person is intoxicated; or

(ii) the person has possession of a prohibited thing; or

(iii) the direction is necessary and reasonable for security or good order at a detention place; or

(iv) the direction is necessary and reasonable to safeguard the best interests of a young detainee; or

### **Example—subpar (iv)**

the person is intentionally causing a detainee distress

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

- (b) the person contravenes a direction given to the person under—
  - (i) section 231 (Directions to visitors); or
  - (ii) section 256 (Strip searches on admission—directing person to leave); or
  - (iii) section 268 (Body searches—directing people to leave).
- (3) To remove any doubt, this section applies to a family member or significant person for a young detainee, even if the person has been visiting the young detainee for less than 1 hour.
- (4) A person commits an offence if the person fails to comply with a direction given to the person under this section.  

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

### **233 Removing people from detention place**

- (1) The chief executive may direct a youth detention officer to enforce a direction under section 232 if the person given the direction contravenes the direction.
- (2) The youth detention officer may use force that is necessary and reasonable to enforce the direction.

## **Division 6.6.6 Maintenance of family relationships**

### **234 Chief executive may allow young child to stay with young detainee**

- (1) This section applies to a young detainee if—
  - (a) the young detainee has a child who is under 6 years old and not enrolled in school; and
  - (b) before being detained, the young detainee was the primary caregiver for the child or was having contact with the child.
- (2) The chief executive may, by direction, allow the young detainee to have contact with, or care for, the child in a detention place.
- (3) However, the chief executive must not give a direction under subsection (2) unless the chief executive—
  - (a) has carried out a care and protection appraisal of the child; and
  - (b) is satisfied that it is in the best interests of the child for the young detainee to have contact with, or care for, the child in the detention place.
- (4) The chief executive may make a youth detention policy or operating procedure about the arrangements to apply in relation to a young detainee having contact with, or caring for, a child in a detention place.



## **Part 6.7                      Alcohol and drug testing**

### **Division 6.7.1              General**

#### **235              Definitions—pt 6.7**

In this part:

*drug*—

(a) means—

(i) a controlled drug under the Criminal Code, section 600;  
or

(ii) a substance prescribed by regulation; but

(b) does not include any of the following:

(i) a drug lawfully supplied, and taken as prescribed or directed, by a health professional;

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

(iii) a drug exempted under section 236 (3).

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

*positive test sample*—see section 236.

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

## 236 Positive test samples

- (1) A person is taken to provide a *positive test sample* for alcohol or a drug if, when directed under this Act to provide a test sample—
  - (a) the person fails to provide a test sample in accordance with the direction; or
  - (b) the person provides an invalid test sample; or
  - (c) for a young detainee—the young detainee provides a test sample that shows that the young detainee has taken alcohol or a drug.
- (2) However, subsection (1) (a) does not apply if the person has a reasonable excuse for failing to provide the test sample within a reasonable time of the direction being given.

*Note* **Fail** includes refuse, see the Legislation Act, dict, pt 1.

### Examples—reasonable excuse

- 1 a medical condition that prevents the person from providing a test sample as directed
- 2 prescribed medication that may affect test results

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

- (3) The chief executive may exempt a drug from the application of this part.
- (4) An exemption is a notifiable instrument.

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

(5) In this section:

*invalid*—a test sample provided by a person is *invalid* if the person—

- (a) tampers, or attempts to tamper, with the test sample; or
- (b) otherwise changes, or attempts to change, the results of the test sample.

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

### **237 Alcohol and drug testing of young detainees**

- (1) The chief executive may direct a young detainee to provide a stated kind of test sample.
- (2) The chief executive, a non-treating doctor or a non-treating nurse may give a young detainee a direction about the way the young detainee must provide the test sample.
- (3) However—
  - (a) a direction under this section must be consistent with any requirement of an operating procedure made for this section; and
  - (b) only a non-treating doctor or a non-treating nurse may take a blood sample.
- (4) A non-treating doctor or non-treating nurse who takes a test sample from a young detainee must give the sample to a youth detention officer.
- (5) The chief executive must, as soon as practicable after the chief executive receives the results of any test conducted on the test sample, give notice of the results to—
  - (a) the young detainee; and

- (b) if the young detainee is under 18 years old—a person who has daily care responsibility or long-term care responsibility for the young detainee; and
- (c) if the young detainee is 18 years old or older—a person nominated by the young detainee.

### **238 Effect of positive test sample by young detainee**

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

#### **Examples—decisions—s (2)**

- 1 decisions under s 188 (Case management plans—scope etc) or s 190 (Security classification—basis etc)
- 2 decisions under ch 8 (Criminal matters—discipline at detention places)

*Note 1* The taking of alcohol or a drug (in any way) into the body is a behaviour breach (see s 287). The results of the analysis of a substance under this Act, signed by an analyst, is evidence of the facts stated in the certificate (see s 882).

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

## **Division 6.7.3      Alcohol and drug testing—youth detention officers**

### **239      Alcohol and drug testing of youth detention officers**

- (1) A regulation may make provision in relation to alcohol and drug testing of youth detention officers whose duties bring them into contact with detainees.
- (2) In particular, a regulation may make provision in relation to any of the following:
  - (a) the circumstances for testing, including when and where tests may be conducted;
  - (b) the conduct of the tests.

## Part 6.8 Young detainees—leave

### Division 6.8.1 Local leave

#### 240 Local leave directions

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

**Example**

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

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

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

- (2) In making a decision under subsection (1), the chief executive must consider the young detainee's best interests.
- (3) A direction is subject to the following conditions:
- (a) any condition prescribed by regulation;
  - (b) any other condition, consistent with the conditions (if any) prescribed by regulation, that—
    - (i) the chief executive believes on reasonable grounds is necessary and reasonable; and
    - (ii) is stated in the direction.

**Example—condition stated in direction**

a condition that an escort officer escorts the detainee

## **241 Local leave permits**

- (1) If the chief executive gives a young detainee a local leave direction under section 240, the chief executive must give the young detainee a written permit (a *local leave permit*) to be absent from the detention place for the purpose for which the direction was given.
- (2) The chief executive may give a young detainee a written permit (also a *local leave permit*) to be absent from a detention place, and to be in another place in the ACT, for any other purpose the chief executive considers appropriate.

### **Examples—purposes**

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

*Note 1* If a form is approved under s 886 for this provision, the form must be used.

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

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

- (3) In making a decision under subsection (2), the chief executive must consider the young detainee's best interests.
- (4) A local leave permit must state the following:
  - (a) the purpose for which the leave is granted;
  - (b) for a permit to attend an educational or training program—the place where the program is being undertaken, and the period for which the leave is granted;
  - (c) for a permit to attend employment—the place of the employment, and the period for which the leave is granted;

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

## **Division 6.8.2 Interstate leave**

### **242 Interstate leave permits**

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

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



- (2) In making a decision under subsection (1), the chief executive must consider the young detainee's best interests.
- (3) An interstate leave permit must include the following details:
- (a) the State to which the permit applies;
  - (b) the purpose for which the leave is granted;
  - (c) for a permit to attend an educational or training program—the place where the program is being undertaken, and the period for which the leave is granted;
  - (d) for a permit to attend employment—the place of the employment, and the period for which the leave is granted;
  - (e) for a permit (other than a permit mentioned in paragraph (c) or (d))—the period, not longer than 7 days, for which the leave is granted.

*Note 1* If a form is approved under s 886 for this provision, the form must be used.

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

- (4) An interstate leave permit may be issued—
- (a) for a young detainee with a high security classification—only if the leave is to enable the young detainee to receive a health service or for a compassionate reason; or
  - (b) in any other case—for any purpose the chief executive believes on reasonable grounds is appropriate.
- (5) An interstate leave permit is subject to the following conditions:
- (a) any condition prescribed by regulation;
  - (b) any other condition, consistent with the conditions (if any) prescribed by regulation, that—

- (i) the chief executive believes on reasonable grounds is necessary and reasonable; and
- (ii) is stated in the permit.

**Examples—conditions stated in interstate leave permits**

- 1 a condition that an escort officer stated in the permit escort the young detainee
- 2 a condition prohibiting association with a particular person or being near a particular place

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

**243 Effect of interstate leave permit**

- (1) An interstate leave permit for a young detainee authorises the young detainee to be absent from a detention place in accordance with the permit—
  - (a) unescorted; or
  - (b) if the permit is subject to a condition that an escort officer must escort the young detainee—while under escort by the escort officer.
- (2) If an interstate leave permit is subject to a condition that the young detainee be escorted by an escort officer, the permit authorises the escort officer to escort the young detainee in accordance with the permit—
  - (a) to and within the State stated in the permit (whether or not through any other jurisdiction); and
  - (b) back to the detention place.

## **244 Powers of escort officers**

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

## **Division 6.8.3 Leave—miscellaneous**

### **245 Lawful temporary absence from detention place**

- (1) This section applies to a young detainee who is absent from a detention place under any of the following:
  - (a) a direction by the chief executive, including a direction under section 109 (Transfers to health facilities) or section 111 (Transfers to correctional centres—under 21 years old);
  - (b) a local leave permit under section 241;
  - (c) an interstate leave permit under section 242;

- (d) any other authority (however described) prescribed by regulation.
- (2) To remove any doubt, the young detainee is—
  - (a) taken to be in the chief executive’s custody; and
  - (b) if under escort by an escort officer—also taken to be in the escort officer’s custody.
- (3) However, a young detainee transferred to a correctional centre under a direction under section 111 is taken to be in the chief executive’s custody only until the young detainee is admitted to the correctional centre.

*Note* See s 111 (6).

## Chapter 7 Criminal matters—search and seizure at detention places

### Part 7.1 Preliminary—ch 7

#### 246 Definitions—ch 7

In this chapter:

**body search**, of a young detainee, means a search of the young detainee's body, including an examination of an orifice or cavity of the young detainee's body.

**frisk search**, of a young detainee, means—

- (a) a search of the young detainee conducted by quickly running the hands over the young detainee's outer clothing; and
- (b) an examination of anything worn or carried by the young detainee that is conveniently and voluntarily removed by the young detainee.

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

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

**ordinary search**, of a young detainee, means a search of the young detainee or of anything in the young detainee's possession, and may include—

- (a) requiring the young detainee to remove only the young detainee's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves, or headwear; and
- (b) an examination of anything removed.

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

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

**prohibited thing** means a thing declared to be a prohibited thing under section 148.

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

**Examples—scanning searches**

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

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

**strip search**, of a young detainee, means a search of the young detainee, or of anything in the young detainee's possession, under section 254 (Strip searches on admission to detention place) or section 258 (Strip searches directed by chief executive) and may include—

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

**247 Relationship with other laws**

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

## Part 7.2 Searches generally

### 248 Searches—intrusiveness

A person conducting a search of a young detainee under this chapter must ensure, as far as practicable, that the search—

- (a) is the least intrusive kind of search that is necessary and reasonable in the circumstances; and
- (b) is conducted in the least intrusive way that is necessary and reasonable in the circumstances.

**Example**

searching for a prohibited thing by a scanning search rather than a frisk search

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

### 249 Searches—use of search dog

- (1) The chief executive may direct a youth detention officer to use a search dog to assist a youth detention officer in conducting a search under this chapter.
- (2) The chief executive may give the direction only if the chief executive believes on reasonable grounds that the assistance of the dog would minimise the intrusiveness of the search by the youth detention officer.
- (3) The youth detention officer and search dog may enter, and remain at any place, to assist in the conduct of a search under this chapter.



- (4) An operating procedure may make provision in relation to the use of search dogs under this chapter.

**Examples—provision made by operating procedure**

- 1 the training and approval of search dogs for use by youth detention officers
- 2 approvals for youth detention officers to use search dogs

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

## 250 Searches—transgender and intersex young detainees

- (1) This section applies if a transgender or intersex young detainee is to be searched under this chapter.
- (2) For a young detainee who fails to make a choice under section 189 (2) (a) (Transgender and intersex young detainees—sexual identity)—
  - (a) if the young detainee requires that a male conduct the search, the young detainee is taken, for this chapter, to be male; and
  - (b) if the young detainee requires that a female conduct the search, the young detainee is taken, for this chapter, to be female.

*Note 1* For the criminal matters chapters, the sex of a young detainee is taken to be the young detainee's sex entered in the register under s 189 (7) (Transgender and intersex young detainees—sexual identity).

*Note 2* For the meaning of *transgender person* and *intersex person*, see the Legislation Act, s 169A and s 169B.

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

- (1) If a strip search or body search is to be conducted on a young detainee who is younger than 18 years old, the chief executive must ensure, as far as practicable, that a person who has daily care responsibility, or long-term care responsibility for the young detainee (other than the chief executive) is told about the search—
- (a) before the search is conducted; or
  - (b) if it is impracticable to tell the person before the search—as soon as practicable after the search.

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

*Note 2* A proposed strip or body search need not be conducted in the presence of the person notified (see s 254, s 256 and s 266).

- (2) If a strip search or body search is to be conducted on a young detainee who is 18 years old or older, the chief executive must ensure, as far as practicable, that the young detainee's nominated person is told about the search—
- (a) before the search is conducted; or
  - (b) if it is impracticable to tell the person before the search—as soon as practicable after the search.

## Part 7.3 Scanning, frisk and ordinary searches

### 252 Directions for scanning, frisk and ordinary searches

- (1) The chief executive may, at any time, direct a youth detention officer to conduct a scanning search, frisk search or ordinary search of a young detainee if the chief executive believes on reasonable grounds that the search is prudent to ensure security or good order at a detention place.
- (2) Also, a youth detention officer may conduct a scanning search, frisk search or ordinary search of a young detainee if the officer suspects on reasonable grounds that the young detainee is carrying—
  - (a) a prohibited thing; or
  - (b) something that may be used by the young detainee in a way that may involve—
    - (i) an offence; or
    - (ii) a risk to the personal safety of the young detainee or someone else; or
    - (iii) a risk to security or good order at a detention place.

### 253 Requirements for scanning, frisk and ordinary searches

- (1) The youth detention officer who conducts a scanning search, frisk search or ordinary search of a young detainee must—
  - (a) tell the young detainee about the search and the reasons for the search and ask for the young detainee's cooperation; and
  - (b) for a frisk search or ordinary search—conduct the search in a private area or an area that provides reasonable privacy for the young detainee; and

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

## Part 7.4 Strip searches—young detainees

### 254 Strip searches on admission to detention place

- (1) The chief executive may direct a youth detention officer to strip search a young detainee if the chief executive believes on reasonable grounds that the strip search is necessary for an initial assessment under section 160 (Initial assessment).
- (2) The strip search must be conducted in the presence of a person with daily care responsibility, or long-term care responsibility, for the young detainee if—
  - (a) the young detainee is under 18 years old; and
  - (b) the chief executive believes on reasonable grounds that it is necessary, and in the best interests of the young detainee, for the person to be present; and
  - (c) the young detainee agrees to the person being present.
- (3) The chief executive may arrange for the search to be conducted in the presence of a support person for the young detainee if—
  - (a) the young detainee is 18 years old or older; and
  - (b) the chief executive considers the presence of a support person necessary or desirable because of the young detainee's vulnerability; and
  - (c) the young detainee agrees to the person being present.
- (4) In making a decision under subsection (1) or (2), the chief executive must have regard to the young detainee's age, maturity, developmental capacity and any known history.

**255 Strip searches of young detainees under 18 years old—  
no-one with parental responsibility available**

- (1) This section applies to a strip search to which section 254 (2) applies if—
- (a) a person who has daily care responsibility, or long-term care responsibility, for the young detainee cannot be contacted before the search is conducted; or
- Note* For a requirement to contact a person with parental responsibility, see s 251.
- (b) no-one who has daily care responsibility, or long-term care responsibility, for the young detainee is available to be present at the search; or
  - (c) the young detainee does not agree to a person who has daily care responsibility, or long-term care responsibility, for the young detainee being present at the search.
- (2) The chief executive must ensure that the strip search is conducted in the presence of someone (a **support person**) who—
- (a) the chief executive believes on reasonable grounds can support and represent the interests of the young detainee; and
  - (b) the young detainee agrees should be present at the search.
- Note* In some circumstances the chief executive is a person who has daily care responsibility, or long-term care responsibility, for a young detainee (see div 1.3.2).
- (3) However, the strip search may continue in the absence of a support person if—
- (a) the young detainee does not agree to a support person being present; or
  - (b) the chief executive directs the support person to leave under section 256 (2).

**256 Strip searches on admission—directing person to leave**

- (1) This section applies if a strip search of a young detainee under section 254 (Strip searches on admission to detention place) is being conducted in the presence of—
  - (a) a person who has daily care responsibility, or long-term care responsibility, for the young detainee; or
  - (b) a support person under section 254 (3) or section 255 (2).
- (2) The chief executive may direct the person to leave if the chief executive believes on reasonable grounds that the person is preventing or hindering the conduct of the search.

**257 Removing people from search area**

- (1) The chief executive may direct a youth detention officer to enforce a direction under section 256 (2) if the person given the direction contravenes the direction.
- (2) The youth detention officer may use force that is necessary and reasonable to enforce the direction.

**258 Strip searches directed by chief executive**

- (1) The chief executive may direct a youth detention officer to strip search a young detainee only if—
  - (a) the chief executive suspects on reasonable grounds that the young detainee has something concealed on the young detainee that—
    - (i) is a prohibited thing; or
    - (ii) may be used by the young detainee in a way that may involve an offence, a behaviour breach, a risk to the personal safety of the young detainee or someone else, or a risk to the security or good order at a detention place; and

- (b) a scanning search, frisk search or ordinary search of the young detainee has failed to detect the thing.
- (2) To remove any doubt, the strip search need not be conducted in the presence of a person who has daily care responsibility, or long-term care responsibility, for the young detainee.
- (3) This section does not apply to a strip search under section 254 (Strip searches on admission to detention place).

**259 Obligations on youth detention officers before strip searches**

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

**260 Youth detention officers at strip searches**

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



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

## **261 Strip searches—general rules**

- (1) The youth detention officer conducting a strip search of a young detainee must conduct the strip search—
  - (a) in a way that—
    - (i) provides reasonable privacy for the young detainee; and
    - (ii) is appropriate, having regard as far as practicable, to the young detainee’s sexuality and any known impairment, condition or history; and
  - (b) as quickly as practicable.
- (2) The strip search must be conducted in a private area or an area that provides reasonable privacy for the young detainee.
- (3) The strip search must not be conducted—
  - (a) in the presence of someone of the opposite sex to the young detainee, other than—

- (i) a person present under section 254 (2) or (3) (Strip searches on admission to detention place) or section 255 (Strip searches of young detainees under 18 years old—no-one with parental responsibility available); or
    - (ii) another youth detention officer present under section 260 (4); or
  - (b) in the presence or sight of someone else whose presence is not necessary for the search or for the safety of anyone present.
- (4) Subject to part 7.8 (Searches—use of force), the strip search must not involve any touching of the young detainee’s body by a youth detention officer.

**262 Strip searches—rules about visual inspection of young detainee’s body**

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

**263 Strip searches—rules about young detainees' clothing**

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

## **Part 7.5                      Body searches—young detainees**

### **264                      Body searches directed by chief executive**

- (1) The chief executive may direct a non-treating doctor to conduct a body search of a young detainee if the chief executive suspects on reasonable grounds that the young detainee—
  - (a) has ingested or inserted something in the young detainee’s body that may jeopardise the young detainee’s health or wellbeing; or
  - (b) has a prohibited thing concealed within the young detainee’s body that may be used in a way that may pose a substantial risk to security or good order at a detention place.
- (2) In making a decision under subsection (1), the chief executive must have regard to the young detainee’s age, maturity, developmental capacity and any known history.

### **265                      Obligations of chief executive before body searches**

- (1) This section applies if the chief executive proposes to direct a body search of a young detainee under section 264.
- (2) The chief executive must tell the young detainee—
  - (a) whether the young detainee will be required to remove clothing during the search; and
  - (b) if the young detainee will be required to remove clothing, why the removal is necessary.
- (3) If the young detainee asks why the search is to be conducted in a particular way, the chief executive must tell the young detainee the reasons.

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

## **266 People present at body searches**

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

*Note* If the doctor is not the same sex as the young detainee, the doctor cannot touch the young detainee or examine the young detainee's body orifices (see s 272).

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

- (6) If the young detainee is under 18 years old, the search must be conducted in the presence of a person who has daily care responsibility, or long-term care responsibility, for the young detainee if—
  - (a) the chief executive believes that it is necessary, and in the best interests of the young detainee, for the person to be present; and
  - (b) the young detainee agrees to the person being present.
- (7) In making a decision under subsection (6), the chief executive must have regard to the young detainee's age, maturity, developmental capacity and any known history.
- (8) If the young detainee is 18 years old or older, the chief executive may arrange for the search to be conducted in the presence of a support person for the young detainee if—
  - (a) the chief executive considers the presence of a support person necessary or desirable because of the young detainee's vulnerability; and
  - (b) the young detainee agrees to the person being present.

**267 Body searches of young detainees under 18 years old—  
no-one with parental responsibility available**

- (1) This section applies in relation to a body search of a young detainee who is under 18 years old if—
  - (a) a person who has daily care responsibility, or long-term care responsibility, for the young detainee cannot be contacted before the search is conducted; or

*Note* For a requirement to contact a person with parental responsibility, see s 251.

  - (b) no-one who has daily care responsibility, or long-term care responsibility, for the young detainee is available to be present at the search; or

- (c) the young detainee does not agree to a person who has daily care responsibility, or long-term care responsibility, for the young detainee being present at the search.
- (2) The chief executive must ensure that the body search is conducted in the presence of someone (a *support person*) who—
- (a) the chief executive believes on reasonable grounds can support and represent the interests of the young detainee; and
  - (b) the young detainee agrees should be present at the search.
- Note* In some circumstances the chief executive is a person who has daily care responsibility, or long-term care responsibility, for a young detainee (see div 1.3.2).
- (3) However, the body search may continue in the absence of a support person if—
- (a) the young detainee does not agree to a support person being present; or
  - (b) the chief executive directs the support person to leave under section 268 (2).

## **268 Body searches—directing people to leave**

- (1) This section applies if a body search of a young detainee is being conducted in the presence of—
- (a) a person who has daily care responsibility, or long-term care responsibility, for the young detainee; or
  - (b) a support person under section 266 (8) or section 267.
- (2) The chief executive may direct the person to leave if the chief executive believes on reasonable grounds that the person is preventing or hindering the conduct of the search.

**269 Removing people from search area**

- (1) The chief executive may direct a youth detention officer to enforce a direction under section 268 (2) if the person given the direction contravenes the direction.
- (2) The youth detention officer may use force that is necessary and reasonable to enforce the direction.

**270 Help for body searches**

- (1) This section applies if the non-treating doctor conducting a body search of a young detainee asks the chief executive for assistance that the doctor believes on reasonable grounds is necessary and reasonable for the search.
- (2) The chief executive may direct a youth detention officer, or authorise someone else present at the search (the *assistant*), to assist in the conduct of the search.
- (3) The assistant must be the same sex as the young detainee.
- (4) However, subsection (3) does not apply if the chief executive believes on reasonable grounds that—
  - (a) there is an imminent and serious threat to the personal safety of the young detainee; and
  - (b) compliance with subsection (3) would exacerbate the threat.

**271 Body searches—rules about young detainees' clothing**

- (1) A body search of a young detainee must not involve—
  - (a) the removal from the young detainee of more clothes than is necessary and reasonable for the search; or
  - (b) the removal from the young detainee of more clothes at any time than is necessary and reasonable for the search; or



- (c) without limiting paragraph (b), both the upper and lower parts of the young detainee's body being uncovered at the same time.
- (2) A young detainee who has been body-searched must be allowed to dress in private as soon as the search is finished.
- (3) If clothing from a young detainee is seized during a body search, the chief executive must ensure that the young detainee is left with, or given, appropriate clothing to wear.

**272 Body searches—rules about touching young detainees**

For the body search of a young detainee, the non-treating doctor or non-treating nurse may touch the young detainee and examine the young detainee's orifices, but only if the doctor or nurse is of the same sex as the young detainee.

**273 Seizing things discovered during body searches**

- (1) A non-treating doctor conducting a body search of a young detainee may seize anything mentioned in section 264 (Body searches directed by chief executive) that is discovered during the search if seizing the thing would not be likely to cause injury to the young detainee or someone else.
- (2) The doctor must give the thing seized to a youth detention officer as soon as practicable.

## **Part 7.6                      Searching people other than detainees**

### **274                      Searches of people other than detainees**

- (1) The chief executive may direct a youth detention officer to conduct a scanning search, frisk search or ordinary search of a person at a detention place who is not a young detainee if the chief executive—
  - (a) believes on reasonable grounds that the search is prudent to ensure—
    - (i) the safety of anyone; or
    - (ii) security or good order at the place; or
  - (b) suspects on reasonable grounds that the person is carrying—
    - (i) a prohibited thing; or
    - (ii) anything else that creates, or is likely to create, a risk to—
      - (A) the personal safety of anyone else; or
      - (B) security or good order at the place.
- (2) The youth detention officer who conducts a frisk search or ordinary search of a person mentioned in subsection (1) must—
  - (a) tell the person about the search and the reasons for the search and ask for the person's cooperation; and
  - (b) conduct the search in a private area or an area that provides reasonable privacy for the person.

- (3) The youth detention officer may conduct a frisk search of the person only if—
  - (a) the person is of the same sex as the officer; or
  - (b) if that is not the case—another person of the same sex as the person to be searched is present while the search is being conducted.
- (4) The other person mentioned in subsection (3) (b) must not be a young detainee.
- (5) Part 7.8 (Searches—use of force) does not apply to a search under this section.

## Part 7.7                      Searches of premises and property

### 275                      Searches—premises and property generally

- (1) The chief executive may, at any time, direct a youth detention officer to search—
  - (a) any part of a detention place; or
  - (b) anything at a detention place, including anything in the custody or possession of anyone at a detention place; or
  - (c) any vehicle used for transporting a young detainee.

#### **Examples—searches**

a search of any of the following for a prohibited thing:

- (a) any area or building or part of a building (including a cell) at a detention place;
- (b) any storage area, including an area used by young detainees or authorised people, at a detention place;
- (c) any vehicle, machinery or equipment at a detention place

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

- (2) However, this section does not authorise a search of—
  - (a) anyone at a detention place; or
  - (b) any clothing being worn at the time of the search by someone at a detention place.
- (3) In this section:  
*search* includes search—
  - (a) with a device using electronic or other technology; and
  - (b) by physical means; and

- (c) with the assistance of a search dog.

**276 Searches of young detainee cells—privileged material**

- (1) This section applies if a young detainee has privileged material at a detention place.
- (2) A youth detention officer may search the young detainee's cell under section 275 in the absence of the young detainee if—
  - (a) the young detainee removes the privileged material from the cell; or
  - (b) the privileged material is stored in accordance with arrangements under subsection (3).
- (3) The chief executive may make arrangements for the secure storage at a detention place of privileged material for young detainees.

**277 Searches of young detainee cells—suspected privileged material**

- (1) If a youth detention officer suspects on reasonable grounds that a young detainee's cell contains privileged material, the youth detention officer may search the cell only if the young detainee is present.
- (2) A search under subsection (1) may include an examination of any privileged material, and anything containing the material, found in the cell.
- (3) However, the youth detention officer must not read any privileged material found in the cell.
- (4) The youth detention officer need not comply with subsection (1) or (3) if the youth detention officer believes on reasonable grounds that urgent circumstances exist and that compliance with the subsection would create a risk of injury to the youth detention officer, the young detainee or someone else.

## **Part 7.8                      Searches—use of force**

### **278                      Searches—use of force**

- (1) A youth detention officer may use force that is necessary and reasonable—
  - (a) to conduct a search under this chapter; or
  - (b) to assist at a body search under section 270 (Help for body searches); or
  - (c) to prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.
- (2) However, the youth detention officer may use force only in accordance with division 6.6.4 (Use of force).

## Part 7.9                      Seizing property

### 279                      Meaning of *owner*—pt 7.9

In this part:

*owner*, of a thing, includes a person entitled to possession of the thing.

### 280                      Seizing mail etc

- (1) The chief executive may seize anything in a young detainee's protected mail if the chief executive believes on reasonable grounds that the thing—
  - (a) may physically harm the addressee or anyone else; or
  - (b) is a prohibited thing.
- (2) The chief executive may seize other mail of a young detainee, or anything in the mail, if the chief executive suspects on reasonable grounds that the seizure is necessary—
  - (a) to stop any of the following entering or leaving a detention place:
    - (i) a prohibited thing;
    - (ii) anything that may be used by the young detainee in a way that may involve an offence, a behaviour breach, a risk to the personal safety of someone else or a risk to security or good order at a detention place; or
  - (b) to stop correspondence that is threatening, or not in the best interests of the young detainee, from entering or leaving a detention place; or

- (c) to stop a young detainee obtaining or buying goods without the chief executive's approval.

**Example—correspondence not in best interests of young detainee—  
par (b)**

mail addressed to a young person by someone convicted of a sexual offence against a child

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

- (3) The chief executive may seize a document under this section only if the chief executive believes on reasonable grounds that the document is not privileged.
- (4) If the chief executive believes on reasonable grounds that a document seized under subsection (3) is privileged, the chief executive must return the document to the detainee immediately.
- (5) In this section:

**mail** means postal mail.

**protected mail** means mail between a young detainee and any of the following:

- (a) a lawyer representing the young detainee;
- (b) an official visitor;
- (c) the director of public prosecutions;
- (d) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
- (e) the privacy commissioner;
- (f) the public advocate;
- (g) the ombudsman;
- (h) a person prescribed by regulation.



**281 Seizing property—general**

- (1) The chief executive may seize—
  - (a) a prohibited thing found on a person or in a person’s custody or possession, unless the person has the written approval of the chief executive to possess the thing; or
  - (b) anything found at a detention place, whether or not in a person’s custody or possession, that the chief executive suspects on reasonable grounds—
    - (i) is being used, or is intended, for the commission of an offence or a behaviour breach; or
    - (ii) jeopardises, or is likely to jeopardise, security or good order at a detention place or the safety of anyone at a detention place or elsewhere.
- (2) To remove any doubt, this section extends to anything found in a search under this chapter.
- (3) The chief executive may seize a document under this section only if the chief executive believes on reasonable grounds that the document is not privileged.

**282 Notice of seizure**

- (1) The chief executive must prepare written notice of a seizure under section 280 or section 281.
- (2) Not later than 7 days after the day of the seizure, the chief executive must give written notice of the seizure to—
  - (a) the owner of the thing seized; or
  - (b) if the owner cannot be identified after reasonable inquiries (given the thing’s apparent value)—the person from whom the thing was seized.
- (3) The notice must—

- (a) identify the thing seized; and
- (b) outline the grounds for the seizure; and
- (c) include a statement about the effect of section 283; and
- (d) include anything else prescribed by regulation.

### **283 Forfeiture of things seized**

- (1) A thing seized under section 280 (Seizing mail etc) or section 281 (Seizing property—general) is forfeited to the Territory if the chief executive decides on reasonable grounds—
  - (a) that—
    - (i) after making reasonable inquiries (given the thing's apparent value), the owner of the thing cannot be found; or
    - (ii) after making reasonable efforts (given the thing's apparent value), the thing cannot be returned to the owner; or
  - (b) that—
    - (i) the thing is a prohibited thing; or
    - (ii) possession of the thing by a young detainee is an offence or a behaviour breach; or
    - (iii) it is necessary to keep the thing to stop it being used for the commission of an offence or a behaviour breach; or
    - (iv) the thing is inherently unsafe; or
    - (v) the thing may be used by the person in a way that may involve a risk to the personal safety of someone else or a risk to security or good order at a detention place.

- (2) The chief executive may deal with a thing forfeited to the Territory under this section, or dispose of it, as the chief executive considers appropriate.

**Examples**

- 1 giving a forfeited weapon to a youth detention officer
- 2 dumping a forfeited thing of little value

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

- (3) However, subsection (2) is subject to any order under the *Crimes Act 1900*, section 249 (Seizure of forfeited articles).

*Note 1* The *Crimes Act 1900* also provides for articles forfeited under any law in force in the Territory to be seized by a member of the police force, taken before the Magistrates Court and for the court to order disposal of the article by the public trustee (see s 249 and s 250).

*Note 2* The *Uncollected Goods Act 1996* provides generally for the disposal of uncollected goods, including goods abandoned on premises controlled by the Territory.

## **284 Return of things seized but not forfeited**

- (1) If a thing seized under section 280 (Seizing mail etc) or section 281 (Seizing property—general) is not forfeited, the chief executive must return it to its owner—
- (a) at the end of the 6 months after the day it was seized; or
  - (b) if a proceeding for an offence or a behaviour breach involving the thing is started within the 6 months—at the end of the proceeding and any appeal from, or review of, the proceeding.
- (2) However, if the thing was being kept as evidence of an offence or a behaviour breach and the chief executive believes on reasonable grounds that its retention as evidence is no longer necessary, the chief executive must return it immediately.

## Chapter 8 Criminal matters—discipline at detention places

### Part 8.1 Discipline at detention places—general

#### 285 Application—ch 8

This chapter applies in relation to a behaviour breach committed, or allegedly committed, by a young detainee.

#### 286 Definitions—ch 8

In this chapter:

*accused detainee* means a young detainee charged with a behaviour breach.

*administrator* means an authorised person to whom the chief executive has delegated functions of an administrator under this chapter.

*allegation report*—see section 293.

*behaviour breach*—see section 287.

*behaviour management consequence*—

- (a) for part 8.3 (Dealing with minor behaviour breaches)—see section 298; and
- (b) for part 8.4 (Disciplinary action—behaviour breach charged)—see section 318.

***behaviour management framework*** means the behaviour management framework established under section 297.

***charge*** means a charge under section 296.

***charge notice***—see section 296.

***disciplinary action***—see section 317.

***hearing***, for a review, means a hearing under part 9.3.

***minor behaviour breach***—see section 288.

***privilege***, in relation to a young detainee—see section 289.

***reporting and investigation procedure***, for part 8.2 (Responding to behaviour breaches), means a reporting and investigation procedure under section 294.

***review*** means a review under—

- (a) division 8.4.2 (Internal review); or
- (b) division 8.4.3 (External review of internal review decisions).

***support person***—a person can be a ***support person*** for a young detainee if—

- (a) the young detainee chooses the person to assist the young detainee or represent the young detainee's interests; and
- (b) the chief executive considers—
  - (i) the person is capable of assisting the young detainee or representing the young detainee's interests; and
  - (ii) it is in the young detainee's best interests for the person to be the young detainee's support person.

**Examples—support people**

- 1 the public advocate
- 2 a person with parental responsibility for the accused detainee

3 a close friend of the accused detainee who is capable of applying for the review

4 a lawyer

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

## 287 Meaning of *behaviour breach*

(1) Each of the following is a *behaviour breach*:

(a) contravening a direction by the chief executive under this Act;

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(b) being in a prohibited area without the chief executive's approval;

*Note* An area may be prohibited under s 147.

(c) smoking;

(d) taking (in any way) alcohol, a prohibited substance or an unauthorised medicine into the young detainee's body;

(e) providing a positive test sample for alcohol or a drug when directed, under this Act, to provide a test sample;

(f) making, possessing, concealing, knowingly consuming or dealing with a prohibited thing, without the chief executive's approval;

(g) gambling;

(h) being disrespectful or abusive towards a youth detention officer in a way that undermines the officer's authority;

(i) being disrespectful or abusive towards another person;

- (j) intentionally or recklessly engaging in conduct that endangers, or may endanger, the health or safety of the young detainee or anyone else;
- (k) fighting;
- (l) assaulting someone else;
- (m) theft;
- (n) possessing stolen property;
- (o) possessing or dealing in things without the chief executive's approval;
- (p) intentionally or recklessly damaging or destroying property belonging to someone else;
- (q) interfering with property belonging to someone else, without approval by the owner of the property;
- (r) creating or participating in a disturbance, or other activity, likely to endanger security or good order at a detention place;
- (s) contravening a condition of a leave permit under section 241 or an interstate leave permit under section 242;
- (t) doing anything for the purpose of escaping, or assisting a young detainee to escape, from detention;
- (u) offering, giving or taking a bribe;
- (v) planning, conspiring or attempting, or assisting anyone else planning, conspiring or attempting, to commit a behaviour breach;
- (w) threatening to do anything mentioned in paragraphs (j), (k), (l), (p) or (r);

- (x) anything else prescribed by regulation.

**Example—chief executive direction—par (a)**

contravening a direction by the chief executive to submit to a search under this Act

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

- (2) In this section:

**medicine**—see the *Medicines, Poisons and Therapeutic Goods Act 2007*, section 11.

**prohibited substance**—see the *Medicines, Poisons and Therapeutic Goods Act 2007*, section 13.

**unauthorised medicine**—a medicine is an **unauthorised medicine** for a young detainee if—

- (a) the medicine is not prescribed for the young detainee; or  
(b) the chief executive has not approved the use of the medicine by the young detainee under section 187.

**288 Meaning of *minor behaviour breach***

A **minor behaviour breach** is a behaviour breach that—

- (a) is not of a serious or persistent nature; and  
(b) does not involve a serious risk to the health or safety of someone else at a detention place; and  
(c) does not involve a serious risk, or serious or persistent disruption, to the security or good order at a detention place.



**289**      **Meaning of *privilege***

A *privilege*, in relation to a young detainee—

- (a) is any amenity, facility or opportunity the young detainee may have the benefit of in detention; but
- (b) does not include anything that is, for this chapter, an entitlement for the young detainee.

**Examples—privileges**

- 1 using phones, email or the internet other than for entitled usage
- 2 buying non-essential goods from money in a young detainee's trust account
- 3 using a radio, television, compact disc, MP3 player or DVD player or other electronic equipment for recreational purposes
- 4 pursuing hobbies and crafts
- 5 keeping personal property in a cell
- 6 accessing leave

**Examples—entitlements**

- 1 an entitlement to health care under s 109
- 2 things expressed in pt 6.5 (Living conditions at detention places) to be entitlements for young detainees

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

**290**      **Overlapping behaviour breaches and criminal offences**

- (1) This section applies if a young detainee engages, or is alleged to have engaged, in conduct that is both—
  - (a) a behaviour breach; and
  - (b) an offence (a *criminal offence*) against this Act or another territory law.

- (2) The young detainee must not be prosecuted for the criminal offence if a behaviour management consequence has been imposed on the young detainee under part 8.3 or part 8.4 because of the behaviour breach.
- (3) The young detainee must not be charged with the behaviour breach under section 296, or the charge must not be continued with under this chapter, if a prosecution for the criminal offence has been started in a court.
- (4) Disciplinary action for the behaviour breach must not be taken against the young detainee if a court has convicted the young detainee, or the young detainee has been found guilty, of the criminal offence.

*Note* For the kinds of disciplinary action that may be taken, see s 317.

## Part 8.2 Responding to behaviour breaches

### 291 Who is an *investigator*?

In this part:

*investigator* means—

- (a) an authorised person to whom the chief executive has delegated functions of an investigator under this part; or
- (b) a person appointed to be an investigator under section 292.

*Note* A person is an authorised person for this Act if the chief executive delegates a power under the Act to the person.

### 292 Appointment of investigators

The chief executive may appoint a person to be an investigator for this part.

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

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

### 293 Report etc by youth detention officer

- (1) This section applies if a youth detention officer believes on reasonable grounds that a young detainee has committed a behaviour breach.

- (2) The youth detention officer may do 1 or more of the following if the person believes on reasonable grounds that it is appropriate in the circumstances:
  - (a) counsel the young detainee;
  - (b) warn the young detainee about committing a behaviour breach;
  - (c) reprimand the young detainee;
  - (d) make a report (an *allegation report*) about the alleged behaviour breach.
- (3) An allegation report must be made in accordance with the reporting and investigation procedures.

## **294 Reporting and investigation procedures**

- (1) The chief executive must make reporting and investigation procedures, consistent with this Act, about the making, recording and investigation of allegation reports.
- (2) Each reporting and investigation procedure is a notifiable instrument.

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

*Note 2* The amendment or repeal of a reporting and investigation procedure is also a notifiable instrument. See the Legislation Act, s 46 (Power to make instrument includes power to amend or repeal).

- (3) Without limiting subsection (1), the reporting and investigation procedures must—
  - (a) require allegation reports to be made in writing and given to an administrator; and
  - (b) require the administrator to whom an allegation report is given, and any investigator who investigates the alleged behaviour breach, to be a different person to the youth detention officer who makes the allegation report; and

- (c) require a young detainee to be told about an alleged behaviour breach in language and a way he or she can understand; and
- (d) allow a young detainee to contact 1 or 2 support people for assistance in responding to an alleged behaviour breach; and
- (e) require a young detainee to be told that he or she has the right to contact 1 or 2 support people for assistance in responding to an alleged behaviour breach.

**295 Action by administrator**

- (1) This section applies if an administrator is given an allegation report about an alleged behaviour breach by a young detainee.
- (2) The administrator—
  - (a) must consider the allegation report; and
  - (b) may arrange for an investigator to investigate the alleged behaviour breach in accordance with the reporting and investigation procedures if the administrator believes on reasonable grounds that it is appropriate in the circumstances.
- (3) After considering the allegation report and the report of any investigation under subsection (2) (b), the administrator may take any further action the administrator believes on reasonable grounds is appropriate in the circumstances.
- (4) Without limiting subsection (3), the administrator may do 1 or more of the following if the administrator believes on reasonable grounds that it is reasonable and proportionate in the circumstances:
  - (a) take no further action in relation to the report;
  - (b) counsel the young detainee;
  - (c) warn the young detainee about committing a behaviour breach;
  - (d) reprimand the young detainee;

- (e) for a minor behaviour breach—deal with the young detainee in accordance with part 8.3;
  - (f) charge the young detainee under section 296;
  - (g) refer the alleged behaviour breach to—
    - (i) the chief police officer; or
    - (ii) the director of public prosecutions.
- (5) Before deciding what action (if any) to take in relation to a minor behaviour breach, the administrator must review any previous minor behaviour breaches and behaviour management consequences imposed on the young detainee.
- (6) A referral under subsection (4) (g) must be in writing and accompanied by the allegation report and any reports the administrator has of investigations already made about the alleged behaviour breach.

## **296 Disciplinary charge**

To charge a young detainee with a behaviour breach, an administrator must give the young detainee written notice (a *charge notice*) of the charge, including details of the following:

- (a) the behaviour breach charged;
- (b) a brief statement of the conduct to which the charge applies and when, or the period during which, it happened;
- (c) the election available under section 301 to accept the disciplinary action proposed by the administrator;
- (d) the disciplinary action the administrator believes on reasonable grounds would be appropriate if the charge were dealt with by the administrator under section 302 (Disciplinary action by administrator);

- (e) that application may be made under section 305 for review of the charge.

*Note* If a form is approved under s 886 for a charge, the form must be used.

## Part 8.3 Dealing with minor behaviour breaches

### 297 Behaviour management framework

- (1) The chief executive must establish a behaviour management framework for dealing with minor behaviour breaches.
- (2) The behaviour management framework is a notifiable instrument.  
*Note* A notifiable instrument must be notified under the Legislation Act.
- (3) Without limiting subsection (1), the behaviour management framework must provide for the following:
  - (a) any behaviour management consequences imposed on a young detainee to be a reasonable and proportionate response to the minor behaviour breach;
  - (b) how privileges can be withdrawn for minor behaviour breaches;
  - (c) review by the chief executive (including on request by a young detainee) of decisions to impose behaviour management consequences for minor behaviour breaches.

### 298 Behaviour management framework—behaviour management consequences

- (1) Each of the following is a *behaviour management consequence* that may be imposed under the behaviour management framework:
  - (a) a fine, not exceeding \$25;
  - (b) a withdrawal of privileges, for not longer than 6 days;
  - (c) a requirement to make an apology to a person affected by the behaviour breach;



- (d) a requirement to perform extra chores, for not longer than 2 hours;
  - (e) anything prescribed by regulation to be a behaviour management consequence for the behaviour management framework and that is reasonable and proportionate to minor behaviour breaches.
- (2) In deciding whether to impose a behaviour management consequence under the behaviour management framework, the administrator must consider the age, developmental capacity, rehabilitation needs and any known history of the young detainee.
- (3) The administrator may impose a behaviour management consequence if satisfied that the consequence to be imposed is—
- (a) reasonable in the circumstances; and
  - (b) proportionate to the circumstances and gravity of the behaviour breach.

### **299 Behaviour management framework—limits**

- (1) This section applies if a young detainee has been dealt with under the behaviour management framework and behaviour management consequences totalling any of the following have been imposed on the young detainee under the framework:
- (a) for fines—\$125;
  - (b) for withdrawals of privileges—30 days;
  - (c) for requirements to perform extra chores—10 hours.
- (2) The young detainee must not be dealt with under the behaviour management framework for any subsequent minor behaviour breach.
- (3) However, an administrator may take other action mentioned in section 295 (other than section 295 (4) (e)) for any subsequent minor behaviour breaches.

## **Part 8.4 Disciplinary action—behaviour breach charge**

### **Division 8.4.1 Disciplinary action by administrator**

#### **300 Right to contact support person—disciplinary action by administrator**

- (1) This section applies if a charge notice has been given to an accused detainee under section 296.
- (2) The accused detainee has a right to contact 1 or 2 support people to assist the detainee with having the disciplinary charge dealt with under this division.
- (3) The chief executive must ensure that the accused detainee has access to facilities to contact a support person as soon as practicable.

#### **301 Behaviour breach admitted by accused detainee**

- (1) An accused detainee may elect to have a disciplinary charge against the accused detainee dealt with under this division by giving the administrator a written notice in which the accused detainee—
  - (a) admits the behaviour breach charged; and
  - (b) accepts the proposed disciplinary action stated in the charge notice.

##### **Example—election**

a signed admission and acceptance on the charge notice

*Note 1* If a form is approved under s 886 for an election under this section, the form must be used.

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

- (2) The election must be given to the administrator—
  - (a) not later 48 hours after the administrator gives the accused detainee the charge notice; or
  - (b) within any extended period allowed under subsection (3).
- (3) On written application by the accused detainee, the administrator may extend the period within which the election must be made if the administrator believes on reasonable grounds that it is appropriate to extend the period.
- (4) The administrator must give the accused detainee written notice of a decision under subsection (3).

### **302 Disciplinary action by administrator**

- (1) This section applies if—
  - (a) a charge notice has been given to an accused detainee; and
  - (b) the accused detainee—
    - (i) makes an election under section 301; or
    - (ii) does not make an election under section 301, or apply for review of the charge, within the period allowed.
- (2) The administrator may, without further investigation or inquiry, take the disciplinary action stated in the charge notice if the administrator believes on reasonable grounds that the accused detainee understands the proposed action.
- (3) If the administrator decides to take the disciplinary action, the administrator must give the accused detainee written notice of the decision.
- (4) The disciplinary action must be taken in accordance with division 8.4.4 (Disciplinary action generally).

## **Division 8.4.2 Internal review**

### **303 Meaning of *review officer*—div 8.4.2**

In this division:

*review officer* means an authorised person to whom the chief executive has delegated functions of a review officer under this division.

### **304 Right to contact support person—internal review**

- (1) This section applies if a charge notice has been given to an accused detainee under section 296.
- (2) The accused detainee has a right to contact 1 or 2 support people to assist the detainee to apply for review of the charge under this division.
- (3) The chief executive must ensure that the accused detainee has access to facilities—
  - (a) to contact a support person as soon as practicable; and
  - (b) to consult with the support person.

### **305 Application for internal review**

- (1) An accused detainee may apply for review of the charge under this division.
- (2) The application must be given to the administrator—
  - (a) not later than the day after the day the administrator gives the accused detainee the charge notice under section 296; or
  - (b) within any extended period allowed under subsection (3).

- (3) On written application by the accused detainee, the administrator may extend the period for making the application if the administrator believes on reasonable grounds that it is appropriate to extend the period.

*Note* The administrator may extend the period for making the application after the period given in the notice has expired (see Legislation Act, s 151C).

- (4) The administrator must give the accused detainee written notice of a decision under subsection (3) to extend the period.

### **306 Internal review of charge**

- (1) If an application for review is given to the administrator under section 305, the administrator must arrange for a review officer to conduct a review into the behaviour breach charged in the charge notice.
- (2) An authorised person must not exercise any function of a review officer under this division in relation to the charge if the authorised person—
- (a) made an allegation report or carried out any investigation in relation to the alleged behaviour breach to which the charge relates; or
  - (b) charged the young detainee under section 296.
- (3) Chapter 9 (Criminal matters—conduct of disciplinary reviews) applies, with any changes prescribed by regulation, in relation to a review under this division.

**307 Review officer’s powers after internal review**

- (1) This section applies if a review officer has completed a review under section 306.
- (2) If the review officer is satisfied on the balance of probabilities that a behaviour breach charged has been proven, the review officer may take disciplinary action against the accused detainee in accordance with division 8.4.4
- (3) The review officer must dismiss the charge—
  - (a) if not satisfied on the balance of probabilities that the behaviour breach charged has been proven; or
  - (b) if satisfied on reasonable grounds that it would otherwise be appropriate to do so.
- (4) If the review officer believes on reasonable grounds that it is necessary or appropriate to do so, the review officer may refer the charge to—
  - (a) the chief police officer; or
  - (b) the director of public prosecutions.
- (5) The review officer must give the accused detainee prompt written notice of the review officer’s decision under subsection (2), including—
  - (a) a statement of the reasons for the decision; and
  - (b) a statement that the accused detainee has a right to apply for review of the decision under division 8.4.3 (External review of internal review decisions); and
  - (c) a statement about the effect of section 310.

*Note 1* If a form is approved under s 886 for the notice, the form must be used.

*Note 2* For the meaning of a statement of reasons, see the Legislation Act, s 179.

## **Division 8.4.3      External review of internal review decisions**

### **308      Meaning of *external reviewer*—div 8.4.3**

In this division:

*external reviewer* means a person appointed as an external reviewer under section 309.

### **309      Appointment of external reviewers**

- (1) The Minister must appoint at least 1 external reviewer.
- (2) A person may be appointed as an external reviewer only if the person is a magistrate and consents, in writing, to the appointment.
- (3) The *Magistrates Court Act 1930*, section 7G (Magistrates not to do other work) does not apply to the appointment of a magistrate as an external reviewer.

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

- (4) The Legislation Act, division 19.3.3 (Appointments—Assembly consultation) does not apply to the appointment of an external reviewer.
- (5) An appointment is a notifiable instrument.

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

### **310      Right to contact support person—external review**

- (1) This section applies if a decision under section 307 (2) (Review officer's powers after internal review) has been made in relation to an accused detainee.
- (2) The accused detainee has a right to contact 1 or 2 support people to assist the detainee to apply for review of the decision under this division.

- (3) The chief executive must ensure that the accused detainee has access to facilities—
  - (a) to contact a support person as soon as practicable; and
  - (b) to consult with the support person.

### **311 Application for external review**

- (1) An accused detainee may apply to an external reviewer for review of a decision made under section 307 (2) (Review officer's powers after internal review) in relation to the accused detainee.

**Example—application for review**

a signed application on the review officer's notice under s 307

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

- (2) The application must be made not later than 7 days after the day the accused detainee is given notice of the decision under section 307.
- (3) Subject to any decision by the external reviewer under section 314, the making of the application does not affect the taking of disciplinary action under the decision under review.

### **312 External review of charge**

- (1) On application under section 311, an external reviewer must—
  - (a) review a decision of a review officer made under section 307;  
or
  - (b) refuse to review the decision.
- (2) Chapter 9 (Criminal matters—conduct of disciplinary reviews) applies, with any changes prescribed by regulation, in relation to a review under this division.



### **313 Refusal to review**

- (1) This section applies if, under section 312, an external reviewer refuses to review a decision made under section 307 in relation to an accused detainee.
- (2) The external reviewer must give the accused detainee, and any support person of the accused detainee about whom the external reviewer has notice, prompt written notice of the refusal, including—
  - (a) a statement of the reasons for the refusal; and
  - (b) notice that a person aggrieved by the refusal may apply for review of the refusal under the *Administrative Decisions (Judicial Review) Act 1989*.

*Note 1* If a form is approved under s 886 for the notice, the form must be used.

*Note 2* For the meaning of a statement of reasons, see the Legislation Act, s 179.

*Note 3* Under the *Administrative Decisions (Judicial Review) Act 1989*, a person aggrieved by an administrative decision made under an enactment may apply to the Supreme Court for review of the decision. Subject to any order of the Court, the making of the application does not affect the operation of the decision or prevent its implementation (see s 16).

### **314 External reviewer's powers after external review**

- (1) After completing a review under section 312, the external reviewer may—
  - (a) confirm the decision under review; or
  - (b) exercise any function of a review officer under section 307 (Review officer's powers after internal review) in relation to the accused detainee, either by—
    - (i) amending the decision under review; or

- (ii) setting aside the decision under review and making a decision in substitution for the decision set aside.
- (2) The external reviewer must give prompt written notice of the external reviewer's decision under this section to—
- (a) the accused detainee; and
  - (b) any support person of the accused detainee about whom the external reviewer has notice; and
  - (c) the chief executive.
- (3) The notice must include—
- (a) a statement of the reasons for the decision; and
  - (b) notice that a person aggrieved by the decision may apply for review of the decision under the *Administrative Decisions (Judicial Review) Act 1989*.
- Note 1* If a form is approved under s 886 for the notice, the form must be used.
- Note 2* For the meaning of a statement of reasons, see the Legislation Act, s 179.
- Note 3* Under the *Administrative Decisions (Judicial Review) Act 1989*, a person aggrieved by an administrative decision made under an enactment may apply to the Supreme Court for review of the decision. Subject to any order of the Court, the making of the application does not affect the operation of the decision or prevent its implementation (see s 16).
- (4) If the external reviewer's decision reduces or sets aside a fine imposed for the behaviour breach, the chief executive must credit to the accused detainee's trust account any amount deducted from the account for payment of the fine.
- (5) If the external reviewer's decision reduces or sets aside any other behaviour management consequence imposed for the behaviour breach, the chief executive must take steps, in consultation with the accused detainee, to provide a reasonable remedy to the accused detainee.

## **Division 8.4.4      Disciplinary action generally**

### **315      Application—div 8.4.4**

This division applies to a young detainee against whom disciplinary action may be taken under this part.

### **316      Meaning of *relevant presiding officer*—div 8.4.4**

In this division:

*relevant presiding officer* means—

- (a) an administrator under division 8.4.1 (Disciplinary action by administrator); or
- (b) a review officer under division 8.4.2 (Internal review); or
- (c) an external reviewer under division 8.4.3 (External review of internal review decisions).

### **317      Disciplinary action by relevant presiding officer**

- (1) A relevant presiding officer may do 1 or more of the following (each of which is *disciplinary action*) in relation to a young detainee:
  - (a) warn the young detainee about committing a behaviour breach;
  - (b) reprimand the young detainee;
  - (c) impose a behaviour management consequence, or a combination of behaviour management consequences, on the young detainee.
- (2) In deciding whether to impose a behaviour management consequence, the relevant presiding officer must consider the age, developmental capacity, rehabilitation needs and any known history of the young detainee.

- (3) The relevant presiding officer may impose a behaviour management consequence if satisfied that the consequence to be imposed is—
- (a) reasonable in the circumstances; and
  - (b) proportionate to the circumstances and gravity of the behaviour.

**318 Disciplinary action—behaviour management consequences**

Each of the following is a *behaviour management consequence* that may be imposed under this part:

- (a) a fine, not exceeding \$250;
- (b) a withdrawal of privileges, for not longer than 60 days;
- (c) a requirement to make an apology to a person affected by the behaviour breach;
- (d) a requirement to perform extra chores, for not longer than 20 hours;
- (e) anything prescribed by regulation to be a behaviour management consequence and that is reasonable and proportionate to behaviour breaches.

**319 Maximum behaviour management consequences**

- (1) This section applies if—
- (a) a young detainee is charged with 2 or more behaviour breaches; and
  - (b) the charges arise out of the same conduct.
- (2) The total of the behaviour management consequences imposed for the breaches must not, for any particular kind of consequence, be more than the maximum penalty that may be imposed for any 1 of the breaches.

**320 Privileges and entitlements—impact of discipline**

To remove any doubt—

- (a) anything expressed in part 6.5 (Living conditions at detention places) to be an entitlement for this chapter is not affected by anything that happens under this chapter, including disciplinary action; and
- (b) anything else mentioned in part 6.5 is, for this chapter, a privilege.

*Note* Records must be kept of disciplinary action taken against young detainees (see *Territory Records Act 2002*).

## Chapter 9 Criminal matters—conduct of disciplinary reviews

### Part 9.1 Conduct of disciplinary review—general

#### 321 Application—ch 9

This chapter applies to a review under—

- (a) division 8.4.2 (Internal review); or
- (b) division 8.4.3 (External review of internal review decisions).

*Note* This chapter also applies to a review under s 220 (External review of segregation directions) (see s s 220 (2)).

#### 322 Definitions—ch 9

In this chapter:

*review officer*—

- (a) for a review under division 8.4.2—means a review officer under that division; and
- (b) for a review under division 8.4.3—means an external reviewer under that division.

*support person*—see section 286.

## **Part 9.2                      Disciplinary review procedures**

### **323                      Nature of disciplinary reviews**

- (1) To remove any doubt, a review is an administrative process.
- (2) At a review—
  - (a) the rules of natural justice apply; and
  - (b) the laws of evidence do not apply; and
  - (c) evidence must not be given on oath or by affidavit; and
  - (d) the question whether a young detainee has committed a behaviour breach must be decided on the balance of probabilities.

### **324                      Notice of disciplinary review etc**

- (1) The review officer for a review in relation to an accused detainee must give written notice of the review to the accused detainee and the chief executive.
- (2) The notice must include the following:
  - (a) a statement about where and when the review is to start;
  - (b) details of the disciplinary charge or disciplinary action to which the review relates;
  - (c) a statement about the effect of section 323;
  - (d) a statement about the effect of subsections (3) to (5);
  - (e) a statement to the effect that the review officer may hold a hearing for the review in accordance with part 9.3 (Disciplinary hearing procedures);
  - (f) the closing date for submissions by the accused detainee.

- (3) The accused detainee may make submissions to the review officer for the review in any form acceptable to the review officer.

**Example—acceptable form**

an audio recording or a document written for an accused detainee

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

- (4) The chief executive must—
- (a) offer to provide reasonable assistance to the accused detainee to put the submissions in a form acceptable to the review officer; and
  - (b) tell the accused detainee about the assistance he or she is entitled to under subsection (5).
- (5) The accused detainee is entitled to reasonable assistance from 1 or 2 support people for the purpose of preparing submissions.
- (6) The review officer must consider any submission given to the review officer by the accused detainee before the closing date for submissions stated in the notice of the review given to the accused detainee.

**325 Conduct of disciplinary reviews**

- (1) A review must be conducted with as little formality and technicality, and as quickly as the requirements of this Act and a proper consideration of the charge allow.
- (2) The review officer may hold a hearing for the review.
- (3) A hearing for a review must be held in accordance with part 9.3.
- (4) Proceedings at a review are not open to the public.



- (5) A decision of the review officer at a review is not invalid only because of any informality or lack of form.

*Note* However, see s 331 (5) and s 332 (2) (b) for who may be present, be heard or make submissions at disciplinary hearings.

**326 Review officer may require official reports**

- (1) For a review, the review officer may, by written notice given to any of the following, require the person to promptly give the review officer a written report about the accused detainee:
- (a) the chief executive;
  - (b) the director of public prosecutions;
  - (c) a public servant.
- (2) The person given the notice must comply with it.

**327 Review officer may require information and documents**

- (1) For a review, the review officer may, by written notice given to a person, require the person—
- (a) to provide stated information to the review officer relevant to the review; or
  - (b) to produce to the review officer a stated document or thing relevant to the review.
- (2) This section does not require a person to give information, or produce a document or other thing, to the review officer if the Minister certifies in writing that giving the information, or producing the document or other thing—
- (a) may endanger a young detainee or anyone else; or

(b) is contrary to the public interest.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

**328 Possession of review documents etc**

The review officer may have possession of a document or other thing produced to the review officer for a review for as long as the review officer considers necessary for the review.

**329 Record of review**

The review officer for a review must keep a written record of proceedings at the review.

## **Part 9.3                      Disciplinary hearing procedures**

### **330                      Notice of disciplinary hearing**

- (1) The review officer for a review in relation to an accused detainee must give written notice of a hearing for the review to the accused detainee and the chief executive.
- (2) The notice must include—
  - (a) a statement about where and when the hearing is to be held; and
  - (b) a statement about the accused detainee’s entitlements under section 331 and section 332.
- (3) If practicable, the hearing must be held at the detention place where the accused detainee is detained.

### **331                      Review officer’s powers at review**

- (1) For a hearing for a review in relation to an accused detainee, the review officer may, by written notice given to the accused detainee or anyone else, require the person to appear before the review officer, at a stated time and place, to do either or both of the following:
  - (a) answer questions;
  - (b) produce a stated document or other thing relevant to the review.
- (2) A person is taken to have complied with a notice under subsection (1) (b) if the person gives the document or other thing to the review officer before the time stated in the notice for its production.

- (3) The review officer at a hearing for a review may require the accused detainee, or a witness, appearing before the review officer to do 1 or more of the following:
- (a) answer a question relevant to the review;
  - (b) produce a document or other thing relevant to the review.
- (4) The review officer at the hearing may disallow a question put to a person if the presiding review officer considers the question—
- (a) is unfair, unduly prejudicial or vexatious; or
  - (b) involves an abuse of the review process.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (5) The review officer may allow a youth detention officer or anyone else to be present, and to be heard, at a disciplinary hearing.

**Examples—other people who may be allowed to be present**

- 1 a support person
- 2 another detainee

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

### **332 Rights of accused detainee at disciplinary hearing**

- (1) The accused detainee is entitled to be present at a hearing for a review in relation to the accused detainee.

*Note* However, the accused detainee may be excluded (see s 333) and the hearing may be conducted if the accused detainee fails to attend (see s 334).

- (2) If the accused detainee appears at a hearing for a review in relation to the accused detainee, the accused detainee is entitled to—
- (a) be heard, examine and cross-examine witnesses and make submissions for the review; and

- (b) have a support person or lawyer present to make submissions on the accused detainee's behalf.

**333 Exclusion of accused detainee from hearing**

The review officer may, by written order, exclude the accused detainee from a hearing for the review if the accused detainee, without reasonable excuse—

- (a) unreasonably interrupts, interferes with or obstructs the hearing; or
- (b) contravenes a reasonable direction by the review officer about the conduct of hearing.

**334 Hearing in accused detainee's absence**

If the accused detainee fails without reasonable excuse to attend a hearing for the review, the review officer may conduct the hearing, and make a decision on the charge, in the accused detainee's absence.

**335 Appearance at disciplinary hearing by audiovisual or audio link**

- (1) This section applies if, in relation to a hearing for a review, or part of the hearing, the review officer has given a direction under the following sections of the *Evidence (Miscellaneous Provisions) Act 1991*:
  - (a) section 20 (Territory courts may take evidence and submissions from outside ACT);
  - (b) section 32 (Use of link in proceedings).
- (2) A person may appear and take part in the hearing in accordance with the direction, if the person—
  - (a) is required or entitled to appear personally, whether as the accused detainee or as a witness; or

- (b) is entitled to appear for someone else.
- (3) A person who appears at the hearing under this section is taken to be before the review officer.

## Chapter 10 Care and protection—general

### Part 10.1 Application of care and protection chapters

*Note to pt 10.1*

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

- (a) who ordinarily lives in the ACT; or
- (b) who does not ordinarily live in the ACT, but who is in the ACT; or
- (c) about whom a report is made under s 354 (Voluntary reporting of abuse and neglect) or s 356 (Offence—mandatory reporting of abuse) arising from something happening in the ACT.

#### 336 What are the *care and protection chapters*?

In this Act:

*care and protection chapters* means the following chapters:

- (a) Chapter 10 (Care and protection—general);
- (b) Chapter 11 (Care and protection—reporting, investigating and appraising abuse and neglect);
- (c) Chapter 12 (Care and protection—voluntary agreements to transfer or share parental responsibility);
- (d) Chapter 13 (Care and protection and therapeutic protection—emergency situations);
- (e) Chapter 14 (Care and protection—care and protection orders);
- (f) Chapter 15 (Care and Protection—chief executive has aspect of parental responsibility);
- (g) Chapter 16 (Care and protection—therapeutic protection of children and young people);

- (h) Chapter 17 (Care and protection—interstate transfer of orders and proceedings);
- (i) Chapter 18 (Care and protection—police assistance);
- (j) Chapter 19 (Care and protection—provisions applying to all proceedings under care and protection chapters).

**337 Age—proof of age to be sought before action taken**

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

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

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



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

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

*Note* An official, or anyone engaging in conduct under the direction of an official, is not civilly liable for conduct engaged in honestly and without recklessness in the exercise of a function under this Act or in the reasonable belief that the conduct was in the exercise of a function under this Act. Any liability that would attach to an official attaches instead to the Territory (see s 878).

**340 Care and protection chapters stop applying when young person becomes adult**

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

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

## Part 10.2 Important concepts—care and protection chapters

### 341 Definitions—care and protection chapters

(1) In this Act:

*abuse*, of a child or young person—see section 342.

*care and protection appraisal*—see section 366.

*care and protection assessment*—see section 367.

*care and protection principles*—see section 350.

*contact*, with a person—see section 348.

*family group conference*—see section 75.

*in need of care and protection*, for a child or young person—see section 345.

*neglect*, of a child or young person—see section 343.

(2) In the care and protection chapters:

*at risk of abuse or neglect*—see section 344.

*former caregiver*, for a child or young person—see section 347.

*party*, for an application—see section 700.

*significant harm* includes a single instance of significant harm or multiple instances of harm that together make up significant harm.

### 342 What is *abuse*?

In this Act:

*abuse*, of a child or young person, means—

- (a) physical abuse; or
- (b) sexual abuse; or
- (c) emotional abuse (including psychological abuse) if the child or young person has experienced the abuse or is experiencing the abuse in a way that has caused or is causing significant harm to his or her wellbeing or development; or
- (d) emotional abuse (including psychological abuse) if—
  - (i) the child or young person has seen or heard the physical, sexual or psychological abuse of a person with whom the child or young person has a domestic relationship, the exposure to which has caused or is causing significant harm to the wellbeing or development of the child or young person; or
  - (ii) if the child or young person has been put at risk of seeing or hearing abuse mentioned in subparagraph (i), the exposure to which would cause significant harm to the wellbeing or development of the child or young person.

### 343 What is *neglect*?

In this Act:

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

**Examples—necessities of life**

- 1 food
- 2 shelter

- 3 clothing
- 4 health care treatment

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

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

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

#### **Examples—when a child is at risk of abuse or neglect**

- 1 Jane is 3 months old and the chief executive has already received 5 reports about her. Jane's parents are long-term drug users and Jane was born with neonatal withdrawal syndrome. Jane's parents have agreed to work with the chief executive to address their drug use. However, they have not actually made the changes they agreed to make. Jane's parents do not have contact with extended family and Jane is not regularly seen by any health professionals or other community support people.
- 2 Michael is 7 years old and in the full-time care of his mother. He has never had any contact with his father. Michael's mother has a mental illness characterised by episodes of psychosis. When Michael's mother has been unwell, she has locked Michael and herself in the home for weeks at a time. Michael's mother attempted suicide by driving off a bridge with Michael in the car.
- 3 Tom is 9 years old and is in the sole care of his father. Since Tom was 6 years old, the chief executive has received reports that Tom's father calls him derogatory names and yells at him, often in the presence of other people. Tom's school counsellor reports that Tom appears anxious, is fearful of loud noises in the school environment and regularly cries. Tom is assessed as being at risk of childhood depression by the school counsellor.

- 4 Amy is 13 years old and regularly goes missing from home to avoid the constant fighting between her mother and stepfather. Amy is engaging in indiscriminate sexual activity and regularly consumes alcohol and illicit drugs which she pays for through prostitution. Amy has intentionally overdosed on medication 3 times and each overdose has required medical treatment. Amy's parents consider that she is now making her own choices and there is nothing they can do to help her.

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

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

- (1) For the care and protection chapters, a child or young person is *in need of care and protection* if—
- (a) the child or young person—
    - (i) has been abused or neglected; or
    - (ii) is being abused or neglected; or
    - (iii) is at risk of abuse or neglect; and
  - (b) no-one with parental responsibility for the child or young person is willing and able to protect the child or young person from the abuse or neglect or the risk of abuse or neglect.
- (2) Without limiting subsection (1), a child or young person is in need of care and protection if—
- (a) there is a serious or persistent conflict between the child or young person and the people with parental responsibility for him or her (other than the chief executive) to the extent that the care arrangements for the child or young person are, or are likely to be, seriously disrupted; or
  - (b) the people with parental responsibility for the child or young person are dead, have abandoned the child or young person or cannot be found after reasonable inquiry; or

- (c) the people with parental responsibility for the child or young person are sexually or financially exploiting the child or young person or not willing and able to keep him or her from being sexually or financially exploited.

**346 Incident need not have happened in ACT**

- (1) This section applies if a person believes that a child or young person is in need of care and protection under section 345 because the child or young person—
  - (a) has been abused or neglected; or
  - (b) is being abused or neglected; or
  - (c) is at risk of abuse or neglect.
- (2) It does not matter whether conduct giving rise to the belief happened completely or partly outside the ACT.

**347 Who is a former caregiver?**

- (1) In the care and protection chapters:  
*former caregiver* means—
  - (a) for a child or young person for whom it is proposed to make a voluntary care agreement—the person who is providing care for the child or young person when the agreement is proposed; or
  - (b) for any other child or young person—a person who was providing care for the child or young person immediately before parental responsibility for the child or young person was transferred to the chief executive or someone else by order of the Childrens Court or operation of this Act, whether or not the person had that aspect of parental responsibility for the child or young person at that time.

- (2) However, *former caregiver* does not include a person providing care for the child or young person—
- (a) at a childcare centre, under a family day care scheme or otherwise for reward; or
  - (b) if the person provides care on a casual basis and is not a family member.

### 348 What is *contact* with a person?

In this Act:

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

**Examples—direct contact**

physical or face to face contact with the person

**Examples—indirect contact**

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

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



## **Part 10.3 Principles and considerations— care and protection chapters**

### *Notes to pt 10.3*

In making a decision under the care and protection chapters for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under the care and protection chapters otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

### **349 What is in best interests of child or young person?**

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

- (f) the capacity of the child's or young person's parents, or anyone else, to provide for the child's or young person's needs including emotional and intellectual needs;
  - (g) for an Aboriginal or Torres Strait Islander child or young person—that it is a high priority to protect and promote the child's or young person's cultural and spiritual identity and development by, wherever possible, maintaining and building the child's or young person's connections to family, community and culture;
  - (h) that it is important for the child or young person to have settled, stable and permanent living arrangements;
  - (i) for decisions about placement of a child or young person—the need to ensure that the earliest possible decisions are made about a safe, supportive and stable placement;
  - (j) the attitude to the child or young person, and to parental responsibilities, demonstrated by each of the child's or young person's parents or anyone else;
  - (k) any abuse or neglect of the child or young person, or a family member of the child or young person;
  - (l) any court order that applies to the child or young person, or a family member of the child or young person.
- (2) For the care and protection chapters, in deciding what is in the best interests of a child or young person, a decision-maker may also consider any other fact or circumstance the decision-maker considers relevant.

**350 Care and protection principles**

- (1) In making a decision under the care and protection chapters in relation to a child or young person, a decision-maker must apply the following principles (the *care and protection principles*) except when it is, or would be, contrary to the best interests of a child or young person—
  - (a) the primary responsibility for providing care and protection for the child or young person lies with the child's or young person's parents and other family members;
  - (b) priority must be given to supporting the child's or young person's parents and other family members to provide for the wellbeing, care and protection of the child or young person;
  - (c) if the child or young person does not live with his or her family because of the operation of this Act—contact with his or her family, and significant people, must be encouraged, if practicable and appropriate;
  - (d) if the child or young person is in need of care and protection and the child's or young person's parents and other family members are unwilling or unable to provide the child or young person with adequate care and protection (whether temporarily or permanently)—it is the responsibility of the government to share or take over their responsibility;
  - (e) if the child or young person does not live with the child's or young person's parents because of the operation of this Act—the safety and wellbeing of the child are more important than the interests of the parents;
  - (f) a court should make an order for a child or young person only if the court considers that making the order would be better for the child or young person than making no order at all.

- (2) The care and protection principles must be applied in addition to the principles under section 9 (Principles applying to Act) and section 10 (Aboriginal and Torres Strait Islander children and young people principle).

*Note* The Maori children and young people principle may also apply if an order or proceeding is transferred to the ACT from New Zealand (see s 678).

### **351 Helping families understand care and protection procedures**

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

*Note 1* If a child or young person is the subject of a proceeding under this Act, the chief executive must give the child or young person sufficient information about the proceeding, in language and a way that the child or young person can understand, to allow the child or young person to take part fully in the proceeding (see *Court Procedures Act 2004*, s 74A (Participation of children and young people in proceedings)).

*Note 2* If the decision-maker is a court, the court must also endeavour to ensure that the child or young person, and any other party present at the hearing of the proceeding, understands the nature and purpose of the proceeding and any orders and knows of their appeal rights (see *Court Procedures Act 2004*, s 74B (Court must ensure children and young people etc understand proceedings)).

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

(3) In this section:

**relevant people**, for a decision in relation to a child or young person, means—

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

*Note* Representation of children and young people is dealt with in the *Court Procedures Act 2004*, pt 7A (Procedural provisions—proceedings involving children).

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

*Note 1* A child or young person has a right to take part in a proceeding under this Act in relation to the child or young person (see *Court Procedures Act 2004*, s 74A (Participation of children and young people in proceedings)).

*Note 2* A court must also take steps to ensure that the child or young person and other people understand proceedings etc (see *Court Procedures Act 2004*, s 74B (Court must ensure children and young people etc understand proceedings)).

## 352 Views and wishes of children and young people

(1) A decision-maker making a decision in relation to a child or young person under the care and protection chapters must give the child or young person a reasonable opportunity to express his or her views and wishes personally to the decision-maker, unless the decision-maker is satisfied that the child or young person does not have sufficient developmental capacity to express his or her views or wishes.

- (2) A decision-maker may find out the views and wishes of a child or young person—
- (a) by having regard to—
- (i) anything said personally by the child or young person to the decision-maker; or
  - (ii) anything said by a representative of the child or young person about the child's or young person's views or wishes; or
- Note* Representation of children and young people is dealt with in the *Court Procedures Act 2004*, pt 7A (Procedural provisions—proceedings involving children).
- (iii) anything about the child's or young person's views or wishes contained in a report given to the decision-maker; or
- (b) in any other way the decision-maker considers appropriate.
- (3) A decision-maker must not require a child or young person to express the child's or young person's views or wishes about anything.

## **Chapter 11      Care and protection— reporting, investigating and appraising abuse and neglect**

### **Part 11.1      Care and protection—reporting abuse and neglect**

#### **Division 11.1.1      Definitions**

##### **353      Definitions—Act**

In this Act:

*child concern report* means a voluntary report or a mandatory report.

*mandatory report*—see section 356.

*prenatal report*—see section 362.

*voluntary report*—see section 354.

#### **Division 11.1.2      Reporting abuse and neglect of children and young people**

##### **354      Voluntary reporting of abuse and neglect**

- (1) This section applies if a person believes or suspects that a child or young person—
  - (a) is being abused; or
  - (b) is being neglected; or
  - (c) is at risk of abuse or neglect.

- (2) The person may report (a *voluntary report*) the belief or suspicion, and the reasons for the belief or suspicion, to the chief executive.

*Note 1* A person who gives information honestly and without recklessness under this section does not breach professional ethics and is protected from civil liability (see s 874).

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

### **355 Offence—false or misleading voluntary report**

A person commits an offence if—

- (a) the person makes a voluntary report; and
- (b) the report contains information or allegations that are false or misleading in a material particular; and
- (c) the person knows that the information or allegations—
  - (i) are false or misleading in a material particular; or
  - (ii) omit anything without which the information or allegations are false or misleading in a material particular.

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

### **356 Offence—mandatory reporting of abuse**

- (1) A person commits an offence if—
- (a) the person is a mandated reporter; and
  - (b) the person is an adult; and
  - (c) the person believes on reasonable grounds that a child or young person has experienced, or is experiencing—
    - (i) sexual abuse; or
    - (ii) non-accidental physical injury; and



- (d) the person's reasons for the belief arise from information obtained by the person during the course of, or because of, the person's work (whether paid or unpaid); and
- (e) the person does not, as soon as practicable after forming the belief, report (a **mandatory report**) to the chief executive—
  - (i) the child's or young person's name or description; and
  - (ii) the reasons for the person's belief.

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

*Note 1* A person who gives information honestly and without recklessness under this section does not breach professional ethics and is protected from civil liability (see s 874).

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

(2) In this section:

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

- (a) a doctor;
- (b) a dentist;
- (c) a nurse;
- (d) an enrolled nurse;
- (e) a midwife;

*Note* **Doctor, dentist, nurse, enrolled nurse** and **midwife** are defined in the Legislation Act, dict, pt 1.

- (f) a teacher at a school;
- (g) a person providing education to a child or young person who is registered, or provisionally registered, for home education under the *Education Act 2004*;

- (h) a police officer;
- (i) a person employed to counsel children or young people at a school;
- (j) a person caring for a child at a childcare centre;
- (k) a person coordinating or monitoring home-based care for a family day care scheme proprietor;
- (l) a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families;
- (m) the public advocate;
- (n) an official visitor;
- (o) a person who, in the course of the person's employment, has contact with or provides services to children, young people and their families and is prescribed by regulation.

*person caring for a child at a childcare centre* includes a childcare assistant or aide caring for a child at the childcare centre if the assistant or aide is in paid employment at the childcare centre, but does not include anyone caring for a child as an unpaid volunteer.

*teacher*, at a school, includes a teacher's assistant or aide if the assistant or aide is in paid employment at the school.

### **357 Mandatory reporting—exceptions**

- (1) Section 356 does not apply to a person if the person believes on reasonable grounds that—
  - (a) someone else has made a report to the chief executive about the same child or young person in relation to the same abuse or neglect; and
  - (b) the other person has reported the same reasons for their belief as the person has for their belief.

- (2) Section 356 (1) (c) (ii) does not apply to a person if the person believes on reasonable grounds that—
- (a) the child or young person (the *injured person*) has experienced, or is experiencing, non-accidental physical injury caused by another child or young person; and
  - (b) a person with parental responsibility for the injured person is willing and able to protect the injured person from further injury.

**Example—par (b)**

A child is injured during a fight at school. The child's teacher believes that a person with parental responsibility for the child is willing and able to protect the child from further injury because the person comes to the school to discuss strategies for preventing further fights.

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

**358 Offence—false or misleading mandatory report**

A person commits an offence if—

- (a) the person makes a mandatory report; and
- (b) the report contains information or allegations that are false or misleading in a material particular; and
- (c) the person knows that the information or allegations—
  - (i) are false or misleading in a material particular; or
  - (ii) omit anything without which the information or allegations are false or misleading in a material particular.

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

### **359 Reports made to public advocate**

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

*Note 1* There are limits on how the report may be used in evidence (see pt 25.5).

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

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

### **360 Chief executive to act on child concern report**

- (1) This section applies if the chief executive receives a child concern report about a child or young person.
- (2) The chief executive must—
  - (a) consider the report; and

- (b) carry out an initial assessment of the matters raised in the report to decide if the child or young person may be in need of care and protection; and
  - (c) take the action that the chief executive considers appropriate in relation to the initial assessment.
- (3) To carry out an initial assessment of the matters raised in the report, the chief executive may take reasonable steps to obtain further information about the matters.

**Example—reasonable steps**

a home visit to interview family members

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

- (4) Without limiting subsection (2) (c), the chief executive may do any of the following:
- (a) give advice to the person who made the child concern report about appropriate assistance that the person may consider to protect the child or young person;

**Example—par (a)**

contact details for support services

- (b) seek information from an information sharing entity to decide the most appropriate response to the child concern report;
- (c) refer a matter raised in the report to the chief police officer if the chief executive suspects on reasonable grounds that it relates to a criminal offence;
- (d) refer the matters raised in the report to a government or community-based service for advice and support services for the child or young person and, if appropriate, the child's or young person's family members;

(e) provide or arrange support services for the child or young person and, if appropriate, the child's or young person's family members;

(f) arrange a family group conference in relation to the child or young person;

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

(g) assist a family member or a significant person to care for the child or young person;

*Note* Care and protection orders are dealt with in ch 14.

(h) take no action.

(5) However, if the chief executive suspects on reasonable grounds that the child or young person may be in need of care and protection the chief executive must decide that the child concern report is a child protection report.

(6) In this section:

*information sharing entity*—see section 859.

### **361 Chief executive action on child protection report**

(1) This section applies if the chief executive decides that a child concern report is a child protection report.

(2) The chief executive must take the action that the chief executive considers appropriate in relation to the report.

(3) Without limiting subsection (2), the chief executive may do any of the following:

(a) seek information from anyone to decide the most appropriate response to the report;

- (b) give advice to the person who made the report about appropriate assistance that the person may consider to protect the child or young person;

**Example—par (b)**

contact details for support services

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

- (c) refer a matter raised in the report to the chief police officer if the chief executive suspects on reasonable grounds that it relates to a criminal offence;
- (d) refer the matters raised in the report to a government or community-based service for advice and support services for the child or young person and, if appropriate, the child's or young person's family members;
- (e) provide or arrange support services for the child or young person and, if appropriate, the child's or young person's family members;
- (f) arrange a family group conference in relation to the child or young person;  
*Note* Family group conferences are dealt with in ch 3 and ch 12.
- (g) assist a family member or a significant person to care for the child or young person;
- (h) enter into a voluntary care agreement for the child or young person;
- (i) take no action.

- (4) This section does not affect the chief executive's capacity to—

- (a) carry out a care and protection appraisal of the child or young person under section 368 (Care and protection appraisal—only with agreement or appraisal order); or

<b>Chapter 11</b>	Care and protection—reporting, investigating and appraising abuse and neglect
<b>Part 11.1</b>	Care and protection—reporting abuse and neglect
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- (b) take action under section 371 (Visual examination etc without agreement); or
- (c) take emergency action in relation to the child or young person under section 406 (Emergency action—criteria for taking emergency action); or
- (d) apply to the Childrens Court for a care and protection order under section 424 (Care and protection order—application by chief executive).

### **Division 11.1.3      Prenatal reporting of anticipated abuse and neglect**

#### **362      Prenatal reporting—anticipated abuse and neglect**

- (1) This section applies if, during a pregnancy, a person believes or suspects that a child who may be born as a result of the pregnancy may be in need of care and protection.
- (2) The person may report (a *prenatal report*) the belief or suspicion, and the reasons for the belief or suspicion, to the chief executive.
- (3) The chief executive may, with the consent of the pregnant woman, take the action the chief executive considers appropriate in relation to the report.
- (4) Without limiting subsection (3), the chief executive may do any of the following with the consent of the pregnant woman:
  - (a) provide a voluntary assessment of whether the child is likely to be in need of care and protection after the child is born;
  - (b) provide or arrange voluntary support services for the pregnant woman, and any family member who may be involved in caring for the child;



- (c) refer the matters raised in the report to a government or community-based service for advice and support services for the pregnant woman and any family member who may be involved in caring for the child.
- (5) The chief executive may also, without the consent of the pregnant woman, give advice to the person who made the report about appropriate assistance for the pregnant woman that the person may consider.

**Example**

contact details for support services

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

- (6) The chief executive may also ask the pregnant woman to consent to the chief executive doing either or both of the following:
- (a) giving prenatal information to a prenatal information sharing entity;
  - (b) asking a prenatal information sharing entity for prenatal information.
- (7) If the pregnant woman does not consent under subsection (6), the chief executive may give the prenatal information to the prenatal information sharing entity, or ask the prenatal information sharing entity for the prenatal information, only if the chief executive suspects on reasonable grounds that the child may be in need of care and protection after the child is born.
- (8) The chief executive is not required to act in relation to a report under this section.

- (9) The chief executive must ensure, as far as practicable, that any action taken because of this section is appropriate and consistent with the pregnant woman’s human rights.

*Note 1* A person who gives information honestly and without recklessness under this section does not breach professional ethics etc and is protected from civil liability (see s 874).

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

- (10) In this section:

***prenatal information*** means information that is relevant to the safety, wellbeing and development of a child after the child is born.

**Examples—information relevant to safety, wellbeing and development of child**

- 1 information needed to assess any likely risks to the child after birth
- 2 information needed to develop voluntary strategies to engage the pregnant woman before the birth
- 3 information needed to develop intervention plans to be implemented at birth that are proportionate and appropriate to the level of risk
- 4 information needed to decide whether a care and protection application should be made for the child at birth
- 5 information needed to assess the father’s parenting capacity, including the father’s ability and willingness to protect the child after birth
- 6 information needed to engage other family members to be voluntarily involved in protecting the child after birth

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

***prenatal information sharing entity*** means any of the following:

- (a) a person who would be involved in the care of the child after the child’s birth;
- (b) a Minister;
- (c) a health facility;

- (d) a police officer or a member of a police service or force of a State;
- (e) an entity established under a law of a State or the Commonwealth;
- (f) the holder of a position established under a law of a State or the Commonwealth;
- (g) any of the following entities that would, after the child's birth, provide a service to, or have contact with, the child or a person who would be involved in the care of the child:
  - (i) an administrative unit;
  - (ii) a territory authority (other than the legal aid commission);
  - (iii) a territory instrumentality;
  - (iv) a public employee (other than a judge or magistrate);
  - (v) a community-based service.

**363 Offence—false or misleading prenatal report**

A person commits an offence if—

- (a) the person makes a prenatal report; and
- (b) the report contains information or allegations that are false or misleading in a material particular; and
- (c) the person knows that the information or allegations—
  - (i) are false or misleading in a material particular; or
  - (ii) omit anything without which the information or allegations are false or misleading in a material particular.

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

**364 How prenatal reports may be used in evidence**

- (1) This section applies if a person honestly and without recklessness makes a prenatal report.
- (2) The report, or evidence of the contents of the report, is admissible in evidence in a proceeding in a court only if—
  - (a) the report or evidence is given to the court by the person who made the report; or
  - (b) the proceeding is before the Childrens Court, under chapter 11 (Care and protection—reporting, investigating and appraising abuse and neglect) or chapter 14 (Care and protection—care and protection orders), in relation to the child born as a result of the pregnancy that is the subject of the report; or
  - (c) the proceeding is before a court hearing an appeal from a decision of the Childrens Court in a proceeding mentioned in paragraph (b); or
  - (d) the proceeding is about a charge or allegation made in a proceeding against a person in relation to the person’s exercising a function under this Act.

**365 Prenatal report information is sensitive information**

- (1) For the definition of *sensitive information* in section 845, prenatal report information is also sensitive information.
- (2) In this section:  
*prenatal report information* means information—
  - (a) in a prenatal report; or
  - (b) that would allow the information in a prenatal report to be worked out; or
  - (c) that identifies a person as a person who made a prenatal report; or

- (d) that would allow a person's identity as a person who made a prenatal report to be worked out.

## **Part 11.2 Care and protection—appraisals**

### **Division 11.2.1 Definitions**

#### **366 What is a *care and protection appraisal*?**

In the care and protection chapters:

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

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

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

### **367 What is a *care and protection assessment*?**

In the care and protection chapters:

*care and protection assessment* of a person—

- (a) means any of the following carried out by an authorised assessor for section 438 (Care and protection assessment—authorisation of assessors):
  - (i) a medical examination or test of the person;
  - (ii) a dental examination or test of the person;
  - (iii) a social assessment of the person;
  - (iv) a paediatric or developmental assessment of the person;
  - (v) a psychological examination or test of the person;
  - (vi) a psychiatric examination or test of the person;
  - (vii) if the person is a parent or other person with parental responsibility—an assessment of the person’s parenting capacity; but
- (b) does not include an assessment, examination or test that—
  - (i) involves surgery; or
  - (ii) is prescribed by regulation.

*Note* A person authorised under s 438 (Care and protection assessment—authorisation of assessors) must be suitably qualified for the assessment (see s 438 (2)).

## **Division 11.2.2 Appraisal with agreement or order**

### **368 Care and protection appraisal—only with agreement or appraisal order**

- (1) This section applies if the chief executive decides that a child concern report about a child or young person is a child protection report under section 360 (5) (Chief executive to act on child concern report).

#### **Example**

The chief executive receives a voluntary report about 10 year old Sarah on the basis of which the chief executive suspects on reasonable grounds that she may be in need of care and protection. Under s 360 (5), the chief executive decides that the report is a child protection report.

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

- (2) The chief executive may carry out a care and protection appraisal of the child or young person if the chief executive suspects on reasonable grounds that the child or young person may be in need of care and protection.
- (3) However, the chief executive may carry out an appraisal only if—
- (a) an appraisal order in force for the child or young person authorises the carrying out of the appraisal; or

*Note* Appraisal orders are dealt with in s 372.

- (b) the chief executive—
- (i) unless it is not practicable, or not in the best interests of the child or young person, to do so—has taken reasonable steps to obtain the agreement to the appraisal of each parent or each other person with daily care responsibility; and



- (ii) has obtained the agreement to the appraisal of at least 1 parent or other person with daily care responsibility; or
- (c) section 370 (Care and protection appraisal—agreement need not be sought if risk etc) applies in relation to the child or young person and the appraisal is an activity mentioned in section 371 only (Visual examination etc without agreement).

**Examples—subpar (b) (i)—not practicable to obtain agreement**

- 1 the identity of the parent or other person cannot be established
- 2 the parent or other person cannot be found

**Examples—subpar (b) (i)—not in best interests of child or young person to obtain agreement**

- 1 the parent or other person is the subject of an allegation of abuse or neglect of the child or young person
- 2 the parent's or other person's contact with the child or young person is not allowed, or is limited, under a court order (under this Act or another law in force in the Territory)

*Note* In certain other circumstances the chief executive need not seek agreement (see s 370) and may visually examine or interview the child or young person (see s 371).

- (4) The agreement of a person under subsection (3) (b) may be given orally.
- (5) To avoid doubt, if the chief executive shares daily care responsibility for the child or young person the agreement of another person who has daily care responsibility is not required for subsection (3) (b).
- (6) The chief executive must keep a written record of an agreement under subsection (3) (b) given orally.

**369 Care and protection appraisal—acknowledgement of agreement**

When seeking the agreement of a person under section 368 (3) (b), the chief executive must tell the person—

- (a) the purpose of the appraisal; and
- (b) if the appraisal is to include a care and protection assessment of the child or young person—the kind of assessment; and
- (c) that the agreement may be refused.

**370 Care and protection appraisal—agreement need not be sought if risk etc**

- (1) This section applies if the chief executive proposes to carry out a care and protection appraisal of a child or young person and the chief executive suspects on reasonable grounds that seeking the agreement of a parent or other person who has daily care responsibility for the child or young person would be likely to—
  - (a) put the child or young person at significant risk of abuse or neglect; or
  - (b) jeopardise a criminal investigation.

**Example**

The chief executive receives a child concern report about Andrew and decides that the report is a child protection report. The person making the report states that Andrew has told his teacher that his father is sexually abusing him and has threatened to hurt him if he tells anyone. The chief executive suspects that seeking the agreement of a person who has daily care responsibility would be likely to put Andrew at significant risk of emotional and physical abuse.

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

- (2) The chief executive need not seek the agreement of a parent or other person who has daily care responsibility for the child or young person.

### **371 Visual examination etc without agreement**

- (1) If section 370 applies in relation to a child or young person, the chief executive may, without the agreement of a parent or other person who has daily care responsibility for the child or young person—
- (a) visually examine the child or young person; and
  - (b) interview the child or young person.
- (2) If the child or young person is a student at a school, a patient at a health facility or being cared for by a childcare service, the chief executive—
- (a) may enter the school, health facility or childcare service to visually examine or interview the child or young person; and
  - (b) if entering the school, health facility or childcare service, must—
    - (i) produce his or her identity card; and
    - (ii) tell the person in charge of the school, health facility or childcare service the purpose of the entry.

- (3) After the chief executive visually examines or interviews the child or young person, the chief executive must take reasonable steps to tell at least 1 parent or other person who has daily care responsibility for the child or young person that the examination or interview has been carried out.

*Note 1* The chief executive may carry out a care and protection appraisal, with the agreement of a person who has daily care responsibility for the child or young person, if the chief executive suspects on reasonable grounds that the child or young person may be in need of care and protection (see s 368).

*Note 2* The chief executive may carry out a care and protection appraisal if an appraisal order is in force for the child or young person.

- (4) However, the chief executive need not tell a person about the examination or interview if satisfied that doing so would be likely to—
- (a) put the child or young person at significant risk of abuse or neglect; or
  - (b) jeopardise a criminal investigation.
- (5) This section does not affect the chief executive’s capacity to—
- (a) do anything mentioned in section 360 (4) (Chief executive to act on child concern report) or section 361 (3) (Chief executive action on child protection report); or
  - (b) take emergency action in relation to the child or young person under section 406 (Emergency action—criteria for taking emergency action); or
  - (c) apply to the Childrens Court for a care and protection order under section 424 (Care and protection order—application by chief executive); or
  - (d) give information under part 25.3 (Sharing protected information).

## **Division 11.2.3 Appraisal orders**

### *Note to div 11.2.3*

The chief executive may ask the chief police officer for assistance in taking action under an appraisal order. The chief police officer must, if asked, give assistance to the chief executive by assigning police officers to assist the chief executive in carrying out the action (see s 679).

### **372 What is an appraisal order?**

In the care and protection chapters:

#### ***appraisal order***—

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

*Note* A care and protection appraisal may include a care and protection assessment (see s 366).

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

- (vi) that a person not have contact with the child or young person, or not have contact with the child or young person except if a stated person or a person of a stated class is present; and

*Note* **Contact** includes indirect contact (see s 348).

- (c) may, but need not, include a temporary parental responsibility provision.

### **373 What is a *temporary parental responsibility provision*?**

In the care and protection chapters:

***temporary parental responsibility provision***—

- (a) means a provision in an appraisal order for a child or young person that transfers daily care responsibility for the child or young person to the chief executive; and
- (b) may provide for the chief executive to enter and search any place the chief executive believes on reasonable grounds the child or young person is, to find the child or young person.

*Note 1* A temporary parental responsibility provision must not be longer than 4 weeks (see s 384).

*Note 2* The chief executive may ask the chief police officer for assistance in carrying out a temporary parental responsibility provision in an appraisal order. The chief police officer must, if asked, give assistance to the chief executive by assigning police officers to assist the chief executive in carrying out the action (see s 679).

**374 Offence—contravene appraisal order**

A person commits an offence if—

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

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

**375 Appraisal orders—prevails over care and protection orders**

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

*Note* Care and protection orders are made under pt 14.4.

**376 Appraisal orders—application by chief executive**

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

- (a) the chief executive is satisfied that a care and protection appraisal is necessary to assess whether the child or young person is in need of care and protection; and
- (b) for a parent or other person who has daily care responsibility for the child or young person, the chief executive either—

- (i) has, under section 368 (Care and protection appraisal—only with agreement or appraisal order) (unless it was not practicable, or not in the best interests of the child or young person, to do so) taken reasonable steps to obtain the agreement to the appraisal of a parent or each other person with daily care responsibility and no parent or other person with daily care responsibility has agreed to the appraisal; or
- (ii) need not, under section 370 (Care and protection appraisal—agreement need not be sought if risk etc) seek the agreement of the person to the appraisal.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

### **377 Appraisal orders—urgent applications**

- (1) An application for an appraisal order may be made by phone, fax or another way if necessary because of urgent circumstances.
- (2) An application made under subsection (1) must be given to the following people before the application is heard by the court:
  - (a) the child or young person;
  - (b) each parent of the child or young person;
  - (c) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (d) the public advocate.
- (3) The Childrens Court must if practicable hear and decide the application on the day it is filed.



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**378 Appraisal orders—application to state grounds**

An application for an appraisal order must state—

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

**Example—ground on which order sought**

a person with parental responsibility does not agree to the appraisal

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

**379 Appraisal orders—who must be given application**

- (1) The chief executive must give a copy of an application for an appraisal order for a child or young person to the following people at least 1 working day before the application is to be heard by the court:
  - (a) the child or young person;
  - (b) each parent of the child or young person;
  - (c) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (d) the public advocate.
- (2) This section does not apply—
  - (a) to an application under section 377 (Appraisal orders—urgent applications); or

- (b) if the chief executive or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency action).

*Note* In those cases, the chief executive need only give a copy of the application to people before the application is heard by the court (see s 377 and s 413).

**380 Appraisal orders—court to consider application promptly**

- (1) The Childrens Court must hear and decide the application not later than 5 working days after the day the application is filed.
- (2) This section does not apply to an application under section 377 (Appraisal orders—urgent applications).

*Note* The court must if practicable hear and decide the application on the day it is filed (see s 377).

**381 Appraisal orders—no interim orders**

The Childrens Court must not make an interim appraisal order.

**382 Appraisal orders—criteria for making**

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

- (a) a parent or other person who has daily care responsibility for the child or young person either—
- (i) does not agree to the appraisal; or
  - (ii) under section 368 (3) (b) was not asked to agree to the appraisal because it was not practicable, or not in the best interests of the child or young person, to do so; or
  - (iii) was not asked to agree to the appraisal because of section 370 (2) (Care and protection appraisal—agreement need not be sought if risk etc); and

- (b) a care and protection appraisal is necessary to assess whether the child or young person is in need of care and protection.

*Note 1* In a proceeding for an appraisal order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

### **383 Appraisal orders—different provisions and requirements**

In making an appraisal order for a child or young person, the Childrens Court may include any of the following whether or not it was applied for:

- (a) a requirement that—
- (i) a person attend, alone or with someone else, at a stated place at a stated time for the appraisal; or
  - (ii) a person or entity comply with arrangements made by the chief executive for the appraisal; or
  - (iii) that a person or entity allow entry to a stated place for the appraisal;
  - (iv) a person or entity give the chief executive information about the care, wellbeing or development of a child or young person; or
  - (v) something be produced to the court or given to the chief executive or someone else; or
  - (vi) that a person not have contact with the child or young person, or not have contact with the child or young person except if a stated person or a person of a stated class is present;

*Note* **Contact** includes indirect contact (see s 348).

- (b) a temporary parental responsibility provision.

### **384 Appraisal orders—length**

- (1) The length of an appraisal order—
  - (a) must be stated in the order; and
  - (b) must not be longer than 4 weeks.
- (2) The length of a temporary parental responsibility provision in an appraisal order—
  - (a) must be stated in the order; and
  - (b) must not be longer than 4 weeks.

*Note 1* Temporary parental responsibility provisions are dealt with in s 373.

*Note 2* The length of an appraisal order may be extended to a maximum of 8 weeks (see s 388).

### **385 Appraisal orders—extension application**

- (1) The chief executive may apply to the Childrens Court for an extension of an appraisal order for a child or young person.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

- (2) An application for extension of an appraisal order must state—
  - (a) the grounds for the proposed extension; and
  - (b) if the application includes an application for extension of a temporary parental responsibility provision—the proposed arrangements for the child’s or young person’s care during the period of temporary parental responsibility.

**386 Appraisal orders—who must be given extension application?**

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

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

*Note* Parties to proceedings are dealt with in pt 19.2.

**387 Appraisal orders—court to consider extension application promptly**

- (1) After initially considering an application for extension of an appraisal order, the Childrens Court may adjourn further consideration of the application only if the Childrens Court is satisfied that the adjournment is appropriate considering the urgency of the application.
- (2) The Childrens Court must hear and decide the application not later than 5 working days after the day the application is filed.
- (3) If an appraisal order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided (whether or not the application is decided within the period required under this section).

**388 Appraisal orders—criteria for extension**

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

- (a) the Childrens Court is satisfied that the appraisal cannot be properly carried out unless the order is extended; and

(b) the total length of the order and the proposed extension will not be longer than 8 weeks.

*Note 1* In a proceeding for an appraisal order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

## **Chapter 12**      **Care and protection—voluntary agreements to transfer or share parental responsibility**

### **Part 12.1**      **Definitions**

#### **389**      **Definitions—Act and ch 12**

(1) In this Act:

*voluntary care agreement*—see section 394 (1).

(2) In this chapter:

*party*—see section 396 (1).

*registered*, for a family group conference agreement—means registered under section 391.

<b>Chapter 12</b>	Care and protection—voluntary agreements to transfer or share parental responsibility
<b>Part 12.2</b>	Registration of family group conference agreements that transfer or share parental responsibility

Section 390

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## **Part 12.2**

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

*Note to pt 12.2*

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

### **390 Registered family group conference agreement—application**

- (1) This section applies if, in a family group conference agreement reached at a family group conference arranged under section 80 (2) (Family group conferences—criteria), the parties agree that daily care responsibility or long-term care responsibility for a child or young person should be—
  - (a) transferred from a person to someone else (other than the chief executive); or
  - (b) shared with a person (other than the chief executive) who would not otherwise have that aspect of parental responsibility for the child or young person.

*Note 1* A family group conference may be arranged under s 80 (2) if the chief executive believes on reasonable grounds that—

- (a) the child or young person is in need of care and protection; and
- (b) arrangements should be made to secure the child's or young person's care and protection.

*Note 2* Daily care responsibility is dealt with in s 19.  
Long-term care responsibility is dealt with in s 20.

*Note 3* A family group conference agreement must not transfer to, or share with, the chief executive parental responsibility for the child or young person (see s 76).



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

*Note* If a form is approved under s 886 for an agreement, the form must be used.

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

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

- (1) This section applies if the chief executive applies to the Childrens Court under section 390 (2) to register a family group conference agreement.
- (2) If the Childrens Court is satisfied that it could make a care and protection order under this Act with the same effect as the family group conference agreement, the Childrens Court must register the agreement.

*Note* A family group conference agreement must not transfer to, or share with, the chief executive parental responsibility for the child or young person (see s 76).

- (3) If the Childrens Court is not satisfied that it could make a care and protection order under this Act with the same effect as the family group conference agreement, the Childrens Court must refuse to register the agreement.

<b>Chapter 12</b>	Care and protection—voluntary agreements to transfer or share parental responsibility
<b>Part 12.2</b>	Registration of family group conference agreements that transfer or share parental responsibility

Section 392

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- (4) If the Childrens Court refuses to register a family group conference agreement, the court must tell the chief executive about the refusal.

**392 Registered family group conference agreement—notice**

- (1) If the Childrens Court registers a family group conference agreement about a child or young person under section 391 (2), the court must tell the chief executive and the public advocate, by written notice (a *registration notice*) about the registration.
- (2) If the chief executive is given a registration notice, the chief executive must give a copy of the registration notice to each person who was invited to attend the family group conference.

**393 Registered family group conference agreement—effect and enforcement**

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

*Note* Care and protection orders are dealt with in ch 14. It is an offence to contravene a care and protection order (see s 423). See also provisions about police assistance in Chapter 18 and enforcement generally in ch 23.

## Part 12.3 Voluntary agreement to share parental responsibility with chief executive

### 394 What is a *voluntary care agreement*?

(1) In this Act:

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

- (a) between the chief executive and—
  - (i) a parent of the child or young person; or
  - (ii) someone else who has daily care responsibility or long-term care responsibility for the child or young person; and
- (b) for either or both of the following aspects of parental responsibility for the child or young person to be shared between the chief executive and the parent or other person:
  - (i) daily care responsibility;
  - (ii) long-term care responsibility.

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

(2) A voluntary care agreement may include an arrangement for the person mentioned in subsection (1) (a) (i) or (ii) to pay an amount (the *contribution*) to the chief executive by way of contribution to the cost of the care of the child or young person.

- (3) The contribution must not be more than the amount paid by the Territory for the care of the child or young person.
- (4) The contribution is a debt due and payable to the Territory.

**395 Voluntary care agreements—who may initiate?**

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

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

**396 Voluntary care agreements—who are *parties*?**

- (1) In this chapter:  
*party*, for a voluntary care agreement, means the following people:
  - (a) the chief executive;
  - (b) a parent of the child or young person who entered the agreement;
  - (c) someone else who entered the agreement and who has daily care responsibility, or long-term care responsibility, for the child or young person.
- (2) A voluntary care agreement is not void or voidable because a party to the agreement is not an adult.

### 397 Voluntary care agreements—chief executive's criteria

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

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

**Examples—another form of assistance**

- 1 organising for the child or young person to be cared for by someone else with daily care responsibility, or long-term care responsibility, for the child or young person
- 2 organising for the child or young person to be cared for by a family member

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

- (b) the chief executive is satisfied that a voluntary sharing of daily care responsibility or long-term care responsibility for the child or young person is necessary to ensure the child or young person's wellbeing; and
- (c) if the chief executive is satisfied that the child or young person has sufficient developmental capacity to understand that it is proposed that the child or young person will be temporarily cared for by a person who is not the child's or young person's former caregiver—the chief executive finds out and considers the child's or young person's views and wishes; and
- (d) for a voluntary care agreement in relation to a young person who is school-leaving age or older, the chief executive—
- (i) obtains the young person's agreement to the voluntary care agreement; or

- (ii) is satisfied that the young person does not have sufficient maturity or developmental capacity to understand and agree to the proposed voluntary care agreement.

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

**398 Voluntary care agreements—start day**

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

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

**399 Voluntary care agreements—length**

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

**400 Voluntary care agreements—extension**

- (1) The parties to a voluntary care agreement may agree in writing to extend the agreement if—
  - (a) the total length of the voluntary care agreement and the proposed extension will be not longer than—
    - (i) 6 months; or

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

- (ii) the young person does not have sufficient maturity or developmental capacity to understand and agree to the proposed voluntary care agreement.
- (3) A voluntary care agreement may be extended more than once.

**401 Voluntary care agreements—early ending**

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

**402 Voluntary care agreements—return of children and young people**

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

*Note* Emergency action may be taken under ch 13.



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

*Note* Parental responsibility provisions are dealt with in div 1.3.2.  
Care and protection orders are dealt with in ch 14.

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

## Chapter 13 Care and protection and therapeutic protection—emergency situations

### Part 13.1 Emergency action

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

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

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

*Note* *In need of care and protection* is defined in s 345.

#### 404 When are children and young people *in need of emergency therapeutic protection*?

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

- (a) the child or young person meets the criteria for a therapeutic protection order; and
- (b) the immediate placement of the child or young person in a therapeutic protection place is necessary to ensure the child or young person's safety.

**405 What is *emergency action*?**

In this Act:

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

- (a) means transferring daily care responsibility for the child or young person to the chief executive or police officer; and
- (b) includes arranging for the child's or young person's care and protection by keeping the child or young person at a place or by moving the child or young person from a place to another place.

*Note 1* If the chief executive has daily care responsibility for a child or young person, the chief executive must place the child or young person with an out-of-home carer (see pt 15.4) unless the child or young person is in therapeutic protection.

*Note 2* An authorised person or police officer may at any time enter premises if the authorised person or police officer believes on reasonable grounds that a child or young person at the premises is in need of emergency care and protection and the purpose of the entry is to take emergency action for the child or young person (including using force that is reasonable and necessary to obtain entry to safeguard the wellbeing of the child or young person) (see s 814).

**406 Emergency action—criteria for taking emergency action**

- (1) The chief executive or a police officer may take emergency action for a child or young person if the chief executive or police officer believes on reasonable grounds that the child or young person is in need of emergency care and protection or emergency therapeutic protection.
- (2) To remove any doubt, the chief executive or police officer may take emergency action for a child or young person if the child or young person is in the care of—
  - (a) a parent of the child or young person; or

- (b) someone else who has daily care responsibility for the child or young person.

*Note* Daily care responsibility for a child or young person is dealt with in s 19.

#### **407 Emergency action—assistance**

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

*Note* The chief executive may ask the chief police officer for assistance in carrying out emergency action and the chief police officer must assign police officers to assist the chief executive (see pt 18.1).

#### **408 Emergency action—certain people must be told**

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

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

**409 Emergency action—daily care responsibility after action**

- (1) If the chief executive takes emergency action for a child or young person, the chief executive has daily care responsibility for the child or young person.
- (2) If a police officer takes emergency action for a child or young person, the police officer has daily care responsibility for the child or young person until the police officer tells the chief executive about the emergency action under section 408.

*Note* The police officer must tell the chief executive immediately in writing, or, if that is not practicable, immediately orally and as soon as practicable in writing (see s 408 (1) and (2)).

- (3) After the police officer tells the chief executive about the emergency action, the chief executive has daily care responsibility for the child or young person.

- (4) The chief executive may authorise a police officer to exercise daily care responsibility for a child or young person on behalf of the chief executive.

*Note* If 2 or more people have parental responsibility for a child or young person, either of them may discharge the responsibility. However, if the chief executive is 1 of the people, no-one else may discharge the responsibility in a way that would be incompatible with the chief executive's discharge of the responsibility (see s 18 and s 475 (2)).

#### **410 Emergency action—length of daily care responsibility**

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

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

#### **411 Care and protection appraisal and placement**

If the chief executive has daily care responsibility for a child or young person under this division, the chief executive may make arrangements for the care and protection of the child or young person including—

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

*Note* Care and protection appraisals are dealt with in pt 11.2.

- (b) placing the child or young person with a person including—
  - (i) a parent of the child or young person; or

- (ii) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person; or
- (iii) a former caregiver of the child or young person.

**412 Emergency action—contact with family**

- (1) If the chief executive or a police officer has daily care responsibility for a child or young person under this division, the chief executive or police officer must, as far as practicable, allow reasonable contact between the child or young person and his or her family members and significant people.
- (2) However, the chief executive or police officer is not required to allow contact if the contact would create a risk of harm to the child or young person.

**413 Emergency action—application for orders**

- (1) This section applies if—
  - (a) the chief executive or a police officer has daily care responsibility for a child or young person under this division; and
  - (b) the chief executive applies for any of the following orders for the child or young person:
    - (i) an appraisal order;
    - (ii) a care and protection order;
    - (iii) an assessment order;
    - (iv) a therapeutic protection order.

- (2) The chief executive need only give a copy of the application to people under the following sections before the application is heard by the Childrens Court:
  - (a) section 379 (Appraisal orders—who must be given application);
  - (b) section 427 (Care and protection orders—who must be given application);
  - (c) section 445 (Assessment orders—who must be given application);
  - (d) section 541 (Therapeutic protection orders—who must be given application).
- (3) The Childrens Court must give initial consideration to the application on the day it is filed.

**414 Emergency action—end of daily care responsibility**

- (1) This section applies if the chief executive or a police officer has daily care responsibility for a child or young person under this division.
- (2) The chief executive or police officer stops having daily care responsibility for the child or young person if—
  - (a) the child or young person is returned to someone mentioned in section 415 (2); or
  - (b) the Childrens Court makes an order giving daily care responsibility for the child or young person to someone else.

**415 Emergency action—return of child or young person**

- (1) This section applies if the chief executive or a police officer has daily care responsibility for a child or young person under this division and, at the end of the period for which the chief executive or police officer may keep responsibility—



- (a) none of the following orders have been made for the child or young person:
    - (i) an appraisal order with a temporary parental responsibility provision;
    - (ii) an interim care and protection order with a parental responsibility provision;
    - (iii) a care and protection order with a parental responsibility provision;
    - (iv) an interim therapeutic protection order;
    - (v) a therapeutic protection order; and
  - (b) the chief executive or police officer still has daily care responsibility for the child or young person.
- (2) The chief executive or police officer must deliver the child or young person into the care of 1 of the following people:
- (a) a parent of the child or young person who has parental responsibility for the child or young person;
  - (b) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (c) a former caregiver of the child or young person.

## Part 13.2 Emergency action release orders

### 416 What is an *emergency action release order*?

In this Act:

*emergency action release order*, for a child or young person for whom the chief executive or a police officer has daily care responsibility under part 13.1, means an order for the release of the child or young person into the care of a stated person.

### 417 Emergency action release order—application

- (1) This section applies if the chief executive or a police officer has daily care responsibility for a child or young person under part 13.1.
- (2) Any of the following people (the *applicant*) may apply to the Childrens Court for an emergency action release order:
  - (a) the child or young person;
  - (b) a parent of the child or young person who has parental responsibility for the child or young person;
  - (c) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (d) a former caregiver of the child or young person;
  - (e) the public advocate.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

**418 Emergency action release order—application to state grounds**

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

**419 Emergency action release order—who must be given application**

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

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

*Note* If the chief executive applies for an appraisal order, a care and protection order, an assessment order or a therapeutic protection order for the child or young person, the chief executive need only give a copy of the application to people before the application is heard by the court (see s 413).

**420      Emergency action release order—criteria for making**

The Childrens Court may make an emergency action release order for a child or young person only if satisfied that the child or young person is no longer in need of emergency care and protection or emergency therapeutic protection.

*Note 1*    In a proceeding for an emergency action release order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2*    The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

## Chapter 14 Care and protection—care and protection orders

### Part 14.1 Preliminary

#### 421 Definitions—ch 14

In this chapter:

*authorised assessor*—see section 438.

*care and protection order*—see section 422.

*contact provision*, in a care and protection order—see section 485.

*drug use provision*, in a care and protection order—see section 488.

*DVPO protection order*—see section 458.

*enduring parental responsibility provision*, in a care and protection order—see section 481.

*interim care and protection order*—see section 433.

*mental health tribunal provision*, in a care and protection order—see section 491.

*parental responsibility provision*, in a care and protection order—see section 474.

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

- (a) a contact provision;
- (b) a drug use provision;
- (c) an enduring parental responsibility provision;
- (d) a mental health tribunal provision;

- (e) a residence provision;
- (f) a short-term parental responsibility provision;
- (g) a long-term parental responsibility provision;
- (h) a specific issues provision;
- (i) a supervision provision.

*short-term parental responsibility provision*, in a care and protection order—see section 476.

*specific issues provision*, in a care and protection order—see section 492.

*supervision provision*, in a care and protection order—see section 489.

## **422 What is a care and protection order?**

In this Act:

*care and protection order*—

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

(ix) a supervision provision.

**423 Offence—contravene care and protection order**

A person commits an offence if—

- (a) a care and protection order is in force for someone else who is a child or young person; and
- (b) the person has been given a copy of the order; and
- (c) the person engages in conduct that contravenes a provision of the order.

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

*Note 1* A registered family group conference agreement has effect as if it were an order of the Childrens Court and may be enforced accordingly (see s 393).

*Note 2* If a care and protection order is in force for a child or young person and there are reasonable grounds for suspecting that someone has contravened the order and because of the contravention, the child or young person is in danger, the chief executive or police officer may apply to the Childrens Court for a warrant to have the child or young person taken into safe custody (see s 685).

## Part 14.2 Applications for care and protection orders

### 424 Care and protection order—application by chief executive

The chief executive may apply to the Childrens Court for a care and protection order for a child or young person if the chief executive believes on reasonable grounds that the child or young person is in need of care and protection.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

### 425 Care and protection order—application by others

- (1) Someone (the *other applicant*) other than the chief executive may apply to the Childrens Court for a care and protection order for a child or young person if—
  - (a) the other applicant believes on reasonable grounds that the child or young person is in need of care and protection; and
  - (b) if the chief executive has not applied for a care and protection order for the child or young person—the other applicant has consulted the chief executive about the application; and
  - (c) the other applicant has the leave of the Childrens Court to make the application.
- (2) If the other applicant seeks the leave of the Childrens Court to make the application, the Childrens Court—
  - (a) must hear the other applicant and the chief executive; and
  - (b) may give the other applicant leave to make the application.



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

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

**426 Care and protection order—application must state provisions sought and grounds**

- (1) An application for a care and protection order must state—
- (a) the provisions proposed to be included in the order; and
  - (b) the grounds on which the care and protection order is sought.
- (2) An application for a care and protection order with a parental responsibility provision must also state—
- (a) whether parental responsibility is proposed to be shared or transferred; and
  - (b) each person who is to share parental responsibility; and
  - (c) each person to whom parental responsibility is to be transferred.

*Note* The Childrens Court may also include a provision in a care and protection order whether or not anyone applied, or cross-applied, for it (see s 383).

**427 Care and protection orders—who must be given application**

- (1) The applicant for a care and protection order for a child or young person must give a copy of the application to the following people at least 3 working days before the application is to be heard by the court:
- (a) the child or young person;

- (b) each parent of the child or young person;
  - (c) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (d) if the applicant is not the chief executive—the chief executive;
  - (e) the public advocate.
- (2) This section does not apply if the chief executive or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency action).

*Note* For s (2), the chief executive need only give a copy of the application to people before the application is heard by the court (see s 413).

#### **428 Care and protection order—cross-application for different provisions**

- (1) A party to a proceeding for a care and protection order for a child or young person may cross-apply for a different provision to be included in the order, different terms in a provision in the order or a different order, if the party—
- (a) believes on reasonable grounds that the different provision, terms or order is in the best interests of the child or young person; and
  - (b) has leave of the Childrens Court to cross-apply.

##### **Example—different term in provision in order**

An order includes a residence provision about with whom the child must live. A party may cross-apply for the residence provision to provide for the child to live with a different person.

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

- (2) If a party seeks the leave of the Childrens Court to cross-apply, the court may give leave only if satisfied that there are reasonable grounds for believing that the different provision, terms or order is in the best interests of the child or young person.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

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

- (1) A cross-application for a care and protection order must state—
- (a) the provisions that the applicant proposes to have included in the order, the proposed different terms in the provisions in the order or the proposed different order; and
  - (b) for a cross-application for a different provision, terms or order in a care and protection order—
    - (i) the draft different provision, terms or order; and
    - (ii) why the different provision, terms or order would be in the best interests of the child or young person.

*Note* The Childrens Court may also include a provision in a care and protection order whether or not anyone applied, or cross-applied, for it (see s 383).

- (2) A cross-application for a care and protection order with a parental responsibility provision must also state—
- (a) whether parental responsibility is proposed to be shared or transferred; and
  - (b) each person who is to share parental responsibility; and
  - (c) each person to whom parental responsibility is to be transferred.

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

- (1) The Childrens Court must give initial consideration to an application, or cross-application, for a care and protection order not later than 5 working days after the day the application, or cross-application, is filed.
- (2) The application or cross-application must be initially listed before a magistrate.
- (3) The magistrate must give directions about the conduct of the proceeding (including the hearing of the application or cross-application) at the time the application or cross-application is initially considered.
- (4) If a care and protection order in relation to the child or young person who is the subject of the application or cross-application is in force on the day the application or cross-application is filed, but the care and protection order would end before the application or cross-application is heard, the care and protection order continues in force until the application or cross-application is heard and decided (whether or not the application or cross-application is considered within the period required under this section).
- (5) This section does not apply if the chief executive or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency action).

*Note* For s (5), the court must give initial consideration to the application on the day it is filed (see s 413).

## Part 14.3 Interim care and protection matters

### Division 14.3.1 General

#### 431 Interim matters—Court action before adjournment

- (1) Before adjourning an application or cross-application under part 14.2 (Applications for care and protection orders), the Childrens Court must—
- (a) identify the matters in dispute and consider the length of hearing required; and
  - (b) give whatever directions are necessary to facilitate the hearing.

##### Examples—directions to facilitate hearing

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

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

- (2) Also, before adjourning an application or cross-application under this part, the Childrens Court may do any of the following:
- (a) order that a meeting (a *court-ordered meeting*) be held to identify or resolve matters in dispute;  
*Note* Court-ordered meetings are dealt with in s 432.
  - (b) make an interim care and protection order for the child or young person;  
*Note* Interim care and protection orders are dealt with in s 433.
  - (c) make an assessment order;

*Note* Assessment orders are dealt with in s 436.

- (d) make a DVPO interim protection order for the child or young person under section 459;

*Note* The Childrens Court may make a DVPO interim protection order if satisfied that it is necessary to ensure the child's or young person's safety until the application for the care and protection order is decided.

- (e) if an interim care and protection order is in force for the child or young person—
- (i) extend the length of the order and any provision so that they remain in force until the end of the adjournment; or
  - (ii) revoke any provision or both the order and the provision.

#### **432 Interim matters—court-ordered meeting**

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

*Note* Representation of children and young people is dealt with in the *Court Procedures Act 2004*, pt 7A (Procedural provisions—proceedings involving children).

- (iii) anyone else who was given a copy of the application under section 427 (Care and protection orders—who must be given application); and
  - (iv) with the leave of the court—anyone who has an interest in the proceeding.
- (2) The Childrens Court must appoint a suitable person to preside at the court-ordered meeting.

**Examples—suitable people**

- 1 a mediator providing community-based mediation services
- 2 a registrar of the court

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

- (3) However, the Childrens Court must not appoint anyone mentioned in subsection (1) who is attending the court-ordered meeting to preside at the meeting.
- (4) The person presiding at a court-ordered meeting must report the outcome of the court-ordered meeting to the Childrens Court.

## **Division 14.3.2 Interim care and protection orders**

### **433 Interim matters—interim care and protection orders**

- (1) The Childrens Court may, on application or on its own initiative, make an order (an *interim care and protection order*) for a child or young person if—
- (a) an application for a care and protection order for the child or young person has been made to the court but not finally decided; and

- (b) the court believes on reasonable grounds that the child or young person is in need of care and protection or would be in need of care and protection if the interim care and protection order was not made.
- (2) The Childrens Court must include in an interim care and protection order any of the following provisions that the Childrens Court is satisfied is in the best interests of the child or young person:
- (a) a contact provision;
  - (b) a drug use provision;
  - (c) a mental health tribunal provision;
  - (d) a residence provision;
  - (e) a supervision provision;
  - (f) a parental responsibility provision;
  - (g) a specific issues provision.
- (3) The length of an interim care and protection order must be stated in the order and the order must end on, or before, the day the application or cross application is decided.
- (4) Before making an interim care and protection order for a child or young person, the Childrens Court may require the chief executive to give the court a care plan for the child or young person for the period of the interim order.

*Note* Care plans are dealt with in s 455.

#### **434 Offence—contravene interim care and protection order**

A person commits an offence if—

- (a) an interim care and protection order is in force for someone else who is a child or young person; and
- (b) the person has been given a copy of the order; and



- (c) the person engages in conduct that contravenes a provision of the order.

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

**435 Interim care and protection orders—revocation or amendment**

- (1) This section applies if, during the hearing of an application for a care and protection order, the Childrens Court makes an interim care and protection order for a child or young person.
- (2) A party (the *applicant*) to the proceeding for the care and protection order may apply to the Childrens Court for revocation or amendment of the interim care and protection order.
- (3) The applicant must give a copy of the application to the following people at least 3 working days before the application is heard by the court:
  - (a) each party to the proceeding;
  - (b) anyone else who was required to be given a copy of the application for the care and protection order;
  - (c) the public advocate.
- (4) The Childrens Court must give initial consideration to the application not later than 5 working days after the day the application is filed.
- (5) The Childrens Court must give directions about the conduct of the proceeding (including the hearing of the application) at the time the application is initially considered.
- (6) After hearing the application, the Childrens Court must—
  - (a) revoke the interim care and protection order; or
  - (b) amend the interim care and protection order; or

- (c) substitute a provision in the interim care and protection order for a different provision; or
  - (d) dismiss the application.
- (7) If the interim care and protection order is in force on the day the application for revocation or amendment is filed, but would end before the application is heard, the interim care and protection order continues in force until the application is heard and decided (whether or not the application is considered within the period required under this section).

### **Division 14.3.3 Assessment orders**

*Note to div 14.3.3*

The chief executive may ask the chief police officer for assistance in taking action under an assessment order. The chief police officer must, if asked, give assistance to the chief executive by assigning police officers to assist the chief executive in carrying out the action (see s 679).

#### **436 What is an assessment order?**

In the care and protection chapters:

***assessment order***—

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

*Note* ***Care and protection assessment*** is defined in s 367.

- (b) may, but need not, include 1 or more of the following requirements:
  - (i) that a person attend, alone or with someone else, at a stated place at a stated time for the care and protection assessment;
  - (ii) that a person or entity comply with arrangements made by the chief executive for the care and protection assessment;

- (iii) that a person or entity give the court information relevant to the care, wellbeing or development of a child or young person;
- (iv) that something be produced to the court.

**437 Care and protection assessment—terms of reference for care and protection assessment**

- (1) For a care and protection assessment of a child or young person, unless the assessment order states otherwise, the chief executive must—
  - (a) decide the matters to be assessed in the care and protection assessment (the *terms of reference*); and
  - (b) choose an authorised assessor to make the assessment.
- (2) The terms of reference—
  - (a) may relate to the child or young person who is the subject of the assessment or another person; and

**Example—another person**  
a person with parental responsibility for the child or young person

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

  - (b) may include any matter that the chief executive considers relevant.
- (3) The chief executive must consult with the parties before deciding the terms of reference or choosing the assessor for a care and protection assessment.

*Note* For the parties under the care and protection chapters, see s 700.

- (4) For subsection (5), the chief executive must—
- (a) tell the parties about the proposed terms of reference or assessor; and
  - (b) give the parties at least 7 days to make submissions to the chief executive about the proposed terms of reference or assessor; and
  - (c) take into account any submissions made by a party.

**438 Care and protection assessment—authorisation of assessors**

- (1) The chief executive may authorise a person to carry out care and protection assessments (an *authorised assessor*).

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

- (2) The chief executive may authorise a person only if the chief executive considers the person is suitably qualified to carry out care and protection assessments.

**Examples—suitably qualified people**

- 1 a doctor or nurse to carry out medical examinations
- 2 a social worker or psychologist to carry out social assessments
- 3 an occupational therapist or other health professional to carry out developmental assessments
- 4 another person with qualifications or expertise to carry out assessments

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

- (3) An authorisation is a notifiable instrument.

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

**439 Care and protection assessment—report after making**

- (1) An authorised assessor who carries out a care and protection assessment must, as soon as practicable after the assessment is completed, give the chief executive—
  - (a) a written report of the assessment; and
  - (b) any records made by the assessor in the course of carrying out the assessment.
- (2) The chief executive must file the report with the Childrens Court.
- (3) A report filed under this section is taken to be a report to the Childrens Court rather than evidence tendered by a party.

**440 Offence—contravene assessment order**

A person commits an offence if—

- (a) an assessment order is in force for a child or young person; and
- (b) the person has been given a copy of the order; and
- (c) the person is not a child or young person who is to be assessed under the order (other than in the capacity of a parent); and
- (d) the person engages in conduct that contravenes a provision of the order.

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

**441 Assessment orders—prevails over care and protection order**

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

*Note* Care and protection orders are made under pt 14.4.

**442 Assessment orders—on application or court’s own initiative**

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

**443 Assessment orders—application by party**

- (1) A party to a proceeding for a care and protection order for a child or young person may apply for an assessment order if the party believes on reasonable grounds that—
- (a) a care and protection assessment is necessary to assess whether the child or young person is in need of care and protection; and
  - (b) the care and protection assessment cannot be properly carried out unless the order is made; and
  - (c) if the application is for an assessment order for the child or young person and a care and protection assessment of the child or young person has been carried out previously—the further care and protection assessment of the child or young person is not detrimental to the child or young person.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

*Note 3* Parties to proceedings are dealt with in pt 19.2.

- (2) A party who applies for an assessment order must meet the costs of the care and protection assessment.

**444 Assessment orders—application to state grounds**

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

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**445 Assessment orders—who must be given application**

- (1) The applicant for an assessment order in relation to a child or young person must give a copy of the application to the following people at least 3 working days before the application is to be heard by the court:
  - (a) the child or young person;
  - (b) each parent of the child or young person;
  - (c) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (d) the public advocate.
- (2) This section does not apply if the chief executive or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency action).

*Note* For s (2), the chief executive need only give a copy of the application to people before the application is heard by the court (see s 413).

**446 Assessment orders—court to consider application promptly**

The Childrens Court must give initial consideration to an application for an assessment order not later than 5 working days after the day the application is filed.

**447 Assessment orders—no interim order**

The Childrens Court must not make an interim assessment order.

**448 Assessment orders—criteria for making**

The Childrens Court may make an assessment order in relation to a child or young person only if satisfied that—

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

- (b) the care and protection assessment cannot be properly carried out unless the order is made; and
- (c) if the application is for an assessment order for the child or young person and a care and protection assessment of the child or young person has been carried out previously—the further care and protection assessment of the child or young person is not detrimental to the child or young person.

*Note 1* In a proceeding for an assessment order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

#### **449 Assessment orders—length**

The length of an assessment order—

- (a) must be stated in the order; and
- (b) must not be longer than 10 weeks.

*Note* The length of an assessment order may be extended (see s 454).

#### **450 Assessment orders—extension application**

A party to a proceeding for a care and protection order for a child or young person may apply to the Childrens Court for extension of an assessment order for a child or young person if the party believes on reasonable grounds that the care and protection assessment cannot be properly carried out unless the order is extended.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).



**451 Assessment orders—extension application must state grounds**

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

**452 Assessment orders—who must be given extension application?**

The applicant for extension of an assessment order must give a copy of the application to the following people at least 3 working days before the application is to be heard by the court:

- (a) each party to the proceeding in which the order was made;
- (b) anyone else who was required to be given a copy of the application for the assessment order;
- (c) the public advocate.

*Note* Parties to proceedings are dealt with in pt 19.2.

**453 Assessment orders—court to consider extension application promptly**

- (1) The Childrens Court must give initial consideration to an application for extension of an assessment order not later than 5 working days after the day the application is filed.
- (2) After initially considering the application, the Childrens Court may adjourn further consideration of the application only if satisfied that the adjournment is appropriate considering the urgency of the application.
- (3) If the assessment order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided (whether or not the application is considered within the period required under this section).

#### **454 Assessment orders—criteria for extension**

- (1) The Childrens Court may, by order, extend an assessment order—
  - (a) only if satisfied that the care and protection assessment cannot be properly carried out unless the order is extended; and
  - (b) only if the total length of the order and the proposed extension will not be longer than 18 weeks.
- (2) However the Childrens Court may extend the assessment order so that the total length of the order and the proposed extension is longer than 18 weeks if—
  - (a) the total length of the order and the proposed extension will not be longer than 26 weeks; and
  - (b) the court is satisfied that because of special and exceptional circumstances the extension is necessary for the assessment to be properly completed.

*Note 1* In a proceeding for an assessment order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

### **Division 14.3.4 Care plans**

#### **455 What is a *care plan*?**

In this Act:

*care plan*, for a child or young person who is, or is proposed to be, subject to a care and protection order or interim care and protection order—

- (a) means a written plan for meeting the child's or young person's protection or care needs; and

- (b) may include proposals for the purposes of case planning about the following:
- (i) who the chief executive considers would be the best person to have a stated aspect of parental responsibility for the child or young person;
  - (ii) for an Aboriginal or Torres Strait Islander child or young person—the preservation and enhancement of the identity of the child or young person as an Aboriginal or Torres Strait Islander person;
  - (iii) if the chief executive proposes to place the child or young person in kinship care or foster care—the kind of placement that will be sought or provided for the child or young person including any interim placement arrangements;  

*Note* Placement of children and young people in kinship care and foster care is dealt with in div 15.4.1.
  - (iv) how the chief executive proposes to ensure the living arrangements for the child or young person are as stable as possible;
  - (v) contact arrangements for the child or young person with family members and significant people as appropriate;
  - (vi) services to be provided for the child or young person;
  - (vii) if the child or young person is or is proposed to be placed in out-of-home care—planning and services to be provided for the child or young person when leaving out of home care.

## **456 Care plans—stability proposals**

- (1) This section applies if a care plan includes a proposal mentioned in section 455 (b) (iii) in relation to a child or young person’s living arrangements.
- (2) The chief executive must prepare a proposal (a *stability proposal*) that outlines how the chief executive proposes to ensure long-term placement in a safe, nurturing and secure environment.
- (3) A stability proposal may include—
  - (a) for a child or young person who lives with his or her parents—strategies to ensure stable and long-term living arrangements; and
  - (b) for a child or young person who does not live with his or her parents—
    - (i) an assessment of whether restoration of the child or young person to his or her parents is a realistic possibility; or
    - (ii) a proposal for restoration that includes changes at the home or by the parents that the chief executive believes would need to occur before the chief executive would consider it safe for the child or young person to return to his or her parents; or
    - (iii) a proposal for long-term placement that the chief executive considers to be in the best interests of the child or young person.
  - (c) anything else the chief executive considers necessary to ensure a long-term placement in a safe, nurturing and secure environment.

- (4) A proposal for long-term placement may include—
- (a) placement under a care and protection order with a long-term parental responsibility provision; or
  - (b) placement under a care and protection order with an enduring parental responsibility provision; or
  - (c) placement under a parenting order under the *Family Law Act 1975* (Cwlth); or
  - (d) adoption under the *Adoption Act 1993*.
- (5) The chief executive must not include adoption in a proposal for long-term placement for an Aboriginal or Torres Strait Islander child or young person under subsection (4) unless the chief executive has considered the *Adoption Act 1993*, section 21.

#### **457 Care plans—who must be consulted**

- (1) If the chief executive is preparing a care plan for a child or young person, the chief executive must—
- (a) tell the following people about the proposals the chief executive intends to include in the care plan:
    - (i) the child or young person;
    - (ii) each person who has daily care responsibility for the child or young person;
    - (iii) anyone else who would be involved in implementing a proposal;

##### **Examples—people who would be involved**

- 1 an out-of-home carer for the child or young person
- 2 a community-based service that is providing services to the child or young person

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

- (iv) for a proposal prepared under section 455 (b) (ii)—
  - (A) Aboriginal or Torres Strait Islander people who have an interest in the wellbeing of the child or young person through family, kinship and cultural ties; and
  - (B) any Aboriginal or Torres Strait Islander people or organisation identified by the chief executive as providing ongoing support services to the child or young person or the child’s or young person’s family; and
- (b) give the people opportunity to make submissions to the chief executive about the proposals.
- (2) If a person makes a submission to the chief executive about a proposal, the chief executive must consider the submission.

## Division 14.3.5 Orders under Domestic Violence and Protection Orders Act

### 458 Definitions—div 14.3.5

In this division:

***domestic violence***—

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

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

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

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

## **459 DVPO interim protection orders**

- (1) The Childrens Court may make a DVPO interim protection order for a child or young person—
  - (a) if an application for a care and protection order for the child or young person has been made but not yet finally decided; and
  - (b) if satisfied that it is necessary to make the DVPO interim protection order to ensure the child's or young person's safety until the application for the care and protection order is decided.
- (2) In considering whether it is necessary to make the DVPO interim protection order to ensure the child's or young person's safety until the application is decided, the Childrens Court may have regard to the need to ensure the person against whom the order is made will not engage in domestic violence in relation to the child or young person.
- (3) The Childrens Court may make the DVPO interim protection order—
  - (a) on its own initiative; or
  - (b) on application by a party to the proceeding for the care and protection order; or
  - (c) on application by the public advocate.

*Note* The Childrens Court may make a DVPO interim protection order before adjourning an application or cross-application under s 431 (Interim matters—Court action before adjournment).

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

*Note 3* In the proceeding, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 4* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

- (4) To remove any doubt, if the Childrens Court makes a DVPO interim protection order the order must be consistent with this division and the *Domestic Violence and Protection Orders Act 2001*.

**Example**

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

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

**460 DVPO final protection orders**

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

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



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

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

*Note 3* In the proceeding, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 4* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

- (3) To remove any doubt, if the Childrens Court makes a DVPO final protection order the order must be consistent with this division and the *Domestic Violence and Protection Orders Act 2001*.

- (4) In this section:

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

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

- (1) For this division, a person *psychologically abuses* a child or young person if the person—
- (a) causes or allows the child or young person to see or hear the physical, sexual, or psychological abuse of a person with whom the child or young person lives; or
  - (b) puts the child or young person, or allows the child or young person to be put, at risk of seeing or hearing that abuse occurring.

- (2) For subsection (1), the person who suffers the abuse is not regarded as having caused or allowed the child to see or hear the abuse, or, as the case may be, as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.
- (3) To remove any doubt—
  - (a) a single act may amount to psychological abuse of a child or young person; and
  - (b) a number of acts that form part of a pattern of behaviour may amount to psychological abuse of a child or young person, even though some or all of the acts, when viewed in isolation, may appear to be minor or trivial.

**462 No DVPO protection order if no proceeding under care and protection chapters**

- (1) This section applies if—
  - (a) someone wants to apply for a DVPO protection order for a child or young person; and
  - (b) no application for a care and protection order for the child or young person has been made.
- (2) The person must not apply for a DVPO protection order under this Act.
- (3) To remove any doubt, this section does not stop the person from applying for a protection order under the *Domestic Violence and Protection Orders Act 2001*.

**463 Effect of making DVPO protection order under this Act**

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

**Examples**

- 1 the DVPO protection order may be amended (including by extension) or revoked under that Act

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

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

- (2) The making of the DVPO protection order on an application for a care and protection order does not affect the validity of the protection order.
- (3) In applying the *Domestic Violence and Protection Orders Act 2001*, section 13 (Who may apply to amend or revoke a protection order?) to the DVPO protection order, the public advocate is taken to have been a party to the application for the DVPO protection order.
- (4) In applying the *Domestic Violence and Protection Orders Act 2001* to a DVPO protection order, a reference in that Act to domestic violence is taken to have the meaning given in section 458, definition of **domestic violence**.
- (5) In applying the *Domestic Violence and Protection Orders Act 2001* to a DVPO interim protection order made under this Act—
  - (a) a reference in that Act to a final order is taken to be a reference to a care and protection order; and
  - (b) a reference in that Act to the application or proceeding is taken to be a reference to the application or proceeding under this Act for which the DVPO interim protection order was made.

**Example—par (a)**

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

## **Part 14.4**                      **Making care and protection orders**

*Notes to pt 14.4*

An appraisal order prevails over a care and protection order (see s 375).

An assessment order prevails over a care and protection order (see s 441).

### **464**                      **Care and protection order—criteria for making**

- (1) The Childrens Court may make a care and protection order for a child or young person if the court—
  - (a) is satisfied that the child or young person is in need of care and protection; and
  - (b) has considered the care plan prepared by the chief executive for the child or young person; and
  - (c) is satisfied that—
    - (i) the provisions included in the order are necessary to ensure the care and protection of the child or young person; and
    - (ii) making the order is in the best interests of the child or young person.
- (2) The Childrens Court must include in a care and protection order, on application or its own initiative, any of the following provisions that the Childrens Court is satisfied is in the best interests of the child or young person:
  - (a) a contact provision;
  - (b) a drug use provision;
  - (c) an enduring parental responsibility provision;

- (d) a mental health tribunal provision;
  - (e) a residence provision;
  - (f) a short-term parental responsibility provision;
  - (g) a long-term parental responsibility provision;
  - (h) a specific issues provision;
  - (i) a supervision provision.
- (3) However, the Childrens Court must not include in a care and protection order an enduring parental responsibility provision unless satisfied that the criteria mentioned in section 482 (Enduring parental responsibility provision—criteria for making) are met.
- (4) Unless the Childrens Court orders otherwise, the chief executive must give a copy of a care plan provided for a proceeding to each other party to the proceeding.
- (5) The Childrens Court—
- (a) must not merely accept the admission of the parties to the proceeding that the child or young person is in need of care and protection; but
  - (b) must satisfy itself that the child or young person is in need of care and protection.
- Note 1* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).
- Note 2* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).
- (6) The Childrens Court may include a provision in a care and protection order on application by a party to the proceeding or on its own initiative.

- (7) If the Childrens Court intends someone to make decisions about where the child or young person lives, the court must include a residence provision in the care and protection order.

**465 Care and protection order—length**

- (1) The Childrens Court must state the length of each provision included in a care and protection order.
- (2) The length of a care and protection order is the length of the longest provision in the order.

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

- (a) for short-term parental responsibility provision—s 476 (not longer than 2 years); and
- (b) for enduring parental responsibility provision—s 481 (until the child or young person is 18 years old).

*Note 2* The length of a care and protection order may be extended (see s 471).

## Part 14.5                      Extending, amending and revoking care and protection orders

### 466                      Care and protection order—extension and amendment applications

- (1) A person may apply to the Childrens Court for extension or amendment of a care and protection order, or a provision in a care and protection order, if the person—
  - (a) believes on reasonable grounds that the extension or amendment is in the best interests of the child or young person; and
  - (b) has the leave of the Childrens Court to make the application.
- (2) The Childrens Court must give leave to someone who was a party to the proceeding in which the care and protection order was made.
- (3) However, the Childrens Court may give leave to someone to apply more than once in a 12-month period only if satisfied that there has been a significant change in any relevant circumstances since the care and protection order was made or last extended or amended.

*Note 1*    Statements, documents and reports must be included in the application (see s 696).

*Note 2*    Oral applications may also be made (see s 698).

### 467                      Care and protection order—revocation applications

- (1) A person may apply to the Childrens Court for revocation of a care and protection order, or a provision in a care and protection order if the person—
  - (a) believes on reasonable grounds that—

- (i) the child or young person would not be in need of care and protection if the order or provision were revoked; or
  - (ii) the order cannot be administered effectively because of the child or young person's persistent refusal to comply with the residence provision of the order; or
  - (iii) it is otherwise in the best interests of the child or young person to revoke the order or provision; and
- (b) has the leave of the Childrens Court to make the application.
- (2) The Childrens Court must give leave to someone who was a party to the proceeding in which the care and protection order was made.
- (3) However, the Childrens Court may give leave to someone to apply more than once in a 12 month period only if satisfied that there has been a significant change in any relevant circumstances since the care and protection order was made or last extended or amended.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).

#### **468 Care and protection order—application to state what sought and grounds**

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

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



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

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

- (a) each party to the proceeding in which the order was made;
- (b) anyone else who was required to be given a copy of the application for the care and protection order;
- (c) the public advocate.

*Note* Parties to proceedings are dealt with in pt 19.2.

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

- (1) The Childrens Court must give initial consideration to an application for extension, amendment or revocation of a care and protection order, or a provision in a care and protection order not later than 5 working days after the day the application is filed.
- (2) The Childrens Court must give directions about the conduct of the proceeding (including the hearing of the application) at the time the application is initially considered.
- (3) If the care and protection order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided (whether or not the application is considered within the period required under this section).

**471 Care and protection order—criteria for extensions and amendments**

- (1) The Childrens Court may, by order, extend or amend a provision in a care and protection order if satisfied that extending or amending the order as proposed is in the best interests of the child or young person.
- (2) The court may extend a provision in a care and protection order for as long as the court considers appropriate.
- (3) The court may amend a provision in a care and protection order in any way the court considers appropriate, including—
  - (a) substituting a provision with a different provision; or
  - (b) including an additional provision.

*Note 1* The length of a care and protection order may be extended if the Childrens Court makes an annual review report order about an annual review report for a child or young person who is subject to a care and protection order (see pt 14.3).

*Note 2* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 3* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

- (4) This section is subject to section 477 (Short-term parental responsibility provision—extension).

**472 Care and protection order—criteria for revocation**

- (1) The Childrens Court may, by order, revoke a care and protection order, or a provision in a care and protection order, if satisfied that—
  - (a) the child or young person would not be in need of care and protection if the order, or the provision in the order, was revoked; or

- (b) the order cannot be administered effectively because of the child or young person's persistent refusal to comply with the residence provision of the order; or
- (c) it is otherwise in the best interests of the child or young person to revoke the order or the provision in the order.

*Note* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

- (2) Before revoking a care and protection order, or a provision in a care and protection order, the Childrens Court must consider the following matters:
  - (a) the age and maturity of the child or young person;
  - (b) the views and wishes of the child or young person;
  - (c) the living arrangements of the child or young person;
  - (d) the risk to the child or young person of harm if the order, or the provision of the order, is revoked.

#### **473 Care and protection orders—financial burdens**

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

## Part 14.6 Parental responsibility provisions

### Division 14.6.1 General

#### 474 What is a *parental responsibility provision*?

In the care and protection chapters:

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

- (a) means a provision about who has a stated aspect of parental responsibility for the child or young person; and
- (b) may, but need not, include 1 or more of the following directions:
  - (i) that a stated person has daily care responsibility for the child or young person;  
*Note* Daily care responsibility is dealt with in s 19.
  - (ii) that a stated person has long-term care responsibility for the child or young person;  
*Note* Long-term care responsibility is dealt with in s 20.
  - (iii) that parental responsibility for the child or young person is shared between stated people;
  - (iv) that a stated person (including the chief executive) who has long-term care responsibility for the child or young person must consult with each other person who shares long-term care responsibility for the child or young person in making a decision about a long-term matter for the child or young person;  
*Note* Long-term care responsibility is dealt with in s 20.

- (v) that a stated person who has parental responsibility for the child or young person must exercise the responsibility in a stated way.

*Note* If a care and protection order is in force for a child or young person and the chief executive or a police officer believes on reasonable grounds that someone has contravened the order and because of the contravention, the child or young person is in danger, the chief executive or police officer may apply to the Childrens Court for a warrant to have the child or young person taken into safe custody (see s 685).

#### **475 Chief executive sharing daily care responsibility**

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

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

### **Division 14.6.2 Short-term parental responsibility provisions**

#### **476 What is a *short-term parental responsibility provision*?**

In the care and protection chapters:

*short-term parental responsibility provision* means a parental responsibility provision in a care and protection order that is not longer than 2 years.

*Note* The length of a care and protection order is dealt with in s 465.

**477 Short-term parental responsibility provision—extension**

- (1) The Childrens Court may extend a short-term parental responsibility provision in a care and protection order if satisfied that extending the provision is in the best interests of the child or young person.
- (2) However, for subsection (1) it is a rebuttable presumption that it is in the best interests of the child or young person for the child or young person to be subject to a long-term parental responsibility provision if—
  - (a) the chief executive has had an aspect of daily care responsibility or long-term parental responsibility for—
    - (i) the 2 years immediately before the decision under subsection (1) is made; or
    - (ii) a total of more than 2 years in the 3 years immediately before the decision under subsection (1) is made; and
  - (b) the child or young person has been living with a stated person under a care and protection order for—
    - (i) the 2 years immediately before the decision under subsection (1) is made; or
    - (ii) a total of more than 2 years in the 3 years immediately before the decision under subsection (1) is made.
- (3) To rebut the presumption, a person who is a parent of the child or young person, or someone else who has had parental responsibility for the child or young person during the term of the order, must satisfy the Childrens Court that—
  - (a) the person is likely to be able to resume care of the child or young person during the period of extension; and
  - (b) it is in the best interests of the child or young person for the person to resume care of the child or young person during the period of extension.

- (4) In subsection (2):

*stated person* means—

- (a) the carer under the care and protection order; or
- (b) one parent to the exclusion of another parent; or
- (c) a family member who is not a parent.

*Note 1* A short-term parental responsibility provision may be extended, amended or revoked under pt 14.5.

*Note 2* If an application has been made to the Childrens Court for a care and protection order and the application is adjourned, any parental responsibility provision that is in force at the time of the adjournment may be extended until the end of the adjournment or revoked (see s 431).

#### **478 Short-term parental responsibility provision—financial contribution**

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

## Division 14.6.3 Long-term parental responsibility provisions

### 479 What is a *long-term parental responsibility provision*?

In the care and protection chapters:

*long-term parental responsibility provision* means a parental responsibility provision in a care and protection order that—

- (a) is in force until the child or young person is 18 years old; and
- (b) transfers daily care responsibility and long-term care responsibility for the child or young person to the chief executive or another stated person, unless the order states that a particular aspect of responsibility is transferred.

#### Example

A parental responsibility provision that transfers daily care responsibility for a child or young person to the chief executive until the child or young person is 18 years old but does not transfer long-term care responsibility to the chief executive.

*Note 1* The length of a care and protection order is dealt with in s 465.

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

### 480 Long-term parental responsibility provision—financial contribution by parents

- (1) This section applies if the Childrens Court includes a long-term parental responsibility provision in a care and protection order for a child or young person and the provision—
  - (a) transfers parental responsibility for the child or young person to the chief executive; or
  - (b) shares parental responsibility for the child or young person with the chief executive.



- (2) The Childrens Court may order a parent of the child or young person to pay an amount (the *contribution*) to the chief executive as a contribution to the cost of the care of the child or young person.
- (3) In deciding the amount of the contribution, the Childrens Court must have regard to the financial circumstances of the parent.
- (4) The contribution is a debt due and payable to the Territory.

## **Division 14.6.4      Enduring parental responsibility provisions**

### **481      What is an *enduring parental responsibility provision*?**

- (1) In the care and protection chapters:

*enduring parental responsibility provision* means a parental responsibility provision in a care and protection order that—

- (a) transfers daily care responsibility and long-term care responsibility for the child or young person to a stated person; and
- (b) does not transfer parental responsibility to the chief executive; and
- (c) is in force until the child or young person is 18 years old.

*Note*      The length of a care and protection order is dealt with in s 465.

- (2) To remove any doubt, an enduring parental responsibility provision is taken to include a residence provision that authorises the stated person to decide where and with whom a child or young person must live.

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

- (1) The Childrens Court may, on application or on its own initiative, include an enduring parental responsibility provision in a care and protection order for a child or young person if—
  - (a) no-one with parental responsibility for the child or young person (other than under a care and protection order) has had care of the child or young person for—
    - (i) the 2 years immediately before the order is made, or
    - (ii) a total of at least 2 years in the 3 years immediately before the order is made; and
  - (b) the child or young person has been living with a stated person under a care and protection order for—
    - (i) the 2 years immediately before the order is made, or
    - (ii) a total of more than 2 years in the 3 years immediately before the order is made; and
  - (c) the court is satisfied that—
    - (i) no-one with parental responsibility for the child or young person (other than under a care and protection order) (a *previous carer*) is willing or able to exercise daily care responsibility or long-term care responsibility for the child or young person; or
    - (ii) it is not in the best interests of the child or young person for a previous carer to exercise those responsibilities for the child or young person; and
  - (d) the court is satisfied that—
    - (i) it is unlikely that a previous carer of the child or young person will be willing or able to exercise daily care responsibility or long-term care responsibility for the

child or young person before the child or young person is 18 years old; or

- (ii) it is unlikely that it would be in the best interests of the child or young person for a previous carer to exercise those responsibilities for the child or young person before the child or young person is 18 years old; and
- (e) the court is satisfied that the stated person is willing and able to exercise daily care responsibility or long-term care responsibility for the child or young person; and
- (f) the court is satisfied that including the provision is the best way to meet the child's or young person's need for emotional security in the long-term; and
- (g) for an Aboriginal or Torres Strait Islander child or young person—the court has given any Aboriginal or Torres Strait Islander person or organisation that has provided ongoing support services to the child or young person and his or her family a reasonable opportunity to provide a written report about the making of the proposed provision.

(2) In this section:

***stated person*** means the person to whom the court proposes to transfer daily care responsibility and long-term care responsibility for the child or young person under the proposed enduring parental responsibility provision.

*Note 1* An enduring parental responsibility provision may be amended or revoked under pt 14.5.

*Note 2* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 3* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

**483 Enduring parental responsibility provision—financial contribution**

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

## Part 14.7 Residence provisions

### 484 What is a *residence provision*?

In the care and protection chapters:

*residence provision*, in a care and protection order, or an interim care and protection order, for a child or young person—

- (a) means a provision—
  - (i) about where or with whom a child or young person must live; or
  - (ii) authorising a person to decide where or with whom a child or young person must live; and
- (b) may include 1 or more of the following directions:
  - (i) that a stated person must not live at the same premises as the child or young person (including that the stated person must stop living at those premises);
  - (ii) that a stated person may live with the child or young person only subject to stated conditions.

**Example—stated condition**

that the stated person must undertake an anger management program

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

## Part 14.8 Contact provisions

### 485 What is a *contact provision*?

In the care and protection chapters:

*contact provision*, in a care and protection order, or an interim care and protection order, for a child or young person means a provision—

- (a) about who may, or must not, have contact with the child or young person; or
- (b) authorising the chief executive or another person to decide with whom the child or young person may have contact and to decide any conditions for the contact.

#### Examples—decisions and conditions

- 1 that a child may have contact with a stated person for at least 4 hours each week if the person complies with the drug use provision in the order
- 2 that a young person may have supervised contact with a stated person twice each week as arranged by the chief executive
- 3 that a child may have contact with a stated person in accordance with a care plan

*Note 1* *Contact*, with a person, is defined in s 348.

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

### 486 Contact provision—presumption about contact with family

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

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

**487 Contact provision—sibling may join proceeding without leave**

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

## Part 14.9 Drug use provisions

### 488 What is a *drug use provision*?

In the care and protection chapters:

*drug use provision*, for a stated person, in a care and protection order, or an interim care and protection order, for a child or young person means a provision about usage of drugs by the stated person that includes 1 or more of the following directions:

- (a) that the stated person must not use a stated drug;
- (b) that the stated person may use a stated drug only in accordance with the conditions in the provision;
- (c) that the stated person undergo drug testing as directed by the chief executive in accordance with the drug testing standards.

*Note* The Minister may make drug testing standards under s 887.



## Part 14.10 Supervision provisions

### 489 What is a *supervision provision*?

- (1) In the care and protection chapters:

*supervision provision*, in a care and protection order, or an interim care and protection order, for a child or young person, means a provision placing the child or young person, for the period stated in the order, under the supervision of the chief executive.

*Note* If a care and protection order including a supervision provision is in force for the child or young person for longer than 6 months, the chief executive must prepare an annual review report for the child or young person (see pt 14.13).

- (2) A supervision provision may, but need not, include 1 or more of the following requirements:
- (a) that 1 or more of the following people must report to the chief executive at the reasonable times and places stated by the chief executive:
    - (i) the child or young person;
    - (ii) a parent of the child or young person;
    - (iii) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (b) that 1 or more of the following people must take part in discussions with the chief executive about the child's or young person's care, wellbeing or development:
    - (i) the child or young person;
    - (ii) a parent of the child or young person;

- (iii) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;

**Example—discussion about care, wellbeing or development**

a discussion about whether the child or young person should undertake some form of education, vocational or recreational activity

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

- (c) that a person with parental responsibility for the child or young person allow the chief executive entry to stated premises for the purpose of supervising the care and protection of the child or young person.
- (3) Subsection (2) does not limit the matters for which the Childrens Court may make a supervision provision.

**490 Supervision provision—meetings with chief executive**

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

## Part 14.11 Mental health tribunal provisions

### 491 What is a *mental health tribunal provision*?

In this Act:

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

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

## Part 14.12 Specific issues provisions

### 492 What is a *specific issues provision*?

In this Act:

*specific issues provision*, in a care and protection order, or an interim care and protection order, for a child or young person means a provision about the care and protection of the child or young person that includes 1 or more of the following directions:

- (a) that a stated entity must do a stated thing;
- (b) that a stated entity must not do a stated thing;
- (c) that a stated entity must comply with a stated condition.

#### **Examples—directions to do a stated thing**

- 1 that a parent of the child or young person attend a stated parenting course
- 2 that a stated individual or body give to the chief executive stated oral or written information about the care, wellbeing or development of a child or young person

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

## Part 14.13 Annual review reports—parental responsibility provisions and supervision provisions

### 493 What is a *reviewable care and protection order*?

In this chapter:

*reviewable care and protection order* means a care and protection order that is in force, if the order—

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

*Note* Parental responsibility provisions are dealt with in pt 14.6.

*Note* Supervision provisions are dealt with in pt 14.10.

### 494 What is an *annual review report*?

In this chapter:

*annual review report*, for a reviewable care and protection order, means a report about—

- (a) the circumstances and living arrangements of the child or young person who is the subject of the care and protection order; and
- (b) whether the chief executive considers the existing arrangements for the care and protection of the child or young person are in the best interests of the child or young person.

**495 Annual review report—prepared at least annually**

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

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

**496 Annual review report—consultation**

- (1) This section applies if the chief executive is preparing an annual review report for a child or young person.
- (2) Before the chief executive finalises the report, the chief executive must, as far as is practicable and if the chief executive considers it is in the child's or young person's best interests, arrange a meeting with the following people to discuss the matters that the chief executive proposes to include in the report:
  - (a) if the chief executive is satisfied that the child or young person can understand and take part in the meeting—the child or young person;
  - (b) each person who has daily care responsibility or long-term care responsibility for the child or young person;
  - (c) if the child is placed in out-of-home care—the out-of-home carers for the child or young person;
  - (d) if the child or young person is placed with a foster carer—the foster care service for the foster carer;
  - (e) anyone else the chief executive considers appropriate.

**Example—par (2) (e)**

The public advocate

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

- (3) The matters discussed at the meeting may include sensitive information.

*Note* *Sensitive information* is defined in s 845.

**497 Annual review report—must be given to certain people**

- (1) The chief executive must give an annual review report for a care and protection order for a child or young person to each of the following people:
- (a) the child or young person;
  - (b) each person who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (c) each kinship carer or foster carer caring for the child or young person;
  - (d) the public advocate;
  - (e) the Childrens Court.

*Note* If a provision requires a person to act in relation to a parent of a child or young person, the person is not required to act in relation to the parent if the person cannot after reasonable inquiry find the parent (see s 21).

- (2) The chief executive may also give the annual review report to someone else so that the other person can give the report to a person mentioned in subsection (1).
- (3) Before giving an annual review report to someone mentioned in subsection (1) (a), (b) or (c) or subsection (2), the chief executive may make minor alterations to the report to protect the privacy and confidentiality of a person named in the report.

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

- (1) The chief executive may apply to the Childrens Court for an order waiving the need to give an annual review report about a child or young person to someone mentioned in section 497 (1) (a), (b) or (c) (a *waiver order*) if the chief executive considers that giving the report to the person would not be in the best interests of the child or young person.
- (2) The chief executive must give a copy of the application to each person mentioned in section 497 (1).

**499 Annual review report—waiver of obligation to give annual review report to someone**

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



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

- (1) This section applies if the chief executive—
  - (a) must give an annual review report to someone under section 497 (1) (Annual review report—must be given to certain people); and
  - (b) has not given the report to the person; and
  - (c) has not obtained a waiver order for the person.
- (2) The public advocate may apply to the Childrens Court for an order requiring the chief executive to give the annual review report to the person (an *annual review report order*).
- (3) The public advocate must give the chief executive a copy of the application promptly after the application is filed.
- (4) The Childrens Court may make an annual review report order.
- (5) If the court makes an annual review report order, the chief executive must give the annual review report to the person not later than 14 days after the day the court makes the order.

**501 Annual review report—extension of care and protection order**

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

## Chapter 15      Care and protection—chief executive has aspect of parental responsibility

### *Note to ch 15*

Parental responsibility for a child or young person may be transferred to, or shared with, the chief executive under any of the following (see s 17 and s 18):

- an appraisal order including a temporary parental responsibility provision (see s 373)
- a voluntary care agreement (see pt 12.3)
- emergency action (see pt 13.1)
- a care and protection order including a parental responsibility provision (see pt 14.6)
- a safe custody warrant (see s 683)
- a court order (under this Act or another law in force in the Territory)
- a provision of another law in force in the Territory.

## Part 15.1      General

### 502      Definitions—Act

In this Act:

*foster carer*—see section 510.

*foster care service*—see section 515.

*general parental authority*—see section 515.

*in therapeutic protection*—see section 572.

*kinship carer*—see section 509.

*out-of-home carer*—see section 508.

*out-of-home carer authorisation*—see section 515.

*residential care service*—see section 511.

*specific parental authority*—see section 515.

**503 Chief executive may provide assistance**

- (1) If the chief executive has parental responsibility for a child or young person, the chief executive may provide any of the following for the child or young person:
  - (a) placement with an out-of-home carer;
  - (b) financial support;
  - (c) counselling;
  - (d) appropriate education, training and employment opportunities;
  - (e) health care treatment;
  - (f) recreational opportunities;
  - (g) a care plan;
  - (h) an explanation, in a way the child or young person can understand, of the aim of care plans.
- (2) If the chief executive stops having parental responsibility for a child or young person (for any reason), the chief executive may arrange for financial or other assistance to be provided to, or for, the child or young person on the conditions the chief executive considers appropriate.

## **Part 15.2 Chief executive has long-term care responsibility**

### **504 Chief executive sharing long-term care responsibility**

- (1) This section applies if the chief executive—
  - (a) shares with another person long-term care responsibility for a child or young person; and
  - (b) under a parental responsibility provision is required to consult with each other person who shares long-term care responsibility for the child or young person in making a decision about a long-term matter for the child or young person.
- (2) If another person who has long-term care responsibility for the child or young person disagrees with the chief executive's proposed decision about a long-term matter for the child or young person—
  - (a) the person or the chief executive may apply to the Childrens Court for an order about the matter; and
  - (b) the chief executive must not make the decision without the person's agreement.

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

### **505 Chief executive must consult about long-term care**

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

*Note* Long-term care responsibility is dealt with in s 20.

## **Part 15.3**                      **Chief executive has daily care responsibility**

### **506**                      **Pt 15.3 applies to care and protection chapters**

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

*Note*                      Parental responsibility for a child or young person may be transferred to, or shared with, the chief executive under the following provisions (see s 17 and s 18):

- an appraisal order including a temporary parental responsibility provision (see s 373)
- a voluntary care agreement (see pt 12.3)
- emergency action (see pt 13.1)
- a care and protection order including a parental responsibility provision (see pt 14.6)
- a safe custody warrant (see s 683)
- a court order (under this Act or another law in force in the Territory)
- a provision of another law in force in the Territory.

- (2) However, this part does not apply if daily care responsibility for a child or young person is transferred to the chief executive—

- (a) under a therapeutic protection order or an interim therapeutic protection order; or
- (b) because the child has been confined at a therapeutic protection place under section 531 (b) (Therapeutic protection only under therapeutic protection order or for emergency protection).

*Note*                      Therapeutic protection orders are dealt with in pt 16.2. Interim therapeutic protection orders are dealt with in div 16.2.3.

**507 Public advocate to be told about action following appraisals**

- (1) This section applies if—
- (a) the chief executive decides that a child concern report about a child or young person is a child protection report; and
  - (b) because of the report, the chief executive carries out a child protection appraisal for the child or young person; and
  - (c) at the time of the incident that gave rise to the report, the chief executive had daily care responsibility for the child or young person and had placed the child or young person with an out-of-home carer under part 15.4; and

*Note 1* The chief executive may have daily care responsibility for a child or young person under any of the following provisions:

- (a) an appraisal order including a temporary parental responsibility provision (see s 373);
- (b) a voluntary care agreement (see pt 12.3);
- (c) emergency action (see pt 13.1);
- (d) a care and protection order including a parental responsibility provision (see pt 14.6).

*Note 2* If the chief executive has daily care responsibility for a child or young person, the chief executive must place the child or young person with an out-of-home carer (see pt 15.4).

- (d) the incident that gave rise to the report either—
- (i) involved the out-of-home carer; or
  - (ii) happened while the child or young person was taking part in a contact visit with someone and the contact was—
    - (A) allowed under a contact provision in a care and protection order; or
- Note* Contact provisions are dealt with in pt 14.8.
- (B) approved by the chief executive.

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

## Part 15.4 Out-of-home carers

### Division 15.4.1 Placement with out-of-home carer

#### 508 Who is an *out-of-home carer*?

In this Act:

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

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

#### 509 Who is a *kinship carer*?

In this Act:

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

- (a) authorised by the chief executive under section 516 (Authorisation of kinship carer—specific parental authority) for the child or young person; and
- (b) with whom the chief executive has placed the child or young person under section 512 (Chief executive may place child or young person with out-of-home carer).

#### 510 Who is a *foster carer*?

In this Act:

*foster carer*, for a child or young person, means a person authorised by the chief executive under—

- (a) section 518 (Authorisation of foster carer—specific parental authority); or



- (b) section 519 (Authorisation of foster carer—general parental authority).

**511 What is a residential care service?**

In this Act:

*residential care service*, for a child or young person, means an entity authorised by the chief executive under section 520 (Authorisation of residential care service—general parental authority).

**512 Chief executive may place child or young person with out-of-home carer**

- (1) If the chief executive has daily care responsibility for a child or young person, the chief executive may place the child or young person with an out-of-home carer.
- (2) If the chief executive is placing an Aboriginal or Torres Strait Islander child or young person with an out-of-home carer, the placement must be in accordance with section 513.

*Note* An authorised person may, at any reasonable time, enter premises where a child or young person is living if the chief executive has placed the child or young person with an out-of-home carer under this section and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 815).

**513 Priorities for placement with out-of-home carer—Aboriginal or Torres Strait Islander child or young person**

- (1) If the chief executive is placing an Aboriginal or Torres Strait Islander child or young person with an out-of-home carer under section 512, the chief executive must place the child or young person with the first of the options mentioned in subsection (2) that—
  - (a) is available; and

- (b) to which the child or young person does not object; and
  - (c) is consistent with any Aboriginal or Torres Strait Islander cultural plan in force for the child or young person.
- (2) The chief executive may place an Aboriginal or Torres Strait Islander child or young person with any of the following out-of-home carers:
- (a) a kinship carer;
  - (b) a foster carer who is a member of the child's or young person's Aboriginal or Torres Strait Islander community in a relationship of responsibility for the child or young person according to local custom and practice;
  - (c) a foster carer who is a member of the child's or young person's community;
  - (d) an Aboriginal or Torres Strait Islander foster carer;
  - (e) a non-Aboriginal or Torres Strait Islander foster carer who—
    - (i) the chief executive believes on reasonable grounds is sensitive to the child's or young person's needs; and
    - (ii) the chief executive believes on reasonable grounds is capable of promoting the child's or young person's ongoing contact with the child's or young person's Aboriginal or Torres Strait Islander family, community and culture; and
    - (iii) if family reunion or continuing contact with the child's or young person's Aboriginal or Torres Strait Islander family, community or culture is a consideration in the placement—lives near the child's or young person's Aboriginal or Torres Strait Islander family or community.

(3) In this section:

*Aboriginal or Torres Strait Islander cultural plan*, for an Aboriginal or Torres Strait Islander child or young person, means a care plan developed for the child or young person by the chief executive under section 455 (What is a *care plan*?) that includes proposals for the preservation and enhancement of the identity of the child or young person as an Aboriginal or Torres Strait Islander person.

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

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

*Note 1* The Minister may approve a place as a place of care for this Act under s 525.

*Note 2* An authorised person may, at any reasonable time, enter premises where a child or young person is living if the chief executive has placed the child or young person with an out-of-home carer under s 512 (Chief executive may place child or young person with out-of-home carer) and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 815).

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

**Division 15.4.2 Authorisation of out-of-home carers and approval of places of care**

**515 Definitions—Act**

In this Act:

*foster care service* means an entity that—

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

- (c) is authorised by the chief executive under section 517 (Authorisation of foster care service).

***general parental authority*** means—

- (a) for a foster carer—an authorisation under section 519 (Authorisation of foster carer—general parental authority); or
- (b) for a residential care service—an authorisation under section 520 (Authorisation of residential care service—general parental authority).

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

- (a) a person as a kinship carer under section 516; or
- (b) a person as a foster carer under—
- (i) section 518 (Authorisation of foster carer—specific parental authority); or
- (ii) section 519 (Authorisation of foster carer—general parental authority); or
- (c) an entity as a residential care service under section 520 (Authorisation of residential care service—general parental authority).

***specific parental authority*** means—

- (a) for a kinship carer—an authorisation under section 516; or
- (b) for a foster carer—an authorisation under section 518 (Authorisation of foster carer—specific parental authority).

**516 Authorisation of kinship carer—specific parental authority**

- (1) This section applies if the chief executive has daily care responsibility or long-term care responsibility for a child or young person.

- (2) The chief executive may authorise, orally or in writing, a family member, or significant person, of the child or young person to exercise the daily care or long-term care responsibility for the chief executive.
- (3) However, the chief executive may authorise a family member, or significant person, only if satisfied that the family member or significant person—
  - (a) is a suitable entity to exercise the responsibility for the child or young person; and
- (4) The family member or significant person must exercise the responsibility subject to any directions of the chief executive.
- (5) An authorisation under this section has effect only during a placement of the child or young person with the family member or significant person under section 512 (Chief executive may place child or young person with out-of-home carer).

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

*Note 2* A decision under this section is a reviewable decision (see s 839).

## **517 Authorisation of foster care service**

The chief executive may authorise an entity to be a foster care service if satisfied that the entity—

- (a) is a suitable entity to facilitate foster care services; and

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

*Note 1* Suitable entities are dealt with in s 61.

*Note 2* The Minister may make out-of-home care standards under s 887.

*Note 3* A decision under this section is a reviewable decision (see s 839).

### **518 Authorisation of foster carer—specific parental authority**

- (1) This section applies if the chief executive has daily care responsibility or long-term care responsibility for a child or young person.
- (2) The chief executive may authorise, orally or in writing, a person to exercise the daily care or long-term care responsibility for the chief executive.
- (3) However, the chief executive may authorise a person only if satisfied that the person agrees to exercise the responsibility for the chief executive.
- (4) The person must exercise the responsibility subject to any directions of the chief executive.
- (5) An authorisation under this section has effect only during a placement of the child or young person with the foster carer under section 512 (Chief executive may place child or young person with out-of-home carer).

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

*Note 2* A decision under this section is a reviewable decision (see s 839).

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**519 Authorisation of foster carer—general parental authority**

- (1) The chief executive may authorise, orally or in writing, a person—
  - (a) to exercise daily care responsibility for any child or young person for whom the chief executive has daily care responsibility; or
  - (b) to exercise long-term care responsibility for any child or young person for whom the chief executive has long-term care responsibility.
- (2) However, the chief executive may authorise a person only if satisfied that the person—
  - (a) is a suitable entity to exercise the responsibility for any child or young person; and
  - (b) has given the chief executive suitability information required by the chief executive about each other adult member of the person's household.
- (3) The person must exercise the responsibility subject to any directions of the chief executive.

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

*Note 2* A decision under this section is a reviewable decision (see s 839).

**520 Authorisation of residential care service—general parental authority**

- (1) The chief executive may authorise, in writing, an entity to exercise—
  - (a) daily care responsibility for any child or young person for whom the chief executive has daily care responsibility; or

- (b) long-term care responsibility for any child or young person for whom the chief executive has long-term care responsibility.
- (2) However, the chief executive may authorise an entity only if satisfied that the entity—
  - (a) is a suitable entity to exercise the responsibility for any child or young person; and
  - (b) complies with, and is likely to continue to comply with, the out-of-home care standards; and
  - (c) agrees to exercise the responsibility for the chief executive for any child or young person.
- (3) The entity must exercise the responsibility subject to any directions of the chief executive.

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

*Note 2* A decision under this section is a reviewable decision (see s 839).

## **521 Out-of-home carer must be given copy of authorisation and any relevant court orders**

- (1) If the chief executive orally authorises a person or entity as an out-of-home carer, the chief executive must also, as soon as practicable, authorise the person or entity in writing.
- (2) If the chief executive authorises, in writing, a person or entity as an out-of-home carer, the chief executive must give the person or entity a copy of—
  - (a) the authorisation; and
  - (b) any relevant court order about the child or young person.



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**522 Revocation of foster care service’s authorisation**

- (1) The chief executive may revoke an entity’s authorisation under section 517 as a foster care service if the chief executive is satisfied that the entity—
  - (a) is not a suitable entity to facilitate foster care services; or
  - (b) has not complied with, or continued to comply with, the out-of-home care standards.
- (2) The chief executive may also revoke an entity’s authorisation if the entity asks the chief executive to revoke the authorisation.
- (3) Before revoking an entity’s authorisation under subsection (1), the chief executive must—
  - (a) give the entity written notice of the chief executive’s intention to revoke the authorisation, including the chief executive’s reasons; and
  - (b) tell the entity that the person may make a submission, in writing, to the chief executive about the notice not later than 14 days after the day the notice is given to the person; and
  - (c) if the entity makes a submission—consider the submission.
- (4) After considering any submission, the chief executive may consider any other relevant matter and must decide to either—
  - (a) revoke the authorisation; or

*Note* A decision under this paragraph is a reviewable decision (see s 839).

- (b) revoke the notice of intention to revoke.

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

*Note* Under the Legislation Act, s 180, power given by a law to make a decision includes power to reverse or change the decision. The power

to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision.

### **523 Revocation of foster carer’s authorisation**

- (1) The chief executive may revoke a person’s authorisation under section 519 as a foster carer if satisfied that the person—
  - (a) is not a suitable entity to have responsibility for any child or young person; or
  - (b) has not adequately cared for or protected the child or young person; or
  - (c) has failed to comply with a direction of the chief executive in exercising daily care or long-term care responsibility for any child or young person.

*Note* **Fail** includes refuse, see the Legislation Act, dict, pt 1.

- (2) The chief executive may also revoke a person’s authorisation if the person asks the chief executive to revoke the authorisation.
- (3) Before revoking a person’s authorisation under subsection (1), the chief executive must—
  - (a) give the person written notice of the chief executive’s intention to revoke the authorisation, including the chief executive’s reasons; and
  - (b) tell the person that the person may make a submission, in writing, to the chief executive about the notice not later than 14 days after the day the notice is given to the person; and
  - (c) if the entity makes a submission—consider the submission.
- (4) After considering any submission, the chief executive may consider any other relevant matter and must decide to either—
  - (a) revoke the authorisation; or

*Note* A decision under this paragraph is a reviewable decision (see s 839).

(b) revoke the notice of intention to revoke.

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

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

*Note 2* An authorised person may, at any reasonable time, enter premises where a child or young person is living if the chief executive has placed the child or young person with an out-of-home carer under s 512 (Chief executive may place child or young person with out-of-home carer) and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 815).

## **524 Revocation of residential care service's authorisation**

(1) The chief executive may revoke an entity's authorisation under section 520 as a residential care service if satisfied that the entity—

- (a) is not a suitable entity to have daily care responsibility for any child or young person; or
- (b) has not adequately cared for or protected the child; or
- (c) has not complied with the out-of-home care standards.

*Note* The Minister may make out-of-home care standards under s 887.

(2) The chief executive may also revoke an entity's authorisation if the entity asks the chief executive to revoke the authorisation.

(3) Before revoking an entity's authorisation under subsection (1), the chief executive must—

- (a) give the entity written notice of the chief executive's intention to revoke the authorisation, including the chief executive's reasons; and

- (b) tell the entity that the entity may make a submission, in writing, to the chief executive about the notice not later than 14 days after the day the notice is given to the entity; and
  - (c) if the entity makes a submission—consider the submission.
- (4) After considering any submission, the chief executive may consider any other relevant matter and must decide to either—
- (a) revoke the authorisation; or

*Note* A decision under this paragraph is a reviewable decision (see s 839).

- (b) revoke the notice of intention to revoke.
- (5) This section is in addition to the Legislation Act, section 180 (Power to make decision includes power to reverse or change).

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

*Note 2* An authorised person may, at any reasonable time, enter premises where a child or young person is living if the chief executive has placed the child or young person with an out-of-home carer under s 512 (Chief executive may place child or young person with out-of-home carer) and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 815).

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

## **525 Approval of places of care**

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

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

*Note 1* The Minister may make out-of-home care standards under s 887.

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

*Note 3* A decision under this section is a reviewable decision (see s 839).

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

*Note* An authorised person may, at any reasonable time, enter a place operated by a residential care service if the Minister is deciding whether to approve the place as a place of care under this section and has asked the residential care service to allow the chief executive to inspect the place and the residential care service has agreed to allow the chief executive to inspect the place (see s 817).

(3) If the Minister asks the residential care service to allow the chief executive to inspect the place but the residential care service does not allow the chief executive to inspect the place, the Minister need not decide whether to approve the place as a place of care.

(4) An approval remains in force until revoked by the Minister.

(5) If the Minister approves a place operated by a residential care service as a place of care, the residential care service may care for and accommodate children and young people at the place.

(6) An approval is a notifiable instrument.

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

*Note 2* An authorised person may, at any reasonable time, enter premises where a child or young person is living if the chief executive has placed the child or young person with an out-of-home carer under s 512 (Chief executive may place child or young person with out-of-home carer) and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 815).

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

### **Division 15.4.3 Information to be kept by foster carers and residential care services**

#### **526 Definitions—div 15.4.3**

In this division:

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

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

***personal information***, about a child or young person—

- (a) means all protected information about the child or young person; and

*Note* For the meaning of ***protected information***, see s 844.

- (b) includes the following items:
  - (i) the birth certificate for the child or young person;

- (ii) school reports about the child or young person;
- (iii) medical reports about the child or young person;
- (iv) photographs of the child or young person.

*placement*, for a child or young person, means placement of the child or young person by the chief executive with a foster carer or a residential care service under section 512 (Chief executive may place child or young person with out-of-home carer).

### **527 Information must be kept during placement**

- (1) This section applies if the chief executive places a child or young person with a foster carer or a residential care service under section 512 (Chief executive may place child or young person with out-of-home carer).
- (2) Each care entity for the child or young person for the placement, must keep the following things during the placement:
  - (a) personal information about the child or young person that the care entity possesses because of the placement;
  - (b) records made by the care entity about the child or young person because of the placement.

### **528 Information must be kept after placement ends**

- (1) This section applies if a care entity for a child or young person for a placement keeps personal information or records under section 527.
- (2) The care entity must keep the personal information or records until the care entity gives the personal information or records to the chief executive under subsection (3).
- (3) The care entity must give the personal information or records to the chief executive if—
  - (a) the chief executive asks the care entity to give the personal information or records to the chief executive; or

- (b) the care entity stops being a care entity for this Act; or
  - (c) 2 years have elapsed since the placement ended; or
  - (d) the person to whom the personal information or records relate becomes an adult.
- (4) If personal information or records are given to the chief executive under subsection (3), the personal information or records are a record of an agency.
- (5) In this section:
- record*, of an agency—see the *Territory Records Act 2002*, section 9 (Meaning of *record* of an agency).

## **529 Child or young person must have access to information**

- (1) This section applies if—
- (a) a care entity for a child or young person for a placement keeps personal information or records under section 527; and
  - (b) the care entity has not given the personal information or records to the chief executive under section 528.
- (2) The chief executive may authorise the care entity to give the child or young person access to the personal information and records if the chief executive considers it to be in the child's or young person's best interests.
- (3) If the chief executive authorises the care entity to give the child or young person access to the personal information and records, the care entity must give the child or young person access.
- (4) If the chief executive's authorisation is subject to a condition about the access to be given, the care entity must comply with the condition.



## Chapter 16 Care and protection— therapeutic protection of children and young people

### Part 16.1 Preliminary

#### 530 Definitions—Act and ch 16

(1) In this Act:

*harmful conduct*—see section 533.

*interim therapeutic protection order*—see section 543.

*mental dysfunction*—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

*Note* The *Mental Health (Treatment and Care) Act 1994*, dictionary defines *mental dysfunction* as a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion.

*mental illness*—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

*Note* The *Mental Health (Treatment and Care) Act 1994*, dictionary defines *mental illness* as a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person and is characterised by the presence in the person of any of the following symptoms:

- (a) delusions;
- (b) hallucinations;
- (c) serious disorder of thought form;
- (d) a severe disturbance of mood;
- (e) sustained or repeated irrational behaviour indicating the presence of the symptoms referred to in paragraph (a), (b), (c) or (d).

*therapeutic protection history*—see section 537.

*therapeutic protection order*—see section 532.

*therapeutic protection place*—see section 535.

*therapeutic protection plan*—see section 536.

(2) In this chapter:

*non-treating doctor* means a doctor authorised under section 632 (Health professionals—non-treating functions).

*non-treating health professional* means a health professional authorised under section 632 (Health professionals—non-treating functions).

*non-treating nurse* means a nurse authorised under section 632 (Health professionals—non-treating functions).

*risk assessment*—see section 534.

*therapeutic protection person* means—

- (a) for a therapeutic protection place for which the chief executive is the operating entity—an authorised person to whom the chief executive has delegated functions of a therapeutic protection person under this chapter; and
- (b) for any other therapeutic protection place—a person that the operating entity has authorised to exercise the functions of a therapeutic protection person under this chapter for the therapeutic protection place.

*transition plan*—see section 538.

**531 Therapeutic protection only under therapeutic protection order or for emergency protection**

The chief executive may confine a child or young person at a therapeutic protection place only—

- (a) under a therapeutic protection order; or
- (b) under an interim therapeutic protection order; or
- (c) if the chief executive believes on reasonable grounds the child or young person is in need of emergency therapeutic protection.

*Note* For when a child or young person is in need of emergency therapeutic protection, see s 404.

## Part 16.2 Therapeutic protection orders

*Note to pt 16.2*

Legal representation of children and young people is dealt with in the *Court Procedures Act 2004*, pt 7A (Procedural provisions—proceedings involving children).

### Division 16.2.1 Definitions—Act and pt 16.2

#### 532 What is a *therapeutic protection order*?

In this Act:

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

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

*Note* Part 15.3 (Chief executive has daily care responsibility) does not apply if daily care responsibility for a child or young person is transferred to the chief executive under a therapeutic protection order (see s 506).

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

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

- (a) someone has contravened the order and, because of the contravention, the child or young person is in danger; or
- (b) the child or young person is absent without lawful authority or excuse from the therapeutic protection place where the child or young person has been directed to be confined under the therapeutic protection order (see s 685).

### **533 What is *harmful conduct*?**

In this Act:

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

### **534 What is a *risk assessment*?**

- (1) For this chapter:

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

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

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

**535 What is a *therapeutic protection place*?**

In this Act:

*therapeutic protection place*, means a place declared by the Minister under section 625 to be a therapeutic protection place.

*Note* Therapeutic protection places are further dealt with in div 16.4.1.

**536 What is a *therapeutic protection plan*?**

In this Act:

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

- (a) means a plan to reduce the likelihood of the child or young person engaging in harmful conduct in the future arranged by the chief executive in consultation, as far as is practicable, with—
  - (i) the child or young person; and
  - (ii) the parents of the child or young person; and
  - (iii) each other person (if any) who has daily care responsibility for the child or young person; and
  - (iv) anyone else who is proposed to be involved in implementing the plan; and

- (b) includes written details of the following for the proposed period of confinement:
- (i) when the period of confinement is to start and end;
  - (ii) the therapy, counselling or other service that is proposed for the child or young person;
  - (iii) the expected results of the therapy, counselling or other service;
  - (iv) the education that is proposed for the child or young person;
  - (v) the supervision that is proposed for the child or young person;
  - (vi) the proposed arrangements for the child's or young person's contact with—
    - (A) family members; and
    - (B) significant people for the child or young person; and
    - (C) other people;
  - (vii) for an Aboriginal or Torres Strait Islander child or young person—the proposed arrangements for the preservation and enhancement of the identity of the child or young person as an Aboriginal or Torres Strait Islander person.

*Note* If the public advocate or an official visitor asks the chief executive for a therapeutic protection plan for a child or young person, the chief executive must provide a copy promptly (see s 631).

**537**      **What is *therapeutic protection history*?**

In this Act:

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

- (a) when the period of confinement started and ended;
- (b) where the child or young person was confined;
- (c) the therapy, counselling or other service that was provided to the child or young person;
- (d) the review of the progress of the therapy, counselling or other service;
- (e) the education that was provided to the child or young person;
- (f) the supervision that was provided to the child or young person;
- (g) the arrangements for the child's or young person's contact with, and the child's or young person's contact with—
  - (i) family members; and
  - (ii) significant people for the child or young person; and
  - (iii) other people.



**538**      **What is a *transition plan*?**

In this chapter:

*transition plan*, for a child or young person—

- (a) means a plan developed by the chief executive for when the child or young person is no longer subject to a therapeutic protection order; and
- (b) may include proposals for ongoing therapy, counselling or other services to assist the child's or young person's transition from therapeutic protection.

**Division 16.2.2      Applications for therapeutic protection orders**

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

- (1) Only the chief executive may apply for a therapeutic protection order.
- (2) The chief executive may apply to the Childrens Court for a therapeutic protection order for a child or young person if satisfied that the criteria for making the order are met.

*Note 1*    Criteria for making a therapeutic protection order are in s 549.

*Note 2*    Oral applications may also be made (see s 698).

**540**      **Therapeutic protection order—application to state grounds etc**

An application for a therapeutic protection order for a child or young person must—

- (a) state the grounds on which the order is sought; and
- (b) include—
  - (i) a risk assessment for the child or young person; and

- (ii) a copy of previous therapeutic protection orders for the child or young person (if any); and
- (iii) the therapeutic protection history for the child or young person (if any); and
- (c) state the less restrictive ways that the chief executive has—
  - (i) tried to prevent the child or young person from engaging in harmful conduct and how the less restrictive ways were not successful (if any); and
  - (ii) considered to prevent the child or young person from engaging in harmful conduct and how the less restrictive ways were not appropriate (if any); and
- (d) include—
  - (i) a therapeutic protection plan for the child or young person; and
  - (ii) a transition plan for the child or young person; and
  - (iii) information about how the therapeutic protection order is part of the overall care plan for the child or young person.

*Note* Statements, documents and reports must be included in the application (see s 696).

## **541 Therapeutic protection orders—who must be given application**

- (1) The chief executive must give a copy of the application for the therapeutic protection order for the child or young person to the following people at least 1 working day before the application is to be heard by the Childrens Court:
  - (a) the child or young person;
  - (b) each parent of the child or young person;

- (c) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (d) the public advocate.
- (2) This section does not apply if the chief executive or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency care and protection).

*Note* For s (2), the chief executive need only give a copy of the application to people before the application is heard by the Childrens Court (see s 413).

**542 Therapeutic protection order—Childrens Court to consider application promptly**

- (1) The Childrens Court must give initial consideration to an application for a therapeutic protection order not later than 2 working days after the day the application is filed.
- (2) The Childrens Court must give directions about the conduct of the proceeding (including the hearing of the application) at the time the application is initially considered.
- (3) This section does not apply if the chief executive or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency action).

*Note* For s (3), the Childrens Court must give initial consideration to the application on the day it is filed (see s 413).

## Division 16.2.3 Interim therapeutic protection orders

### 543 What is an *interim therapeutic protection order*?

In this Act:

*interim therapeutic protection order*, for a child or young person, means a therapeutic protection order if the period of confinement is not longer than 2 weeks.

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

- (a) someone has contravened the order and, because of the contravention, the child or young person is in danger; or
- (b) the child or young person is absent without lawful authority or excuse from the therapeutic protection place where the child or young person has been directed to be confined under the therapeutic protection order (see s 685).

### 544 Interim therapeutic protection order—criteria for making

The Childrens Court may, on application by the chief executive, make an interim therapeutic protection order for a child or young person if—

- (a) an application for a therapeutic protection order for the child or young person has been made but not finally decided; and
- (b) the Childrens Court believes on reasonable grounds that the criteria for making a therapeutic protection order for the child or young person are met.

*Note* Criteria for making a therapeutic protection order are in s 549.

**545 Interim therapeutic protection order—mental health referral**

- (1) The Childrens Court must make an interim therapeutic protection order for a child or young person if—
  - (a) an application for a therapeutic protection order for the child or young person has been made but not finally decided; and
  - (b) the Childrens Court suspects on reasonable grounds that the child or young person is suffering from a mental illness or mental dysfunction.
- (2) The order must contain a provision directing the child or young person to submit to the jurisdiction of the mental health tribunal to allow the tribunal—
  - (a) to decide whether the child or young person is suffering from a mental illness or mental dysfunction; and
  - (b) if the tribunal decides that the child or young person is suffering from a mental illness or mental dysfunction—to make recommendations to the Childrens Court about how the child or young person should be dealt with.

*Note* The Childrens Court may make a therapeutic protection order for a child or young person only if satisfied that the child or young person is not suffering from a mental illness or mental dysfunction (see s 549).

**546 Interim therapeutic protection order—length**

- (1) The length of an interim therapeutic protection order—
  - (a) must be stated in the order; and
  - (b) must not be longer than 2 weeks.
- (2) However, if the interim therapeutic protection order would end before the application for the therapeutic protection order is decided, the interim order continues in force until the application is decided.

- (3) An interim therapeutic protection order must end on, or before, the day the application for the therapeutic protection order is decided.

**547 Interim therapeutic protection order—no extension, amendment, revocation**

An interim therapeutic protection order must not be extended, amended or revoked.

**548 Offence—interim therapeutic protection order**

A person commits an offence if—

- (a) an interim therapeutic protection order is in force for a child or young person; and
- (b) the person has been given a copy of the order; and
- (c) the person is not the child or young person who is the subject of the interim therapeutic protection order; and
- (d) the person engages in conduct that contravenes a provision of the order.

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

## **Division 16.2.4 Making a therapeutic protection order**

### **549 Therapeutic protection order—criteria for making**

The Childrens Court may, on the application of the chief executive, make a therapeutic protection order for a child or young person only if satisfied that—

- (a) if the order is not made—
  - (i) there will be a significant risk of significant harm to—
    - (A) the child or young person; or
    - (B) someone else; and
  - (ii) the risk of harm arises from the child's or young person's conduct; and
  - (iii) the risk of harm will be imminent; and
- (b) the chief executive has—
  - (i) tried less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways have not been successful; or
  - (ii) considered less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways were not appropriate; and
- (c) there are no less restrictive ways for the chief executive to prevent the child or young person from engaging in harmful conduct; and
- (d) the child or young person is at least 10 years old; or
- (e) the child or young person—
  - (i) is not suffering from a mental illness or mental dysfunction; or

- (ii) in addition to any other behaviours or dysfunction giving rise to the risk of harm is suffering from a mental illness or mental dysfunction but the Childrens Court is satisfied that making a therapeutic protection order for the child or young person is the best way to support the child or young person; and

*Note* The Childrens Court must make an interim therapeutic protection order for a child or young person if an application for a therapeutic protection order for the child or young person has been made but not finally decided and the court suspects on reasonable grounds that the child or young person is suffering from a mental illness or mental dysfunction. The order must direct the child or young person to submit to the jurisdiction of the mental health tribunal (see s 545).

- (f) no-one who has parental responsibility for the child or young person (other than the chief executive) is willing and able to prevent the child or young person from engaging in harmful conduct; and

*Note* Parental responsibility is dealt with in div 1.3.2.

- (g) confinement of the child or young person is necessary to prevent the child or young person from engaging in harmful conduct; and
- (h) the chief executive has developed a therapeutic protection plan for the child or young person; and
- (i) the therapeutic protection plan is more likely than not to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and
- (j) making the order is in the best interests of the child or young person.



**Examples—other ways to prevent child or young person from engaging in harmful conduct—par (b) and (c)**

- 1 The chief executive provided Alex’s family with intensive family support services.
- 2 The chief executive sought a care and protection order including a parental responsibility provision for Bonny. Under the order, Bonny was placed with a foster carer and provided with intensive support services.
- 3 The chief executive provided Colin with the same services that are provided under a therapeutic protection plan but Colin was not confined at a therapeutic protection place.

*Note 1* In a proceeding for a therapeutic protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The Childrens Court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

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

**550 Therapeutic protection order—length**

The length of a therapeutic protection order—

- (a) must be stated in the order; and
- (b) must not be longer than 8 weeks.

*Note* A therapeutic protection order may be extended (see div 16.2.6).

**551 Therapeutic protection order—statement of reasons**

If the Childrens Court hears and decides an application for a therapeutic protection order, the court must record a written statement of reasons for the decision.

*Note* A party may ask for the statement of reasons (see s 722 (2)).

**552 Offence—therapeutic protection order**

A person commits an offence if—

- (a) a therapeutic protection order is in force for a child or young person; and
- (b) the person has been given a copy of the order; and
- (c) the person is not the child or young person who is the subject of the therapeutic protection order; and
- (d) the person engages in conduct that contravenes a provision of the order.

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

**Division 16.2.5 Review of therapeutic protection orders**

**553 Initial review within 4 weeks**

- (1) This section applies if a therapeutic protection order is in force for a child or young person.
- (2) The chief executive must review the operation of the order (the *initial review*) not later than 4 weeks after the order is made.

**554 Ongoing review at least each 4 weeks**

- (1) This section applies if a therapeutic protection order is in force for a child or young person.
- (2) The chief executive must review the operation of the order (an *ongoing review*) not later than 4 weeks after—
  - (a) the initial review; and
  - (b) each ongoing review.

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**555 Review—views to be considered**

- (1) This section applies if the chief executive is carrying out an initial review, or ongoing review, of the operation of a therapeutic protection order.
- (2) In carrying out the review, the chief executive must consider the views of the following people:
  - (a) the child or young person;
  - (b) each person who has parental responsibility for the child or young person (other than the chief executive);

*Note* Parental responsibility is dealt with in div 1.3.2.
  - (c) each person who had daily care responsibility for the child or young person immediately before the order was made;

*Note* Daily care responsibility is dealt with in s 19 (b).
  - (d) each official visitor who has visited the child or young person;
  - (e) the public advocate;
  - (f) any other person the chief executive considers appropriate.

**556 Review report**

- (1) This section applies if the chief executive has carried out an initial review, or ongoing review, of the operation of a therapeutic protection order.
- (2) The chief executive must prepare a report (a *review report*) about the operation of the therapeutic protection order.
- (3) The chief executive must give a copy of the review report to the following people:
  - (a) the child or young person;
  - (b) each person who has parental responsibility for the child or young person (other than the chief executive);

- (c) each person who had daily care responsibility for the child or young person immediately before the order was made;
- (d) each official visitor who has visited the child or young person;
- (e) the public advocate.

**557 Chief executive’s action after review**

- (1) This section applies if the chief executive has carried out an initial review, or ongoing review, of the operation of a therapeutic protection order.
- (2) If the chief executive decides that the order should be extended, the chief executive must apply to the Childrens Court for the order to be extended.

*Note* The Childrens Court may extend the order under div 16.2.6.

- (3) If the chief executive decides that the order should be amended, the chief executive must apply to the Childrens Court for the order to be amended.

*Note* Amending a therapeutic protection order is dealt with in div 16.2.7.

- (4) If the chief executive decides that the order should be revoked, the chief executive must apply to the Childrens Court for the order to be revoked.

*Note* Revoking a therapeutic protection order is dealt with in div 16.2.7.

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## **Division 16.2.6      Extending a therapeutic protection order**

### **558      Therapeutic protection order—extension application**

The chief executive may apply to the Childrens Court for extension of a therapeutic protection order only if the chief executive believes on reasonable grounds that the criteria for extending the order are met.

*Note 1*    Criteria for extending the order is in s 562.

*Note 2*    Statements, documents and reports must be included in the application (see s 696).

*Note 3*    Oral applications may also be made (see s 698).

### **559      Therapeutic protection order—extension application must state grounds etc**

An application for extension of a therapeutic protection order must—

- (a) state the grounds for the proposed extension; and
- (b) include—
  - (i) the therapeutic protection history for the child or young person; and
  - (ii) a further therapeutic protection plan for the child or young person for the period of the proposed extension; and
  - (iii) a further risk assessment for the child or young person.

**560 Therapeutic protection order—who must be given extension application**

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

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

*Note* Parties to proceedings are dealt with in pt 19.2.

**561 Therapeutic protection order—Childrens Court to consider extension application promptly**

- (1) The Childrens Court must give initial consideration to an application for extension of a therapeutic protection order not later than 2 working days after the day the application is filed.
- (2) The Childrens Court must give directions about the conduct of the proceeding (including the hearing of the application) at the time the application is initially considered.
- (3) If the therapeutic protection order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided (whether or not the application is considered within the period required under this section).

**562 Therapeutic protection order—criteria for extension up to 6 months**

- (1) The Childrens Court may, by order, extend a therapeutic protection order only if satisfied that—
  - (a) if the order is not extended—
    - (i) there will be a significant risk of significant harm to—

- (A) the child or young person; or
  - (B) someone else; and
  - (ii) the risk of harm arises from the child's or young person's conduct; and
  - (iii) the risk of harm will be imminent; and
  - (b) the chief executive has—
    - (i) tried less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways have not been successful; or
    - (ii) considered less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways were not appropriate; and
  - (c) there are no less restrictive ways for the chief executive to prevent the child or young person from engaging in harmful conduct; and
  - (d) if, in addition to any other behaviours or dysfunction giving rise to the risk of harm, the child or young person is suffering from a mental illness or mental dysfunction—extending the order is the best way to support the child or young person; and
  - (e) no-one who has parental responsibility for the child or young person (other than the chief executive) is willing and able to prevent the child or young person from engaging in harmful conduct; and
- Note* Parental responsibility is dealt with in div 1.3.2.
- (f) further confinement of the child or young person is necessary to prevent the child or young person from engaging in harmful conduct; and
  - (g) the chief executive has developed a further therapeutic protection plan for the child or young person; and

- (h) the further therapeutic protection plan is more likely than not to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and
- (i) extending the order is in the best interests of the child or young person.

*Note 1* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The Childrens Court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

- (2) The Childrens Court may extend a therapeutic protection order for as long as a further 8 weeks.
- (3) However, the Childrens Court must not extend a therapeutic protection order if the total length of the order and the proposed extension will be longer than 6 months.

### **563 Therapeutic protection order extension—statement of reasons**

If the Childrens Court hears and decides an application for extension of a therapeutic protection order, the court must record a written statement of reasons for the decision.

*Note* A party may ask for the statement of reasons (see s 722 (2)).

## **Division 16.2.7 Amending or revoking a therapeutic protection order**

### **564 Therapeutic protection order—application for amendment or revocation**

The following people may apply for amendment or revocation of a therapeutic protection order for a child or young person if the person believes on reasonable grounds that the criteria for amending or revoking the order are met:



- (a) the chief executive;
- (b) the child or young person;
- (c) someone who has parental responsibility for the child or young person;
- (d) a former caregiver of the child or young person;
- (e) the public advocate.

*Note* Criteria for amending the order are in s 569.  
Criteria for revoking the order are in s 570.

**565 Therapeutic protection order—application for amendment must state grounds etc**

- (1) An application for amendment of a therapeutic protection order must—
  - (a) state—
    - (i) how the provision is proposed to be amended; and
    - (ii) the grounds for the proposed amendment; and
  - (b) if the applicant is the chief executive, include—
    - (i) the therapeutic protection history for the child or young person; and
    - (ii) a revised therapeutic protection plan for the child or young person that takes into account the proposed amendment; and
    - (iii) a further risk assessment for the child or young person.
- (2) If the applicant is not the chief executive, after the chief executive receives a copy of the application, the chief executive must file with the Childrens Court—
  - (a) the therapeutic protection history for the child or young person; and

- (b) a revised therapeutic protection plan for the child or young person that takes into account the proposed amendment; and
- (c) a risk assessment for the child or young person.

**566 Therapeutic protection order—application for revocation must state grounds etc**

- (1) An application for revocation of a therapeutic protection order must—
  - (a) state the grounds for the proposed revocation; and
  - (b) if the applicant is the chief executive, include—
    - (i) the therapeutic protection history for the child or young person; and
    - (ii) a further risk assessment for the child or young person.
- (2) If the applicant is not the chief executive, after the chief executive receives a copy of the application, the chief executive must file with the Childrens Court—
  - (a) the therapeutic protection history for the child or young person; and
  - (b) a further risk assessment for the child or young person.

**567 Therapeutic protection order—who must be given application for amendment or revocation**

The applicant for amendment or revocation of a therapeutic protection order must give a copy of the application to the following people at least 1 working day before the application is to be heard by the Childrens Court:

- (a) each party to the proceeding in which the order was made;
- (b) anyone else who was required to be given a copy of the application for the therapeutic protection order;

(c) the public advocate.

*Note* Parties to proceedings are dealt with in pt 19.2.

**568 Therapeutic protection order—Childrens Court to consider application for amendment or revocation promptly**

- (1) The Childrens Court must give initial consideration to an application for amendment or revocation of a therapeutic protection order not later than 5 working days after the day the application is filed.
- (2) The Childrens Court must give directions about the conduct of the proceeding (including the hearing of the application) at the time the application is initially considered.
- (3) If the therapeutic protection order is in force on the day the application is filed, but would end before the application is heard, the order continues in force until the application is heard and decided (whether or not the application is considered within the period required under this section).

**569 Therapeutic protection order—criteria for amendment**

The Childrens Court may, by order, amend a therapeutic protection order only if satisfied that—

- (a) if the order is not amended—
  - (i) there will be a significant risk of significant harm to—
    - (A) the child or young person; or
    - (B) someone else; and
  - (ii) the risk of harm arises from the child’s or young person’s conduct; and
  - (iii) the risk of harm will be imminent; and
- (b) the chief executive has developed a further therapeutic protection plan for the child or young person; and

- (c) the further therapeutic protection plan is more likely than not to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and
- (d) amending the order is in the best interests of the child or young person.

*Note 1* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The Childrens Court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

#### **570 Therapeutic protection order—criteria for revocation**

The Childrens Court may, by order, revoke a therapeutic protection order only if satisfied that—

- (a) if the order is revoked, there will be no imminent, significant risk of significant harm to the child or young person or someone else arising from the child's or young person's conduct; and
- (b) revoking the order is in the best interests of the child or young person.

*Note 1* In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 2* The Childrens Court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

#### **571 Therapeutic protection order amendment or revocation—statement of reasons**

If the Childrens Court hears and decides an application for amendment or revocation of a therapeutic protection order, the court must record a written statement of reasons for the decision.

*Note* A party may ask for the statement of reasons (see s 722 (2)).

## Part 16.3 Children and young people in therapeutic protection

### Division 16.3.1 Preliminary

#### 572 When is a child or young person *in therapeutic protection*?

In this Act:

*in therapeutic protection*—a child or young person is *in therapeutic protection* if the child or young person is confined at a therapeutic protection place under a therapeutic protection order or under section 531 (b) (Therapeutic protection only under therapeutic protection order or for emergency protection).

#### 573 Transgender and intersex children and young people—sexual identity

- (1) This section applies to a transgender or intersex child or young person in therapeutic protection at a therapeutic protection place.
- (2) On admission to a therapeutic protection place—
  - (a) the child or young person may tell the operating entity for the therapeutic protection place the sex the child or young person chooses to be identified with; or
  - (b) if the child or young person fails to make a choice under paragraph (a)—the operating entity may choose the sex the child or young person is to be identified with having regard to the presentation of the child or young person on admission to the place.

*Note* **Fail** includes refuse, see the Legislation Act, dict, pt 1.

- (3) The operating entity for the therapeutic protection place may, on application by the child or young person, approve a change in the sex the child or young person chooses to be identified with, having regard to any report obtained under subsection (4) or (5).
- (4) Before making a decision under subsection (2) (b) or (3), the operating entity for the therapeutic protection place must obtain a report by a non-treating doctor or other non-treating health professional about the child's or young person's sexual identity.
- (5) The operating entity for the therapeutic protection place may also obtain a report by a non-treating doctor or other non-treating health professional about the child's or young person's sexual identity chosen under subsection (2) (a) if the operating entity believes on reasonable grounds that obtaining the report—
  - (a) is in the best interests of the child or young person; and
  - (b) is necessary to make a decision in relation to the child's or young person's placement, supervision or management at the therapeutic protection place.
- (6) The operating entity for the therapeutic protection place must—
  - (a) give the child or young person written notice of a decision under subsection (2) or (3); and
  - (b) ensure that the child's or young person's sex chosen under this section is entered in the therapeutic protection register kept by the operating entity.
- (7) For this Act, the sex of the child or young person is taken to be the child's or young person's sex entered in the therapeutic protection register under subsection (6) (b).

**Examples—effect of section**

The conduct of searches of the child or young person would be on the basis that the child or young person was a person of the sex chosen and entered in the therapeutic protection register.

*Note 1* The child or young person may require that either a male or a female conduct a search (see s 592 (2) (Searches—transgender or intersex child or young person)).

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

## **Division 16.3.2      Supervision**

### **574      Therapeutic protection—supervision**

The operating entity for a therapeutic protection place may closely or constantly supervise a child or young person in therapeutic protection if the supervision is reasonably necessary to safeguard the child's or young person's wellbeing.

*Note* An authorised person may, at any reasonable time, enter a therapeutic protection place (see s 816).

### **575      Therapeutic protection—escort outside therapeutic protection place**

- (1) A child or young person in therapeutic protection may leave a therapeutic protection place only if escorted by the operating entity for the therapeutic protection place.
- (2) A child or young person who leaves a therapeutic protection place, under escort by the operating entity for the therapeutic protection place, is taken to be in therapeutic protection.

## **Division 16.3.3 Visits by accredited people**

### **576 Who is an *accredited person*?**

In this division:

*accredited person*, for a child or young person in therapeutic protection, means each of the following:

- (a) the chief executive;
- (b) a representative of an entity providing a service or program to the child or young person at a therapeutic protection place;
- (c) a lawyer representing the child or young person;
- (d) an official visitor;
- (e) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
- (f) the public advocate;
- (g) the ombudsman;
- (h) a person prescribed by regulation.

### **577 Therapeutic protection—visits by accredited people must be allowed**

To protect the human rights of children and young people in therapeutic protection at therapeutic protection places, the operating entity for the therapeutic protection place must ensure, as far as practicable, that children and young people in therapeutic protection have reasonable opportunities to receive visits from accredited people.

### **578 Therapeutic protection—visits by accredited people**

An accredited person may visit a child or young person in therapeutic protection.



## **Division 16.3.4 Use of force**

### **579 Therapeutic protection—managing use of force**

- (1) The operating entity for a therapeutic protection place must make arrangements to ensure, as far as practicable, that the use of force in relation to the management of a child or young person in therapeutic protection is always—
  - (a) a last resort; and
  - (b) for a purpose that cannot be achieved in any other way; and
  - (c) in accordance with this division; and
  - (d) in accordance with the therapeutic protection standards.

*Note* The Minister may make therapeutic protection standards under s 887.

- (2) The operating entity must also ensure, as far as practicable, that—
  - (a) a therapeutic protection person does not use force in relation to a child or young person in therapeutic protection without first considering the following in relation to the use of force:
    - (i) the child's or young person's age, sex, physical and mental health and any history of abuse;
    - (ii) if the proposed force involves any restraint of the child or young person—the physical and developmental capacity of the child or young person; and
  - (b) the use of force in relation to a child or young person is not observed by any other child or young person.
- (3) However, an operating entity need not comply with subsection (2) if, in urgent circumstances, the person believes on reasonable grounds that doing so would create a risk of injury to the therapeutic protection person, the child or young person in therapeutic protection, or anyone else.

**580 Therapeutic protection—authorised use of force**

A therapeutic protection person may use force that is necessary and reasonable—

- (a) to prevent a child or young person in therapeutic protection from inflicting self-harm or harming someone else; or
- (b) to prevent unlawful damage, destruction or interference with property.

**581 Therapeutic protection—application of force**

- (1) A therapeutic protection person may use force under this division only if the operating entity—
  - (a) gives a clear warning of the intended use of force; and
  - (b) allows enough time for the warning to be observed; and
  - (c) uses force, as far as practicable, in a way that reduces the risk of causing injury.
- (2) However, the therapeutic protection person need not comply with subsection (1) (b) or (c) if, in urgent circumstances, the person believes on reasonable grounds that doing so would create a risk of injury to the child or young person in therapeutic protection or anyone else.

**Example—urgent circumstances**

the child or young person is assaulting someone or engaging in self-harm

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

- (3) In applying force under section 580, the therapeutic protection person may use body contact.

**582 Therapeutic protection—medical examination after use of force**

- (1) The operating entity for a therapeutic protection place must ensure that any child or young person in therapeutic protection injured by the use of force under this division is examined as soon as practicable by a doctor (other than a non-treating doctor) and that appropriate health care is available to the child or young person.
- (2) Without limiting subsection (1), the operating entity for a therapeutic protection place must give a child or young person in therapeutic protection the opportunity to be examined by a doctor or nurse (other than a non-treating doctor or non-treating nurse) after the use of force in relation to the child or young person.

**583 Therapeutic protection—monthly reports about use of force**

The operating entity for a therapeutic protection place must, as soon as practicable after the end of each month, give the chief executive a report summarising the incidents (if any) during the month that involved the use of force in relation to a child or young person in therapeutic protection.

**Division 16.3.5 Searches**

**Subdivision 16.3.5.1 Application and definitions—div 16.3.5**

**584 Application—div 16.3.5**

This division applies to a child or young person who is in therapeutic protection.

**585 What is a *scanning search*?**

In this part:

*scanning search*, of a child or young person, means a search of the child or young person by electronic or other means that does not

require the child or young person to remove the child's or young person's clothing or be touched by someone else.

**Examples—scanning searches**

- 1 passing a portable electronic or other device over or close to a child or young person
- 2 requiring a child or young person to pass by or through an electronic or other device

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

**586 What is a *frisk search*?**

In this part:

*frisk search*, of a child or young person, means—

- (a) a search of the child or young person conducted by quickly running the hands over the child's or young person's outer clothing; and
- (b) an examination of anything worn or carried by the child or young person that is conveniently and voluntarily removed by the child or young person.

**587 What is an *ordinary search*?**

In this part:

*ordinary search*, of a child or young person, means a search of the child or young person or of anything in the child's or young person's possession, and may include—

- (a) requiring the child or young person to remove only the child's or young person's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves, or headwear; and
- (b) an examination of anything removed.

**588**      **What is a *body search*?**

In this part:

*body search*, of a child or young person, means a search of the child's or young person's body, including an examination of an orifice or cavity of the child's or young person's body.

*Note*      Body searches are dealt with in subdiv 16.3.5.5.

**589**      **What is a *strip search*?**

In this part:

*strip search*, of a child or young person, means a search of the child or young person, or of articles in the child's or young person's possession, under section 598 (Strip searches—authorisation) that may include—

- (a) requiring the child or young person to remove all of the child's or young person's clothing; and
- (b) an examination of—
  - (i) the child's or young person's body (but not the child's or young person's body orifices or cavities); and
  - (ii) the child's or young person's clothing.

*Note*      Strip searches are dealt with in subdiv 16.3.5.4.

**590**      **What is a *dangerous thing*?**

In this part:

*dangerous thing* means a thing that, if used by, or allowed to remain with, a child or young person, may—

- (a) cause serious damage to the health of the child or young person or someone else; or
- (b) threaten the life of the child or young person or someone else.

## **Subdivision 16.3.5.2 Searches generally**

### **591 Searches—intrusiveness**

A person conducting a search of a child or young person under this division must ensure, as far as practicable, that the search—

- (a) is the least intrusive kind of search that is necessary and reasonable in the circumstances; and
- (b) is conducted in the least intrusive way that is necessary and reasonable in the circumstances.

**Example**

searching for a dangerous thing by a scanning search rather than a frisk search

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

### **592 Searches—transgender or intersex child or young person**

- (1) This section applies if a transgender or intersex child or young person is to be searched under this division.
- (2) For a child or young person who fails to make a choice under section 573 (2) (a) (Transgender and intersex children and young people—sexual identity)—
  - (a) if the child or young person requires that a male conduct the search, the child or young person is taken, for this part, to be male; and

- (b) if the child or young person requires that a female conduct the search, the child or young person is taken, for this part, to be female.

*Note 1* For the Act generally, the sex of a child or young person is taken to be the child's or young person's sex entered in the therapeutic protection register under s 573 (7).

*Note 2* For the meaning of *intersex person* and *transgender person*, see the Legislation Act, s 169A and s 169B.

### **593 Searches—use of force**

- (1) A therapeutic protection person may use force that is necessary and reasonable—
- (a) to conduct or assist at a search under this division; or
  - (b) to prevent the loss, destruction or contamination of anything seized, or that may be seized, during the search.
- (2) However, the therapeutic protection person may use force only in accordance with division 16.3.4.

### **Subdivision 16.3.5.3 Scanning, frisk and ordinary searches**

#### **594 Directions for scanning, frisk and ordinary searches**

- (1) The operating entity for a therapeutic protection place may, at any time, direct a therapeutic protection person to conduct a scanning search, frisk search or ordinary search of a child or young person if the operating entity believes on reasonable grounds the search is prudent to ensure security or good order at a therapeutic protection place.
- (2) Also, a therapeutic protection person may conduct a scanning search, frisk search or ordinary search of a child or young person if the person suspects on reasonable grounds that the child or young person is carrying—
- (a) a dangerous thing; or

- (b) something that may be used by the child or young person in a way that may involve—
  - (i) an offence; or
  - (ii) a risk to the personal safety of the child or young person or someone else; or
  - (iii) a risk to security or good order at a therapeutic protection place.

**595 Scanning, frisk and ordinary searches—requirements before search**

- (1) This section applies if a therapeutic protection person proposes to conduct a scanning, frisk or ordinary search of a child or young person.
- (2) Before the search is conducted, the therapeutic protection person must tell the child or young person—
  - (a) about the search; and
  - (b) the reasons for the search.
- (3) If the child or young person asks why the search is to be conducted in a particular way, the therapeutic protection person must tell the child or young person the reasons.
- (4) The therapeutic protection person must ask for the child's or young person's cooperation for the search.

**596 Frisk and ordinary searches—privacy**

- (1) A frisk search or ordinary search of a child or young person may only be conducted in—
  - (a) a private area; or
  - (b) an area that provides reasonable privacy for the child or young person.



- (2) A frisk search or ordinary search of a child or young person must not be conducted in the presence or sight of—
  - (a) another child or young person; or
  - (b) someone whose presence is not necessary for the search or for the safety of anyone present.
- (3) A frisk search of a child or young person must be conducted by a therapeutic protection person of the same sex as the child or young person.
- (4) Subsection (3) does not apply if the operating entity for the therapeutic protection place believes on reasonable grounds that—
  - (a) there is an imminent and serious threat to the personal safety of the child or young person or someone else; and
  - (b) compliance with subsection (3) would exacerbate the threat.

#### **597 Scanning, frisk and ordinary searches—clothing**

If clothing from a child or young person is seized during a scan search, frisk search or ordinary search, the therapeutic protection person conducting the search must ensure that the child or young person is left with, or given, reasonably appropriate clothing to wear.

*Note* Seizure of things found during the search is dealt with in div 16.3.6.

#### **Subdivision 16.3.5.4 Strip searches**

##### **598 Strip searches—authorisation**

- (1) The operating entity for a therapeutic protection place may direct a therapeutic protection person to strip search a child or young person only if—
  - (a) the operating entity suspects on reasonable grounds that the child or young person has a dangerous thing concealed on the child or young person; and

- (b) a scanning search, frisk search or ordinary search of the child or young person has failed to detect the thing.
- (2) In making a decision under subsection (1), the operating entity must have regard to the child's or young person's age, maturity, developmental capacity and any known history.

**599 Strip searches—requirements before search**

- (1) This section applies if a therapeutic protection person proposes to strip search a child or young person.
- (2) Before the search is conducted, the therapeutic protection person must tell the child or young person—
  - (a) about the search; and
  - (b) the reasons for the search; and
  - (c) whether the child or young person will be required to remove clothing during the search; and
  - (d) if the child or young person will be required to remove clothing—why the removal is necessary.
- (3) If the child or young person asks why the search is being conducted in a particular way, the therapeutic protection person must tell the child or young person the reasons.
- (4) The therapeutic protection person must ask for the child's or young person's cooperation for the search.

**600 Strip searches—second therapeutic protection person must be present**

- (1) A strip search of a child or young person must be conducted—
  - (a) by a therapeutic protection person of the same sex as the child or young person; and

- (b) in the presence of 1 or more other therapeutic protection people, each of whom must be the same sex as the child or young person.
- (2) However, the number of therapeutic protection people present during the search must be no more than is necessary and reasonable to ensure the search is conducted as safely and effectively as possible.
- (3) The person conducting the search may direct someone else mentioned in subsection (1) (b) to provide the assistance that the person believes on reasonable grounds is necessary and reasonable for the search.
- (4) The requirement in subsection (1) (b) that a person be the same sex as the child or young person does not apply if the operating entity for the therapeutic protection place believes on reasonable grounds that—
  - (a) there is an imminent and serious threat to the personal safety of the child or young person; and
  - (b) compliance with the requirement would exacerbate the threat.

**601 Strip searches—support person must be present**

- (1) The operating entity for a therapeutic protection place must ensure that the strip search is conducted in the presence of someone (a *support person*) who—
  - (a) the operating entity believes on reasonable grounds can support and represent the interests of the child or young person; and
  - (b) the child or young person agrees should be present at the search.
- (2) However, the search may continue in the absence of a support person if—

- (a) the child or young person does not agree to a support person being present; or
- (b) the operating entity directs the support person to leave under section 602.

**602 Strip searches—directing support person to leave**

- (1) This section applies if a child or young person is being strip searched in the presence of a support person under section 601.
- (2) The operating entity for the therapeutic protection place may direct the support person to leave if the operating entity believes on reasonable grounds that the support person is preventing or hindering the search.
- (3) If the support person leaves, the search may continue in the absence of the support person.

**603 Strip searches—enforcing direction to leave**

- (1) The operating entity for a therapeutic protection place may direct a therapeutic protection person to enforce a direction under section 602 (2) if the person given the direction contravenes the direction.
- (2) The therapeutic protection person may use force that is necessary and reasonable to enforce the direction.

**604 Strip searches—general rules**

If a therapeutic protection person is strip searching a child or young person, the person must conduct the search—

- (a) in a way that is appropriate, having regard as far as practicable, to the child's or young person's sexuality and any known impairment, condition or history; and
- (b) as quickly as practicable.

**605 Strip searches—privacy**

- (1) A strip search of a child or young person may only be conducted in—
  - (a) a private area; or
  - (b) an area that provides reasonable privacy for the child or young person.
- (2) If a therapeutic protection person is strip searching a child or young person, the person must conduct the search in a way that provides reasonable privacy for the child or young person.
- (3) A strip search of a child or young person must not be conducted—
  - (a) in the presence of anyone of the opposite sex to the child or young person, other than—
    - (i) a person present under section 600 (Strip searches—second therapeutic protection person must be present); or
    - (ii) a support person present under section 601 (Strip searches—support person must be present); or
  - (b) in the presence or sight of someone whose presence is not necessary for the search or for the safety of anyone present.

**606 Strip searches—no touching body**

Subject to division 16.3.4 (Use of force), a strip search must not involve touching the child's or young person's body.

**607 Strip searches—visual inspection of body**

- (1) If a therapeutic protection person is strip searching a child or young person, the person must not visually inspect the following areas of the child or young person unless the officer suspects on reasonable grounds that it is necessary to do so for the search:
  - (a) the genital area;

- (b) for a female child or young person—the breasts.
- (2) A strip search of a child or young person must not involve more visual inspection of the child’s or young person’s body than is necessary and reasonable for the search.
- (3) Without limiting subsection (2), during the strip search of the child or young person, any visual inspection of the following areas of the child or young person must be kept to a minimum:
  - (a) the genital area;
  - (b) the anal area;
  - (c) the buttocks;
  - (d) for a female child or young person—the breasts.

**608 Strip searches—clothing**

- (1) A strip search of a child or young person must not involve—
  - (a) the removal from the child or young person of more clothes than is necessary and reasonable for the search; or
  - (b) the removal from the child or young person of more clothes at any time than is necessary and reasonable for the search; or
  - (c) without limiting paragraph (b), both the upper and lower parts of the child’s or young person’s body being uncovered at the same time.
- (2) After a strip search of a child or young person is finished, the child or young person must be allowed to dress in private.
- (3) If clothing from a child or young person is seized during a strip search, the therapeutic protection person conducting the search must ensure that the child or young person is left with, or given, reasonably appropriate clothing to wear.

*Note* Seizure of things found during the search is dealt with in div 16.3.6.

### **Subdivision 16.3.5.5 Body searches**

#### **609 Body searches—directions**

- (1) The operating entity for a therapeutic protection place may direct a non-treating doctor to conduct a body search of a child or young person only if the operating entity suspects on reasonable grounds that the child or young person has ingested or inserted something that may jeopardise the child's or young person's health or wellbeing.
- (2) In making a decision under subsection (1), the operating entity must have regard to the child's or young person's age, maturity, developmental capacity and any known history.

#### **610 Body searches—requirements before search**

- (1) This section applies if the operating entity for a therapeutic protection place has directed a non-treating doctor to conduct a body search of a child or young person.
- (2) Before the search is conducted, the operating entity must tell the child or young person—
  - (a) about the search; and
  - (b) the reasons for the search; and
  - (c) whether the child or young person will be required to remove clothing during the search; and
  - (d) if the child or young person will be required to remove clothing—why the removal is necessary.
- (3) If the child or young person asks why the search is to be conducted in a particular way, the operating entity must tell the child or young person the reasons.
- (4) The operating entity must ask for the child's or young person's cooperation for the search.

**611 Body searches—non-treating nurse must be present**

- (1) A non-treating nurse must be present during the body search of a child or young person.
- (2) If the non-treating doctor conducting the body search is not the same sex as the child or young person, the non-treating nurse present must be the same sex as the child or young person.

**612 Body searches—another person may be present**

- (1) The operating entity for a therapeutic protection place may direct a therapeutic protection person to be present during the body search of a child or young person.
- (2) However, the number of people present during the search must be no more than is necessary and reasonable to ensure the search is conducted as safely and effectively as possible.
- (3) The operating entity may direct more than 1 therapeutic protection person to be present during the search, each of whom must be the same sex as the child or young person.
- (4) However, the requirement in subsection (3) does not apply if the operating entity believes on reasonable grounds that—
  - (a) there is an imminent and serious threat to the personal safety of the child or young person; and
  - (b) compliance with the requirement would exacerbate the threat.

**613 Body searches—support person must be present**

- (1) The operating entity for the therapeutic protection place must ensure that the body search is conducted in the presence of someone (a *support person*) who—
  - (a) the operating entity believes on reasonable grounds can support and represent the interests of the child or young person; and



- (b) the child or young person agrees should be present at the search.
- (2) However, the body search may continue in the absence of a support person if the child or young person does not agree to a support person being present.

**614 Body searches—directing support person to leave**

- (1) This section applies if a child or young person is being body searched in the presence of a support person under section 613.
- (2) The operating entity for the therapeutic protection place may direct the support person to leave if the operating entity believes on reasonable grounds that the support person is preventing or hindering the search.
- (3) If the support person leaves, the search may continue in the absence of the support person.

**615 Body searches—touching body**

- (1) This section applies to—
  - (a) a non-treating doctor who is—
    - (i) conducting a body search of a child or young person; and
    - (ii) the same sex as the child or young person; and
  - (b) a non-treating nurse who is—
    - (i) present at a body search of a child or young person; and
    - (ii) the same sex as the child or young person.
- (2) The non-treating doctor or non-treating nurse may touch the child or young person and examine the child's or young person's body orifices and cavities for the search.

## 616 Body searches—clothing

- (1) A body search of a child or young person must not involve—
  - (a) the removal from the child or young person of more clothes than is necessary and reasonable for the search; or
  - (b) the removal from the child or young person of more clothes at any time than is necessary and reasonable for the search; or
  - (c) without limiting paragraph (b), both the upper and lower parts of the child's or young person's body being uncovered at the same time.
- (2) Immediately after a body search of a child or young person is finished, the child or young person must be allowed to dress in private.
- (3) If clothing from a child or young person is seized during a body search, the operating entity for the therapeutic protection place must ensure that the child or young person is left with, or given, reasonably appropriate clothing to wear.

*Note* Seizure of things found during the search is dealt with in div 16.3.6.

## 617 Body searches—assistance

- (1) This section applies if a non-treating doctor who is conducting a body search of a child or young person asks the operating entity for the assistance that the doctor believes on reasonable grounds is necessary and reasonable for the search.
- (2) The operating entity may direct or authorise someone else present at the search (the *assistant*) to assist in the search.
- (3) The assistant must be the same sex as the child or young person.

- (4) However, subsection (3) does not apply if the operating entity believes on reasonable grounds that—
- (a) there is an imminent and serious threat to the personal safety of the child or young person, or someone else; and
  - (b) compliance with subsection (3) would exacerbate the threat.

**618 Body searches—non-treating doctor may seize things**

- (1) A non-treating doctor who is conducting a body search of a child or young person may seize anything that the child or young person has ingested or inserted that may jeopardise the child's or young person's health or wellbeing that is discovered during the search.
- (2) However, the non-treating doctor may seize the thing only if seizing the thing would not be likely to cause injury to the child or young person or someone else.
- (3) The non-treating doctor must give the thing seized to the operating entity as soon as practicable.

*Note* Seizure of things found during the search is further dealt with in div 16.3.6.

**Division 16.3.6 Seizing dangerous things**

**619 Application—div 16.3.6**

This division applies to a child or young person who is in therapeutic protection.

**620 Seizing property—who is the owner?**

In this division:

*owner*, of a thing, includes a person entitled to possession of the thing.

**621 Seizing property—dangerous things may be seized**

- (1) The operating entity for a therapeutic protection place may seize a dangerous thing found on a child or young person or in a child's or young person's custody or possession, unless the child or young person has the written approval of the operating entity to possess the thing.
- (2) To remove any doubt, this section applies to any dangerous thing found in a search under this part.

**622 Seized property—must tell owner**

- (1) As soon as practicable, but not later than 7 days, after the day a thing is seized under section 621, the operating entity for the therapeutic protection place must tell the following people, in writing (a *seizure notice*), about the seizure:
  - (a) the owner of the thing seized; or
  - (b) if the owner cannot be identified after reasonable efforts (given the thing's apparent value)—the person from whom the thing was seized.
- (2) The seizure notice must—
  - (a) identify the thing seized; and
  - (b) outline the grounds for the seizure; and
  - (c) include a statement about the effect of section 623; and
  - (d) include anything else prescribed by regulation.

## **623 Seized property—forfeiture**

- (1) A thing seized under section 621 (Seizing property—dangerous things may be seized) is forfeited to the Territory if—
- (a) after making reasonable efforts (given the thing's apparent value), the operating entity for the therapeutic protection place is satisfied that—
    - (i) the owner of the thing cannot be found; or
    - (ii) the thing cannot be returned to the owner; or
  - (b) the operating entity for the therapeutic protection place is satisfied that—
    - (i) possession of the thing by the child or young person is an offence; or
    - (ii) it is necessary to keep the thing to stop it being used for the commission of an offence; or
    - (iii) the thing is inherently unsafe.
- (2) The operating entity may deal with a thing forfeited to the Territory under this section, or dispose of it, as the operating entity considers appropriate.

### **Examples**

- 1 giving a forfeited weapon to the chief executive
- 2 dumping a forfeited thing of little value

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

- (3) However, subsection (2) is subject to any order under the *Crimes Act 1900*, section 249 (Seizure of forfeited articles).

*Note 1* The *Crimes Act 1900* also provides for articles forfeited under any law in force in the Territory to be seized by a member of the police force, taken before the Magistrates Court and for the court to order disposal of the article by the public trustee (see s 249 and s 250).

*Note 2* The *Uncollected Goods Act 1996* provides generally for the disposal of uncollected goods, including goods abandoned on premises controlled by the Territory.

## **624 Seized property—return**

- (1) If a thing seized under section 621 (Seizing property—dangerous things may be seized) is not forfeited to the Territory, the operating entity for the therapeutic protection place must return the thing to its owner—
- (a) at the end of the 6 months after the day the thing was seized; or
  - (b) if a proceeding for an offence involving the thing is started not later than the 6 months—at the end of the proceeding and any appeal from the proceeding.
- (2) However, if the thing was being kept as evidence of an offence and the operating entity believes on reasonable grounds that keeping the thing as evidence is no longer necessary, the operating entity must return the thing immediately to its owner.

## **Part 16.4 Therapeutic protection— administration**

### **Division 16.4.1 Therapeutic protection places**

#### **625 Therapeutic protection place—declaration**

- (1) The Minister may declare a place to be a therapeutic protection place for this Act.
- (2) However, the Minister may declare a place to be a therapeutic protection place only if the place—
  - (a) is not used to accommodate young detainees; and
  - (b) complies with the therapeutic protection standards.

*Note* The Minister may make therapeutic protection standards under s 887.

- (3) A declaration is a notifiable instrument.

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

*Note 2* An authorised person may, at any reasonable time, enter a place if the chief executive is deciding whether to declare the place as a therapeutic protection place under this section (see s 816).

#### **626 Therapeutic protection place—exclusion of matters from declaration etc**

- (1) The chief executive may exclude from a therapeutic protection place declaration any matter that the chief executive believes on reasonable grounds would be likely to disclose the location of a therapeutic protection place.
- (2) However, the chief executive must disclose the location of a therapeutic protection place to the people entitled under section 634 (1) to have access to the therapeutic protection register.

## **627 Therapeutic protection place—policies and procedures**

- (1) The chief executive may make therapeutic protection place policies and operating procedures, consistent with this Act, to facilitate the effective and efficient management of therapeutic protection places.

*Note* A reference to this Act includes a reference to the statutory instruments made or in force under this Act, including any therapeutic protection standards (see Legislation Act, s 104).

- (2) Each therapeutic protection place policy or operating procedure is a notifiable instrument.

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

*Note 2* The amendment or repeal of a therapeutic protection place policy or operating procedure is also a notifiable instrument (see Legislation Act, s 46 (Power to make instrument includes power to amend or repeal)).

*Note 3* The chief executive must make a therapeutic protection place policy or operating procedure in relation to the use of force, including provision in relation to the circumstances, and by whom, force may be used and the kinds of force that may be used (see s 579).

*Note 4* An authorised person may, at any reasonable time, enter a therapeutic protection place (see s 816).

## **628 Authorisation of operating entity for therapeutic protection place**

The chief executive may authorise an entity to be an operating entity for a therapeutic protection place if satisfied that the entity—

- (a) is a suitable entity to operate a therapeutic protection service; and

*Note* Suitable entities are dealt with in s 61.

- (b) complies with, and is likely to continue to comply with, the therapeutic protection standards.

*Note* The Minister may make therapeutic protection standards under s 887.



**629 Suspension of operating entity's authorisation**

- (1) The chief executive may suspend an entity's authorisation under section 628 as an operating entity for a therapeutic protection place if the chief executive suspects on reasonable grounds that the entity—
  - (a) is not a suitable entity to operate a therapeutic protection place; or
  - (b) has not complied with, or continued to comply with, the therapeutic protection standards.
- (2) The chief executive may suspend the authorisation by—
  - (a) giving the entity written notice of the suspension, including the chief executive's reasons for suspending the authorisation; and
  - (b) telling the entity that the entity may make a submission, in writing, to the chief executive about the suspension not later than 14 days after the day the notice is given to the entity.
- (3) A suspension takes effect immediately.
- (4) After the end of 28 days after the chief executive gives notice of the suspension of an entity's authorisation under subsection (2) (b), the chief executive must—
  - (a) consider any submission made by the entity; and
  - (b) either—
    - (i) revoke the suspension; or
    - (ii) give the entity notice of the chief executive's intention to revoke the authorisation under section 630.

### **630 Revocation of operating entity’s authorisation**

- (1) The chief executive may revoke an entity’s authorisation under section 628 as an operating entity for a therapeutic protection place if the chief executive is satisfied that the entity—
  - (a) is not a suitable entity to operate a therapeutic protection place; or
  - (b) has not complied with, or continued to comply with, the therapeutic protection standards.
- (2) The chief executive may also revoke an entity’s authorisation if the entity asks the chief executive to revoke the authorisation.
- (3) Before revoking an entity’s authorisation under subsection (1), the chief executive must—
  - (a) give the entity written notice of the chief executive’s intention to revoke the authorisation, including the chief executive’s reasons; and
  - (b) tell the entity that the person may make a submission, in writing, to the chief executive about the notice not later than 14 days after the day the notice is given to the person; and
  - (c) if the entity makes a submission—consider the submission.
- (4) This section is in addition to the Legislation Act, section 180 (Power to make decision includes power to reverse or change).

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

*Note 2* A decision under this section is a reviewable decision (see s 839).

## Division 16.4.2 Therapeutic protection plan

### 631 Public advocate and official visitor may be given therapeutic protection plan

If the public advocate or an official visitor asks the chief executive for a therapeutic protection plan for a child or young person, the chief executive must promptly give the public advocate or official visitor a copy of the plan.

*Note* The therapeutic protection plan is protected information (see ch 25).

## Division 16.4.3 Non-treating health professionals

### 632 Health professionals—non-treating functions

- (1) An operating entity for a therapeutic protection place may, orally or in writing, authorise a health professional (a *non-treating health professional*) to exercise non-treating functions under this chapter for children and young people at the therapeutic protection place.

*Note* *Health professional* includes a doctor and nurse registered under the *Health Professionals Act 2004*.

- (2) An operating entity must ensure, as far as practicable, that a child's or young person's treating health professional is not asked to exercise a function as a non-treating health professional under this chapter in relation to the child or young person.
- (3) Subsection (2) does not apply if the operating entity believes on reasonable grounds that—
  - (a) there is an imminent and serious threat to the personal safety of the child or young person or someone else; and
  - (b) compliance with subsection (2) would exacerbate the threat.

(4) In this section:

*treating health professional*, in relation to a child or young person, means a health professional who has a professional relationship with the child or young person for the provision of health services.

## **Division 16.4.4 Therapeutic protection register**

### **633 Therapeutic protection register**

- (1) The operating entity for a therapeutic protection place must keep a register (a *therapeutic protection register*) of children and young people for whom the Childrens Court makes an interim therapeutic protection order or a therapeutic protection order and who are confined at the therapeutic protection place.
- (2) The therapeutic protection register must include the following details for each child or young person for whom the Childrens Court makes an interim therapeutic protection order or a therapeutic protection order:
  - (a) name, sex and date of birth;
  - (b) details of the therapeutic protection order;
  - (c) the therapeutic protection plan for each proposed period of confinement;
  - (d) the therapeutic protection history for each period of confinement;
  - (e) if the child or young person is strip searched or body searched during a period of confinement—
    - (i) the reason for the search; and
    - (ii) when and where the search was conducted; and
    - (iii) the name of each person present at any time during the search; and

- (iv) if, under section 600 (4), section 612 (4) or section 617 (4), a requirement for a person present at the search to be the same sex as the child or young person was not complied with—the operating entity’s reasons for believing the requirement did not apply; and
- (v) details of anything seized during the search; and
- (vi) details of any force used for conducting the search, and why force was used;

*Note* Strip searches are authorised under s 598. Body searches are authorised under s 609.

- (f) if force was used on the child or young person during the period of confinement—the reason why force was used;
- (g) where and with whom the child or young person lived before the period of confinement;
- (h) anything else prescribed by regulation.

*Note* Information in the therapeutic protection register is protected information (see ch 25).

- (3) The register may contain anything else the operating entity for the therapeutic protection place considers relevant.

### **634 Therapeutic protection register—who may have access?**

- (1) The following people may have access to a therapeutic protection register:
  - (a) the chief executive or a person authorised by the chief executive;
  - (b) a magistrate;
  - (c) a judge;
  - (d) the ombudsman;
  - (e) an official visitor;

- (f) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
  - (g) the public advocate;
  - (h) a person prescribed by regulation.
- (2) The operating entity for a therapeutic protection place must ensure that the therapeutic protection register kept by the operating entity is only accessed by the people mentioned in subsection (1).

*Note* An authorised person may, at any reasonable time, enter a therapeutic protection place (see s 816).

**635 Therapeutic protection register—public advocate to inspect**

The public advocate must inspect the therapeutic protection register at least once every 3 months.

## Chapter 17      Care and protection—interstate transfer of orders and proceedings

### Part 17.1      Preliminary

#### 636      Object of ch 17

The object of this chapter is to provide for the transfer of care and protection orders and proceedings between the ACT and a State or between the ACT and New Zealand—

- (a) so that children and young people who are in need of protection may be protected despite moving from one jurisdiction to another; and
- (b) to facilitate the timely and expeditious finalisation of court proceedings for the protection of a child or young person; and
- (c) to recognise the desirability of orders relating to the care and protection of a child or young person having effect, and being enforced, in the jurisdiction where the child or young person lives.

#### 637      Definitions—ch 17

In this chapter:

*child welfare law*—see section 640.

*child welfare order*, for a child or young person—see section 638.

*child welfare proceeding*—see section 639.

*government agency* means a government department (however described) or statutory authority of the State.

*interim child welfare order*—see section 661.

*interstate law*—see section 641.

*interstate officer*—see section 642.

*participating State* means a State where an interstate law is in force.

*sending State*, for a child welfare order or child welfare proceeding, means the State from which the order or proceeding is transferred under this chapter or an interstate law.

*State* includes New Zealand.

*State Childrens Court*, of a State, means the court with jurisdiction to hear and decide a child welfare proceeding in the State at first instance.

*welfare body*, for a State, means—

- (a) a Minister of the State; or
- (b) a government agency of the State; or
- (c) the chief executive (however described) of a government agency of the State; or
- (d) a person who holds another position in, or is employed by, a government agency of the State; or
- (e) a statutory office holder; or
- (f) an organisation, or the chief executive (however described) of an organisation, in the State.



**638 What is a *child welfare order*?**

In this chapter:

*child welfare order* means an order under a child welfare law (other than an interim child welfare order) made in favour of, or giving responsibility to, a welfare body, that—

- (a) provides for the parental responsibility, guardianship or custody of a child or young person; or
- (b) provides for supervision of a child or young person; or
- (c) provides for contact with a child or young person; or
- (d) relates to specific things that a person must do or not do that are directly related to a child or young person's care or protection.

**639 What is a *child welfare proceeding*?**

In this chapter:

*child welfare proceeding* means a proceeding brought in a court under a child welfare law for—

- (a) the making of a child welfare order or an interim child welfare order; or
- (b) the amendment, extension or revocation of a child welfare order or an interim child welfare order.

**640 What is a *child welfare law*?**

(1) In this Act:

*child welfare law* means—

- (a) the care and protection chapters; or
- (b) a law of a State that corresponds to the care and protection chapters; or

- (c) a law of a State declared by the Minister under subsection (2) to be a child welfare law for this chapter.
- (2) The Minister may, in writing, declare a law of a State to be a child welfare law for this chapter if satisfied that the law corresponds, or substantially corresponds, to the care and protection chapters.
- (3) A declaration is a notifiable instrument.

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

**641 What is an *interstate law*?**

- (1) In this chapter:  
*interstate law* means—
  - (a) a law of a State that corresponds to this chapter; or
  - (b) a law declared by the Minister under subsection (2) to be an interstate law for this chapter.
- (2) The Minister may, in writing, declare a law of a State to be an interstate law for this chapter if satisfied that the law corresponds or substantially corresponds to this chapter.
- (3) A declaration is a notifiable instrument.

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

**642 Who is an *interstate officer*?**

- (1) In this chapter:  
*interstate officer*, for a State, means—
  - (a) the person holding the position that has the main responsibility, under the child welfare law of the State, for the protection of children and young people in the State; or
  - (b) the holder of a position in the State that is declared by the Minister under subsection (2) to be an interstate officer position for the State for this chapter.

- (2) The Minister may, in writing, declare a position in a State to be an interstate officer position for the State for this chapter.
- (3) A declaration is a notifiable instrument.

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

## Part 17.2 Interstate transfer of ACT child welfare orders

### Division 17.2.1 Transfers of orders by chief executive

#### 643 Chief executive may transfer child welfare order

- (1) The chief executive may transfer a child welfare order (the *home order*) for a child or young person to a participating State if—
  - (a) in the chief executive’s opinion, a child welfare order to the same or a similar effect as the home order could be made under the child welfare law of the State; and
  - (b) the home order is not subject to an appeal to the Supreme Court or affected by a proceeding for judicial review; and
  - (c) the relevant interstate officer has agreed to the transfer and to the proposed terms of the child welfare order to be transferred (the *interstate order*); and
  - (d) if the chief executive is satisfied that the child or young person is able to understand the proposal to transfer the order—the chief executive has sought and considered the child’s or young person’s views and wishes; and
  - (e) anyone whose agreement to the transfer is required under section 645 has agreed.
- (2) The chief executive may include in the interstate order any condition that could be included in a child welfare order of that kind made in the relevant participating State.
- (3) In making a decision under subsection (1) (a), the chief executive must not take into account the period for which it is possible to make a child welfare order of that kind in the State.

- (4) The period for which an interstate order is to remain in force must be decided by the chief executive and stated in the interstate order.
- (5) The period must be—
  - (a) if the remaining period of the home order at the date of registration of the interstate order in the participating State is a period for which an order may be made under the child welfare law of the State—the remaining period; or
  - (b) in any other case—as similar a period as may be made under that law but not longer than the period of the home order.

#### **644 Chief executive transfer—considerations**

In deciding whether to transfer a child welfare order for a child or young person to a participating State, the chief executive must have regard to—

- (a) the matters mentioned in section 8 (Best interests of children and young people paramount consideration); and
- (b) the principles set out in section 9 (Principles applying to Act) and section 10 (Aboriginal and Torres Strait Islander children and young people principle); and
- (c) the care and protection principles; and
- (d) whether the chief executive or an interstate officer is in the better position to exercise powers and responsibilities under a child welfare order for the child or young person; and
- (e) the desirability of a child welfare order being an order under the child welfare law of the State where the child or young person lives; and
- (f) the desirability of orders relating to the care and protection of a child or young person having effect, and being enforced, in the jurisdiction where the child or young person lives; and

- (g) any sentencing order (other than a fine) in force in relation to the child or young person or any criminal proceedings pending against the child or young person in any court.

**645 Chief executive transfer—certain people must agree**

- (1) For section 643 (1) (e), agreement to the transfer of the order for the child or young person is required from—
  - (a) for a young person who is school-leaving age or older—the young person; and
    - Note* School-leaving age is 15 years old (see dict).
  - (b) each person who has daily care responsibility or long-term care responsibility for the child or young person; and
    - Note* Parental responsibility provisions are dealt with in pt 14.6.
  - (c) each person who is authorised to decide where or with whom the child or young person must live under a residence provision in a care and protection order; and
  - (d) each person who is allowed contact with the child or young person under a contact provision in a care and protection order for the child or young person.
    - Note* Contact provisions are dealt with in pt 14.8.
- (2) If the child or young person lives in a State with a person who has daily care responsibility for the child or young person under a parental responsibility provision in a care and protection order in force for the child or young person—
  - (a) it is sufficient if each person required to agree agrees to the child or young person living in the State; and
  - (b) their agreement to the transfer is not required.

- (3) If a relevant person lives in or is intending to live in the relevant participating State—
- (a) it is sufficient if each other relevant person agrees to the child or young person living in the State; and
  - (b) the agreement of the person to the transfer is not required.
- (4) Also, a person’s agreement is not required if—
- (a) the person cannot be found after reasonable inquiry; or
  - (b) the person does not have the capacity to agree to the transfer; or
  - (c) for agreement required from the young person—the young person does not have sufficient maturity or developmental capacity to agree to the transfer.
- (5) In this section:
- relevant person***, for a child or young person, means—
- (a) a parent of the child or young person; and
  - (b) a person who is authorised to decide where or with whom the child or young person must live under a residence provision in a care and protection order; and
  - (c) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person (under a parental responsibility provision in a care and protection order or otherwise).

**646 Chief executive transfer—certain people must be told**

- (1) This section applies if the chief executive decides to transfer a child welfare order for a child or young person to a participating State under this division.
- (2) As soon as practicable, but not later than 3 working days, after the day the chief executive makes the decision, the chief executive must give written notice to the following people about the decision:
  - (a) for a decision about a young person—the young person;
  - (b) the parents of the child or young person;
  - (c) each other person who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (d) the public advocate.

**647 Chief executive transfer—limited time for review**

- (1) A proceeding for judicial review of a decision of the chief executive to transfer a child welfare order to a participating State must be started, and originating process given to the chief executive, not later than 10 working days after the day the chief executive decided to transfer the order.
- (2) A proceeding for judicial review must comply with the relevant rules of court.
- (3) However, the Supreme Court must not extend the 10 working days mentioned in subsection (1).
- (4) The lodging (or filing) and service on the chief executive of an originating process mentioned in subsection (1) stays the operation of the decision until the proceeding is determined.



## **Division 17.2.2      Transfer of orders by Childrens Court**

### **648      Childrens Court transfer—application**

- (1) The chief executive may apply to the Childrens Court for an order transferring a child welfare order to a participating State.
- (2) The chief executive must give a copy of the application to—
  - (a) each person who was a party to the proceeding in which the original order was made; and
  - (b) the public advocate.

### **649      Childrens Court transfer—criteria**

The Childrens Court may, on application by the chief executive, make an order transferring a child welfare order to a participating State if—

- (a) the child welfare order is not subject to an appeal to the Supreme Court; and
- (b) the relevant interstate officer has agreed to—
  - (i) the transfer; and
  - (ii) the proposed terms of the child welfare order.

### **650      Childrens Court transfer—interstate orders**

- (1) If the Childrens Court decides to transfer a child welfare order (the *home order*), the kind of child welfare order to be transferred (the *interstate order*) must be a child welfare order that—
  - (a) could be made under the child welfare law of the participating State; and
  - (b) the court believes to be—
    - (i) to the same or a similar effect as the home order; or

- (ii) otherwise in the best interests of the child or young person.
- (2) The Childrens Court may include in the interstate order any condition that could be included in a child welfare order of that kind made in the relevant participating State.
- (3) In deciding under subsection (1) whether an order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the Childrens Court must not take into account the period for which it is possible to make a child welfare order of that kind in the State.
- (4) The period for which an interstate order is to remain in force must be decided by the Childrens Court and stated in the interstate order.
- (5) The period must be a period—
  - (a) for which a child welfare order of the kind of the interstate order may be made under the child welfare law of the participating State; and
  - (b) that the Childrens Court considers appropriate.

**651 Childrens Court transfer—considerations**

- (1) In deciding what order to make on an application under this division, the Childrens Court must have regard to—
  - (a) the matters mentioned in section 8 (Best interests of children and young people paramount consideration); and
  - (b) the principles set out in section 9 (Principles applying to Act) and section 10 (Aboriginal and Torres Strait Islander children and young people principle); and
  - (c) the care and protection principles; and
  - (d) whether the chief executive or an interstate officer is in the better position to exercise powers and responsibilities under a child welfare order for the child or young person; and

- (e) the desirability of a child welfare order being an order under the child welfare law of the State where the child or young person lives; and
  - (f) the desirability of orders relating to the care and protection of a child or young person having effect, and being enforced, in the jurisdiction where the child or young person lives; and
  - (g) any information given to the Childrens Court by the chief executive or anyone else about any sentencing order (other than a fine) in force in relation to the child or young person or any criminal proceedings pending against the child or young person in any court.
- (2) The Childrens Court may also consider any report prepared by the chief executive relevant to the proposed transfer.

**652 Childrens Court transfer—care plans**

- (1) The Childrens Court may make an order transferring a child welfare order to a participating State only if it has received and considered a care plan prepared by the chief executive for the child or young person.
- (2) Unless the Childrens Court orders otherwise, the chief executive must provide a copy of the care plan to each person who was a party to the proceeding in which the original order was made.

**653 Childrens Court transfer—appeal applications**

- (1) This section applies if the Childrens Court has made a final order transferring a child welfare order to a participating State (the *final order*).
- (2) A party to the application for the order may appeal on a question of law to the Supreme Court.

- (3) The appeal must be started, and originating process must be given to the chief executive, not later than 10 working days after the day the final order was made.
- (4) The appeal operates as stay of the final order.
- (5) The appeal must comply with the relevant rules of court.
- (6) However, the Supreme Court must not extend the 10 working days mentioned in subsection (3).

#### **654 Childrens Court transfer—appeals**

- (1) The Supreme Court must hear and decide the appeal as quickly as possible.
- (2) After deciding the appeal, the Supreme Court may make any order it considers appropriate, including an order remitting the case for rehearing to the Childrens Court with or without a direction in law.
- (3) An order, other than an order remitting the case for rehearing to the Childrens Court, may be enforced as an order of the Supreme Court.
- (4) The Supreme Court may make any interim care and protection order pending the hearing of the appeal that the Childrens Court has jurisdiction to make.

*Note* Interim care and protection orders are dealt with in div 14.3.2.

### **Division 17.2.3 Interstate registration of ACT orders**

#### **655 Interstate registration of ACT orders—effect**

- (1) A child welfare order made by the Childrens Court under the care and protection chapters for a child or young person ceases to have effect when an order for the child or young person is registered in a participating State under an interstate law.
- (2) However, if the registration is revoked in the participating State under the interstate law, the order that ceased to have effect is revived and has effect in accordance with its terms.

**656 Interstate registration of ACT orders—revocation**

- (1) This section applies if the registrar of the Childrens Court is told under a provision of an interstate law equivalent to section 671 that the registration of an order transferring a child welfare order to a participating State has been revoked.
- (2) The registrar must tell the chief executive about the revocation.
- (3) The chief executive must tell the following people about the revocation:
  - (a) the child or young person who is the subject of the transferred order or proceeding;
  - (b) the parents of the child or young person;
  - (c) each other person who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (d) the parties to the proceeding in which the decision to transfer the order or proceeding was made.

**657 Interstate registration of ACT orders—Childrens Court file**

- (1) This section applies if, under this division—
  - (a) a child welfare order is transferred to a State Childrens Court—
    - (i) by the chief executive under division 17.2.1; or
    - (ii) by the Childrens Court under division 17.2.2; and
  - (b) the transfer decision or an order transferring a child welfare order to a participating State is not subject to appeal or review or a stay; and
  - (c) the time for starting an appeal or seeking a review has ended.

- (2) The registrar of the Childrens Court must give the following things to the State Childrens Court of the participating State:
  - (a) all documents filed in the Childrens Court for the child welfare proceeding for the child welfare order;
  - (b) an extract from any part of the register that relates to the child welfare proceeding for the child welfare order.

## **Part 17.3 Interstate transfer of ACT child welfare proceedings**

### **658 Transfer of ACT proceedings—applications**

- (1) The chief executive may apply to the Childrens Court for an order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State.
- (2) The chief executive must give a copy of the application to—
  - (a) if the order relates to a young person—the young person; and
  - (b) the parents of the child or young person; and
  - (c) each other person who has daily care responsibility, or long-term care responsibility, for the child or young person; and
  - (d) the public advocate.

### **659 Transfer of ACT proceedings—criteria**

- (1) The Childrens Court may, on application by the chief executive, make an order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State if the relevant interstate officer has agreed to the transfer.
- (2) The proceeding is discontinued in the Childrens Court when the order mentioned in subsection (1) is registered in the State Childrens Court of the participating State under the interstate law.

**660 Transfer of ACT proceedings—considerations**

In deciding whether to make an order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State, the Childrens Court must have regard to—

- (a) whether another proceeding for the child or young person is pending, or has previously been heard and decided, under the child welfare law in the participating State; and
- (b) where any matter giving rise to the proceeding in the court happened; and
- (c) where any of the following people lives or is likely to live:
  - (i) the child or young person;
  - (ii) the parents of the child or young person;
  - (iii) each other person who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (iv) any other significant people for the child or young person.

**661 Transfer of ACT proceedings—interim orders**

- (1) If the Childrens Court makes an order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State, the court must also make an interim order (an *interim child welfare order*) for the care, welfare or development of the child or young person.
- (2) An interim child welfare order may do any of the following:
  - (a) give parental responsibility for the child or young person to someone;
  - (b) allow contact between the child or young person and someone else;



- (c) give responsibility for the supervision of the child or young person to—
  - (i) the interstate officer in the participating State; or
  - (ii) someone else in that State to whom responsibility for the supervision of a child or young person could be given under the child welfare law of that State.
- (3) The length of an interim child welfare order—
  - (a) must be stated in the order; and
  - (b) must not be longer than 30 days.
- (4) The State Childrens Court of the participating State may amend, extend or revoke the interim child welfare order.

**662 Transfer of ACT proceedings—appeal applications**

- (1) This section applies if the Childrens Court has made a final order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State (the *final order*).
- (2) A party to the application for the order may appeal on a question of law to the Supreme Court.
- (3) The appeal must be started, and originating process must be given to the chief executive, not later than 10 working days after the day the final order was made.
- (4) The appeal operates as stay of the final order but not of any interim child welfare order made at the same time as the final order.
- (5) The appeal must comply with the relevant rules of court.
- (6) However, the Supreme Court must not extend the 10 working days mentioned in subsection (3).

**663 Transfer of ACT proceedings—appeals**

- (1) The Supreme Court must hear and decide the appeal as quickly as possible.
- (2) After deciding the appeal, the Supreme Court may make any order it considers appropriate, including an order remitting the case for rehearing to the Childrens Court with or without a direction in law.
- (3) An order, other than an order remitting the case for rehearing to the Childrens Court, may be enforced as an order of the Supreme Court.
- (4) The Supreme Court may—
  - (a) make an order staying the operation of an interim child welfare order made at the same time as the appealed order; or
  - (b) amend, extend or revoke an interim child welfare order made at the same time as the appealed order; or
  - (c) make any interim care and protection order pending the hearing of the appeal that the Childrens Court has jurisdiction to make.

*Note* Interim care and protection orders are dealt with in div 14.3.2.

**664 Transfer of ACT proceedings—revocation of registration**

- (1) This section applies if the registrar of the Childrens Court is told under a provision of an interstate law equivalent to section 673 that the registration of an order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State has been revoked.
- (2) The registrar must tell the chief executive about the revocation.
- (3) The chief executive must tell the following people about the revocation:
  - (a) the child or young person who is the subject of the transferred order or proceeding;

- (b) the parents of the child or young person;
- (c) each other person who has daily care responsibility, or long-term care responsibility, for the child or young person;
- (d) the parties to the proceeding in which the decision to transfer the order or proceeding was made.

**665 Transfer of ACT proceedings—Childrens Court file**

- (1) This section applies if, under this division—
  - (a) a child welfare proceeding is transferred to a State Childrens Court by the Childrens Court under part 17.3 (Interstate transfer of ACT child welfare proceedings); and
  - (b) the order transferring a child welfare proceeding pending in the court to the State Childrens Court of a participating State is not subject to appeal or review or a stay; and
  - (c) the time for starting an appeal or seeking a review has ended.
- (2) The registrar of the Childrens Court must give the following things to the State Childrens Court of the participating State:
  - (a) all documents filed in the Childrens Court for the child welfare proceeding;
  - (b) an extract from any part of the register that relates to the child welfare proceeding.

## Part 17.4                      ACT registration of interstate child welfare orders

### 666                      ACT registration—interstate child welfare orders

- (1) If a child welfare order (an *interstate child welfare order*) is transferred to the ACT under an interstate law, the chief executive must file a copy of the interstate child welfare order in the Childrens Court for registration.
- (2) The chief executive must not file an interstate child welfare order if, under the interstate law—
  - (a) the decision or order to transfer the interstate child welfare order is subject to appeal or review or a stay; or
  - (b) the time for instituting an appeal or seeking a review has not expired.
- (3) If the chief executive files an interstate child welfare order for registration in the court, the court must register the interstate child welfare order.

### 667                      ACT registration of interstate orders—interstate registrar

If an interstate child welfare order is registered in the Childrens Court under section 666, the registrar of the court must tell the following people about the registration:

- (a) the appropriate officer of the State Childrens Court of the sending State;
- (b) the interstate officer in that State.

**668 ACT registration of interstate orders—effect**

- (1) If an interstate child welfare order is registered in the Childrens Court under section 666—
  - (a) the order is for all purposes (except for appeal) a care and protection order of the relevant kind made by the court on the day it is registered; and

*Note* Care and protection orders are dealt with in ch 14.
  - (b) the order may be amended, extended or revoked under this Act; and
  - (c) a contravention of the order may be dealt with under this Act.
- (2) If an interstate interim child welfare order is registered in the Childrens Court under section 666—
  - (a) the order is for all purposes (except for appeal) an interim care and protection order made by the court on the day it is registered; and

*Note* Interim care and protection orders are dealt with in div 14.3.2.
  - (b) the order may be amended, extended or revoked under this Act; and
  - (c) a contravention of the order may be dealt with under this Act.

**669 ACT registration of interstate orders—application for revocation**

- (1) This section applies if an interstate child welfare order for a child is registered in the Childrens Court under section 666.
- (2) Any of the following people may apply to the court for revocation of the registration of the order:
  - (a) the chief executive;
  - (b) the child or young person;

- (c) a parent of the child or young person;
  - (d) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (e) a party to the proceeding in the State Childrens Court in the sending State in which the decision to transfer the child welfare order was made.
- (3) If a person applies for revocation of registration of the order, the registrar of the court must give a copy of the application to—
- (a) the relevant interstate officer; and
  - (b) each person, other than the applicant, who could have made an application.

**670 ACT registration of interstate orders—revocation**

- (1) The Childrens Court may revoke the registration of an interstate child welfare order registered under section 666 only if satisfied that it was inappropriately registered because, under the interstate law—
- (a) the decision of the interstate officer or the order of the State Childrens Court of the sending State to transfer the order was subject to appeal or review, or a stay, at the time of registration; or
  - (b) the time for starting an appeal or seeking a review had not ended.
- (2) If the registration of an interstate child welfare order is revoked, the registrar of the Childrens Court must give the interstate child welfare order to the State Childrens Court of the sending State.
- (3) The revocation of the registration of an interstate child welfare order does not prevent the later re-registration of the order.

**671 ACT revocation of interstate orders—interstate registrar**

If the registration of an interstate child welfare order is revoked under section 670, the registrar of the court must tell the following people about the revocation:

- (a) the appropriate officer of the State Childrens Court of the sending State;
- (b) the interstate officer in that State.

## Part 17.5                      ACT registration of interstate child welfare proceedings

### 672                      ACT registration—interstate child welfare proceedings

- (1) If a child welfare proceeding is transferred to the ACT under an order (an *interstate proceedings transfer order*) under an interstate law, the chief executive must file a copy of the following documents in the Childrens Court for registration:
  - (a) the interstate proceedings transfer order;
  - (b) any interim child welfare order made at the same time as the interstate proceedings transfer order (the *interim order*).
- (2) The chief executive must not file an interstate proceedings transfer order if, under the interstate law—
  - (a) the interstate proceedings transfer order or interim order is subject to appeal or review or a stay; or
  - (b) the time for instituting an appeal or seeking a review has not expired.
- (3) If the chief executive files an interstate proceedings transfer order or interim order for registration in the court, the court must register the interstate proceedings transfer order or interim order.

### 673                      ACT registration of interstate proceedings—interstate registrar

If an interstate proceedings transfer order or interim order is registered in the Childrens Court under section 672, the registrar of the court must tell the following people about the registration:

- (a) the appropriate officer of the State Childrens Court of the sending State;



- (b) the interstate officer in that State.

**674 ACT registration of interstate proceedings—effect**

- (1) If an interstate proceedings transfer order for a proceeding is registered in the Childrens Court under section 672, the proceeding is taken to have been started in the Childrens Court on the day the order is registered.
- (2) However, in deciding the proceeding, the court—
  - (a) is not bound by a finding of fact made in the proceeding in the State Childrens Court of the sending State before its transfer; and
  - (b) may have regard to the transcript of, or evidence presented in, the proceeding in the State Childrens Court of the sending State before its transfer.

**675 ACT registration of interstate proceedings—application for revocation**

- (1) This section applies if an interstate proceedings transfer order or interim order for a child is registered in the Childrens Court under section 672.
- (2) Any of the following people may apply to the court for revocation of the registration of the order:
  - (a) the chief executive;
  - (b) the child or young person;
  - (c) a parent of the child or young person;
  - (d) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;
  - (e) a party to the proceeding in the State Childrens Court in the sending State in which the decision to transfer the interstate proceedings transfer order or interim order was made.

- (3) If a person applies for revocation of registration of the order, the registrar of the court must give a copy of the application to—
  - (a) the relevant interstate officer; and
  - (b) each person, other than the applicant, who could have made an application.

**676 ACT registration of interstate proceedings—revocation**

- (1) This section applies if an interstate proceedings transfer order or interim order is registered in the Childrens Court under section 672.
- (2) The Childrens Court may revoke the registration of the interstate proceedings transfer order or interim order only if satisfied that the order was inappropriately registered because, under the interstate law—
  - (a) the order of the State Childrens Court of the sending State to transfer the order was subject to appeal or review, or a stay, at the time of registration; or
  - (b) the time for starting an appeal or seeking a review had not ended.
- (3) If the registration of an interstate proceedings transfer order or interim order is revoked, the registrar of the Childrens Court must give the interstate proceedings transfer order or interim order to the State Childrens Court of the sending State.
- (4) The revocation of the registration of an interstate proceedings transfer order or interim order does not prevent the later re-registration of the order.

**677 ACT registration of interstate proceedings—interstate registrar**

If the registration of an interstate proceedings transfer order or interim order is revoked under section 676, the registrar of the court must tell the following people about the revocation:

- (a) the appropriate officer of the State Childrens Court of the sending State;
- (b) the interstate officer in that State.

## **Part 17.6**                      **Interstate transfer of child welfare orders and proceedings—miscellaneous**

### **678**                      **ACT registration of interstate orders and proceedings—Maori children and young people**

- (1) This section applies if—
  - (a) a child welfare order or child welfare proceeding for a child or young person is transferred under an interstate law to the ACT from New Zealand; and
  - (b) the child or young person is a Maori child or young person.
- (2) In deciding what finding or order to make in a proceeding for the child or young person under this Act, the Childrens Court must have regard to the principle that, if practicable, the relationship between the child or young person and his or her family, whanau, hapu, iwi, family groups and community group must be maintained and strengthened.

## Chapter 18      Care and protection—police assistance

### *Note to ch 18*

A registered family group conference agreement has effect as if it were an order of the Childrens Court and may be enforced accordingly (see s 393).

## Part 18.1      Assistance in carrying out orders etc

### 679      Police assistance

(1) The chief executive may ask the chief police officer for assistance in carrying out any of the following actions (the *action*):

(a) an appraisal order;

*Note*      Appraisal orders are dealt with in s 372.

(b) a care and protection appraisal;

*Note*      Care and protection appraisals are dealt with in s 366.

(c) emergency action;

*Note*      Emergency action is dealt with in pt 13.1.

(d) a care and protection assessment;

*Note*      Care and protection assessments are dealt with in s 367.

(e) an assessment order;

*Note*      Assessment orders are dealt with in div 14.3.3.

(f) an interim care and protection order;

(g) a care and protection order;

*Note*      Care and protection orders are dealt with in s 422.

(h) a DVPO interim protection order;

*Note* DVPO interim protection orders are dealt with in s 459.

(i) a DVPO final protection order;

*Note* DVPO final protection orders are dealt with in s 460.

(j) an interim therapeutic protection order;

*Note* Interim therapeutic protection orders are dealt with in div 16.2.3.

(k) a therapeutic protection order.

*Note* Therapeutic protection orders are dealt with in s 532.

(2) The chief police officer must, if asked, give assistance to the chief executive by assigning police officers to assist the chief executive in carrying out the action.

## **680 Police powers**

(1) A police officer assisting the chief executive in carrying out an action may do any of the following if authorised by a warrant:

(a) enter or break into, remain in and search any premises or place;

(b) seize and remove anything that the police officer believes on reasonable grounds may provide evidence relevant to the action;

(c) take photographs or audio or video recordings, or make sketches, of anything relevant to the action;

(d) require a person who may be able to give information relevant to the action to answer a question.

*Note* The Legislation Act, s 170 and s 171 deals with the application of the privilege against selfincrimination and client legal privilege.

(2) However, a police officer may do something mentioned in subsection (1) without a warrant if the police officer believes on reasonable grounds that the delay involved in getting a warrant would prejudice the action or the safety of a child or young person.

- (3) A police officer assisting the chief executive in carrying out an action may be accompanied by other police officers or authorised people if it is reasonable and necessary.

**681 Seized things may be kept until matter completed**

If something is seized under section 680 (1) (b), the chief police officer or the chief executive may keep the thing until the action is completed and any proceeding arising out of the action is finalised.

**682 Offence—failure to answer police questions**

A person commits an offence if—

- (a) the person is required by a police officer under section 680 (1) (d) to answer a question; and
- (b) the person does not take reasonable steps to answer the question.

Maximum penalty: 50 penalty units.

*Note 1* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

*Note 2* A person who gives information honestly and without recklessness does not breach professional ethics etc and is protected from civil liability (see s 874).

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

## Part 18.2 Safe custody

### 683 Safe custody—parental responsibility to chief executive

If a child or young person is taken into safe custody under a safe custody warrant, the chief executive has daily care responsibility for the child or young person.

*Note* If a child or young person is taken into safe custody under a safe custody warrant, the chief executive must ensure that the matter is brought before the Childrens Court as soon as practicable, but not later than 1 working day, after the day the child or young person is taken into safe custody (see s 694).

### 684 What is a *safe custody warrant*?

In this Act:

*safe custody warrant* means a warrant to enter stated premises to take a child or young person into safe custody.

### 685 Safe custody warrant—application

- (1) The chief executive or a police officer may apply to a magistrate for a safe custody warrant if the chief executive or police officer believes on reasonable grounds that the criteria for issuing the safe custody warrant are satisfied.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the chief executive or police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Note 1* Statements, documents and reports must be included in the application (see s 696).

*Note 2* Oral applications may also be made (see s 698).



**686 Safe custody warrant—criteria**

- (1) The magistrate may issue a safe custody warrant for a child or young person, for stated premises, if satisfied that—
- (a) any of the following orders are in force for the child or young person:
- (i) an appraisal order;  
*Note* Appraisal orders are dealt with in s 372.
  - (ii) an interim care and protection order;  
*Note* Interim care and protection orders are dealt with in s 433.
  - (iii) an assessment order;  
*Note* Assessment orders are dealt with in s 436.
  - (iv) a care and protection order;  
*Note* Care and protection orders are dealt with in s 422.
  - (v) a DVPO interim protection order;  
*Note* DVPO interim protection orders are dealt with in s 459.
  - (vi) a DVPO final protection order;  
*Note* DVPO final protection orders are dealt with in s 460.
  - (vii) a therapeutic protection order;  
*Note* Therapeutic protection orders are dealt with in s 532.
  - (viii) an interim therapeutic protection order; and  
*Note* Interim therapeutic protection orders are dealt with in div 16.2.3.
- (b) there are reasonable grounds for suspecting that—
- (i) someone has contravened the order; and
  - (ii) because of the contravention, the child or young person is in danger; and

- (iii) the child or young person is at the premises or may be at the premises within the next 14 days.
- (2) The magistrate may also issue a safe custody warrant for a child or young person, for stated premises, if satisfied that—
  - (a) a therapeutic protection order, or an interim therapeutic protection order, is in force for the child or young person; and
    - Note* Therapeutic protection orders are dealt with in pt 16.2. Interim therapeutic protection orders are dealt with in div 16.2.3.
  - (b) there are reasonable grounds for suspecting that—
    - (i) the child or young person is absent without lawful authority or excuse from the therapeutic protection place where the child or young person has been directed to be confined under the therapeutic protection order; and
    - (ii) the child or young person is at the premises or may be at the premises within the next 14 days.

### **687 Safe custody warrant—content**

- (1) A safe custody warrant must state—
  - (a) the name of the child or young person who may be taken into safe custody under the warrant; and
  - (b) the order for which the safe custody warrant is issued; and
  - (c) that the chief executive or police officer may, with any necessary and reasonable assistance and force, enter stated premises and exercise the chief executive's or police officer's powers under this part; and
  - (d) the hours when the premises may be entered; and
  - (e) the date, not later than 14 days after the day the warrant is issued, that the warrant ends; and

- (f) the date that the transfer of daily care responsibility for the child or young person to the chief executive ends (the *safe custody period*).
- (2) A safe custody warrant may also state the place where the child or young person is to be placed by the person who executes the warrant.

**688 Safe custody warrant—application made other than in person**

- (1) The chief executive or a police officer may apply for a warrant by phone, fax, radio or other form of communication if the chief executive or police officer considers it necessary because of urgent circumstances.
- (2) Before applying for the warrant, the chief executive or police officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The chief executive or police officer may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the chief executive or police officer if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the chief executive or police officer—
  - (a) the magistrate must tell the chief executive or police officer—
    - (i) the terms of the warrant; and
    - (ii) the date and time the warrant was issued; and
  - (b) the chief executive or police officer must complete a form of warrant (the *warrant form*) and write on it—
    - (i) the magistrate's name; and

- (ii) the date and time the magistrate issued the warrant; and
  - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the chief executive or police officer, authorises the entry and the exercise of the chief executive or police officer's powers under this part.
- (7) The chief executive or police officer must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the chief executive or police officer completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the chief executive or police officer was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

**689 Safe custody warrant—announcement before entry**

- (1) The chief executive or a police officer must, before anyone enters premises under a safe custody warrant—
  - (a) announce that the chief executive or police officer is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and

- (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—  
identify himself or herself to the person.
- (2) The chief executive or police officer is not required to comply with subsection (1) if the chief executive or police officer believes on reasonable grounds that immediate entry to the premises is required to ensure—
  - (a) the safety of anyone (including the chief executive or police officer or a person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**690 Safe custody warrant—details of warrant to be given to occupier etc**

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a safe custody warrant is being executed, the chief executive or police officer or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

**691 Safe custody warrant—occupier entitled to be present etc**

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a safe custody warrant is being executed, the person is entitled to observe the warrant being executed.
- (2) However, the person is not entitled to observe the warrant being executed if—
  - (a) to do so would impede the execution of the warrant; or

- (b) the person is under arrest, and allowing the person to observe the warrant being executed would interfere with the objectives of the warrant.
- (3) This section does not prevent the warrant being executed at 2 or more areas of the premises at the same time.

**692 Safe custody warrant—placement of child or young person**

A child or young person taken into safe custody under a safe custody warrant must be placed by the person who executed the warrant—

- (a) in the place stated in the warrant; or
- (b) if no place is stated—in a place decided by the chief executive.

**693 Offence—remove child or young person**

- (1) A person commits an offence if—
  - (a) a child or young person has been taken into safe custody and is subject to a safe custody placement; and
  - (b) the person removes the child or young person from a place; and
  - (c) the removal is in contravention of the safe custody placement; and
  - (d) the person knows the removal is in contravention of the safe custody placement.

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

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

- (3) In this section:

*safe custody placement*, for a child or young person, means the placement of the child under section 692 (Safe custody warrant—placement of child or young person).

**694 Safe custody—matter must be brought to court promptly**

- (1) If a child or young person is taken into safe custody under a safe custody warrant, the chief executive must ensure that the matter is brought before the Childrens Court as soon as practicable, but not later than 1 working day, after the day the child or young person is taken into safe custody.

*Note* A child or young person has a right to take part in a proceeding in a court in relation to the child or young person (see *Court Procedures Act 2004*, s 74A).

- (2) When a matter is brought before the Childrens Court under this section, the court may exercise any of its powers in relation to the child or young person including the following:
- (a) making or extending an appraisal order under division 11.2.3;
  - (b) making, extending, amending or revoking an interim care and protection order under division 14.3.2;
  - (c) making, extending, amending or revoking an assessment order under division 14.3.3;
  - (d) making, extending, amending or revoking a care and protection order under part 14.5;
  - (e) making, extending, amending or revoking a therapeutic protection order under part 16.2.

## **Chapter 19 Care and protection— provisions applying to all proceedings under care and protection chapters**

### **Part 19.1 Applications**

#### **695 Application—including cross-application**

In this chapter:

*application* includes a cross-application.

#### **696 Application—must include statements, documents and reports**

An application to a court under the care and protection chapters must be accompanied by the following:

- (a) a written statement of the substance of the oral evidence that the applicant intends to present at the hearing of the application;
- (b) a written copy of any document or expert report that the applicant intends to rely on at the hearing of the application.

#### **697 Application—statements and reports to be signed etc**

Unless otherwise directed by a court, a statement or report prepared for use in a proceeding under the care and protection chapters—

- (a) must be in the form of an affidavit; or
- (b) must—
  - (i) be signed and dated by the person making the statement or report; and



- (ii) contain a declaration to the effect that the maker of the statement or report believes it to be true and understands that it may be used in court.

**698 Application—oral applications**

- (1) A person may, with the leave of the court, make an oral application under this Act for a proceeding before, during or after the hearing of the proceeding.
- (2) Subsection (1) applies despite any requirement about service in this Act.
- (3) If an oral application is made, the court must direct the applicant about—
  - (a) which (if any) of the requirements for service or notice of the making of an application are to apply to the oral application and how they are to apply; and
  - (b) whether a written application is required; and
  - (c) whether service of a written application is required.
- (4) If the court does not give directions under subsection (3) for an oral application, no service is required under this Act.

**699 Application—withdrawal or discontinuance**

- (1) A person who has applied to a court for an order under the care and protection chapters may withdraw or discontinue the application before the end of the proceeding by—
  - (a) telling, in writing, each person who was given the application; and
  - (b) filing a notice of withdrawal or discontinuance with the court.
- (2) If another party to the proceeding agrees with the withdrawal or discontinuance, the notice of withdrawal or discontinuance must have the agreement endorsed on it.

## **Part 19.2 Parties**

### **700 Parties—who are *parties* to an application?**

- (1) The following people are *parties* to an application under the care and protection chapters:
  - (a) the applicant;
  - (b) the child or young person;
  - (c) someone given a copy of the application who takes part in the proceeding (other than as a witness or representative);

*Note* Representation of children and young people is dealt with in the *Court Procedures Act 2004*, pt 7A (Procedural provisions—proceedings involving children).
  - (d) someone who is a participant in the proceeding (other than as a witness or representative) who has been—
    - (i) asked to attend by the Childrens Court and been joined as a party to the proceeding; or
    - (ii) joined as a party to the proceeding on the person’s own application.
- (2) However, the public advocate is a party to a proceeding under the care and protection chapters only if the public advocate applies to be joined as a party.

**701 Parties—hearing in party’s or other person’s absence**

- (1) If someone makes an application under the care and protection chapters, the person may, at the same time, seek the leave of the court to have the application heard in the absence of any other party or person who must be given a copy of the application.

*Note* For people who must be given copies of applications under the care and protection chapters, see:

- (a) s 379 (Appraisal orders—who must be given application);
  - (b) s 427 (Care and protection orders—who must be given application);
  - (c) s 445 (Assessment orders—who must be given application);
  - (d) s 541 (Therapeutic protection orders—who must be given application).
- (2) The court may give leave only if satisfied that notice of the application to the other party or person would place a child or young person at significant risk of significant harm.

**702 Parties—failure to attend proceeding**

- (1) This section applies if someone has been given a copy of an application under the care and protection chapters.
- (2) If the person does not attend the proceeding, the court must—
- (a) adjourn the proceeding and make any order about further service of the person that the court considers appropriate; or
  - (b) make any other order or give any other direction that it considers appropriate, including an order or direction that is binding on the person.

**703 Parties—court may join affected party**

- (1) This section applies to a proceeding under the care and protection chapters.
- (2) If the court is satisfied that it should make an order binding on or affecting someone who is not a party to the proceeding, the court may join the person as a party to the proceeding.
- (3) However, the court must give the person a reasonable opportunity to make representations to the court about why the order should not be made—
  - (a) before making the order; or
  - (b) if, because of the urgency of the case it is not possible to do so before making the order—not later than a reasonable time after making the order.

**704 Parties—application to join party**

- (1) This section applies to a proceeding for a child or young person under the care and protection chapters.
- (2) If someone (the *applicant*) applies to the court to be joined as a party to the proceeding, the court may order the person be joined as a party to the proceeding if it considers it appropriate to do so.
- (3) If the applicant is the public advocate, the court must join the public advocate as a party to the proceeding.
- (4) If the applicant has been caring for the child or young person continuously for 2 years or more, there is a rebuttable presumption that it is appropriate to join the applicant as a party to the proceeding.
- (5) An application may be made orally without notice to the parties to the proceeding, but the court must give each party an opportunity to be heard on the application before deciding whether to join the applicant as a party.

**705 Parties—filed material to be given to joined parties**

If the court joins a person as a party to a proceeding under section 703 or section 704—

- (a) the person is entitled to material already filed in the proceeding only if the court directs; and
- (b) the court must direct what material already filed in the proceeding must be given to the person, and by whom; and
- (c) the court may make any further orders or give any further directions about the conduct of the proceeding that the court considers appropriate.

**706 Parties—application for removal of party**

- (1) A party to a proceeding under the care and protection chapters (the *applicant*) may apply to the court for an order that another party to the proceeding be removed as a party.
- (2) The applicant must give a copy of the application to the following people before the application is heard by the court:
  - (a) each party to the proceeding;
  - (b) the public advocate.

**707 Parties—court may remove party**

- (1) This section applies if the court is satisfied that a party to a proceeding under the care and protection chapters—
  - (a) has been improperly or unnecessarily joined; or
  - (b) is no longer a proper or necessary party.
- (2) The court may, on application by a party to a proceeding or on its own initiative—
  - (a) order that the party is no longer a party; and

- (b) make any other orders or give any other directions for the conduct of the proceeding that the court considers appropriate.
- (3) Before making an order under this section, the court must provide each party to the proceeding with an opportunity to be heard on the application or motion.

**708 Parties—notice of address for service**

A party to a proceeding under the care and protection chapters must file with the court, and give to each other party to the proceeding, a written statement of the party's name and address for service of documents.

**709 Parties—representation**

- (1) A party to a proceeding under the care and protection chapters may appear before the court—
  - (a) in person; or
  - (b) represented by a lawyer; or
  - (c) with the leave of the court, represented by someone else.

*Note* Representation of children and young people is dealt with in the *Court Procedures Act 2004*, pt 7A (Procedural provisions—proceedings involving children).

- (2) Also, the chief executive may appear before the court by the chief executive's delegate or someone authorised to appear on the chief executive's behalf.
- (3) If a party to a proceeding under the care and protection chapters (the **represented party**) is represented by a lawyer in the proceeding, the lawyer must file with the court, and give to each other party to the proceeding, a written statement that the lawyer acts for the represented party and an address in the ACT for service of documents.

- (4) A lawyer may stop representing a party to a proceeding under the care and protection chapters only if the lawyer files with the court, and gives to each other party to the proceeding, a written statement to that effect.

**710 Exclusion of people from hearings**

- (1) This section applies to a proceeding for a child or young person under the care and protection chapters.
- (2) The court may order that someone must not be present in the courtroom during all or part of the hearing of the proceeding if the court considers it appropriate.
- (3) This section applies to everybody including—
- (a) the child or young person; and
  - (b) the parents of the child or young person; and
  - (c) anyone else who has daily care responsibility, or long-term care responsibility, for the child or young person.

<b>Chapter 19</b>	Care and protection—provisions applying to all proceedings under care and protection chapters
<b>Part 19.3</b>	Standard of proof

Section 711

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## **Part 19.3**                      **Standard of proof**

### **711**                      **Standard of proof**

In a proceeding under the care and protection chapters, a fact is proved if it is proved on the balance of probabilities.



## **Part 19.4                      Witnesses and evidence**

### **712                      Procedures at hearings to be informal**

- (1) A proceeding under the care and protection chapters must be carried out as informally and quickly as—
  - (a) the requirements of this or any other Act allows; and
  - (b) a proper consideration of the matter allows.
- (2) This section does not apply if another provision of this Act provides otherwise.

### **713                      Court may call witnesses**

- (1) This section applies to a proceeding under the care and protection chapters.
- (2) The court may, on its own initiative, call a person as a witness whose evidence may, in the court's opinion, be of assistance to the court.

### **714                      Court may summons people to attend**

- (1) This section applies if, in a proceeding under the care and protection chapters—
  - (a) someone must be given an application; and
  - (b) the person has been given the application; and
  - (c) the person has not attended a hearing for the application.
- (2) If the court considers that the attendance of the person is necessary to allow the court to hear and decide the application, the court may do any of the following that it considers appropriate to bring about the attendance of the person:
  - (a) give a direction;

- (b) issue a summons;
- (c) issue a warrant.
- (3) A summons must include a statement to the effect that—
  - (a) if the person does not attend the court, a warrant may be issued to bring the person before the court; and
  - (b) there is a penalty for not taking all reasonable steps to attend court in answer to the summons.
- (4) The court may issue a warrant to bring a person before the court if—
  - (a) a summons has been given to the person under this section; and
  - (b) the person does not attend the court to answer to the summons.

**715 Child or young person as witness**

- (1) A child or young person may be called as a witness in a proceeding under the care and protection chapters only with the leave of the court.
- (2) If the court gives leave for a child or young person to be called as a witness, the court may prohibit cross-examination of the child or young person if satisfied that it is in the best interests of the child or young person to do so.

**716 Court not bound by rules of evidence**

- (1) In a proceeding under the care and protection chapters, the court—
  - (a) is not bound by the rules of evidence; and
  - (b) may inform itself of a matter in any way that it considers appropriate.
- (2) Also, if the court is making, extending, amending or revoking an order under the care and protection chapters, the court may—
  - (a) admit and act on hearsay evidence; and

(b) take submissions from someone who is not a party.

**717 Restriction on taking evidence**

If it appears to the court to be necessary or convenient for the proper determination of the matters at issues in a proceeding, the court may restrict the way or the extent to which someone, including a child or young person, is to be examined or cross-examined for the proceeding.

## **Part 19.5 Orders**

### **718 Orders—obligations on people**

- (1) A court making an order under the care and protection chapters may make an order imposing an obligation on a person only if the person—
  - (a) agrees to the order being made; or
  - (b) has been given an opportunity to be heard about the proposed order; or
  - (c) cannot after reasonable inquiry be found.
- (2) The court gives a person an opportunity to be heard about a proposed order if the court has directed the person, in writing, to attend the proceeding to be heard about the proposed making of an order (whether or not the person attends the proceeding).

### **719 Orders—by agreement**

- (1) The parties to an application under the care and protection chapters may file with the court draft order (the *draft consent order*) that, if made, would have the agreement of the parties.
- (2) The draft consent order must be signed by—
  - (a) each party to the application; and
  - (b) each person who will be—
    - (i) required to comply with the order; or
    - (ii) directly affected by the order.

**720 Orders—must be given to people**

As soon as practicable after making an order under the care and protection chapters in a proceeding, the court must give a copy of the order to—

- (a) the chief executive; and
- (b) the public advocate; and
- (c) each lawyer representing a party to the proceeding who has, before the date of the order, filed a notice of address for service; and
- (d) if a party to the proceeding is not represented by a lawyer and has, before the date of the order, filed a notice of address for service—the party.

**721 Residence, contact and specific issues provisions—giving, amending or extending directions**

- (1) This section applies to a care and protection order that includes 1 or more of the following:
  - (a) a specific issues provision that includes a direction that a stated person—
    - (i) do a stated thing; or
    - (ii) not do a stated thing; or
    - (iii) comply with a stated condition;
  - (b) a contact provision that includes a direction that a stated person must not have contact with the child or young person;
  - (c) a residence provision that includes a direction—
    - (i) that a stated person must not live at the same premises as the child or young person (including that the stated person must stop living at those premises); or

- (ii) that a stated person may live with the child or young person only subject to stated conditions.
- (2) If a court makes, amends or extends the care and protection order, the court must give a copy of the order or revised order to the following people:
- (a) the stated person, by personal service on the person;
  - (b) the chief executive;
  - (c) the public advocate;
  - (d) the chief police officer;
  - (e) each other person who was a party to the proceeding;
  - (f) any other person the court considers appropriate.
- (3) However, if the court considers personal service on the stated person is impracticable, the court may give the copy of the order or revised order to the stated person in another way.
- Note* Under the Legislation Act, s 247, a document may also be served on an individual—
- (a) by sending it by prepaid post, addressed to the individual, to a home or business address of the individual; or
  - (b) by faxing it to a fax number of the individual; or
  - (c) by emailing it to an email address of the individual; or
  - (d) by leaving it, addressed to the individual, at a home or business address of the individual with someone who appears to be at least 16 years old and to live or be employed at the address.
- (4) If the court considers it appropriate, the court may direct that a police officer give the copy of the order or revised order to someone.
- (5) If the court directs that a police officer give the copy of the order or revised order to someone, the chief police officer must, if asked by the registrar, arrange for the copy of the order or revised order to be given by a police officer.

(6) In this section:

**revised order** means—

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

*Note 1* A specific issues provision, a contact provision or a residence provision may be extended, amended or revoked under pt 19.5.

*Note 2* In a proceeding for an appraisal order, a fact is proved if it is proved on the balance of probabilities (see s 711).

*Note 3* The court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

## 722 Orders—statement of reasons

(1) This section applies if a court—

- (a) makes an order under the care and protection chapters in a proceeding; or
- (b) hears and decides an application for—
  - (i) extension of a therapeutic protection order under section 562; or
  - (ii) amendment of a therapeutic protection order under section 569; or
  - (iii) revocation of a therapeutic protection order under section 570.

*Note* The court must record a written statement of reasons for these decisions (see s 563 and s 571).

(2) Not later than 28 days after the day the order is made, a party to the proceeding may ask the court, in writing, to give the party a statement of reasons for making, extending, amending or revoking the order.

- (3) The court must give a written statement of reasons as soon as practicable, but not later than 28 days, after the day the court receives the request.

**723 Orders about service**

A court may make the following orders in relation to a proceeding under the care and protection chapters:

- (a) an order dispensing with service of a notice, order or other instrument under the care and protection chapters;
- (b) an order shortening the time for serving a notice, order or other instrument under the care and protection chapters



## Part 19.6 Costs

### 724 Costs—parties bear own unless court orders otherwise

- (1) This section applies to a proceeding under the care and protection chapters including—
  - (a) an interlocutory proceeding; and
  - (b) an appeal from a decision made under the care and protection chapters.
- (2) The parties to a proceeding must bear their own costs unless a court exercising jurisdiction under this Act orders otherwise.

### 725 Costs—frivolous, vexatious, dishonest application

- (1) This section applies to a proceeding under the care and protection chapters including—
  - (a) an interlocutory proceeding; and
  - (b) an appeal from a decision made under the care and protection chapters.
- (2) A court exercising jurisdiction under this Act may, on application or on its own initiative, order the payment of costs in a proceeding if satisfied that—
  - (a) an application in the proceeding is frivolous, vexatious or dishonest; or
  - (b) there are exceptional circumstances that justify the order.
- (3) A person who applies for an order for costs under this section must give a copy of the application to the party from whom the costs are sought.

**726 Costs—parties bear own costs unless order otherwise**

- (1) This section applies to a proceeding under the care and protection chapters including—
  - (a) an interlocutory proceeding; and
  - (b) an appeal from a decision made under the care and protection chapters.
- (2) A court exercising jurisdiction under this Act may, on application or on its own initiative, order someone's costs be paid if the hearing of a proceeding is adjourned because—
  - (a) someone else required to attend the hearing did not attend; or
  - (b) someone else contravened a direction or order of the court.
- (3) A person who applies for an order for costs under this section must give a copy of the application to the party from whom the costs are sought.

**727 Costs—how court may share costs**

- (1) This section applies if a court exercising jurisdiction under this Act has made an order about costs under section 725 or section 726.
- (2) The court may order costs be paid by or shared between the parties in the way the court orders.
- (3) However, if the Childrens Court makes an order for the payment of costs in a proceeding, the costs allowed are up to 50% of the costs that would be allowed if the proceeding had been heard in the Supreme Court.

## **Chapter 20      Childcare services**

### **Part 20.1      Childcare services—preliminary**

#### **728      Definitions—Act and ch 20**

- (1) In this Act:

*childcare centre*—see section 733.

*childcare service*—see section 732.

*family day care scheme*—see section 734.

- (2) In this chapter:

*cancellation notice*—see section 766.

*childcare service licence*, for a childcare service, means a licence under section 747 (Childcare service licence—decision on application) to operate the childcare service.

*childcare worker*, for a childcare service, means a person who cares for a child for the childcare service.

*compliance notice*—see section 760 (2).

*compliance suspension notice*—see section 761 (2).

*controlling person*, for a childcare service—see section 736.

*intention to cancel notice*—see section 764 (2).

*licensed childcare service* means a childcare service operated by a licensed proprietor for the childcare service.

*licensed proprietor*, of a childcare service, means a proprietor of the childcare service who holds a childcare service licence to operate the childcare service.

*proposed controlling person*, for a childcare service, means a person who intends to be a controlling person for the childcare service.

*proposed proprietor*, for a childcare service, means a person who intends to own or operate the childcare service.

*proprietor*, for a childcare service—see section 735.

*responsible person*, for a childcare service—see section 738.

## 729 Objects—ch 20

The objects of this chapter include—

- (a) providing an effective licensing system for childcare services; and
- (b) imposing standards for childcare services.

*Note* The Minister may make childcare services standards under s 887.

## 730 Principles—ch 20

In making a decision or taking action under this chapter for a childcare service, the following childcare services principles should be applied:

- (a) childcare services must provide care that is safe, positive and nurturing;
- (b) childcare services must promote the educational, social and developmental wellbeing of children.

*Note* In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

**731 Application—ch 20**

- (1) This chapter does not apply to care provided for a child—
- (a) at a playgroup; or
  - (b) in conjunction with a meeting, function or similar activity that involves a person who has daily care responsibility for the child, at the same or adjacent premises (unless provided in conjunction with the person's usual employment); or
  - (c) by a family member (unless provided as part of a family day care scheme); or
  - (d) by an out-of-home carer with whom the chief executive has placed the child or young person under section 512; or
- Note* If the chief executive has daily care responsibility for a child or young person, the chief executive must place the child or young person with an out-of-home carer (see pt 15.4).
- (e) by a government school or non-government school under the *Education Act 2004*, whether provided during or outside school hours; or
  - (f) by a person providing home education to the child if the child is registered, or provisionally registered, for home education under the *Education Act 2004*; or
  - (g) that is incidental to the child's participation in religious instruction, sporting, educational, recreational or cultural events or activities; or
  - (h) that is incidental to activities by the child as a member, or while training to become a member, of a club or class sponsored by a non-profit community organisation; or
  - (i) while the child is a patient in a hospital, including a day hospital.

(2) In this section:

*day hospital*—see the *Health Act 1993*, dictionary.

## Part 20.2                      Childcare services—important concepts

### 732                      What is a *childcare service*?

In this Act:

*childcare service* means—

- (a) a childcare centre; or
- (b) a family day care scheme.

### 733                      What is a *childcare centre*?

(1) In this Act:

*childcare centre* means a service, operated from premises, that provides care—

- (a) for at least the minimum number of children; and
- (b) for payment or other material benefit.

(2) For this section, when working out how many children care is being provided for by a service operated from premises—

- (a) a child for whom care is provided on an emergency basis, or in unexpected or exceptional circumstances, must not be counted unless the child is cared for at the premises for 2 or more consecutive days; and
- (b) if a child of a childcare worker is being cared for at the premises, the child must be counted.

(3) In this section:

*minimum number*, of children, means—

- (a) 5 young children; or

(b) 8 children, if no more than 4 children are young children.

**young child** means a child who is not yet either—

- (a) attending school as required under the *Education Act 2004*; or
- (b) registered, or provisionally registered, for home education under the *Education Act 2004*.

**734 What is a *family day care scheme*?**

(1) In this Act:

***family day care scheme*** means a scheme that organises, coordinates and monitors home-based care for children.

(2) In this section:

***home-based care***, for a child, means care provided by a person for the child if—

- (a) the care is provided at a home that is not the child's home; and
- (b) the care is provided for payment or other material benefit; and
- (c) the person does not have—
  - (i) daily care responsibility for the child; or
  - (ii) long-term care responsibility for the child.

**Examples—schemes that are not family day care schemes**

- 1 a scheme that organises, coordinates and monitors nannies
- 2 a scheme that organises, coordinates and monitors babysitters

*Note 1* Daily care responsibility is dealt with in s 19.  
Long-term care responsibility is dealt with in s 20.

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



**735 Who is the *proprietor* of a childcare service?**

In this chapter:

*proprietor*, of a childcare service, means—

- (a) for a licensed childcare service—the licensed proprietor of the childcare service; or
- (b) in any other case—the person who owns or operates the childcare service.

**736 Who is a *controlling person* for a childcare service?**

In this chapter:

*controlling person*, for a childcare service, means a person (other than the proprietor if the proprietor is not an individual) who exercises control or may exercise control over the childcare service.

**737 Offence—fail to notify change of controlling person**

- (1) A licensed proprietor of a childcare service commits an offence if—
  - (a) someone stops being a controlling person for the childcare service; and
  - (b) the licensed proprietor does not tell the chief executive, in writing, that the person has stopped being a controlling person not later than 30 days after the day the person stops being a controlling person.

Maximum penalty: 5 penalty units.

- (2) A licensed proprietor of a childcare service commits an offence if—
- (a) someone becomes a controlling person for the childcare service; and
  - (b) the licensed proprietor does not tell the chief executive, in writing, that the person has become a controlling person not later than 30 days after the day the person becomes a controlling person.

Maximum penalty: 5 penalty units.

- (3) An offence against this section is a strict liability offence.

## Part 20.3 Childcare services—offences

*Note to pt 20.3*

An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

### 738 Who is a *responsible person* for a childcare service?

In this chapter:

*responsible person*, for a childcare service—each of the following is a *responsible person*:

- (a) a proprietor of the childcare service;
- (b) a controlling person for the childcare service;
- (c) a person caring for a child for the childcare service.

*Note* A person may be a proprietor or controlling person for a childcare service whether or not the childcare service is a licensed childcare service (see s 735 and s 736).

### 739 Offence—fail to protect child from injury

- (1) A person commits an offence if the person—
  - (a) is a responsible person for a childcare service; and
  - (b) does not ensure that reasonable precaution is taken to protect a child being cared for by the service from a hazard likely to cause injury.

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

- (2) This section does not apply to a person caring for a child for a childcare service if the person is—
- (a) unable to take the precaution; and
  - (b) unable to ensure that the precaution is taken by someone else.

**740 Offence—fail to supervise child**

A person commits an offence if the person—

- (a) is a responsible person for a childcare service; and
- (b) does not take reasonable steps to ensure that a child being cared for by the service is adequately supervised.

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

**741 Offence—unreasonably discipline child**

- (1) A person commits an offence if the person—
- (a) is a responsible person for a childcare service; and
  - (b) subjects a child being cared for by the service to unreasonable discipline.

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

- (2) In this section:

*unreasonable discipline* includes—

- (a) physical punishment; or
- (b) any behaviour management strategy likely to cause emotional or physical harm to a child.

**Examples**

- 1 smacking
- 2 yelling

3 using threatening or humiliating language

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

**742 Offence—fail to maintain buildings, equipment etc**

A person commits an offence if the person—

- (a) is a responsible person for a childcare service; and
- (b) does not take reasonable steps to ensure that the buildings, grounds, equipment and furnishings used in operating the service are maintained in a safe, clean and hygienic condition and in good repair.

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

## Part 20.4 Childcare services—childcare service licences

### Division 20.4.1 Childcare service licences—application, eligibility, etc

#### 743 Childcare service licence—proposed proprietor may apply

- (1) A proposed proprietor of a childcare service may apply for a childcare service licence to operate the childcare service.
- (2) The application must—
  - (a) be made in writing to the chief executive; and
  - (b) include complete details of suitability information about—
    - (i) the proposed proprietor; and
    - (ii) each proposed controlling person for the childcare service.

*Note 1* **Suitability information** is defined in s 65.

*Note 2* Giving false or misleading information is an offence against the Criminal Code, s 338.

*Note 3* If a form is approved under s 886 for this provision, the form must be used.

*Note 4* A fee may be determined under s 885 for this provision.

- (3) However, subsection (2) (b) (ii) does not apply in relation to a proposed controlling person for the childcare service if the person is not known to the proposed proprietor of the childcare service at the time the application is made.

- (4) If subsection (3) applies, the proposed proprietor must give the chief executive complete details of suitability information about the proposed controlling person for the childcare service by the later of the following:
- (a) 30 days after the controlling person for the childcare service becomes known to the proposed proprietor;
  - (b) 30 days after the application is approved.

#### **744 Childcare service licence—further information**

- (1) This section applies if the chief executive has received an application for a childcare service licence under section 743.
- (2) The chief executive may ask the proposed proprietor to give the chief executive more information about—
- (a) the application, including information about the proposed proprietor and any proposed controlling person; and
  - (b) the premises proposed to be used for operating the childcare service.
- (3) The chief executive may ask the proposed proprietor to allow the chief executive to inspect the premises where the proposed proprietor proposes to operate the childcare service.

*Note* An authorised person may, at any reasonable time, enter premises if the chief executive has received an application under s 743 and asked the proposed proprietor to allow the chief executive to inspect the premises under s (3) and the proposed proprietor has agreed to allow the chief executive to inspect the premises (see s 817).

**745 Childcare service licence—chief executive need not decide if no information or inspection**

- (1) This section applies if, under section 744, the chief executive asks the proposed proprietor—
  - (a) to give the chief executive more information but the proposed proprietor does not give the chief executive the information; or
  - (b) to allow the chief executive to inspect premises but the proposed proprietor does not allow the chief executive to inspect the premises.
- (2) The chief executive need not decide whether the proposed proprietor is eligible for a childcare service licence.

**746 Childcare service licence—eligibility**

A proposed proprietor of a childcare service is eligible for a childcare service licence to operate the childcare service only if the chief executive is satisfied that—

- (a) the proposed proprietor is a suitable entity to provide the childcare service; and
- (b) each proposed controlling person for the childcare service is a suitable entity to provide the childcare service; and
- (c) the proposed proprietor complies, and is likely to continue to comply, with the childcare services standards; and
- (d) the premises where the childcare service is to be operated comply with the childcare services standards.

*Note 1* Suitable entities to provide services are dealt with in pt 2.4.

*Note 2* The Minister may make childcare services standards under s 887.



## 747 Childcare service licence—decision on application

- (1) This section applies if the chief executive has received an application for a childcare service licence under section 743.
- (2) If the proposed proprietor is eligible under section 746 for a childcare service licence to operate the childcare service, the chief executive must give the proposed proprietor a licence to operate the childcare service.
- (3) If the proposed proprietor is not eligible under section 746 for a childcare service licence to operate the childcare service, the chief executive must refuse to give the proposed proprietor a licence to operate the childcare service.

*Note* A decision under this subsection is a reviewable decision (see s 839).

- (4) The chief executive must, not later than the required time—
  - (a) decide the application; and
  - (b) tell the proposed proprietor about the decision on the application.
- (5) For subsection (4), the **required time** is the latest of the following:
  - (a) if the chief executive requires a proposed proprietor or proposed controlling person to provide a reference or report under section 68 (2) (a)—30 days after the day the chief executive receives the reference or report;
  - (b) if the chief executive requires a proposed proprietor or proposed controlling person to undergo a test or medical examination under section 68 (2) (b)—30 days after the day the chief executive receives the results of the test or examination;
  - (c) if the chief executive asks the proposed proprietor to give the chief executive more information under section 744 (2)—30 days after the day the chief executive receives the information;

- (d) if the chief executive asks the proposed proprietor to allow the chief executive to inspect premises under section 744 (3)—30 days after the day the chief executive is allowed to inspect the premises;
- (e) in any other case—30 days after the day the chief executive receives the application.

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

## **748 Childcare service licence—content**

A childcare service licence must state—

- (a) the name of the proprietor of the childcare service; and
- (b) the kind of childcare service for which the licence is given; and
- (c) the length of the licence; and
- (d) for a licence to operate a childcare centre—
  - (i) the premises where the childcare centre may operate; and
  - (ii) the maximum number of children that may be cared for at the childcare centre; and
  - (iii) the age of the children who may be cared for at the childcare centre.

## 749 Childcare service licence—childcare service standards

- (1) A childcare service licence is subject to the condition that the service must be operated in a way that complies with the childcare services standards.

### Example

The Minister makes a childcare service standard for family day care schemes. A licence for a childcare service of that kind is subject to the condition that it is operated in a way that complies with the standard.

*Note 1* The Minister may make childcare services standards under s 887.

*Note 2* The Minister may make different standards in relation to different childcare services or different classes of service, and standards that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48.)

*Note 3* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

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

- (2) The chief executive may exempt a childcare service from 1 or more childcare service standards (a ***temporary standards exemption***) if the chief executive believes on reasonable grounds that—
- (a) the exemption is not likely to prejudice the safety and educational, social and developmental wellbeing of a child or children being cared for by the service; and
  - (b) the exemption is not likely to impact on the childcare service's promotion of the educational, social and developmental wellbeing of children; and
  - (c) the childcare service has taken, or is taking, steps to comply with any childcare service standard included in the exemption; and

- (d) the exemption will not result in the proprietor of the childcare centre failing to take all reasonably practicable steps to protect the health, safety and welfare of employees of the childcare service.
- (3) A temporary standards exemption must not include information that identifies a childcare worker or would allow the identity of a childcare worker to be worked out.
- (4) A temporary standards exemption must be for not longer than 6 months.
- (5) The chief executive may extend a temporary standards exemption if the total period of the exemption is not longer than 12 months.
- (6) A temporary standards exemption may be conditional.
- (7) The chief executive may revoke a temporary standards exemption at any time on reasonable grounds.
- (8) A temporary standards exemption is a notifiable instrument.

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

### **750 Childcare service licence—length**

- (1) The chief executive must not give a childcare service licence for longer than 3 years.
- (2) However, if a licensed proprietor of a childcare service has applied for renewal of the licence under section 754, the chief executive may extend the licence until the application is decided.

### **751 Childcare service licence—extensions**

- (1) If a childcare service licence is shorter than 3 years, the licensed proprietor may apply for an extension of the licence.

*Note 1* If a form is approved under s 886 for this provision, the form must be used.

*Note 2* A fee may be determined under s 885 for this provision.

- (2) If the licensed proprietor would be eligible under section 746 (Childcare service licence—eligibility) for the licence as extended, the chief executive must—
    - (a) extend the licence to a total period of not longer than 3 years; and
    - (b) tell the licensed proprietor, in writing, about the extension.
  - (3) If the licensed proprietor would not be eligible under section 746 for the licence as extended, the chief executive must—
    - (a) refuse to extend the licence; and
    - (b) tell the licensed proprietor, in writing, about the refusal.
- Note* A decision under this subsection is a reviewable decision (see s 839).
- (4) The chief executive must decide the application, and tell the proprietor about the decision, not later than 30 days after the day the chief executive receives the application.

## **752 Childcare service licence—amendment**

- (1) A licensed proprietor of a childcare service may apply to the chief executive to amend the licence in relation to—
  - (a) the premises where the childcare centre may operate; and
  - (b) the maximum number of children that may be cared for at the childcare centre; and
  - (c) the age of the children who may be cared for at the childcare centre.

*Note 1* If a form is approved under s 886 for this provision, the form must be used.

*Note 2* A fee may be determined under s 885 for this provision.

- (2) The chief executive may amend the licence if satisfied that the childcare service can be operated under the amended licence in a way that complies with the childcare service standards.

*Note 1* A childcare service licence is subject to the condition that the service must be operated in a way that complies with the childcare services standards.

*Note 2* The Minister may make childcare services standards under s 887.

- (3) The chief executive must decide the application, and tell the proprietor about the decision, not later than 30 days after the day the chief executive receives the application.

### **753 Childcare service licence—transfer**

- (1) The licensed proprietor of a childcare service may apply to the chief executive to transfer the childcare service licence to someone else.

*Note 1* If a form is approved under s 886 for this provision, the form must be used.

*Note 2* A fee may be determined under s 885 for this provision.

- (2) The chief executive may transfer the licence if the person to whom the license is proposed to be transferred would be eligible under this chapter for the licence.
- (3) The chief executive must, not later than 30 days after the day the chief executive receives the application—
- (a) decide the application; and
  - (b) if the decision is to transfer the licence, decide the date that the transfer takes effect; and
  - (c) tell the licensed proprietor about the decision on the application.

*Note* A decision under this subsection is a reviewable decision (see s 839).

- (4) A transfer takes effect on the date decided by the chief executive.

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## **Division 20.4.2      Childcare service licences—renewal**

### **754      Childcare service licence renewal—licensed proprietor may apply**

- (1) A licensed proprietor of a childcare service may apply for renewal of the licence.
- (2) The application must be—
  - (a) made in writing to the chief executive; and
  - (b) received by the chief executive at least 30 days, but not more than 60 days, before the childcare service licence ends.
- (3) However, the chief executive may extend the time for making an application.

*Note 1* A licensed proprietor may apply to the chief executive for the time to be extended, and the chief executive may extend the time, even though the time has ended (see Legislation Act, s 151C).

*Note 2* If a form is approved under s 886 for this provision, the form must be used.

*Note 3* A fee may be determined under s 885 for this provision.

### **755      Childcare service licence renewal—further information**

- (1) This section applies if the chief executive has received an application for renewal of a childcare service licence under section 754.
- (2) The chief executive may ask the licensed proprietor to give the chief executive more information about—
  - (a) the application, including information about the licensed proprietor and any controlling person; and
  - (b) the premises used for operating the childcare service.

- (3) The chief executive may ask the licensed proprietor to allow the chief executive to inspect the premises where the licensed proprietor operates the childcare service.

*Note* An authorised person may, at any reasonable time, enter premises if the chief executive has received an application for renewal of a childcare service licence under s 754 and asked the proposed proprietor to allow the chief executive to inspect the premises under this section and the proposed proprietor has agreed to allow the chief executive to inspect the premises (see s 817).

**756 Childcare service licence renewal—chief executive need not decide if no information or inspection**

- (1) This section applies if, under section 755, the chief executive asks the licensed proprietor—
- (a) to give the chief executive more information but the licensed proprietor does not give the chief executive the information; or
  - (b) to allow the chief executive to inspect premises but the licensed proprietor does not allow the chief executive to inspect the premises.
- (2) The chief executive need not decide whether the licensed proprietor is eligible for renewal of a childcare service licence.

**757 Childcare service licence renewal—eligibility**

- (1) A licensed proprietor of a childcare service is eligible for renewal of the licence only if the chief executive is satisfied that the licensed proprietor—
- (a) is eligible for a childcare service licence under section 746; and



(b) has complied with the childcare services standards during the period of the childcare service licence.

*Note 1* The proprietor and each controlling person must tell the chief executive not later than 7 days after any of their suitability information changes (see s 70).

*Note 2* The Minister may make childcare services standards under s 887.

- (2) For subsection (1) (b), the chief executive may take into account—
- (a) any periods of noncompliance, or persistent noncompliance, with the childcare services standards; and
  - (b) actions taken to rectify any noncompliance with the child care services standards; and
  - (c) the future likelihood of compliance with the childcare service standards.

## **758 Childcare service licence renewal—decision on application**

- (1) This section applies if the chief executive receives an application for renewal of a childcare service licence under section 754.
- (2) If the licensed proprietor is eligible under section 757 for renewal of the childcare service licence, the chief executive must give the licensed proprietor a new childcare service licence.
- (3) If the licensed proprietor is not eligible under section 757 for renewal of the childcare service licence, the chief executive must refuse to renew the childcare service licence.

*Note* A decision under this subsection is a reviewable decision (see s 839).

- (4) The chief executive must, not later than the required time for an application—
  - (a) decide the application; and
  - (b) tell the licensed proprietor about the decision on the application.

- (5) For subsection (4), the required time for an application is the latest of the following:
- (a) if the chief executive requires the licensed proprietor or a controlling person to provide a reference or report under section 68 (2) (a)—30 days after the day the chief executive receives the reference or report;
  - (b) if the chief executive requires the licensed proprietor or a controlling person to undergo a test or medical examination under section 68 (2) (b)—30 days after the day the chief executive receives the results of the test or examination;
  - (c) if the chief executive asks the licensed proprietor to give the chief executive more information under section 755 (2)—30 days after the day the chief executive receives the information;
  - (d) if the chief executive asks the licensed proprietor, to allow the chief executive to inspect premises under section 755 (3)—30 days after the day the chief executive is allowed to inspect the premises;
  - (e) in any other case—30 days after the day the chief executive receives the application.

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

## Division 20.4.3 Childcare service licences— suspension and cancellation

### 759 Who is an *affected child*?

In this division:

*affected child*, for an event, for a childcare service, includes—

- (a) a child who is being cared for by the childcare service when the event happens; and
- (b) a child who is enrolled at the childcare service, whether or not the child attends the childcare service on the day the event happens.

### 760 Childcare service licence—compliance notices

- (1) This section applies if the chief executive believes on reasonable grounds that the licensed proprietor of a childcare service has operated the childcare service in a way that does not comply with this chapter or a childcare services standard.

*Note 1* For s (1), the chief executive may also give an intention to cancel notice (see s 764).

*Note 2* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

*Note 3* The Minister may make childcare services standards under s 887.

- (2) The chief executive may give a written notice (a *compliance notice*) to the licensed proprietor of the childcare service—
  - (a) directing the licensed proprietor to take the steps stated in the notice to comply with the relevant provisions or standard not later than the day stated in the notice; and

- (b) telling the licensed proprietor that the licensed proprietor may make a submission, orally or in writing, to the chief executive about the notice not later than 7 days after the day the notice is given to the licensed proprietor.
- (3) If the licensed proprietor does not make a submission in accordance with the compliance notice, the chief executive must take reasonable steps to tell a person with daily care responsibility for each affected child about the compliance notice.

*Note* A parent of a child has daily care responsibility for the child unless that aspect of parental responsibility has been transferred to someone else (see s 16 and s 17). Daily care responsibility for a child may also be shared with someone else (see s 18).

- (4) If the licensed proprietor makes a submission in accordance with the compliance notice, the chief executive must consider the submission and must either—
  - (a) confirm the compliance notice; or
  - (b) amend the compliance notice; or
  - (c) revoke the compliance notice.

*Note* A decision under this subsection is a reviewable decision (see s 839).

- (5) After making a decision under subsection (4), the chief executive must tell the licensed proprietor about the decision.
- (6) If the licensed proprietor makes a submission in accordance with the compliance notice and the chief executive decides to confirm or amend the compliance notice, the chief executive must take reasonable steps to tell a person with daily care responsibility for each affected child about the compliance notice and the decision to confirm or amend it.

## **761 Childcare service licence—suspension for noncompliance**

- (1) This section applies if—
- (a) the chief executive gives the licensed proprietor of a childcare service a compliance notice under section 760; and
  - (b) the licensed proprietor does not take the steps stated in the notice not later than the day stated in the notice or, if the chief executive allows further time, the further time.

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

- (2) The chief executive may give a written notice (a *compliance suspension notice*) to the licensed proprietor—
- (a) suspending the childcare service licence starting on the date stated in the notice; and
  - (b) telling the licensed proprietor that the licensed proprietor may make a submission, in writing, to the chief executive about the notice not later than 30 days after the day the notice is given to the licensed proprietor.

*Note* A decision under par (a) is a reviewable decision (see s 839).

- (3) If the chief executive gives a compliance suspension notice to the licensed proprietor, the chief executive must also take reasonable steps to tell a person with daily care responsibility for each affected child about the suspension.
- (4) The compliance suspension notice has effect until either—
- (a) the suspension is ended under section 762; or

- (b) the notice is revoked by the chief executive by written notice given to the licensed proprietor.

*Note* If a form is approved under s 886 for this provision, the form must be used.

**762 Childcare service licence—ending noncompliance suspension**

- (1) This section applies if—
  - (a) the chief executive gives the licensed proprietor of a childcare service a compliance suspension notice under section 761; and
  - (b) the licensed proprietor makes a submission in accordance with the notice.
- (2) The chief executive must consider the submission.
- (3) After considering the submission, the chief executive may consider any other relevant matter and must decide to either—
  - (a) confirm the suspension and decide the length of the suspension; or
  - (b) end the suspension.

*Note* A decision under par (a) is a reviewable decision (see s 839).
- (4) The chief executive must tell—
  - (a) the licensed proprietor about the decision under subsection (3); and
  - (b) anyone else about the decision who was told under section 761 about the suspension.

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**763 Childcare service licence—suspension if children unsafe**

- (1) This section applies if the chief executive believes on reasonable grounds that—
- (a) children being cared for by a licensed childcare service are unsafe; and
  - (b) the exercise of the chief executive’s powers under this section is necessary to protect the children.

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

- (2) The chief executive may give a written notice (a ***safety suspension notice***) to the licensed proprietor, immediately suspending the childcare service licence.

*Note* A decision under this subsection is a reviewable decision (see s 839).

- (3) If the chief executive gives a ***safety suspension notice*** to the licensed proprietor, the chief executive must also take reasonable steps to tell a person with daily care responsibility for each affected child about the suspension.

*Note* A parent of a child has daily care responsibility for the child unless that aspect of parental responsibility has been transferred to someone else (see s 16 and s 17). Daily care responsibility for a child may also be shared with someone else (see s 18).

- (4) The safety suspension notice has effect until revoked by the chief executive by written notice given to the licensed proprietor.

*Note* If a form is approved under s 886 for this provision, the form must be used.

## 764 Childcare service licence—notice of intention to cancel

- (1) This section applies if—
- (a) the licensed proprietor of a childcare service is convicted or found guilty of an offence against this Act; or
  - (b) the chief executive believes on reasonable grounds that—
    - (i) a childcare service licence was obtained improperly; or
    - (ii) the licensed proprietor of a childcare service has operated the childcare service in a way that does not comply with a childcare services standard; or
- Note 1* The Minister may make childcare services standards under s 887.
- Note 2* For subpar (ii), the chief executive may instead give a compliance notice (see s 760).
- (iii) the licensed proprietor of a childcare service is not a suitable entity to provide the childcare service; or
  - (iv) a controlling person for a childcare service is not a suitable entity to provide the childcare service.
- Note* Suitable entities to provide services are dealt with in pt 2.4.
- (2) The chief executive may give a written notice (an *intention to cancel notice*) to the licensed proprietor telling the licensed proprietor—
- (a) that the chief executive intends to cancel the childcare service licence; and
  - (b) the reasons for the intended cancellation; and
  - (c) that the licensed proprietor may make a submission, in writing, to the chief executive about the intended cancellation not later than 21 days after the day the notice is given to the licensed proprietor.



- (3) If the chief executive gives an intention to cancel notice to the licensed proprietor, the chief executive must also take reasonable steps to tell a person with daily care responsibility for each affected child about the notice.

*Note* A parent of a child has daily care responsibility for the child unless that aspect of parental responsibility has been transferred to someone else (see s 16 and s 17). Daily care responsibility for a child may also be shared with someone else (see s 18).

## **765 Childcare service licence—cancellation**

- (1) This section applies if the chief executive gives a licensed proprietor of a childcare service an intention to cancel notice under section 764.
- (2) If the licensed proprietor makes a submission in accordance with the intention to cancel notice, the chief executive must consider the submission.
- (3) After considering the submission, the chief executive may consider any other relevant matter and must decide to either—
- (a) cancel the childcare service licence; or
  - (b) revoke the intention to cancel notice.

*Note* A decision under par (a) is a reviewable decision (see s 839).

- (4) If the licensed proprietor does not make a submission in accordance with the notice, the chief executive must decide to cancel the childcare service licence.
- (5) If the chief executive decides to revoke the intention to cancel notice, the chief executive must tell the following people about the decision:
- (a) the licensed proprietor;
  - (b) anyone else who was told under section 764 (3) about the intention to cancel notice.

**766 Childcare service licence—cancellation notice**

- (1) This section applies if the chief executive decides to cancel a licensed proprietor's childcare service licence.
- (2) The chief executive must give a written notice (a *cancellation notice*) to the licensed proprietor, cancelling the childcare service licence starting on the date stated in the notice (the *cancellation date*).
- (3) If the chief executive gives a cancellation notice to the licensed proprietor, the chief executive must also take reasonable steps to tell a person with daily care responsibility for each affected child about the cancellation.
- (4) The cancellation notice must be given to the licensed proprietor at least 7 days before the cancellation date.

**767 Offence—fail to return cancelled childcare service licence**

- (1) A person commits an offence if—
  - (a) the person is a licensed proprietor of a childcare service; and
  - (b) the chief executive cancels the childcare service licence by giving the licensed proprietor a cancellation notice; and
  - (c) the person fails to return the childcare service licence to the chief executive not later than 7 days after the day the cancellation notice is given to the person.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.

**768 Childcare service licence—identity of childcare workers protected**

If the chief executive is required to tell a person with daily care responsibility for an affected child about something under this division, the chief executive must not tell the person information that—

- (a) identifies a person as a childcare worker for a childcare service; or
- (b) would allow the identity of a person as a childcare worker for a childcare service to be worked out.

**Division 20.4.4 Childcare service licences—offences**

**769 Offence—operate unlicensed childcare service**

A person commits an offence if—

- (a) the person is—
  - (i) a proprietor of a childcare service; or
  - (ii) a controlling person for a childcare service; and
- (b) the proprietor of the childcare service—
  - (i) operates the childcare service; and
  - (ii) does not hold a childcare service licence to operate the childcare service.

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

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

**770 Offence—advertise unlicensed childcare service**

- (1) A person commits an offence if—
- (a) the person is—
    - (i) a proprietor of a childcare service; or
    - (ii) a controlling person for a childcare service; and
  - (b) the person publishes an advertisement for the childcare service; and
  - (c) the proprietor of the childcare service does not hold a childcare service licence to operate the childcare service.

Maximum penalty: 30 penalty units.

- (2) This section does not apply if—
- (a) a person applies for a childcare service licence to operate a childcare service; and
  - (b) the application has not been decided; and
  - (c) the person publishes an advertisement for the childcare service; and
  - (d) the advertisement clearly states that the person does not hold a licence to operate the service.
- (3) In this section:
- advertisement***—
- (a) includes an enrolment form, circular, label, notice and sign; but
  - (b) does not include a document published for a feasibility study.

**771 Offence—operate childcare service when licence suspended**

A person commits an offence if—

- (a) the person is—
  - (i) a licensed proprietor of a childcare service; or
  - (ii) a controlling person for a licensed childcare service; and
- (b) the childcare service licence is suspended under—
  - (i) section 761 (Childcare service licence—suspension for noncompliance); or
  - (ii) section 763 (Childcare service licence—suspension if children unsafe); and
- (c) the licensed proprietor operates the childcare service.

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

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

**772 Offence—operate childcare service in contravention of standards**

- (1) A person commits an offence if—
  - (a) the person is—
    - (i) a licensed proprietor of a childcare service; or
    - (ii) a controlling person for a licensed childcare service; and

- (b) the childcare service is operated in a way that does not comply with the childcare services standards.

*Note* The Minister may make childcare services standards under s 887.

Maximum penalty: 50 penalty units.

- (2) This section does not apply if—
- (a) a temporary standards exemption under section 749 (2) is in force for the childcare service; and
  - (b) the exemption exempts the childcare service from the operation of this section; and
  - (c) the proprietor of the childcare service operates the childcare service in accordance with the exemption.

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

## **Division 20.4.5 Childcare service licences—register, assessment and reporting**

### **773 Childcare service licence—register**

The chief executive must establish a register of childcare service licences.

### **774 Assessing compliance with childcare services standards**

- (1) At least once during the period of a childcare service licence, the chief executive must assess the childcare service's compliance with the childcare services standards.

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises (see s 817).

- (2) The Minister may make childcare services assessment requirements.

- (3) A childcare services assessment requirement is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) An assessment must be carried out in accordance with the childcare services assessment requirements.
- (5) The chief executive may ask the licensed proprietor of a childcare service to give the chief executive any information about the childcare service reasonably required by the chief executive to carry out the assessment.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (6) The licensed proprietor must comply with the request as soon as practicable.

### **775 Annual childcare standards report**

- (1) The chief executive must, for each financial year, prepare a report (a *childcare standards report*) about the compliance of licensed childcare services with the childcare services standards.
- (2) A childcare standards report must include—
- (a) any temporary standards exemptions under section 749 (2); and
  - (b) any compliance notices confirmed or amended under section 760 (4); and
  - (c) any compliance suspension notices given under section 761; and
  - (d) any safety suspension notices given under section 763 (2); and
  - (e) any intention to cancel notices or cancellation notices given under section 765 or section 766; and

- (f) any assessments made by the chief executive under section 774 during the financial year to which the report relates; and
- (g) if no assessment was made by the chief executive under section 774 during the financial year to which the report relates for a childcare service—the date the service was last assessed and the year the service is to be assessed; and
- (h) any submissions that the chief executive is required to include under section 777 in a childcare standards report; and
- (i) if a proprietor, controlling person or childcare worker for a childcare service was found guilty of, or convicted of an offence against this chapter—details of the offence.

*Note* Before including in a childcare standards report information about a licensed childcare service being operated in a way that does not comply with a childcare services standard, the chief executive must consult, and consider submissions by, the licensed proprietor (see s 777).

- (3) A childcare standards report is a notifiable instrument.

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

- (4) A childcare standards report must comply with the childcare standards report requirements.
- (5) A childcare standards report must not include information that—
- (a) identifies a person as a person who made a confidential report; or
  - (b) would allow a person’s identity as a person who made a confidential report to be worked out; or
  - (c) identifies a child; or
  - (d) would allow the identity of a child to be worked out; or
  - (e) identifies a person as a childcare worker for a childcare service; or



- (f) would allow the identity of a person as a childcare worker for a childcare service to be worked out.

**776 Annual childcare standards report—requirements**

- (1) The Minister may make childcare standards report requirements.
- (2) A childcare standards report requirement is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**777 Annual childcare standards report—consultation**

- (1) This section applies if the chief executive proposes to include in a childcare standards report information about a licensed childcare service being operated in a way that does not comply with a childcare services standard.
- (2) The chief executive must give the licensed proprietor of the childcare service a written notice (a *childcare standards report notice*) stating—
- (a) the chief executive’s proposal; and
  - (b) that the licensed proprietor may, not later than 30 days after the day the notice is given to the licensed proprietor, make a submission about the proposal to the chief executive; and
  - (c) that if the proprietor makes a written submission in accordance with the notice, the submission may be included in a childcare standards report.
- (3) A childcare standards report notice must not include information that—
- (a) identifies a person as a person who made a confidential report;  
or

- (b) would allow a person's identity as a person who made a confidential report to be worked out.
- (4) Before including in a childcare standards report information about a childcare service being operated in a way that does not comply with a childcare services standard, the chief executive must consider any submission made by the licensed proprietor in accordance with the childcare standards report notice.
- (5) If the chief executive decides to include in a childcare standards report information about a licensed childcare service being operated in a way that does not comply with a childcare services standard, the chief executive must also include in the report a copy of any written submission given to the chief executive by the licensed proprietor in accordance with a childcare standard report notice.

## Part 20.5 Childcare services—enforcement

*Note to pt 20.5*

Other enforcement provisions apply to this chapter (see ch 23).

### 778 Removal of child in immediate danger

- (1) This section applies if the chief executive is satisfied that there is an immediate danger to the health or safety of a child being cared for by a childcare service.

*Note* An authorised person may, at any reasonable time, enter premises if a licensed childcare service is operating on the premises or the chief executive suspects on reasonable grounds that a childcare service is operating on the premises (see s 817).

- (2) The chief executive may—
- (a) remove the child from the premises where the childcare service is operating; and
  - (b) also remove from the premises anything reasonably required for the child's care; and
  - (c) arrange for the child to be—
    - (i) returned to the care of a person with daily care responsibility for the child; or
    - (ii) temporarily cared for by a licensed childcare service.

#### **Examples—par (b)**

- 1 the child's nappies
- 2 the child's food
- 3 medication for the child provided by child's parent
- 4 contact details of a person with daily care responsibility for the child
- 5 information about the child's medical conditions

*Note 1* A parent of a child has daily care responsibility for the child unless that aspect of parental responsibility has been transferred to someone else (see s 16 and s 17). Daily care responsibility for a child may also be shared with someone else (see s 18).

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

- (3) If the chief executive arranges for the child to be temporarily cared for by a licensed childcare service, the chief executive must take all reasonable steps to tell a person with daily care responsibility for the child—
- (a) that the child is being temporarily cared for by a licensed childcare service; and
  - (b) the reason for the temporary care; and
  - (c) the location of the child.
- (4) If the chief executive removes something required for a child's care under subsection (2) (b), the chief executive must take all reasonable steps to ensure that the thing is used for the child's care and returned to its owner when no longer needed.

## **Chapter 21      Employment of children and young people**

### *Notes to ch 21*

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

### **Part 21.1      Important concepts**

#### **779      Chapter 21 subject to Education Act 2004, s 13**

This chapter has effect subject to the *Education Act 2004*, section 13 (Employment of children under school-leaving age).

*Note*      The *Education Act 2004*, s 13 makes it an offence for a person to employ a child or young person under school-leaving age (15 years old), on a day and at a time, when the child or young person—

- (a) is required under the Act to attend a school, school activity or approved educational course; or
- (b) if the child or young person does not live in the ACT or is enrolled at a school under State law—would be required under this Act to attend a school, school activity or approved educational course if the child or young person were living in the ACT or were not enrolled at a school under State law.

The *Education Act 2004*, s 14 allows the chief executive to issue a certificate exempting the child or young person from school if—

- (a) it is necessary or desirable, considering any educational, vocational training or employment opportunity offered to the child or young person; or
- (b) it is otherwise in the best interests of the child or young person, considering the care, health, development or education of the child or young person.

## 780 Definitions—ch 21

In this chapter:

*contrary to the best interests of a child or young person*—see section 782.

*educational institution* means a school, college or other educational institution, whether or not operated by or on behalf of the Territory.

*employment*—see section 781.

*employment conditions notice*—see section 790.

*employment prohibition notice*—see section 788.

*work experience* means the engagement of a child or young person who is under school-leaving age by someone if the engagement is—

- (a) arranged by an educational institution where the child or young person is enrolled; and
- (b) part of a work experience program (however described) conducted by the educational institution.

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

## 781 When does someone *employ* a child or young person?

(1) In this chapter:

*employment* means—

- (a) performance of work under a contract for services (whether written or unwritten); or
- (b) an apprenticeship, traineeship or other work-related training for a trade or occupation; or
- (c) work experience, other than work experience as part of a work experience program exempted under section 784.

- (2) In deciding whether something is *employment* of a child or young person for this chapter, it does not matter whether the child or young person receives payment (however described) or not.
- (3) Taking part in an approved program of compliance testing under the *Tobacco Act 1927*, part 6A (Tobacco compliance testing) is not *employment* for this chapter.

**782**      **When is employment *contrary to the best interests of a child or young person*?**

In this chapter, employment is taken to be *contrary to the best interests of a child or young person* if—

- (a) for a child or young person who is required to attend school under the *Education Act 2004*—it contravenes that Act, section 13 in relation to the child or young person; or
- (b) for a child or young person engaged in education or training—it is likely to prejudice the ability of the child or young person to benefit from the education or training; or
- (c) it is otherwise likely to harm the child’s or young person’s health, safety, personal or social development (including by sexual or financial exploitation).

## Part 21.2 Work experience programs— exemption

### 783 Work experience program—exemption from ch 21

- (1) An educational institution may apply for an exemption from the operation of this chapter for a work experience program conducted by the educational institution.
- (2) The application must—
  - (a) be made in writing to the chief executive; and
  - (b) include complete details of how the work experience program complies with the work experience standards.

*Note 1* The Minister may make work experience standards under s 887.

*Note 2* If a form is approved under s 886 for this provision, the form must be used.

*Note 3* A fee may be determined under s 885 for this provision.

### 784 Work experience program—decision on application

- (1) This section applies if the chief executive has received an application from an educational institution for an exemption under section 783.
- (2) The chief executive may exempt the educational institution in relation to a work experience program only if the chief executive believes on reasonable grounds that the work experience program complies with, and will continue to comply with, the work experience standards.
- (3) The exemption may be subject to conditions.
- (4) The chief executive need not decide the application if the application does not contain sufficient information to allow the chief executive to decide it.



**785 Work experience program exemption—further information**

- (1) This section applies if the chief executive has—
  - (a) received an application from an educational institution for an exemption under section 783; or
  - (b) exempted an educational institution from the operation of this chapter in relation to a work experience program under section 784.
- (2) The chief executive may, at any time, ask the educational institution to give the chief executive further information about—
  - (a) the application; or
  - (b) the work experience program.
- (3) The educational institution must comply with a request as soon as practicable.

**786 Suspension of work experience program exemption**

- (1) The chief executive may suspend an educational institution's exemption under section 784 if the chief executive suspects on reasonable grounds that the educational institution has not complied with, or continued to comply with, the work experience standards.
- (2) The chief executive may suspend the exemption by—
  - (a) giving the educational institution written notice of the suspension, including the chief executive's reasons for suspending the exemption; and
  - (b) telling the educational institution that it may make a submission, in writing, to the chief executive about the suspension not later than 14 days after the day the notice is given to the educational institution.
- (3) A suspension takes effect immediately.

- (4) After the end of 14 days after the chief executive gives notice of the suspension, the chief executive must—
  - (a) consider any submission made by the entity; and
  - (b) either—
    - (i) revoke the suspension; or
    - (ii) give the entity notice of the chief executive's intention to revoke the authorisation under section 787.

**787 Revocation of educational institution's exemption**

- (1) The chief executive may revoke an educational institution's exemption under section 784 if satisfied that the educational institution has not complied with, or continued to comply with, the work experience standards.
- (2) Before revoking an exemption under subsection (1), the chief executive must—
  - (a) give the educational institution written notice of the chief executive's intention to revoke the exemption, including the chief executive's reasons; and
  - (b) tell the educational institution that it may make a submission, in writing, to the chief executive about the notice not later than 14 days after the day the notice is given to the educational institution; and
  - (c) if the educational institution makes a submission—consider the submission.

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

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

*Note 2* A decision under this section is a reviewable decision (see s 839).

## Part 21.3                      Employment of children and young people

*Note to pt 21.3*

Occupational health and safety matters are dealt with in the *Occupational Health and Safety Act 1989*.

### **788                      Chief executive may prohibit employment**

The chief executive may, by written notice given to an employer (an *employment prohibition notice*), prohibit the employer from employing, or continuing to employ, a child or young person named in the notice if the chief executive believes on reasonable grounds that the employment is, or is likely to be, contrary to the best interests of the child or young person.

### **789                      Offence—contravene employment prohibition notice**

An employer commits an offence if—

- (a) the chief executive gives the employer an employment prohibition notice under section 788; and
- (b) the employer engages in conduct that contravenes the employment prohibition notice.

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

## 790 Chief executive may state conditions of employment

The chief executive may, by written notice given to an employer (an *employment conditions notice*), state conditions in relation to the employment of a child or young person named in the notice, that must be complied with to ensure the employment is not contrary to the best interests of the child or young person.

### Examples—conditions

- 1 conditions about adequate direct supervision of the young person
- 2 conditions about appropriate induction and training
- 3 conditions about supply and use of suitable protective clothing
- 4 conditions about workplace premises including compliance with any registration or licensing requirement
- 5 conditions about availability of grief or trauma counselling at the workplace

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

## 791 Offence—contravene employment conditions notice

An employer commits an offence if—

- (a) the chief executive gives the employer an employment conditions notice under section 790; and
- (b) the employer engages in conduct that contravenes the employment conditions notice.

Maximum penalty: 50 penalty units.

## 792 Children and young people employment standards

An employer of a child or young person must comply with the children and young people employment standards in relation to the employment.

*Note* The Minister may make children and young people standards under s 887.



(b) the child or young person is under school-leaving age.

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

*Note* Employment as part of an exempted work experience program is not employment for this chapter (see s 781 (1), def *employment*, par (c)).

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

(a) section 796 (which is about light work);

(b) section 797 (which is about family businesses).

#### **796 Exception to s 795—employment in light work**

(1) Section 795 (1) does not apply to the employment of a child or young person if—

(a) the employment is in light work; and

(b) the child or young person is employed for 10 hours per week or less.

(2) Section 795 (1) does not apply to the employment of a child or young person in light work for more than 10 hours per week if—

(a) the employment is in light work; and

(b) the proposed employer has, at least 7 days before the day the employment starts, told the chief executive in writing about the employment.

*Note* If a form is approved under s 886 for this provision, the form must be used.

#### **797 Exception to s 795—employment in family business**

Section 795 (1) does not apply to the employment of a child or young person if—

(a) the employer is—

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

- (ii) a company of which a parent of the child or young person is a director; or
  - (iii) a partnership of which a parent of the child or young person is a partner; and
- (b) the employment is light work.

### **798 Declaration of high risk employment**

- (1) The Minister may declare employment in an industry, occupation or activity to be high risk employment if satisfied that it is likely to harm a child's or young person's health, safety, personal or social development (including by sexual or financial exploitation).
- (2) A declaration is a notifiable instrument.

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

### **799 High risk employment—employer may apply for permit**

- (1) An employer may apply for a permit to employ a child or young person who is under school-leaving age in high risk employment (a *high risk employment permit*).
- (2) The application must—
  - (a) be made in writing to the chief executive; and
  - (b) include complete details of—
    - (i) the activities that the child or young person will be expected to perform during the proposed employment; and
    - (ii) the period of proposed employment; and
    - (iii) how the employer proposes to protect the young person's health, safety, personal or social development during the employment; and



- (c) be accompanied by written consent to the proposed employment of a person with daily care responsibility for the young person.

*Note 1* Giving false or misleading information is an offence against the Criminal Code, s 338.

*Note 2* If a form is approved under s 886 for this provision, the form must be used.

*Note 3* A fee may be determined under s 885 for this provision.

## **800 High risk employment permit—decision on application**

- (1) This section applies if the chief executive has received an application for a high risk employment permit.
- (2) The chief executive may issue the permit only if the chief executive believes on reasonable grounds that the proposed employment is not likely to harm the child's or young person's health, safety, personal or social development (including by sexual or financial exploitation).
- (3) The permit may be subject to conditions about the child's or young person's health and safety.

### **Examples—conditions**

- 1 conditions about adequate direct supervision of the young person
- 2 conditions about appropriate induction and training
- 3 conditions about supply and use of suitable protective clothing
- 4 conditions about workplace premises including compliance with any registration or licensing requirement
- 5 conditions about availability of grief or trauma counselling at the workplace

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

- (4) The employer must give a copy of the permit to the person with daily care responsibility who gave consent for section 799 (2) (c) when the application for the permit was made.

- (5) The chief executive need not decide the application if the application does not contain sufficient information to allow the chief executive to decide it.

**801 High risk employment permit—further information**

- (1) This section applies if the chief executive has received an application from an employer for a high risk employment permit under section 799 or has issued a high risk employment permit to an employer under section 800.
- (2) The chief executive may, at any time, ask the employer to give the chief executive further information about—
- (a) the application; or
  - (b) the employment of the child or young person.
- (3) The employer must comply with a request as soon as practicable.

**802 High risk employment permit—content**

A high risk employment permit must state—

- (a) the name of the employer who is to employ the child or young person; and
- (b) the name of the child or young person who is to be employed; and
- (c) the location of the premises where the employment is to be undertaken; and
- (d) the length of the permit; and
- (e) any conditions to which the permit is subject.

**803 Offence—employment of child or young person under school-leaving age in high risk employment**

- (1) A person commits an offence if—
- (a) the person employs a child or young person; and
  - (b) the employment is in high risk employment; and
  - (c) the child or young person is under school-leaving age.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) This section does not apply to the employment of a child or young person if the chief executive has issued a high risk employment permit in relation to the employment of the child or young person.

**804 Offence—contravene condition of permit**

A person commits an offence if—

- (a) the chief executive has issued a high risk employment permit under section 800; and
- (b) the permit is conditional; and
- (c) the person engages in conduct that contravenes a condition of the permit.

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

## Chapter 22      Research involving children and young people

### 805      Definitions—ch 22

In this chapter:

*approved research project* means a research project approved under section 807 (1).

*ethics committee* means a committee approved under section 810 as an ethics committee.

*researcher*, for a research project, means the person or entity carrying out, or proposing to carry out, the research project.

*research project*—see section 806.

### 806      What is a *research project*?

(1) In this chapter:

*research project* means a research project by an entity (the *researcher*) that involves—

- (a) the chief executive giving the researcher protected information (including sensitive information) about a child or young person; or

*Note 1*    The chief executive may give protected information to a researcher for an approved project (see s 855).

*Note 2*    *Protected information* is defined in s 844. *Sensitive information* is defined in s 845.

- (b) the researcher recruiting a person through the chief executive to take part in the project if—

- (i) the person is a child or young person who is the subject of a proceeding under this Act; or

- (ii) the person is a child or young person for whom a care and protection order is in force; or
  - (iii) the person is a child or young person who is the subject of a child concern report; or
  - (iv) the person is a child or young person for whom the chief executive has parental responsibility; or
  - (v) the person is a young detainee; or
  - (c) the researcher recruiting a person who exercises a function under this Act; or
  - (d) the researcher conducting the research project at a place of care, a place of detention or a place of therapeutic protection.
- (2) However, a *research project* does not include—
- (a) the chief executive giving the researcher protected information (including sensitive information) about a child or young person in a form that does not identify an individual or allow an individual's identity to be worked out (including a person who made a child concern report); or
  - (b) an activity conducted by the chief executive that would reasonably be considered to be a quality assurance exercise or an audit.

### **807 Approval of research projects—generally**

- (1) The chief executive may approve a research project.
- (2) However, the chief executive may approve a research project only if—
  - (a) the chief executive is satisfied the project complies with or is likely to comply with the research standards; and

- (b) if the project involves a child or young person taking part in the project—the chief executive has approved the project under section 809.
- (3) In deciding whether to approve a research project, the chief executive may have regard to a recommendation made by an ethics committee approved by the Minister under section 810.

### **808 Research standards—certain matters to be covered**

- (1) If a child or young person is to take part in a research project, the research standards must—
  - (a) ensure that the safety and wellbeing of the child or young person is paramount; and
  - (b) appropriately protect the child’s or young person’s health, safety and personal and social development; and
  - (c) allow the child or young person to stop taking part in the project at any time; and
  - (d) ensure that the child’s or young person’s identity as a participant in the project is protected; and
  - (e) comply with anything else prescribed by regulation.

*Note* The Minister may make research standards under s 887.

- (2) If the chief executive is to give a researcher protected information about a child or young person for a research project, the research standards must ensure that the secrecy of the information is protected.

### **809 Approval of research projects—child or young person to take part**

- (1) This section applies if the chief executive is deciding whether to approve a research project that involves a child or young person taking part in the project.

- (2) The chief executive may approve the research project only if satisfied that—
- (a) the researcher is a suitable entity to have contact with children or young people in the way proposed in the project; and  
*Note* Suitable entities to provide services are dealt with in pt 2.4.
  - (b) any other person who is to have contact with children or young people for the project is a suitable entity to have contact with children or young people in the way proposed in the project.
- (3) If the chief executive approves a research project that involves a child or young person, the researcher must—
- (a) seek the written consent, for the child or young person to take part in the research project, of—
    - (i) the child or young person (if the child or young person has sufficient developmental capacity to give consent); or
    - (ii) a person with daily care responsibility for the child or young person; and
  - (b) tell the child or young person that—
    - (i) he or she can refuse consent; and
    - (ii) if consent is given, he or she can stop taking part in the project at any time.

### **810 Approval of ethics committees**

- (1) The Minister may approve a stated committee as an ethics committee for this chapter.
- (2) An approval is a notifiable instrument.

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

**811      Offence—researcher contravene approved standards**

A person commits an offence if the person—

- (a) is a researcher for an approved research project; and
- (b) carries out the approved research project in a way that does not comply with the research standards.

Maximum penalty: 50 penalty units.



## Chapter 23 Enforcement

### *Notes to ch 23*

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

The decision-maker must, where practicable and appropriate, have suitable qualifications, experience or skills to make decisions in relation to children and young people (see s 9).

## Part 23.1 General

### 812 Definitions—ch 23

In this chapter:

***authorised person***—see section 26.

*Note* If the chief executive delegates the functions under this chapter the delegate is an authorised person and must be given an identity card (see s 26).

***connected***—a thing is connected with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used to commit the offence.

***occupier***, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

## Part 23.2 Powers of authorised people

### 813 Power to enter premises—general

- (1) For this Act, an authorised person may—
  - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (b) at any time, enter premises with the occupier's consent; or
  - (c) enter premises in accordance with a search warrant.
- (2) The authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (3) To remove any doubt, the authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (4) However, subsection (1) does not authorise entry into a part of premises that is being used only for residential purposes.
- (5) In this section:  
*at any reasonable time* includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).

### 814 Power to enter premises—Chapter 13 (Care and protection and therapeutic protection—emergency situations)

- (1) For this Act, an authorised person or police officer may, at any time, enter premises if—

- (a) the authorised person or police officer believes on reasonable grounds that a child or young person at the premises is in need of emergency care and protection or emergency therapeutic protection; and

*Note 1* *In need of emergency care and protection* is defined in s 403.

*Note 2* *In need of emergency therapeutic protection* is defined in s 404.

- (b) the purpose of the entry is for the authorised person or police officer to take emergency action for the child or young person under section 406.

*Note* *Emergency action* is defined in s 405.

- (2) The authorised person or police officer may use reasonable and necessary force to enter the premises to safeguard the wellbeing of the child or young person.
- (3) This section is additional to section 813.

**815 Power to enter premises—ch 15 (Care and Protection—chief executive has aspect of parental responsibility)**

- (1) For this Act, an authorised person may, at any reasonable time, enter premises where a child or young person is living if—
- (a) the chief executive has placed the child or young person with an out-of-home carer under section 512; and
- (b) the purpose of the entry is to ensure that the child or young person is being properly cared for.
- (2) For this Act, an authorised person may also, at any reasonable time, enter a place operated by a residential care service if—
- (a) the Minister—
- (i) is deciding whether to approve the place as a place of care under section 525; and

- (ii) has asked the residential care service to allow the chief executive to inspect the place; and
- (b) the residential care service has agreed to allow the chief executive to inspect the place.

*Note* If the residential care service does not allow the chief executive to inspect the place, the Minister need not decide whether to approve the place as a place of care (see s 525).

- (3) This section is additional to section 813.
- (4) In this section:

*at any reasonable time* includes at any time during normal business hours.

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

## **816 Power to enter premises—ch 16 (Care and protection—therapeutic protection of children and young people)**

- (1) For this Act, an authorised person may, at any reasonable time, enter a therapeutic protection place for which the operating entity is not the chief executive.
- (2) For this Act, an authorised person may also, at any reasonable time, enter any place for which the operating entity is not the chief executive if—
  - (a) the Minister—
    - (i) is deciding whether to declare the place as a therapeutic protection place under section 625; and
    - (ii) has asked the operating entity to allow the chief executive to inspect the place; and
  - (b) the operating entity for the place has agreed to allow the chief executive to inspect the place.

- (3) However, subsection (1) authorises entry into a part of premises used for residential purposes only if the part of the premises is used to operate the therapeutic protection place.
- (4) This section is additional to section 813.
- (5) In this section:

*at any reasonable time* includes at any time during normal business hours.

*operating entity*, for a place, means the entity that operates the place.

#### **817 Power to enter premises—ch 20 (Childcare services)**

- (1) For this Act, an authorised person may, at any reasonable time, enter premises if—
  - (a) the chief executive has—
    - (i) received an application for a childcare service licence under section 743 and has asked the proposed proprietor to allow the chief executive to inspect the premises where the proposed proprietor proposes to operate the childcare service under section 744; or
    - (ii) received an application for renewal of a childcare service licence under section 754 and has asked the proposed proprietor to allow the chief executive to inspect the premises where the proposed proprietor proposes to operate the childcare service under section 755; and
  - (b) the proposed proprietor has agreed to allow the chief executive to inspect the premises.

*Note* If the proposed proprietor does not allow the chief executive to inspect the premises, the chief executive need not decide whether the proposed proprietor is eligible for the childcare service licence or for renewal of the licence (see s 745 and s 756).

- (2) For this Act, an authorised person may also—
  - (a) at any reasonable time, enter premises if a licensed childcare service is operating on the premises; or
  - (b) at any time, enter premises with the occupier's consent.
- (3) However, this section authorises entry into a part of premises used for residential purposes only if the part of the premises is used to operate the childcare service.
- (4) This section is additional to section 813.
- (5) In this section:  
*at any reasonable time* includes at any time during normal business hours.

#### **818 Production of identity card**

An authorised person must not remain at premises entered under this chapter if the authorised person does not produce his or her identity card when asked by the occupier.

#### **819 Consent to entry**

- (1) When seeking the consent of an occupier of premises to enter premises under section 813 (1) (b), an authorised person must—
  - (a) produce his or her identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this chapter may be used in evidence in court; and
    - (iii) that consent may be refused.

- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgement of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this chapter may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this chapter if—
  - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
  - (b) an acknowledgment of consent is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

## **820 General powers on entry to premises**

- (1) An authorised person who enters premises under this chapter may, for this Act, do 1 or more of the following in relation to the premises or anything on the premises:
  - (a) inspect or examine;
  - (b) take measurements or conduct tests;
  - (c) take samples;



- (d) take photographs, films, or audio, video or other recordings;
- (e) make copies of, or take extracts from, a document kept at the premises;
- (f) require the occupier, or anyone at the premises, to give the authorised person records, or copies of records that the person has or has access to that are reasonably required by the authorised person for this Act;
- (g) require the occupier, or an employee or agent of the occupier, to give the authorised person any other assistance to exercise a power under this chapter.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (f) or (g).

Maximum penalty: 50 penalty units.

## **821 Duty to give information or documents**

- (1) An authorised person may, by written notice given to a person, require the person to give to the authorised person the stated information or document required for this Act.
- (2) The information or document must be given to the authorised person within the period stated in the notice or, if an authorised person allows a longer period, the longer period.
- (3) The period stated in the notice must be not less than 14 days after the day the notice is given to the person.
- (4) A person commits an offence if—
  - (a) the person is required to give information or a document to an authorised person under subsection (1); and

- (b) the person does not take all reasonable steps to comply with the requirement within the period applying under subsection (2).

Maximum penalty: 50 penalty units.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

## 822 Power to require name and address

- (1) An authorised person may require a person to state the person's name and home address if the authorised person believes on reasonable grounds that the person is committing or has just committed an offence against this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The authorised person must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The authorised person must also produce his or her identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the authorised person—
- (a) told the person the reason for the requirement; and
  - (b) produced his or her identity card for inspection by the person.

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.
- (6) In this section:

***home address***, of a person, means the address of the place where the person usually lives.

## 823 Power to seize things

- (1) An authorised person who enters premises under this chapter with the occupier's consent may seize anything at the premises if—
  - (a) satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this chapter may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this chapter (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
  - (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an authorised person may—
  - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (5) A person commits an offence if—
  - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and
  - (b) the person knows access to the seized thing has been restricted; and

- (c) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (6) Strict liability applies to subsection (5) (a).

## Part 23.3 Search warrants

### 824 Warrants generally

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (5) The warrant must state—
  - (a) that an authorised person may, with any necessary assistance and force, enter stated premises and exercise the authorised person's powers under this chapter; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and

- (e) the date, within 14 days after the day of the warrant's issue, the warrant ends.

### **825 Warrants—application made other than in person**

- (1) An authorised person may apply for a warrant by phone, fax, radio or other form of communication if the authorised person considers it necessary because of urgent circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
  - (a) the magistrate must tell the authorised person—
    - (i) the terms of the warrant; and
    - (ii) the date and time the warrant was issued; and
  - (b) the authorised person must complete a form of warrant (the **warrant form**) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this chapter.

- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the authorised person was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

**826 Search warrants—announcement before entry**

- (1) An authorised person must, before anyone enters premises under a search warrant—
  - (a) announce that the authorised person is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.

- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—
  - (a) the safety of anyone (including the authorised person or a person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**827 Details of search warrant to be given to occupier etc**

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

**828 Occupier entitled to be present during search etc**

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.



## Part 23.4                      Return and forfeiture of things seized

### 829                      Receipt for things seized

- (1) As soon as practicable after an authorised person seizes a thing under this chapter, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 823 (Power to seize things).
- (3) A receipt under this section must include the following:
  - (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the authorised person's name, and how to contact the authorised person;
  - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken;
  - (e) if an authorised person has restricted access to the thing under section 823 (4) (b)—it is an offence under section 823 (5) to interfere with the thing without an authorised person's approval.

### 830                      Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—

- (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
    - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
  - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
  - (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
  - (4) The authorised person must give the occupier of the premises notice of the application, and the occupier is entitled to be heard on the application.
  - (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
    - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
    - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
  - (6) The provisions of this chapter relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

**831 Access to things seized**

A person who would, apart from the seizure, be entitled to inspect a thing seized under this chapter may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

**832 Return of things seized**

- (1) A thing seized under this chapter must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing, if—
  - (a) a prosecution for an offence relating to the thing is not started within 90 days after the day of the seizure; or
  - (b) a prosecution for an offence relating to the thing is started within 90 days after the day of the seizure but the court does not find the offence proved.
- (2) If anything seized under this chapter is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—
  - (a) is forfeited to the Territory; and
  - (b) may be sold, destroyed or otherwise disposed of as the chief executive directs.

## Part 23.5                      Miscellaneous

### 833                      Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this chapter, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this chapter, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under this chapter in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

### 834                      Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this chapter by an authorised person or a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.

## **Chapter 24 Appeals and review**

### *Notes to ch 24*

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

## **Part 24.1 Appeals**

### **Division 24.1.1 Appeals generally**

#### **835 Appeals to Supreme Court—generally**

- (1) A person may appeal to the Supreme Court in relation to a matter arising under this Act—
  - (a) in accordance with section 836; or
  - (b) for a DVPO protection order made by the Childrens Court for a child or young person in need of care and protection on an application for a care and protection order—in accordance with the *Domestic Violence and Protection Orders Act 2001*.
- (2) This chapter does not limit the *Magistrates Court Act 1930*, part 3.10 (Criminal appeals) or another Territory law that makes provision about the appellate jurisdiction of the Supreme Court.

## Division 24.1.2 Appeals—Care and protection chapters

### 836 Appeals to Supreme Court—care and protection chapters

- (1) An appeal from any of the following decisions of the Childrens Court under the care and protection chapters may be made to the Supreme Court:
  - (a) the making of an order or other decision;
  - (b) a refusal to make an order or other decision applied for;
  - (c) to extend an order or other decision;
  - (d) a refusal to extend an order or other decision;
  - (e) to amend an order or other decision;
  - (f) a refusal to amend an order or other decision;
  - (g) to revoke an order or other decision;
  - (h) a refusal to revoke an order or other decision.
- (2) The following people may appeal under this section:
  - (a) a party to the proceeding in which the decision was made;
  - (b) a person named in the order or other decision;
  - (c) anyone else with the leave of the Supreme Court.

### 837 Application of Magistrates Court Act

The *Magistrates Court Act 1930*, part 4.5 (Civil appeals) applies in relation to an appeal mentioned in section 836 of this Act as if—

- (a) it were an appeal from a judgment or order mentioned in the *Magistrates Court Act 1930*, section 274 (2); and
- (b) all other necessary changes, and any changes prescribed by regulation, were made.

**838 Orders that Supreme Court may make**

On an appeal mentioned in section 836, the Supreme Court must not make an order or other decision that is not an order or other decision that could have been made by the Childrens Court in the proceeding appealed from.

**Division 24.1.3 AAT review**

**839 Review of decisions—ch 15, ch 20 and ch 21**

- (1) A decision mentioned in column 2 in a table in this division is a reviewable decision.
- (2) If the chief executive makes a reviewable decision in an item of a table, the chief executive must give written notice of the decision to each person mentioned in the table, column 3 for the item.
- (3) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (4) A person mentioned in the table, column 4 for an item may apply to the AAT for review of the reviewable decision mentioned in the item.

**Table 839.1 Review of decisions—ch 15 (Care and protection—chief executive has aspect of parental responsibility)**

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 who must be told about decision</b>	<b>column 4 who may apply for review</b>
1	section 516, to refuse to authorise person as kinship carer	the person	the person
2	section 517, to refuse to authorise entity as foster care service	the entity	the entity

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 who must be told about decision</b>	<b>column 4 who may apply for review</b>
3	section 518 or section 519 to refuse to authorise person as foster carer	the person	the person
4	section 520, to refuse to authorise entity as residential care service	the person	the person
5	section 522 (4), or section 523 (4), to revoke authorisation of a person as foster carer	the person	the person
6	section 524 (1), to revoke authorisation of entity as a residential care service	the entity	the entity
7	section 525 (1), to refuse to approve place operated by residential care service as place of care	the residential care service	the residential care service
8	section 525 (4), to revoke approval of place operated by residential care service as place of care	the residential care service	the residential care service



**Table 839.2 Review of decisions—ch 20 (Childcare services)**

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 who must be told about decision</b>	<b>column 4 who may apply for review</b>
1	section 747 (3) to refuse to give proprietor childcare service licence	proprietor	proprietor
2	section 751 (4) to refuse to extend childcare service licence	licensed proprietor	licensed proprietor
3	section 752 (3) to refuse to amend a childcare service licence	licensed proprietor	licensed proprietor
4	section 753 (3) to refuse to transfer a childcare service licence	licensed proprietor	licensed proprietor
5	section 758 (3) to refuse to renew childcare service licence	licensed proprietor	licensed proprietor
6	section 760 (4) (a) to confirm compliance notice	licensed proprietor	licensed proprietor
7	section 761 (2) to suspend childcare service licence	licensed proprietor	licensed proprietor
8	section 762 (3) (a) to confirm suspension of childcare service licence	licensed proprietor	licensed proprietor
9	section 763 (2) to suspend childcare service licence	licensed proprietor	licensed proprietor
10	section 765 (3) to cancel childcare service licence	proprietor	proprietor

**840 Decision to refuse to give childcare service licence must not be stayed or otherwise affected pending outcome of review**

- (1) The *Administrative Appeals Tribunal Act 1989*, section 39A (2) does not apply to a decision under section 747 (3) (Childcare service licence—decision on application) to refuse to give a childcare service licence.
- (2) The Supreme Court must not make an order or other decision under the *Administrative Decisions (Judicial Review) Act 1989*, section 16 in relation to a decision under section 747 (3) (Childcare service licence—decision on application) to refuse to give a childcare service licence.

**Table 840 Review of decisions—ch 21 (Employment of children and young people)**

column 1 item	column 2 reviewable decision	column 3 who must be told about decision	column 4 who may apply for review
1	section 786 to suspend educational institution's exemption (in relation to work experience program)	educational institution	educational institution
2	section 787 to revoke educational institution's exemption (in relation to work experience program)	educational institution	educational institution
3	section 788 to prohibit employer from employing, or continuing to employ, child or young person	the employer the child or young person	the employer the child or young person

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 who must be told about decision</b>	<b>column 4 who may apply for review</b>
4	section 790 to state conditions in relation to employment of child or young person that must be complied with	the employer the child or young person	the employer the child or young person
5	section 800 (2) to refuse to issue permit for high risk employment	the employer the child or young person	the employer the child or young person
6	section 800 (3) to issue permit for high risk employment subject to conditions	the employer the child or young person	the employer the child or young person

## Chapter 25 Information secrecy and sharing

### *Notes to ch 25*

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

### Part 25.1 Application and definitions

#### 841 Application—ch 25

The provisions of this chapter apply to young offenders and young detainees who are adults in the same way as they apply to young offenders and young detainees who are under 18 years old.

#### 842 Definitions—Act and ch 25

- (1) In this Act:

*protected information*—see section 844.

*sensitive information*—see section 845.

- (2) In this chapter:

*divulge* includes communicate.

*information* means information in any form and includes advice.

#### **Examples—information**

- 1 a verbal opinion of a health professional
- 2 a written document
- 3 an electronic record

4 a verbal recommendation for action

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

**information holder**—see section 843.

**State** includes New Zealand.

## 843 Who is an **information holder**?

In this chapter:

**information holder** means a person who—

(a) is or has been—

- (i) the chief executive; or
- (ii) the public advocate; or
- (iii) an official visitor; or
- (iv) a researcher for an approved research project; or

*Note* Approval of researchers and research projects is dealt with in ch 22.

- (v) someone else exercising a function, or purporting to exercise a function, under this Act (other than a judge or magistrate); or
  - (vi) someone else engaged in the administration of this Act; or
- (b) has been given information under this Act by a person mentioned in paragraph (a).

*Note* Protected information may be given to people under various provisions of this Act, including the following:

- s 497 (Annual review report—must be given to certain people);
- s 850 (Minister or chief executive—giving information to person about the person);

- s 851 (Minister or chief executive—giving information in best interests of child or young person);
- s 852 (Chief executive—giving information to person under corresponding provisions);
- s 855 (Chief executive—giving information to researcher);
- s 860 (Minister or chief executive—giving safety and wellbeing information to information sharing entity);
- s 865 (Giving protected information to court or investigative entity).

#### **844 What is *protected information*?**

- (1) In this Act:

*protected information* means information about a person that is disclosed to, or obtained by, an information holder because the information holder is, or has been, an information holder.

- (2) Without limiting subsection (1), *protected information* includes sensitive information.

#### **845 What is *sensitive information*?**

- (1) For this Act:

*sensitive information* means any of the following:

- (a) care and protection report information;
- (b) care and protection appraisal information;
- (c) interstate care and protection information;
- (d) family group conference information;
- (e) contravention report information;
- (f) information prescribed by regulation.

*Note* Prenatal report information is also *sensitive information* (see s 365).

(2) In this section:

***care and protection appraisal information*** means information—

- (a) in a record of an appraisal; or
- (b) that would allow information in a record of an appraisal to be worked out; or
- (c) in a report (an ***incident report***) to the public advocate under section 507 (Public advocate to be told about action following appraisals); or
- (d) that would allow information in a record of an appraisal or incident report to be worked out.

***care and protection report information*** means information—

- (a) in a child concern report; or
- (b) in a record that relates to—
  - (i) a notification under the *Children's Services Act 1986*, section 103 (as in force at any time); or
  - (ii) a report under the *Children and Young People Act 1999*, section 157A, section 158 or section 159 (as in force at any time); or
  - (iii) any other information received by the chief executive under the *Children and Young People Act 1999* about the suspected abuse or neglect of a child or young person; or
  - (iv) any information received about the suspected abuse or neglect of a child or young person at any time an ordinance was in force in relation to child welfare; or
- (c) that would allow information in a child concern report or record mentioned in paragraph (b) to be worked out; or
- (d) that identifies a person as a person who made a child concern report or record mentioned in paragraph (b); or

- (e) that would allow a person's identity as a person who made a child concern report or record mentioned in paragraph (b) to be worked out.

***contravention report information*** means information—

- (a) in a confidential report made under section 876 (Confidential report of contravention of Act); or
- (b) that would allow the information in a confidential report to be worked out; or
- (c) that identifies a person as a person who made a confidential report; or
- (d) that would allow a person's identity as a person who made a confidential report to be worked out.

***family group conference information*** means information—

- (a) about anything said or done to facilitate, or anything said or done at, a family group conference arranged under section 80 (2); or
- (b) information in a family group conference agreement, or in a family group conference outcome report, that relates to a family group conference arranged under section 80 (2); or
- (c) information that would allow information mentioned in paragraph (a) or (b) to be worked out.

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

***interstate care and protection information*** means information—

- (a) in a report (an ***interstate care and protection report***) made under a provision of a law of a State corresponding (or substantially corresponding) to section 354 (Voluntary reporting of abuse and neglect), section 356 (Offence—mandatory reporting of abuse) or section 362 (Prenatal reporting—anticipated abuse and neglect), that is provided to



the chief executive under a section corresponding (or substantially corresponding) to—

- (i) section 852 (Chief executive—giving information to person under corresponding provisions); or
- (ii) section 861 (Information sharing entity—giving safety and wellbeing information to chief executive); or
- (b) that would allow the information in an interstate care and protection report to be worked out; or
- (c) that identifies a person as a person who made an interstate care and protection report; or
- (d) that would allow a person’s identity as a person who made an interstate care and protection report to be worked out.

## **Part 25.2                      Offence to record or divulge protected information**

### **846                      Offence—secrecy of protected information**

- (1) An information holder commits an offence if the information holder—
- (a) makes a record of protected information about someone else; and
  - (b) is reckless about whether the information is protected information about someone else.

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

- (2) An information holder commits an offence if the information holder—
- (a) does something that divulges protected information about someone else; and
  - (b) is reckless about whether—
    - (i) the information is protected information about someone else; and
    - (ii) doing the thing would result in the information being divulged to someone else.

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

**847 Exception to s 846—information given under this Act**

- (1) Section 846 (1) does not apply to the making of a record of protected information if the record is made—
  - (a) under this Act; or
  - (b) in the exercise of a function, as an information holder, under this Act.
- (2) Section 846 (2) does not apply to the divulging of protected information if the information is divulged—
  - (a) under this Act; or
  - (b) in the exercise of a function, as an information holder, under this Act.

*Note* Protected information may be given to people under various provisions of this Act, including the following:

- s 497 (Annual review report—must be given to certain people);
- pt 25.3 (Sharing protected information);
- pt 25.4 (Courts and investigative entities).

**848 Exception to s 846—information given under another law**

- (1) Section 846 (1) (Offence—secrecy of protected information) does not apply to the making of a record of protected information if—
  - (a) the information is not sensitive information; and
  - (b) the record is made—
    - (i) in the exercise of a function, as an information holder, under another law in force in the Territory; or
    - (ii) under another law in force in the Territory.
- (2) Section 846 (2) does not apply to the divulging of protected information if—
  - (a) the information is not sensitive information; and

- (b) the information is divulged—
- (i) under another territory law; or
  - (ii) in the exercise of a function, as an information holder, under another territory law.

*Note* Other legislation may provide for information to be given to people, including the following:

- *Freedom of Information Act 1989*, s 10 (Right of access) and s 38 (Documents to which secrecy provisions of enactments apply)
- *Health Records (Privacy and Access) Act 1997*, s 10 (Statement of principle regarding right of access), and s 14A (No access to health record relating to Children and Young People Act complaint etc).

#### **849 Exception to s 846—information given with agreement**

Section 846 (Offence—secrecy of protected information) does not apply to protected information about a person if the information—

- (a) is not sensitive information; and
- (b) is divulged with the person's consent.

## **Part 25.3                      Sharing protected information**

*Note to pt 25.3*

The Minister may make standards for the giving and seeking of protected information by the chief executive under this chapter (see s 887 (2) (i) (Standard-making power)).

### **Division 25.3.1              Generally**

#### **850                      Minister or chief executive—giving information to person about the person**

The Minister or chief executive may give a person protected information held by the Minister or chief executive about the person.

#### **851                      Minister or chief executive—giving information in best interests of child or young person**

- (1) The Minister or chief executive may give someone protected information about a child or young person if the Minister or chief executive considers that giving the information is in the best interests of the child or young person.
- (2) Before the Minister gives protected information under this section, the Minister must ask the chief executive for advice about giving the information and consider any advice given by the chief executive.
- (3) An information sharing entity may ask the chief executive for information the chief executive may give the information sharing entity under this section.

**852 Chief executive—giving information to person under corresponding provisions**

The chief executive may give protected information to any person who is exercising a function, or otherwise engaged in the administration of, a provision of a law of a State corresponding (or substantially corresponding) to a provision of this Act if the chief executive considers that giving the information is necessary to allow the person to exercise the function to administer the law.

**853 Family group conference facilitator—giving information in best interests of child or young person**

A family group conference facilitator may give the chief executive protected information about a child or young person if the family group conference facilitator considers that giving the information is in the best interests of the child or young person.

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

**854 Out-of-home carer and foster care service—giving information necessary for responsibilities**

- (1) A carer may give someone protected information, that is not sensitive information, about a child or young person if—
  - (a) the carer considers that giving the information is necessary for the proper exercise of the carer's responsibilities for the child or young person; and
  - (b) the giving of the information is in accordance with any directions given by the chief executive.
- (2) In this section:  
*carer* means—
  - (a) an out-of-home carer; or
  - (b) a foster care service.

**855 Chief executive—giving information to researcher**

- (1) The chief executive may give protected information to a researcher for an approved research project.
- (2) The information may be about the child or young person, his or her family or someone else.
- (3) In this section:  
*approved research project*—see section 805.

**856 Chief executive—giving information to authorised assessor**

- (1) The chief executive may give an authorised assessor for a care and protection assessment protected information in relation to the child or young person, or other person, who is the subject of the assessment.
- (2) In this section:  
*authorised assessor*—see section 438.

**857 Certain identifying information not to be given**

Information must not be given to anyone under this part if it is information that—

- (a) identifies a person as a person who made—
  - (i) a child concern report; or
  - (ii) a confidential report; or
  - (iii) an interstate care and protection report; or
- (b) would allow a person's identity as a person who made a report mentioned in paragraph (a) to be worked out.

## Division 25.3.2 Sharing safety and wellbeing information

### 858 What is *safety and wellbeing information*?

- (1) In this division:

*safety and wellbeing information*, in relation to a child or young person, means information that is relevant to the health, safety or wellbeing of the child or young person.

**Examples—information relevant to safety or wellbeing of child or young person**

- 1 information needed to assess whether a child or young person is at risk of abuse or neglect
- 2 information needed to assess whether a child or young person is in need of care and protection
- 3 information needed to implement a care and protection order
- 4 information needed to respond to a serious risk of harm to a child or young person
- 5 information about the health of the child or young person
- 6 information about the educational needs of the child or young person
- 7 information about the immunisation history of the child or young person

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

- (2) The information may be about the child or young person, his or her family or someone else.
- (3) To remove any doubt, safety and wellbeing information may be protected or sensitive information.



**859 Who is an *information sharing entity*?**

(1) In this part:

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

- (a) a parent of the child or young person;
- (b) someone else who has parental responsibility for the child or young person;

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

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

*Note* Out-of-home carers are dealt with in pt 15.4.

- (d) a foster care service;

*Note* *Foster care service* is defined in s 515.

- (e) a Minister;
- (f) an ACT education provider;
- (g) a police officer or a member of a police service or force of a State;
- (h) a health facility;
- (i) any of the following entities that provides services to, or has contact with, the child or young person or his or her family:
  - (i) an administrative unit;
  - (ii) a community-based service;
  - (iii) a territory authority (other than the legal aid commission);
  - (iv) a territory instrumentality;
  - (v) an entity established under a law of a State or the Commonwealth;

(vi) the holder of a position established under a law of a State or the Commonwealth;

(vii) a public employee (other than a judge or magistrate).

(2) In this section :

*ACT education provider*—see section 25.

**860 Minister or chief executive—giving safety and wellbeing information to information sharing entity**

(1) The Minister or chief executive may give an information sharing entity for a child or young person safety and wellbeing information in relation to the child or young person.

(2) An information sharing entity may ask the chief executive for information the chief executive can give the information sharing entity under this section.

(3) This section is additional to section 25 (Chief executive may ask for assistance, etc).

*Note* The chief executive may also ask an information sharing entity for information relevant to the safety, welfare and wellbeing of a child or young person (see s 861).

**861 Information sharing entity—giving safety and wellbeing information to chief executive**

An information sharing entity for a child or young person may give the chief executive safety and wellbeing information in relation to the child or young person if the information sharing entity considers that giving the information is in the best interests of the child or young person.

**862 Chief executive—asking information sharing entity for safety and wellbeing information**

- (1) The chief executive may ask an information sharing entity for a child or young person to give the chief executive safety and wellbeing information in relation to the child or young person.
- (2) An information sharing entity must comply with a request under subsection (1)—
  - (a) promptly; and
  - (b) if the chief executive tells the entity that the situation is an emergency—not later than 24 hours after the entity receives the request.
- (3) This section is additional to section 25 (Chief executive may ask for assistance, etc).

**863 Care teams—sharing safety and wellbeing information**

- (1) The chief executive may declare that the chief executive and a group of other people and entities are a care team for a child or young person.

**Examples—care team members**

- 1 an out-of-home carer
- 2 a counsellor
- 3 a psychologist
- 4 a health professional
- 5 an education provider
- 6 a foster care service
- 7 a family support worker
- 8 a youth support worker
- 9 a therapeutic protection service

10 a member of the child or young person's treating team under the *Health Records (Privacy and Access) Act 1997*

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

- (2) The chief executive may include a person or entity as a member of a care team for a child or young person only if satisfied that the person or entity is responsible for coordinating or delivering a service or care to the child or young person, or his or her family members, under this Act or for a criminal proceeding under another territory law.
- (3) A member of a care team for a child or young person—
  - (a) may ask another member of the care team for safety and wellbeing information about the child or young person; and
  - (b) may give safety and wellbeing information to another member of the care team.
- (4) The giving or receiving of safety and wellbeing information under this section is subject to any instruction made by the chief executive under section 23.

## Part 25.4 Courts and investigative entities

### 864 Definitions—pt 25.4

In this part:

*court* includes a tribunal.

*produce* includes allow access to.

*Note* *Investigative entity*—see the dictionary.

### 865 Giving protected information to court or investigative entity

- (1) An information holder must give protected information to a court or investigative entity if required to do so for this Act or another territory law.
- (2) An information holder must produce a document containing protected information to a court or investigative entity if required to do so for this Act or another territory law.
- (3) An information holder may give protected information to a court or investigative entity if authorised to do so by this Act or another territory law.
- (4) An information holder may produce a document containing protected information to a court or investigative entity if authorised to do so by this Act or another territory law.

- (5) In this section:

*court* includes a court of the Commonwealth, a State or another Territory.

**Example**

the Family Court of Australia

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

**866 Court may order sensitive information to be given or produced**

- (1) A court may, in any proceeding, order an information holder to—
- (a) give sensitive information to the court; or
  - (b) produce a document containing sensitive information to the court.
- (2) However, the court must not allow a document given to it under subsection (1) (b) to be given to the parties to the proceeding unless satisfied that—
- (a) the information is materially relevant to the proceeding; and
  - (b) if the information is about a child or young person—the best interests of the child or young person are protected.
- (3) In making a decision under subsection (2), the court must consider the desirability of protecting the identity of a person who made a child concern report, confidential report or interstate care and protection report.
- (4) To enable the court to make a decision under subsection (2), the court must allow the information holder to be heard in relation to its disclosure to the parties.

- (5) In making a decision under subsection (2), the court must deal with the information given or produced under subsection (3) in a way that ensures the information is not divulged or produced to anyone else.
- (6) In particular, the court must ensure that no copies of the information can be made without leave of the court.
- (7) If the court decides not to allow a document produced to it under subsection (1) (b) to be given to the parties, the court must return the document to the information holder.

**867 Investigative entity may divulge protected information etc**

- (1) An investigative entity may—
  - (a) divulge protected information (including sensitive information) in relation to an investigation it is carrying out to another investigative entity; and
  - (b) divulge protected information (other than sensitive information) in relation to an investigation it is carrying out to someone else.
- (2) However, an investigative entity may divulge sensitive information in relation to an investigation to someone other than another investigative entity only if satisfied that—
  - (a) the information is materially relevant to the investigation; and
  - (b) disclosure of the information is in the public interest; and
  - (c) if the information is about a child or young person—the best interests of the child or young person are protected; and
  - (d) the information does not include information that—
    - (i) identifies a person as a person who made a child concern report; or
    - (ii) would allow a person's identity as a person who made a child concern report to be worked out; or

- (iii) identifies a person as a person who made a confidential report; or
  - (iv) would allow a person's identity as a person who made a confidential report to be worked out; or
  - (v) identifies a person as a person who made an interstate care and protection report; or
  - (vi) would allow a person's identity as a person who made an interstate care and protection report to be worked out.
- (3) To enable the investigative entity to make a decision under subsection (2), the investigative entity must allow the information holder to be heard in relation to the divulging of the information.



## Part 25.5 Admissibility of evidence

### 868 How child concern reports may be used in evidence

- (1) This section applies if a person honestly and without recklessness makes a child concern report.
- (2) The report, or evidence of the contents of the report, is admissible in evidence in a proceeding in a court or tribunal only if—
  - (a) the report or evidence is given to the court or tribunal by the person who made the report; or
  - (b) the proceeding is a proceeding under the care and protection chapters in relation to the child or young person who is the subject of the report; or
  - (c) the proceeding is before a court hearing an appeal from a decision of the Childrens Court in a proceeding mentioned in paragraph (b); or
  - (d) the proceeding is about a charge or allegation made in a proceeding against a person in relation to the person's exercising a function under this Act.
- (3) Before admitting a report, or evidence of a report, under this section, the court or tribunal must give the chief executive the opportunity to be heard.

*Note* For admissibility of a prenatal report, see s 364.

### 869 Confidential report—not admissible in evidence

- (1) A confidential report is not admissible in evidence in any proceeding in a court or tribunal.

*Note* For the meaning of *confidential report*, see s 876.
- (2) Evidence of the contents of a confidential report is also not admissible in evidence in any proceeding in a court or tribunal.

- (3) No-one may be compelled in any proceeding before a court or tribunal—
  - (a) to produce a confidential report or a copy of, or extract from, a confidential report; or
  - (b) to disclose, or give evidence of, the contents of a confidential report.
- (4) This section is subject to section 870 and section 871.

**870 Confidential report—confidential reporter may give evidence**

In any proceeding in a court or tribunal, the confidential reporter may give evidence about the confidential reporter's suspicion under section 876 (1), and the reasons for the suspicion.

**871 Confidential report—evidence admissible with agreement or leave**

- (1) This section applies to evidence—
  - (a) that a particular matter is contained in a confidential report; or
  - (b) that identifies, or is likely to lead to the identification of, the confidential reporter.
- (2) The evidence is admissible in a proceeding in a court or tribunal only if—
  - (a) the confidential reporter agrees, in writing, to the admission of the evidence; or
  - (b) the court or tribunal gives leave for the evidence to be given.
- (3) The court or tribunal may give leave under subsection (2) (b) only if satisfied that it is necessary for the evidence to be given—
  - (a) to ensure the safety and wellbeing of a child or young person; or

- (b) in relation to a charge or allegation made in a proceeding against someone about the exercise of the person's functions under this Act; or
- (c) to decide whether the report was made honestly and without recklessness.

**872 Things said at conference not admissible in care and protection proceedings**

- (1) Evidence of anything said or done at a family group conference arranged under section 80 (2) is not admissible in a proceeding under the care and protection chapters.
- (2) However, a conference outcome report is admissible in a proceeding under the care and protection chapters to prove whether an agreement was or was not reached.

**873 Interim matters—things said at court-ordered meeting**

Evidence of anything said or done at a court-ordered meeting in relation to a proceeding under the care and protection chapters is admissible in the proceeding only if—

- (a) the parties to the proceeding agree to the evidence being admitted; or
- (b) the Childrens Court gives leave for the evidence to be admitted.

## Part 25.6                      Protection of people who give information

### 874                      Protection of people giving certain information

- (1) If a person gives information mentioned in subsection (2) honestly and without recklessness—
  - (a) giving the information is not a breach of—
    - (i) confidence; or
    - (ii) professional etiquette or ethics; or
    - (iii) a rule of professional conduct; and
  - (b) the person does not incur civil or criminal liability only because of giving the information.
- (2) Subsection (1) applies to information given by—
  - (a) a relevant person to the chief executive in response to a request made by the chief executive under section 25 (Chief executive may ask for assistance, etc); and
  - (b) a person to the official visitor under section 44 (Complaints to official visitors); and
  - (c) a person to a chief executive for a report under the *Court Procedures Act 2004*, section 74D (Court may order report about young person); and
  - (d) a health professional to the chief executive in a report of assessment made by the health professional under section 161 (3) (Health assessment); and
  - (e) a relevant chief executive to the chief executive in a report under section 186 (Health reports); and

- (f) a person in a report to the chief executive under section 193 (Mandatory reporting of threats to security etc at detention place); and
  - (g) a person to the chief executive under section 354 (Voluntary reporting of abuse and neglect); and
  - (h) a person to the chief executive under section 356 (Offence—mandatory reporting of abuse); and
- Note* Information given honestly and without recklessness to the public advocate under s 359 is protected under the *Public Advocate Act 2005*, s 15.
- (i) a person to the chief executive under section 360 (4) (a) (Chief executive to act on child concern report); and
  - (j) a person to the chief executive under section 361 (3) (a) (Chief executive action on child protection report); and
  - (k) a person to the chief executive under section 362 (Prenatal reporting—anticipated abuse and neglect); and
  - (l) a person in a report to the chief executive under section 362 (Prenatal reporting—anticipated abuse and neglect); and
  - (m) a person to a police officer under section 680 (1) (d) (Police powers); and
  - (n) an out-of-home carer or foster care service to someone under section 854 (Out-of-home carer and foster care service—giving information necessary for responsibilities); and
  - (o) an information sharing entity to the chief executive under section 861 (Information sharing entity—giving safety and wellbeing information to chief executive) or section 862 (Chief executive—asking information sharing entity for safety and wellbeing information); and

- (p) a member of a care team to another member of the care team under section 863 (Care teams—sharing safety and wellbeing information); and
- (q) a person to the chief executive under section 876 (Confidential report of contravention of Act).

*Note* The chief executive and official visitor are protected from civil liability for giving information by s 878.

## **875 Interaction with other laws**

- (1) This chapter does not limit a power or obligation under another law to give relevant information.
- (2) This chapter applies to information despite any other law that would otherwise prohibit or restrict the giving of the information.

### **Examples—other laws**

- *Evidence Act 1995* (Cwlth)
- *Health Records (Privacy and Access) Act 1997*
- *Privacy Act 1988* (Cwlth)
- *Public Sector Management Act 1994*

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

## Chapter 26      Miscellaneous

### *Notes to ch 26*

In making a decision under this chapter for a child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration (see s 8).

In making a decision under this chapter otherwise than for a particular child or young person, the decision-maker must consider the best interests of children and young people (see s 8).

### **876      Confidential report of contravention of Act**

- (1) This section applies if a person suspects that a provision of this Act is being, or has been, contravened.

*Note*      A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any standards made under s 887 (see Legislation Act, s 104).

- (2) The person may report (in a *confidential report*) the suspicion, and the reasons for the suspicion, to the chief executive.

### **877      Offence—tattoo child or young person without agreement**

- (1) A person commits an offence if—
- (a) the person tattoos a part of another person's body; and
  - (b) the other person is a child or young person; and
  - (c) the person does not have agreement, in writing, from a person who has daily care responsibility, or long-term care responsibility, for the child or young person, to—
    - (i) tattoo that part of the child's or young person's body; or
    - (ii) tattoo the child or young person in that way.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that—
- (a) before tattooing the person, the person had shown a document of identification to the defendant; and
  - (b) the defendant had no reasonable grounds for believing that the document was not a genuine document of identification of the person.
- (4) In this section:
- document of identification***, of a person, means a document that—
- (a) is—
    - (i) an Australian driver licence or a licence to drive a motor vehicle (however described) issued under the law of an external Territory or a foreign country; or
    - (ii) a proof of age card under the *Liquor Act 1975* or a corresponding document issued under the law of a State; or
    - (iii) a passport; and
  - (b) contains a photograph that could reasonably be taken to be of the person; and
  - (c) indicates that the person to whom the document was issued is at least 18 years old.

## **878 Protection of officials from liability**

- (1) In this section:
- official*** means—
- (a) the chief executive; or
  - (b) an official visitor; or



- (c) a person who is exercising, or has exercised, a function under this Act; or
  - (d) a person who is, or has been, engaged in the administration of this Act.
- (2) An official, or anyone engaging in conduct under the direction of an official, is not civilly liable for conduct engaged in honestly and without recklessness—
- (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (3) Any liability that would, apart from this section, attach to an official attaches instead to the Territory.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

### **879 ACT child welfare services must assist public advocate**

- (1) For the purpose of exercising a statutory function, the public advocate may ask an ACT child welfare service to provide information, advice, guidance, assistance, documents, facilities or services in relation to the physical or emotional welfare of children and young people.
- (2) If the public advocate makes a request of an ACT child welfare service under subsection (1), the service must comply with the request promptly.
- (3) In this section:

*ACT child welfare service* means any of the following entities if the entity is involved in providing welfare services for children and young people:

- (a) an administrative unit;

- (b) a territory authority;
- (c) a territory instrumentality;
- (d) a public employee;
- (e) a police officer.

*Note* A person who gives information honestly and without recklessness under this section does not breach professional ethics etc and is protected from civil liability (see *Public Advocate Act 2005*, s 15).

### **880 Notification of location of child or young person**

- (1) This section applies if—
  - (a) a child or young person has voluntarily entered a hospital, police station or refuge (the *place*); and
  - (b) the person in charge, or an occupier, of the place suspects on reasonable grounds that none of the following people knows the location of the child or young person:
    - (i) a parent of the child or young person;
    - (ii) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person.
- (2) The person in charge, or occupier, may, if the person or occupier believes on reasonable grounds that it is in the best interests of the child or young person to do so—
  - (a) tell a parent of the child or young person, or someone else who has daily care responsibility, or long-term care responsibility, for the child or young person, of the location of the child or young person; and
  - (b) if the place is not at a police station—tell a police officer that the child or young person is at the hospital or refuge.

**881 Evidentiary certificates—chief executive—parental responsibility**

In a proceeding under this Act, a certificate purporting to be signed by the chief executive stating that, on a stated date or during a stated period, the chief executive had, or shared, daily care responsibility, or long-term care responsibility, for a stated child or young person is evidence of the matters stated in the certificate.

**882 Evidentiary certificates—chief executive—custody etc**

- (1) A certificate that appears to be signed by the chief executive that states any of the following is evidence of the matter:
- (a) that a stated person was, or was not, subject to detention on a stated day;
  - (b) that a stated person was, or was not, in the chief executive's custody on a stated day;
  - (c) that a stated young offender subject to full-time detention did not comply with a stated obligation of the detention;
  - (d) that the chief executive gave a stated direction to a stated person on a stated day;
  - (e) that a stated person did not comply with a stated direction by the chief executive on a stated day;
  - (f) that a stated decision was made by the chief executive on a stated date;
  - (g) that a stated person did, or did not, occupy a position under this Act on a stated day;
  - (h) that a stated instrument under this Act was, or was not, in force on a stated day;
  - (i) that a stated instrument is a copy of an instrument made, given, issued or received under this Act.

- (2) A certificate mentioned in subsection (1) may state a matter by reference to a date or period.
- (3) A certificate of the results of the analysis of a substance under this Act, signed by an analyst appointed under section 883, is evidence of the facts stated in the certificate.
- (4) A certificate signed by or for the chief executive that states any matter prescribed by regulation is evidence of the stated matter.
- (5) A court must accept a certificate or other document mentioned in this section as proof of the matters stated in it if there is no evidence to the contrary.

### **883 Appointment of analyst for Act**

- (1) The chief executive may appoint analysts for this Act.

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

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

- (2) An appointment under subsection (1) is a notifiable instrument.

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

### **884 Chief police officer delegations**

- (1) The chief police officer may delegate any of the chief police officer's functions under this Act to a police officer.
- (2) This section does not limit the chief police officer's power to delegate a function under any other territory law.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

**885 Determination of fees**

- (1) The chief executive may determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**886 Approved forms**

- (1) The chief executive may approve forms for this Act (other than for use in relation to the Childrens Court).

- (2) If the chief executive approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

**887 Standard-making power**

- (1) The Minister may make standards for this Act.

*Note* Power to make a statutory instrument includes power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see Legislation Act, s 46).

- (2) The standards may make provision for the following:

- (a) the conduct of family group conferences and the implementation of family group conference agreements (***family group conference standards***);

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

- (b) the conduct of drug testing under a drug use provision in a care and protection order (***drug testing standards***);

*Note* Drug use provisions in care and protection orders are dealt with in pt 14.9.

- (c) the care to be provided for children and young people by out-of-home carers (***out-of-home care standards***);

*Note* Out-of-home care is dealt with in pt 15.4.

- (d) the operation of therapeutic protection places and services (***therapeutic protection standards***);

*Note* A child or young person may be confined at a therapeutic protection place under a therapeutic protection order (see pt 16.2).

- (e) the operation of childcare services (***childcare services standards***);

*Note* Childcare services are dealt with in ch 20.

- (f) employers of children and young people (***children and young people employment standards***);

*Note* Employment of children and young people is dealt with in ch 21.

- (g) the requirements for the operation of work experience programs (***work experience standards***);

*Note* Work experience programs are dealt with in pt 21.2.

- (h) research involving children and young people (***research standards***);

*Note* Research is dealt with in ch 22.

- (i) the giving and seeking of protected information by the chief executive under chapter 25 (***information sharing standards***).

- (3) A standard is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**888 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may make provision for—
- (a) the duties of people in charge of detention places; and
  - (b) the health and safety (including medical examinations) of children or young people, and other people, at places of detention; and
  - (c) any of the following in relation to injuries suffered by children or young people, and other people, that arise out of, or in the course of, their detention, or the performance of community service:
    - (i) injury management;
    - (ii) compensation for a permanent injury;
    - (iii) vocational rehabilitation;
    - (iv) death benefits; and
  - (d) travel and transport arrangements for children or young people, and other people, performing community service; and
  - (e) the discipline and security (including the use of force, inspection of mail, and the use of video surveillance and other monitoring devices) at or for places of detention; and
  - (f) the safety, management and good order of places of detention.
- (3) A regulation may also prescribe offences for contraventions of the regulation and prescribe maximum penalties of not more than 10 penalty units for offences against the regulation.

(4) In this section:

*injury* includes—

- (a) disease; and
- (b) aggravation, acceleration and recurrence of an injury or disease.

**889      Legislation amended**

This Act amends the legislation mentioned in schedule 1.



## **Schedule 1      Amendments of other legislation**

(see s 889)

### **Part 1.1              Corrections Management Act 2007**

#### **[1.1]      Section 6 (3)**

*substitute*

- (3) Also, this Act (other than chapter 4 (Detention in police and court cells)) does not apply to a person detained under the *Children and Young People Act 2008*.

#### **[1.2]      Section 29, new definitions**

*insert*

***chief executive*** means—

- (a) for a detainee (other than a young detainee)—the chief executive responsible for this Act;
- (b) for a young detainee—the chief executive responsible for the *Children and Young People Act 2008*.

***young detainee***—see the *Children and Young People Act 2008*, section 95.

**[1.3] New section 29 (2)**

*insert*

- (2) In this chapter—
- (a) a reference to a *correctional centre* is, in relation to the custody or detention of a young detainee, a reference to a detention place under the *Children and Young People Act 2008*; and
  - (b) a reference to a *corrections officer* is, in relation to the custody or detention of a young detainee, a reference to a youth detention officer under the *Children and Young People Act 2008*.

**[1.4] Section 30 (2)**

*substitute*

- (2) However, a person lawfully required to be in police custody must not be detained continuously at a police cell for a period longer than the following period (the *allowed period*):
- (a) for a detainee (other than a young detainee)—36 hours;
  - (b) for a young detainee—12 hours.

**[1.5] Section 30 (3)**

*omit*

36 hours

*substitute*

the allowed period

**[1.6] Section 31 (2)**

*omit*

For this section,

*substitute*

For the application of this section to a detainee (other than a young detainee),

**[1.7] New section 31 (3)**

*insert*

- (3) For the application of this section to a young detainee, the following provisions of the *Children and Young People Act 2008* apply as if the direction, search or seizure occurred under the relevant part in relation to a young detainee at a detention place:
- (a) part 7.1 (Preliminary—ch 7);
  - (b) part 7.2 (Searches generally);
  - (c) part 7.3 (Scanning, frisking and ordinary searches);
  - (d) part 7.4 (Strip searches—young detainees);
  - (e) part 7.9 (Seizing property).

**[1.8] New section 31A**

*insert*

**31A Detention in police cells—additional provisions for young detainees**

- (1) This section applies if a young detainee is detained at a police cell under section 30.
- (2) The chief police officer must ensure that the young detainee—
  - (a) is kept separate from adult detainees; and

- (b) has prompt access to medical and legal assistance; and
- (c) is told, in language and a way he or she can readily understand, about the reason for the detention and the procedures that apply; and
- (d) is able to contact and be contacted by each of the following:
  - (i) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
  - (ii) the public advocate;
  - (iii) the ombudsman.

*Note* The *Crimes Act 1914* (Cwlth), pt 1C contains provisions about investigation of offences (including about periods of arrest and obligations of investigating officials) that apply to indictable offences against ACT laws.

In particular, that Act, s 23Q provides that a person who is under arrest or a protected suspect must be treated with humanity and with respect for human dignity, and must not be subjected to cruel, inhuman or degrading treatment.

#### **[1.9] Section 33 (2), new note**

*insert*

*Note* If the person is a young offender who is under 18 years old, he or she must not be placed in a room with an adult who is under detention (see *Children and Young People Act 2008*, s 100).

#### **[1.10] Section 33 (3)**

*substitute*

- (3) However, the person must not be detained continuously at a court cell for a period longer than the following period (the ***allowed period***):
  - (a) for a detainee (other than a young detainee)—36 hours;
  - (b) for a young detainee—12 hours.

**[1.11] Section 33 (4)**

*omit*

36 hours

*substitute*

the allowed period

**[1.12] Section 33 (5)**

*substitute*

- (5) While detained at a court cell under this section—
- (a) a detainee (other than a young detainee) is taken to be a detainee for all purposes under this Act; and
  - (b) a young detainee is taken to be a young detainee for all purposes under the *Children and Young People Act 2008*.

**[1.13] New section 33A**

*insert*

**33A Detention in court cells—additional provisions for young detainees**

- (1) This section applies if a young detainee is detained at a court cell under section 33.
- (2) The chief executive must ensure that the young detainee—
  - (a) is kept separate from adult detainees; and
  - (b) has prompt access to medical and legal assistance; and
  - (c) is told, in language and a way he or she can readily understand, about the reason for the detention and the procedures that apply; and

- (d) is able to contact and be contacted by each of the following:
  - (i) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
  - (ii) the public advocate;
  - (iii) the ombudsman.

**[1.14] Section 34 (6)**

*substitute*

- (6) To remove any doubt, while detained under this section—
  - (a) a detainee (other than a young detainee) remains a detainee for all purposes under this Act; and
  - (b) a young detainee remains a young detainee for all purposes under the *Children and Young People Act 2008*.

## Part 1.2 Court Procedures Act 2004

**[1.15] New part 7A**

*insert*

### Part 7A Procedural provisions— proceedings involving children or young people

#### Division 7A.1 General

##### 69 Childrens Court procedure

- (1) The *Magistrates Court Act 1930*, chapter 3 (Criminal proceedings), and the rules applying to criminal proceedings in the Magistrates Court, apply to the Childrens Court in relation to a criminal proceeding.

- (2) The rules applying to civil proceedings in the Magistrates Court apply to the Childrens Court in relation to any other proceeding.

## **71 When parents must attend court proceedings**

- (1) A parent of a child or young person who is the subject of a proceeding in a court must attend the court throughout the proceeding if—
- (a) notice of the proceeding has been given to the parent; or
  - (b) the parent otherwise knows of the proceeding.
- (2) Notice of a proceeding given to a parent must state—
- (a) when and where the hearing of the proceeding will begin; and
  - (b) that a warrant may be issued to bring the parent before the court if the parent does not attend throughout the proceeding.
- (3) The court may issue a warrant to bring a parent of a child or young person before the court if—
- (a) notice of the proceeding has been given to a parent of the child or young person; but
  - (b) neither parent attends the court at the beginning of, or at any time during, the proceeding.
- (4) This section applies to a parent who lives in or outside the ACT.
- (5) However, this section does not apply to a parent if—
- (a) daily care responsibility or long-term care responsibility for the child or young person has been transferred to someone else; or
  - (b) for a criminal proceeding—the parent was a victim of the offence to which the proceeding relates and the court excludes the parent under section 72 (2); or

- (c) exceptional circumstances prevent the parent from attending.

**Examples—par (c)**

- 1 the parent is overseas and unable to return
- 2 the parent is serving a sentence of imprisonment by full-time detention

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

- (6) Also, this section does not apply to a proceeding under the care and protection chapters of the *Children and Young People Act 2008*.
- (7) In this section:

*daily care responsibility*—see the *Children and Young People Act 2008*, section 19.

*long-term care responsibility*—see the *Children and Young People Act 2008*, section 20.

## 72 Court proceedings involving children or young people not open to public

- (1) If a child or young person is the subject of a proceeding in a court, the following people are the only people who may be present at the hearing of the proceeding:
- (a) an officer of the court;
  - (b) a party to the proceeding, a lawyer representing the party, and an employee of the lawyer;
  - (c) a parent of the child or young person;
  - (d) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;



- (e) anyone else the court admits as the child's or young person's representative;
- (f) the chief executive responsible for the *Children and Young People Act 2008* or an authorised person under that Act;
- (g) the public advocate or a person authorised by the public advocate for this section;
- (h) a person who has, or a representative of an entity that has, provided a report under the care and protection chapters of the *Children and Young People Act 2008*;
- (i) for a criminal proceeding—a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person's employer;

*Note* Publishing certain information about proceedings involving children is an offence (see Criminal Code, s 712A (Publishing identifying information about children's proceedings)).

- (j) for a criminal proceeding—a person who was a victim of an offence to which the proceeding relates, unless the person is excluded by the court under subsection (2);
  - (k) for a criminal proceeding in which circle sentencing is being considered—a person involved in the circle sentencing;
  - (l) anyone else required or permitted to be present by the court or under the *Children and Young People Act 2008* or any other Act.
- (2) A court may exclude a person who was a victim of an offence to which a criminal proceeding relates from being present at the hearing of the proceeding if it considers it is appropriate to do so having regard to—
- (a) the person's behaviour or expected behaviour; or

- (b) the nature of the person's relationship with the child or young person.

**Example—par (b)**

a violent or abusive relationship

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

- (3) The public advocate and the chief executive responsible for the *Children and Young People Act 2008* may make submissions to the court about whether the court should require or permit a person to be present under subsection (1) (1), or exclude a person under subsection (2).

- (4) In this section:

*circle sentencing*—see the *Magistrates Court Act 1930*, section 309 (4).

*daily care responsibility*—see the *Children and Young People Act 2008*, section 19.

*long-term care responsibility*—see the *Children and Young People Act 2008*, section 20.

**73 Court may excuse parties from attending proceedings**

- (1) This section applies if a child or young person is the subject of a proceeding in a court.
- (2) On the application of a party to the proceeding, the court may excuse the party from attending all or part of the proceeding.
- (3) The court may, at any time and by notice given to the party, require the party to attend the proceeding.

**74 Certain related applications may be heard together**

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

**74A Participation of children and young people in proceedings**

- (1) A child or young person has a right to take part in a proceeding in a court in relation to the child or young person.
- (2) The court may ask the chief executive responsible for the *Children and Young People Act 2008* to assist the court by giving the child or young person sufficient information about the proceeding, in language and a way that the child or young person can understand, to allow the child or young person to take part fully in the proceeding.

**74B Court must ensure children and young people etc understand proceedings**

In a proceeding under the *Children and Young People Act 2008* or another territory law to which a child or young person is a party, the court must endeavour to ensure that the child or young person and any other party present at the hearing of the proceeding—

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

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

**74C Chief executive and public advocate etc may appear at proceedings**

- (1) This section applies if there is a hearing in a court of—
  - (a) a proceeding against a child or young person; or
  - (b) an application, proceeding or matter under the *Children and Young People Act 2008* or in relation to which that Act applies.
- (2) Each of the following is entitled to appear and be heard and may call witnesses:
  - (a) the chief executive responsible for the *Children and Young People Act 2008*;
  - (b) an authorised person under the *Children and Young People Act 2008*;
  - (c) the public advocate;
  - (d) a person authorised by the public advocate for this section.

**74D Court may order report about young person**

- (1) A court hearing a criminal proceeding in relation to or against a child or young person may order the chief executive responsible for the *Children and Young People Act 2008* to give the court a report about the child or young person.
- (2) A chief executive given an order must, despite any other ACT law other than the *Human Rights Act 2004*, give a report.
- (3) In giving effect to the order, the chief executive may do, or arrange for someone else to do, 1 or more of the following:
  - (a) visit and interview the child or young person;

- (b) interview a parent of the child or young person;
  - (c) interview a schoolteacher or other person involved with the education or welfare of the child or young person;
  - (d) require the child or young person to submit to being interviewed by a doctor or other named person.
- (4) Unless a court otherwise orders, a copy of the report must be made available to the parties to the proceeding.
  - (5) The person providing the report may be called as a witness by a party to the proceeding.

**74E Children and young people may have legal and other representative**

- (1) In a proceeding in a court in relation to a child or young person, the child or young person may be represented by a lawyer or litigation guardian, or both.
- (2) A representative of the child or young person must ensure that views and wishes stated by the child or young person are put to the court.
- (3) A representative of the child or young person must tell the court whether the representative is acting on the child's or young person's instructions or in the best interests of the child or young person, or both.

**74F Leave needed for litigation guardian**

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

**74G Legal representation of children and young people**

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

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

**74H Orders about legal representation of children and young people—all proceedings**

- (1) This section applies if, in a proceeding in a court in relation to a child or young person—
  - (a) the child or young person does not have a lawyer; and
  - (b) either—
    - (i) the court is not satisfied that the child or young person has made, or can make, an informed and independent decision not to be represented by a lawyer, and it considers that the child or young person should be represented by a lawyer; or
    - (ii) the court is not satisfied that the interests of the child or young person will be adequately represented in the proceeding.
- (2) The court may, on application or on its own initiative, make any order, or give any direction, it considers necessary or desirable to allow the child or young person a reasonable opportunity to get a lawyer.

**74I Rule-making committee and court to have regard to youth justice principles**

- (1) The rule-making committee must have regard to the youth justice principles in making rules that relate, or may relate, to criminal proceedings involving children or young people.
- (2) A court must have regard to the youth justice principles in deciding any matter relating to the conduct of a criminal proceeding before the court that involves a child or young person.
- (3) A court may also have regard to the youth justice principles when deciding any matter relating to the conduct of a criminal proceeding before the court that involves—
  - (a) a person who is at least 18 years old but under 21 years old; and
  - (b) an offence committed, or allegedly committed, by the person when he or she was under 18 years old.
- (4) In this section:

*youth justice principles*—see the *Children and Young People Act 2008*, section 94.

**Division 7A.2 Care and protection considerations in proceedings**

**74J Definitions—div 7A.2**

In this division:

*care and protection chapters* means the care and protection chapters under the *Children and Young People Act 2008*.

*chief executive* means the chief executive responsible for the *Children and Young People Act 2008*.

*in need of care and protection*, for a child or young person—see the *Children and Young People Act 2008*, section 345.

**74K Proceedings dismissed or adjourned for care and protection reasons**

- (1) If, when hearing an indictment against a child or young person, the court is satisfied that the child or young person is in need of care and protection, the court may—
- (a) dismiss the indictment; or
  - (b) adjourn the proceeding for up to 15 days.

*Note* **Indictment** includes information (see Legislation Act, dict, pt 1).

- (2) If a court acts under subsection (1), the court must, as soon as practicable but not later than 2 working days after the day it acts, give a statement of the reasons for the action to—
- (a) the chief executive; and
  - (b) the public advocate.
- (3) The statement of reasons must contain the following information about the proceeding:
- (a) if the proceeding has been adjourned—the reason the proceeding was adjourned;
  - (b) the circumstances the court is aware of that led to the child or young person coming before the court;
  - (c) the factors that satisfied the court that the child or young person is in need of care and protection.
- (4) The chief executive must treat a statement of reasons given to the chief executive under subsection (2) as if it were a report made under the *Children and Young People Act 2008*, section 356 (Offence—mandatory reporting of abuse).



**74L Chief executive must report to court and public advocate**

- (1) This section applies if—
  - (a) a proceeding has been adjourned under section 74K (1); and
  - (b) the court has given the chief executive a statement of reasons under section 74K (2).
- (2) Not later than 15 days after the day the court adjourns the proceeding under section 74K (1), the chief executive must tell the public advocate and the court, in writing—
  - (a) what action the chief executive has taken, is taking or proposes to take under the care and protection chapters in relation to the child or young person; or
  - (b) if the chief executive proposes to take no action under any care and protection chapter in relation to the child or young person—that the chief executive proposes to take no action.
- (3) Without limiting when the chief executive is taken to have complied with subsection (2), the chief executive is taken to have complied with that subsection if the chief executive—
  - (a) makes an application under the care and protection chapters in relation to the child or young person; and
  - (b) gives a copy of the application to the public advocate.

**74M Court action after adjournment**

- (1) This section applies when a proceeding adjourned under section 74K (1) comes before the court again.
- (2) The court may dismiss the proceeding—
  - (a) if—
    - (i) the chief executive has, under section 74L (2) (a), told the court what action the chief executive has taken, is taking

- or proposes to take under the care and protection chapters in relation to the child or young person; and
- (ii) the court is satisfied that taking the action is in the best interests of the child or young person; or
- (b) if—
- (i) the chief executive has, under section 74L (2) (b), told the court that the chief executive proposes to take no action under any care and protection chapter in relation to the child or young person; and
  - (ii) the court is satisfied that it is in the best interests of the child or young person that the chief executive takes no action; or
- (c) the chief executive has made an application under the care and protection chapters in relation to the child or young person.
- (3) The court may also make any other order or take any other action in relation to the indictment against the child or young person that the court considers appropriate.

**[1.16] Dictionary, new definitions**

*insert*

***child***, for part 7A (Procedural provisions—proceedings involving children or young people)—see the *Children and Young People Act 2008*, section 11.

***young person***, for part 7A (Procedural provisions—proceedings involving children or young people)—see the *Children and Young People Act 2008*, section 12.

## **Part 1.3                      Crimes Act 1900**

### **[1.17]      New division 10.7**

*insert*

#### **Division 10.7                      Particular provisions for children**

##### **Subdivision 10.7.1      Arrest of children under 10 years old**

###### **252A      Warrant for arrest of child under 10 years old**

- (1) An issuing officer may issue a warrant for the arrest of a child under 10 years old only if the issuing officer believes on reasonable grounds that the child has carried out, or is carrying out, conduct that—
  - (a) makes up the physical elements of an offence; or
  - (b) poses a risk to community safety or the child.
- (2) However, the issuing officer must not issue a warrant unless a police officer has given the issuing officer an affidavit setting out—
  - (a) the reasons why the warrant is sought; and
  - (b) any evidence the police officer believes supports the warrant's issue.
- (3) If the issuing officer issues a warrant, the issuing officer must write on the warrant which of the reasons stated in the affidavit, and any other reasons, the officer has relied on as justifying the issue of the warrant.

###### **252B      Arrest of child under 10 years old—without warrant**

- (1) A police officer may, without a warrant, arrest a child under 10 years old if the police officer believes on reasonable grounds—
  - (a) that—

- (i) conduct that makes up the physical elements of an offence or a breach of the peace is being or is likely to be carried out by the child; or
    - (ii) a person has suffered physical injury because of the child's conduct; or
    - (iii) there is imminent danger of injury to a person or serious damage to property because of the child's conduct; and
  - (b) that it is necessary to arrest the child immediately—
    - (i) to prevent the conduct or a repetition of the conduct; or
    - (ii) to protect life or property.
- (2) If the police officer believes on reasonable grounds that the child is on premises, the police officer may, with reasonable and necessary force, enter the premises to arrest the child.

### **252C Police action after arresting child under 10 years old**

- (1) If a police officer arrests a child under 10 years old (whether under a warrant or under section 252B), the police officer must—
- (a) do the minimum necessary to prevent or stop the conduct for which the warrant was issued or the arrest was made; and
  - (b) take the child to—
    - (i) a parent of the child; or
    - (ii) someone else who has daily care responsibility, or long-term care responsibility, for the child; or
    - (iii) if it is not practicable or appropriate to take the child to someone mentioned in subparagraph (i) or (ii)—another appropriate person or agency.
- (2) Before deciding whether another person or agency is appropriate, the police officer must consult with the chief executive responsible for the *Children and Young People Act 2008*.

## **Subdivision 10.7.2 Preliminary procedures in relation to children and young people**

### **252D Definitions—subdiv 10.7.2**

In this subdivision:

*child*—see the *Children and Young People Act 2008*, section 11.

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

*under restraint*—see section 252E.

*young person*—see the *Children and Young People Act 2008*, section 12.

### **252E Meaning of *under restraint***

For this subdivision, a child or young person is *under restraint* if—

- (a) the child or young person is under restraint as a result of having been lawfully arrested or detained; or
- (b) the child or young person is under restraint in relation to an offence and a police officer suspects on reasonable grounds that—
  - (i) the child or young person committed the offence; or
  - (ii) the police officer would be authorised under a law in force in the Territory to arrest the child or young person for the offence; or
- (c) the child or young person is in the company of a police officer in connection with the investigation of an offence or possible offence.

**252F Meaning of *in the company of a police officer***

- (1) For section 252E (c), a child or young person is *in the company of a police officer* in connection with the investigation of an offence or possible offence if—
  - (a) the police officer would not allow the child or young person to leave if the child or young person wished to do so; or
  - (b) the child or young person is waiting at a place at the request of a police officer in connection with the investigation of the offence or possible offence.
- (2) For subsection (1), it does not matter whether or not—
  - (a) the police officer believes on reasonable grounds that the child or young person has committed the offence; or
  - (b) the child or young person is in lawful custody in relation to the offence.
- (3) However, for section 252E (c), a child or young person is not in the company of a police officer in connection with the investigation of an offence or possible offence—
  - (a) if—
    - (i) the child or young person is with a police officer by a roadside (whether or not the child or young person is in a motor vehicle); and
    - (ii) the police officer is investigating an offence or possible offence, other than an indictable offence or possible indictable offence, arising out of the use of a motor vehicle; or
  - (b) if the child or young person is with a police officer for breath analysis under the *Road Transport (Alcohol and Drugs) Act 1977*; or
  - (c) if—

- (i) the child or young person is with an inspector under the *Liquor Act 1975*; and
  - (ii) the inspector is investigating an offence or possible offence against that Act that the inspector believes on reasonable grounds was not committed by the child or young person.
- (4) In this section:
- motor vehicle*—see the *Road Transport (General) Act 1999*, dictionary.

## **252G Interviewing children and young people about offences**

- (1) This section applies if a police officer—
- (a) suspects on reasonable grounds that a child or young person may have committed, or be implicated in the commission of, an offence; or
  - (b) is holding a child or young person under restraint.
- (2) A police officer must not interview the child or young person about an offence, or cause the child or young person to do anything in relation to the investigation of an offence, unless—
- (a) one of the following people (who is an adult and who the police officer does not believe on reasonable grounds to be an accomplice of the child or young person in relation to the offence) is present:
    - (i) a parent of the child or young person;
    - (ii) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;
    - (iii) a family member of the child or young person who is acceptable to the child or young person;

- (iv) a lawyer acting for the child or young person;
  - (v) another suitable person who is acceptable to the child or young person; or
- (b) if the police officer has taken reasonable steps to have a person mentioned in paragraph (a) present but it was not practicable for such a person to be present within 2 hours after being asked to be present—someone else who is not a police officer and has not been involved with the investigation of the offence.

**Example—suitable person—par (a) (v)**

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

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

- (3) In this section:

***accomplice***, in relation to an offence, includes a person who a police officer believes on reasonable grounds to be likely to secrete, lose, destroy or fabricate evidence relating to the offence.

**252H Interviewing children and young people about offences—urgent circumstances**

A police officer may interview a child or young person if—

- (a) the police officer—
  - (i) suspects on reasonable grounds that the child or young person may have committed, or be implicated in the commission of, an offence; or
  - (ii) is holding the child or young person under restraint; and
- (b) the police officer believes on reasonable grounds that it is necessary to interview the child or young person without delay to avoid—



- (i) a risk of death or serious injury of a person; or
- (ii) serious damage to property.

**252I Parents etc to be told if children and young people under restraint**

- (1) If a police officer takes a child or young person under restraint, the police officer must promptly take all reasonable steps to tell a responsible person about the restraint (whether or not the person lives in the ACT).
- (2) In this section:

*responsible person* means—

- (a) a parent of the child or young person; or
- (b) if no parent of the child or young person has parental responsibility for the child or young person—someone else who has daily care responsibility, or long-term care responsibility, for the child or young person.

**252J Police to summons children and young people unless ineffective**

A police officer must not charge a child or young person with an offence at a police station unless satisfied that proceeding by summons would not achieve 1 or more of the purposes mentioned in section 212 (1) (b) (Power of arrest without warrant by police officers).

**252K Parents etc to be told if children and young people charged**

- (1) If a child or young person is charged with an offence at a police station, the person who charged the child or young person must promptly take all reasonable steps to tell 1 of the following people the relevant information in relation to the charge (whether or not the person lives in the ACT):
  - (a) a parent of the child or young person;
  - (b) if no parent of the child or young person has parental responsibility for the child or young person—someone else who has daily care responsibility, or long-term care responsibility, for the child or young person.
- (2) In this section:

*relevant information*, for a charge, means—

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

**[1.18] New section 300 (2)**

*insert*

- (2) To remove any doubt, a reference in this part to the Magistrates Court includes a reference to the Childrens Court.

**[1.19] Section 375**

*substitute*

**375 Summary disposal of certain cases**

- (1) This section applies if a person is before the Magistrates Court charged with—

- (a) a common law offence; or
- (b) an offence punishable by imprisonment for a term not exceeding—
  - (i) if the offence relates to money or other property—  
14 years; or
  - (ii) in any other case—10 years.
- (2) This section also applies if a person is before the Childrens Court charged with any offence (other than an offence punishable by imprisonment for life).
- (3) The court may proceed in accordance with subsections (4) to (12) if—
  - (a) the court considers that it has no jurisdiction, apart from this section, to hear and determine the charge summarily; and
  - (b) for a charge that relates to money, or to property other than a motor vehicle, and is being heard in the Magistrates Court—the court considers that the amount of the money or the value of the property does not exceed \$10 000.
- (4) The court may invite the person (the *defendant*) to plead guilty or not guilty to the charge.
- (5) If the defendant pleads guilty to the charge, the court may accept or reject the plea.
- (6) The defendant is taken to have pleaded not guilty to the charge if—
  - (a) the defendant does not plead to the charge when invited to do so under subsection (4); or
  - (b) the court rejects a plea of guilty to the charge under subsection (5);

- (7) The court may hear and determine the charge summarily, and may sentence or otherwise deal with the defendant according to law, if—
  - (a) the defendant pleads or is to be taken to have pleaded not guilty to the charge; and
  - (b) the court considers that the case can properly be disposed of summarily; and
  - (c) the defendant consents to the case being disposed of summarily.
- (8) The court may sentence or otherwise deal with the defendant if—
  - (a) the court accepts a plea of guilty to a charge; and
  - (b) the court considers that the case can properly be disposed of summarily; and
  - (c) the defendant consents to the case being disposed of summarily.
- (9) Before the Magistrates Court decides whether a case can properly be disposed of summarily, the court must consider the following:
  - (a) any relevant representations made by the defendant;
  - (b) any relevant representations made by the prosecutor in the defendant's presence;
  - (c) whether, if the defendant were found guilty or the defendant's plea of guilty has been accepted by the court, the court is, under this section, empowered to impose an adequate penalty, having regard to the circumstances and the degree of seriousness of the case;
  - (d) any other circumstances that appear to the court to make it more appropriate for the case to be dealt with on indictment rather than summarily.

- (10) Before the Childrens Court decides whether a case can properly be disposed of summarily, the court must consider the following:
- (a) relevant representations made by the defendant;
  - (b) relevant representations made by the prosecutor in the defendant's presence;
  - (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 defendant's age;
  - (g) the defendant's apparent maturity;
  - (h) the defendant's apparent mental capacity;
  - (i) the suitability of the penalties that the court is empowered to impose;
  - (j) the difficulty of any question of law that is likely to arise.
- (11) If the court accepts a plea of guilty to a charge under this section, and—
- (a) the court considers that the case cannot properly be disposed of summarily; or
  - (b) the defendant has not consented to the case being disposed of summarily;

the *Magistrates Court Act 1930*, section 90A (7) to (13) applies in relation to the defendant as if the court had accepted a plea of guilty to the charge under that section.

- (12) If the court disposes of a case summarily under this section and convicts the defendant of the offence, the court must not impose a penalty that exceeds—
- (a) a fine of \$5 000, imprisonment for 2 years or both; or
  - (b) if the maximum penalty provided for the offence by the law creating it is less than the penalty mentioned in paragraph (a)—the maximum penalty.
- (13) In this section:
- Magistrates Court* does not include the Childrens Court.

**[1.20] Dictionary, new definitions**

*insert*

***child***, for subdivision 10.7.2 (Preliminary procedures in relation to children and young people)—see section 252D.

***committed*** an offence, for subdivision 10.7.2 (Preliminary procedures in relation to children and young people)—see section 252D.

***daily care responsibility***—see the *Children and Young People Act 2008*, section 19.

***long-term care responsibility***—see the *Children and Young People Act 2008*, section 20.

***Magistrates Court***, for part 13—see section 300.

***under restraint***, for subdivision 10.7.2 (Preliminary procedures in relation to children and young people)—see section 252D.

***young person***, for subdivision 10.7.2 (Preliminary procedures in relation to children and young people)—see section 252D.

## **Part 1.4**                      **Crimes (Sentence Administration) Act 2005**

### **[1.21] Section 18 (1), new note**

*insert*

*Note*     For a young remandee, see s 320E.

### **[1.22] Section 95 (1)**

*after*

offender

*insert*

(other than a young offender)

### **[1.23] Section 96 (1)**

*after*

offender

*insert*

(other than a young offender)

### **[1.24] New section 102 (4)**

*insert*

(4) This section does not apply in relation to a young offender.

*Note*     For young offenders, see s 320G (Young offenders—breach of good behaviour obligations).

### **[1.25] Section 172 (1) (b)**

*omit*

or a young offender

**[1.26] Section 172 (2)**

*omit*

**[1.27] Section 213**

*substitute*

**213 Meaning of *registered victim***

In this Act:

*registered victim*—

- (a) in relation to an offence by an offender (other than a young offender)—means a victim of the offender about whom information is entered in the register kept under section 215; and
- (b) in relation to an offence by a young offender—means a victim of the young offender about whom information is entered in the register kept under section 215A.

**[1.28] Sections 215 and 216**

*substitute*

**215 Victims register—offenders other than young offenders**

- (1) The chief executive must maintain a register of victims of offenders.
- (2) The chief executive must enter in the register information about a victim of an offender that the victim, or someone acting for the victim, asks the chief executive to enter in the register.
- (3) As soon as practicable after entering the victim's information in the register, the chief executive must give the victim information, orally or in writing, about the following:
  - (a) the role of the board;



- (b) the rights of registered victims under section 216 to information about offenders who are sentenced;
  - (c) the role of victims under chapter 7 (Parole) and part 13.1 (Release on licence) in relation to the release of an offender from imprisonment under a parole order or licence.
- (4) If the victim is a child under 15 years old, the chief executive may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 2008*.
- (5) Subsection (4) does not limit the cases in which the chief executive may give information to a person acting for a victim.
- (6) In this section:  
*offender* does not include a young offender.

**215A Victims register—young offenders**

- (1) The chief executive must maintain a register of victims of young offenders.
- (2) The chief executive must enter in the register information about a victim of a young offender that the victim, or someone acting for the victim, asks the chief executive to enter in the register.
- (3) As soon as practicable after entering the victim's information in the register, the chief executive must give the victim information, orally or in writing, about the rights of registered victims under section 216A to information about young offenders who are sentenced.
- (4) If the victim is a child under 15 years old, the chief executive may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 2008*.
- (5) Subsection (4) does not limit the cases in which the chief executive may give information to a person acting for a victim.

(6) In this section:

*chief executive* means the chief executive responsible for the *Children and Young People Act 2008*.

## 216 Disclosures to registered victims—offenders other than young offenders

(1) If an offender has been sentenced, the chief executive may disclose information about the offender to a registered victim of the offender if satisfied the disclosure is appropriate in the circumstances.

### Examples—disclosures

- 1 any non-association order or place restriction order that applies to the offender
- 2 if the offender is subject to periodic detention—the offender’s periodic detention period, reporting place and reporting time
- 3 if the offender is under a good behaviour order—the place where the offender may do community service work or attend a rehabilitation program
- 4 if the offender is serving a sentence of imprisonment by full-time detention—
  - the correctional centre where the offender is detained;
  - the offender’s classification in detention;
  - the transfer of the offender between correctional centres, including NSW correctional centres;
  - the offender’s parole eligibility date;
  - any unescorted leave given to the offender under the *Corrections Management Act 2007*;
  - the death or escape of, or any other exceptional event relating to, the offender.

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

- (2) If the victim is a child under 15 years old, the chief executive may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 2008*.

*Note* The *Crimes (Sentencing) Act 2005*, s 136 (Information exchanges between criminal justice entities) also deals with information about a victim of an offence.

- (3) Subsection (2) does not limit the cases in which the chief executive may give information to a person acting for a victim.

- (4) In this section:

*offender* does not include a young offender.

## **216A Disclosures to registered victims—young offenders**

- (1) If a young offender has been sentenced, the chief executive may disclose information about the young offender to a registered victim of the young offender if satisfied the disclosure is appropriate in the circumstances.

### **Examples—disclosures**

- 1 any non-association order or place restriction order that applies to the young offender
- 2 if the young offender is under a good behaviour order—the place where the young offender may do community service work or attend a rehabilitation program
- 3 if the young offender is to be released from imprisonment—when and where the young offender will be released

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

- (2) However, the chief executive must not disclose identifying information for the young offender unless the offence was a personal violence offence and the chief executive believes that the victim, or a family member of the victim, may come into contact with the young offender.

**Examples**

- 1 the victim and young offender live in the same neighbourhood and may see each other at the local shopping centre
- 2 the victim and young offender may be enrolled at the same school

- (3) If the victim is a child under 15 years old, the chief executive may give the information to a person who has parental responsibility for the victim under the *Children and Young People Act 2008*.

*Note* The *Crimes (Sentencing) Act 2005*, s 136 (Information exchanges between criminal justice entities) also deals with information about a victim of an offence.

- (4) Subsection (3) does not limit the cases in which the chief executive may give information to a person acting for a victim.
- (5) In this section:

**chief executive** means the chief executive responsible for the *Children and Young People Act 2008*.

**domestic violence offence**—see the *Domestic Violence and Protection Orders Act 2001*, section 9 (2).

**personal violence offence** means—

- (a) an offence that involves causing harm, or threatening to cause harm, to anyone; or
- (b) a domestic violence offence.

---

**[1.29] Section 314A, new dot point**

*insert*

- the *Children and Young People Act 2008*

**[1.30] New chapter 14A**

*insert*

## **Chapter 14A Sentence administration— young offenders**

### **Part 14A.1 General**

#### **320A Purpose—ch 14A**

- (1) The purpose of this chapter is to set out particular provisions that apply to administration of sentences of young offenders.
- (2) Except as provided in this chapter or otherwise in this Act, this Act applies to young offenders in the same way as it applies to other offenders.

*Note* See dict, def *offender* (it includes a young offender).

#### **320B Youth justice principles to be considered**

- (1) An entity exercising a function under this Act must consider the youth justice principles when dealing with a young offender.
- (2) In this section:

*youth justice principles*—see the *Children and Young People Act 2008*, section 94.

#### **320C Young offenders and remandees—references to correctional centre, corrections officer and Corrections Management Act**

- (1) A reference in part 4.2 (Serving full-time detention) to a correctional centre or an ACT correctional centre is, in relation to a CYP young offender, a reference to a detention place under the *Children and Young People Act 2008*.

- (2) In subsection (1), *CYP young offender* means a young offender required under the *Crimes (Sentencing) Act 2005*, section 133H to serve his or her sentence of imprisonment at a detention place.
- (3) The reference in section 105 (Good behaviour—agreement to attend court) to a corrections officer is, in relation to a CYP young offender, a reference to a youth detention officer under the *Children and Young People Act 2008*.
- (4) In subsection (3), *CYP young offender* means a young offender for whom the chief executive (CYP) is responsible in accordance with a decision under section 320F (Young offenders—administration of sentences other than imprisonment).
- (5) A reference in this Act to the *Corrections Management Act 2007* is, in relation to a young offender in detention under the *Children and Young People Act 2008* or a young remandee, a reference to that Act.

**320D Young offenders and remandees—references to chief executive**

- (1) A reference in this Act to the chief executive is, in relation to a function to be exercised in relation to a CYP young offender or a young remandee, a reference to the chief executive responsible for the *Children and Young People Act 2008*.
- (2) In this section:  
*CYP young offender* means—
  - (a) a young offender serving a sentence of imprisonment at a detention place; or
  - (b) a young offender serving a sentence (other than a sentence of imprisonment)—
    - (i) who is under 18 years old; or

- (ii) who is over 18 years old and for whom the chief executive (CYP) is responsible in accordance with a decision under section 320F (Young offenders—administration of sentences other than imprisonment).

**320E Young remandees—remand to be at detention place**

- (1) This section applies (instead of section 18 (1)) to a young remandee.
- (2) The chief executive must—
  - (a) keep the young remandee in custody under full time detention under this Act and the *Children and Young People Act 2008* under the order for remand; and
  - (b) return the young remandee to the remanding authority as ordered by the remanding authority.

**320F Young offenders—administration of sentences other than imprisonment**

- (1) This section applies to a young offender who is serving a sentence (other than a sentence of imprisonment) and becomes an adult.
- (2) The chief executive responsible for this Act and the chief executive responsible for the *Children and Young People Act 2008* must decide which of them is to be the responsible chief executive for matters relating to the sentence and the young offender under this Act.

**320G Young offenders—breach of good behaviour obligations**

- (1) If an authorised person believes on reasonable grounds that a young offender has breached any of the young offender's good behaviour obligations, the authorised person may report the belief to the sentencing court.

- (2) The report must be—
  - (a) in writing; and
  - (b) accompanied by a copy of a written record in support of the authorised person's belief.
- (3) In this section:

*authorised person* means an authorised person under the *Children and Young People Act 2008*.

### **320H Sentencing court to deal with breaches**

- (1) This section applies if—
  - (a) a court imposed a sentence on a person as a young offender; and
  - (b) the person is required to be dealt with by a court for a breach in relation to the sentence.
- (2) The breach must be dealt with by the court that imposed the sentence, whether or not the person is still under 18 years old.

### **320I Young offenders—transfer**

Chapter 11 (Transfer of prisoners) does not apply to a young offender who is subject to an ACT sentence of imprisonment unless the young offender is imprisoned in a correctional centre.

### **320J Young offenders—transfer of community-based sentences**

Chapter 12 (Transfer of community-based sentences) does not apply to a young offender who is under 18 years old (see section 262 (1)).



## **Part 14A.2            Young offenders—                                  accommodation orders**

### **320K            Accommodation orders—contraventions**

A young offender in relation to whom an accommodation order is in force contravenes the order if the young offender contravenes the reasonable lawful directions of—

- (a) if the order is to live at a place—the person in charge of the place; or
- (b) if the order is to live with a person—the person.

### **320L            Accommodation orders—resentencing for breach**

- (1) This section applies if a young offender breaches an accommodation order, or a condition of an accommodation order, in force for the young offender.
- (2) The court may resentence the young offender for the offence in relation to which the accommodation order was made.
- (3) In resentencing the young offender, the court must take into account the following (in addition to any other matters the court considers should be taken into account):
  - (a) the fact that the accommodation order was made;
  - (b) anything done under the order;
  - (c) any other order made for the offence for which the accommodation order was made, and anything done under that other order.
- (4) In resentencing the young offender, the court must not impose a penalty that, when taken together with a penalty previously imposed for the offence for which the accommodation order was made, is greater than the maximum penalty the court could have imposed for that offence.

**[1.31] Dictionary, new definitions**

*insert*

*accommodation order*—see the *Crimes (Sentencing) Act 2005*, section 133V.

*chief executive (CYP)* means the chief executive responsible for the *Children and Young People Act 2008*.

**[1.32] Dictionary, definition of *offender*, paragraph (a)**

*substitute*

- (a) means a person convicted or found guilty of an offence by a court, and includes a young offender; but

**[1.33] Dictionary, definition of *victims register***

*omit*

**[1.34] Dictionary, new definition of *young offender***

*insert*

*young offender* means a person who—

- (a) has been convicted or found guilty of an offence by a court; and  
(b) was under 18 years old when the offence was committed.

**[1.35] Dictionary, new definition of *young remandee***

*insert*

*young remandee* means a remandee—

- (a) who is under 18 years old; or  
(b) who is over 18 years old but under 21 years old and is on remand in relation to an offence alleged to have been committed when he or she was under 18 years old.

## **Part 1.5 Crimes (Sentencing) Act 2005**

### **[1.36] Section 7 (2), new note**

*insert*

*Note* However, see s 133C in relation to the sentencing of a young offender.

### **[1.37] Section 8, definition of *offender*, paragraph (a)**

*substitute*

(a) means a person convicted or found guilty of an offence by a court, and includes a young offender; but

### **[1.38] Section 9, note 1, 1st dot point**

*substitute*

- imprisonment served by full-time detention at a correctional centre or detention place (see s 10, ch 5 and s 133H)

### **[1.39] Section 9, note 1, new dot point**

*insert*

- accommodation order (young offenders only) (see pt 8A.3).

### **[1.40] Section 10 (2), new note 2**

*insert*

*Note 2* See s 133G for additional matters that apply in sentencing a young offender to imprisonment.

### **[1.41] Section 10 (3), note**

*substitute*

*Note 1* For a young offender who is under 21 years old when the sentence is imposed, see s 133H.

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

**[1.42] Section 12 (4), new note 2**

*insert*

*Note 2* For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

**[1.43] Section 13 (3) (a), new note**

*insert*

*Note* This paragraph does not apply to a young offender (see s 133M).

**[1.44] Section 13 (3), note 2**

*substitute*

*Note 2* See s 133M for additional conditions available for young offenders (education and training conditions and supervision conditions).

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

**[1.45] Section 14 (6), new note 2**

*insert*

*Note 2* For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

**[1.46] Section 16 (4), new note 2**

*insert*

*Note 2* For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

**[1.47] Section 17 (5), new note 2**

*insert*

*Note 2* For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

**[1.48] Section 23 (1), new note**

*insert*

*Note* See s 133I for an additional consideration that applies in sentencing a young offender.

**[1.49] Section 25 (2), new note**

*insert*

*Note* For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

**[1.50] Section 29 (1) (a), note**

*substitute*

*Note* A sentence of imprisonment must be served by full-time detention at a correctional centre or detention place unless the court otherwise orders, or the offender is released from detention under this Act or another territory law (see s 10 (3) and s 133H).

**[1.51] Section 29 (1), example 2, 1st dot point**

*omit*

(ie full-time detention at a correctional centre)

**[1.52] Section 31 (c), example, 1st dot point**

*omit*

(ie full-time detention at a correctional centre)

**[1.53] Section 33 (1), new note**

*insert*

*Note* See s 133D for additional considerations that apply in sentencing a young offender.

**[1.54] Section 40A, new note**

*insert*

*Note* See s 133E for additional pre-sentence report matters for young offenders.

**[1.55] New section 41 (7)**

*insert*

(7) In this section:

*chief executive* means—

- (a) for a report about a young offender—the chief executive (CYP); and
- (b) for any other report—the chief executive responsible for this Act.

**[1.56] New section 43 (1) (b) (iiia)**

*insert*

- (iiia) for a report for a young offender—a parent or anyone else who has parental responsibility for the young offender under the *Children and Young People Act 2008*;

**[1.57] New section 43 (1A)**

*insert*

- (1A) However, an assessor may make a request under subsection (1) (b) (iiia) in relation to a young offender who is an adult only with the young offender's consent.

**[1.58] Section 64 (3), definition of *excluded sentence of imprisonment*, new paragraph (f)**

*insert*

(f) a sentence of imprisonment imposed on a young offender.

**[1.59] New section 77 (1A)**

*insert*

(1A) The court must not set a periodic detention period for a young offender unless the periodic detention is to be served when the young offender is an adult.

**[1.60] Section 82 (1) (c)**

*after*

correctional centre

*insert*

or detention place

**[1.61] Section 84 (1), note 2**

*substitute*

*Note 2* For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

*Note 3* If the order is part of a combination sentence, a single notice may be given for the sentences (see Legislation Act, s 49).

**[1.62] New section 84 (5)**

*insert*

(5) In this section:

*chief executive* means—

- (a) for an order made for a young offender—the chief executive (CYP); and
- (b) for any other order—the chief executive responsible for this Act.

**[1.63] Section 85, note 1**

*substitute*

*Note 1* The number of hours that may be required to be performed for a community service condition is at least 20 hours and not more than 500 hours or, for a young offender, not more than 200 hours (see s 91 and s 133L).

**[1.64] Section 91 (1), new note**

*insert*

*Note* For a young offender, the maximum is 200 hours (see s 133L).

**[1.65] Section 92 (3), new note**

*insert*

*Note* For a young offender, the maximum is 200 hours (see s 133L).

**[1.66] Section 103 (1), new note 2**

*insert*

*Note 2* For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).



**[1.67] New section 103 (4)**

*insert*

(4) In this section:

*chief executive* means—

- (a) for an order made for a young offender—the chief executive (CYP); and
- (b) for any other order—the chief executive responsible for this Act.

**[1.68] Section 113 (1), note**

*omit*

**[1.69] Section 113 (2), new notes**

*insert*

*Note 1* If the order is part of a combination sentence, a single notice may be given for the sentences (see Legislation Act, s 49).

*Note 2* For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

**[1.70] Section 121 (2), note**

*substitute*

*Note 1* The offender must also be given written notice of any bail conditions (see *Bail Act 1992*, s 34).

*Note 2* For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

**[1.71] New section 126 (5)**

*insert*

(5) In this section:

*chief executive* means—

- (a) if the offender is under 18 years old when the application is made—the chief executive (CYP); and
- (b) in any other case—the chief executive responsible for this Act.

**[1.72] New section 127 (3)**

*insert*

(3) In this section:

*chief executive* means—

- (a) if the offender is under 18 years old when the notice is given—the chief executive (CYP); and
- (b) in any other case—the chief executive responsible for this Act.

**[1.73] Section 129 (5), new note**

*insert*

*Note* For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

**[1.74] New section 129 (7)**

*insert*

(7) In this section:

*chief executive* means—

- (a) if the offender is under 18 years old when the amendment order is made—the chief executive (CYP); and
- (b) in any other case—the chief executive responsible for this Act.

**[1.75] Section 130 (4), new note**

*insert*

*Note* For a young offender who is under 18 years old, the notice and order must also be given to a parent or person with parental responsibility (see s 133J).

**[1.76] New section 130 (6)**

*insert*

(6) In this section:

*chief executive* means—

- (a) if the offender is under 18 years old when the cancellation order is made—the chief executive (CYP); and
- (b) in any other case—the chief executive responsible for this Act.

**[1.77] New chapter 8A**

*insert*

## **Chapter 8A Sentencing young offenders**

### **Part 8A.1 General**

#### **133A Purpose—ch 8A**

- (1) The purpose of this chapter is to set out particular provisions that apply to the sentencing of young offenders.
- (2) Except as provided in this chapter or otherwise in this Act, this Act applies to young offenders in the same way as it applies to other offenders.

**133B Meaning of *young offender*—Act**

In this Act:

*young offender* means a person who—

- (a) has been convicted or found guilty of an offence by a court;  
and
- (b) was under 18 years old when the offence was committed.

**133C Young offenders—purposes of sentencing**

- (1) Despite section 7 (2), in sentencing a young offender, a court must consider the purpose of promoting the rehabilitation of the young offender and may give more weight to that purpose than it gives to any of the other purposes stated in section 7 (1).
- (2) Also, in sentencing a young offender, a court must have particular regard to the common law principle of individualised justice.

**133D Young offenders—sentencing—additional relevant considerations**

- (1) In deciding how a young offender should be sentenced (if at all) for an offence, a court must consider the following matters:
  - (a) the young offender’s culpability for the offence having regard to his or her maturity;
  - (b) the young offender’s state of development;
  - (c) the past and present family circumstances of the young offender.
- (2) This section applies in addition to section 33 (Sentencing—relevant considerations).

**133E Young offenders—pre-sentence report matters**

- (1) Each of the following is a *pre-sentence report matter* in relation to a young offender:
  - (a) the young offender's culpability for the offence having regard to his or her maturity;
  - (b) the young offender's state of development;
  - (c) the past and present family circumstances of the young offender.
- (2) This section applies in addition to section 40A (Pre-sentence report matters).

**133F Young offenders—chief executive may give court information about availability of resources**

The chief executive (CYP) may give the court information about the availability of resources that would be needed to give effect to an order the court may make in relation to a young offender under this Act.

**133G Young offenders—sentences of imprisonment**

- (1) This section applies if a court is sentencing a young offender to imprisonment under section 10.

*Note* Section 10 allows a court to sentence an offender to imprisonment if satisfied that no other penalty is appropriate.
- (2) The sentence of imprisonment must be a last resort and for the shortest appropriate term.
- (3) The court must consider making a combination sentence consisting of—
  - (a) the sentence of imprisonment; and

(b) a good behaviour order with a supervision condition.

*Note* There is no provision for the setting of a nonparole period for a sentence of imprisonment imposed on a young offender (see s 64 (3), def *excluded sentence of imprisonment*).

(4) The court must not sentence the young offender to imprisonment for life.

### **133H Young offenders—imprisonment to be at detention place**

(1) This section applies (instead of section 10 (3)) if a court sentences a young offender to imprisonment and the young offender is under 21 years old when the sentence is imposed.

(2) The sentence must be served by full-time detention at a detention place unless the young offender is—

(a) released from full-time detention under this Act or another territory law; or

(b) transferred to a correctional centre under the *Children and Young People Act 2008*.

### **133I Young offenders—non-association and place restriction orders**

A court must not make a non-association order or place restriction order for a young offender unless satisfied that the order would not—

(a) interfere with the young offender's access to appropriate education or training; or

(b) disproportionately interfere with the young offender's access to public transport or accommodation.

*Note* Pt 3.4 makes provision for non-association orders and place restriction orders for offenders.

**133J Young offenders—notice of orders to parent etc**

- (1) This section applies if written notice of an order and a copy of the order is required to be given to a young offender under any of the following:
- (a) section 12 (4) (Suspended sentences);
  - (b) section 14 (6) (Fines—orders to pay);
  - (c) section 16 (4) (Driver licence disqualification orders—motor vehicle theft);
  - (d) section 17 (5) (Non-conviction orders—general);
  - (e) section 25 (2) (Non-association and place restriction orders—explanation and official notice);
  - (f) section 84 (1) (Imprisonment—official notice of sentence);
  - (g) section 103 (1) (Good behaviour orders—official notice of order);
  - (h) section 113 (2) (Reparation orders—official notice of order);
  - (i) section 121 (2) (Deferred sentence orders—explanation and official notice of effect);
  - (j) section 129 (5) (Deferred sentence orders—when amendments take effect);
  - (k) section 130 (4) (Deferred sentence orders—when cancellation takes effect).
- (2) If the young offender is under 18 years old, the court must ensure that the notice and a copy of the order is also given to a parent of the young offender and anyone else who has parental responsibility for the young offender under the *Children and Young People Act 2008*.

**133K Young offenders—references to corrections officer**

A reference in this Act to a corrections officer is, in relation to a young offender, a reference to a youth detention officer under the *Children and Young People Act 2008*.

**Part 8A.2 Young offenders—good behaviour orders**

**Division 8A.2.1 Young offenders—good behaviour orders generally**

**133L Young offenders—community service—hours to be performed**

- (1) The number of hours of community service work required to be performed for a community service condition in a good behaviour order for a young offender—
  - (a) must be at least 20 hours and not more than 200 hours; and
  - (b) must not interfere with the young offender's access to appropriate education or training.
- (2) The period during which the community service work is required to be completed under the community service condition must be not longer than 12 months.
- (3) Section 92 (3) (Community service—concurrent and consecutive orders) applies in relation to a young offender as if the reference to 500 hours were a reference to 200 hours.

**133M Young offenders—good behaviour orders—conditions**

- (1) A good behaviour order for a young offender must not include a condition mentioned in section 13 (3) (a) (which is about giving security for compliance with an order).



(2) In addition to the conditions mentioned in section 13 (3) (b) to (f), a good behaviour order for a young offender may include—

(a) an education and training condition; and

*Note* An education and training condition must not be included in the order unless the young offender is convicted of the offence (see s 133M).

(b) a supervision condition.

## **Division 8A.2.2 Good behaviour orders—education and training conditions**

### **133N Meaning of *education and training condition*—Act**

In this Act:

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

### **133O Application—div 8A.2.2**

This division applies if a court is considering whether to include an education and training condition in a good behaviour order for a young offender.

### **133P Education and training conditions—convicted young offenders only**

A good behaviour order cannot include an education and training condition unless the young offender has been convicted or found guilty of the offence for which the order is made.

### **133Q Education and training conditions—eligibility**

The court must not include an education and training condition in the good behaviour order unless satisfied that—

- (a) education or training of a particular kind is suitable for the young offender; and
- (b) it is appropriate that the young offender undertake education or training of that kind; and
- (c) a place for the young offender in education or training of that kind is available or will become available within a reasonable time.

**133R Education and training conditions—suitability**

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

- (b) any evidence given by the person who prepared any pre-sentence report for the young offender or who gave relevant sentencing information to the court; or
  - (c) any evidence given by the chief executive (CYP) about the young offender.
- (4) The court must record reasons for its decision to include, or not include, an education and training condition in the good behaviour order if—
- (a) a pre-sentence report recommends, or relevant sentencing information indicates, that the young offender is suitable but the court decides not to include an education and training condition; or
  - (b) a pre-sentence report recommends, or relevant sentencing information indicates, that the young offender is not suitable but the court decides to include an education and training condition.
- (5) Failure to comply with subsection (4) does not invalidate the good behaviour order.

**133S Education and training conditions—maximum period**

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

**133T Education and training conditions—2 or more good behaviour orders**

- (1) This section applies if—
- (a) a young offender is currently subject to an education and training condition under a good behaviour order (an *existing order*); and

- (b) the court makes a further good behaviour order that includes an education and training condition (a *new order*).
- (2) The court may direct how the new order and the existing order work together.
- (3) However, the new order must not require the young offender to undergo education or training as stated in the order for more than 3 years.

### **Division 8A.2.3 Good behaviour orders—supervision conditions**

#### **133U Meaning of *supervision condition*—Act**

- (1) In this Act:
  - supervision condition*, of a good behaviour order for a young offender, means a condition included in the order that—
    - (a) requires the young offender to comply with all reasonable directions given by the chief executive; and
    - (b) allows the chief executive to require information from entities directly supervising the young offender.
- (2) In this section:
  - chief executive* means—
    - (a) if the offender is under 18 years old when the direction is given or the requirement is made—the chief executive (CYP); and
    - (b) in any other case—the chief executive responsible in accordance with a decision made under the *Crimes (Sentence Administration) Act 2005*, section 320F.

**133V Supervision conditions—when required**

- (1) A court must include a supervision condition in a good behaviour order for a young offender if the court has made, or proposes to make, a good behaviour order that includes—
  - (a) a community service condition; or
  - (b) a rehabilitation condition; or
  - (c) an education and training condition.
- (2) Subsection (1) does not limit the circumstances in which the court may include a supervision condition in a good behaviour order.

**133W Supervision conditions—maximum period**

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

**133X Supervision conditions—2 or more good behaviour orders**

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

## Part 8A.3 Young offenders— accommodation orders

### 133Y Meaning of *accommodation order*—Act

(1) In this Act:

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

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

(2) In this section:

*chief executive* means—

- (a) if the offender is under 18 years old when the direction is given—the chief executive (CYP); and
- (b) in any other case—the chief executive responsible in accordance with a decision made under the *Crimes (Sentence Administration) Act 2005*, section 320F.

### 133Z Accommodation orders—convicted young offenders only

If a young offender has been convicted or found guilty of an offence, the court may make an accommodation order for the young offender.

### 133ZA Accommodation orders—eligibility

The court must not make an accommodation order for a young offender unless satisfied that—

- (a) the order would be suitable for the young offender; and

- (b) if the order states that the young offender is to live at a place—  
the person in charge of the place agrees to accommodate the young offender at the place; and
- (c) if the order states that the child is to live with a person—
  - (i) the person is a suitable person to accommodate the young offender; and
  - (ii) the person agrees to the young offender living with the person.

**133ZB Accommodation orders—suitability**

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

- (b) any evidence given by the person who prepared any pre-sentence report for the young offender or who gave relevant sentencing information to the court; or
  - (c) any evidence given by the chief executive (CYP) about the young offender.
- (4) The Court must record reasons for its decision in relation to a young offender if—
- (a) a pre-sentence report recommends, or relevant sentencing information indicates, that an accommodation order be made for the young offender but the court does not make an accommodation order; or
  - (b) a pre-sentence report recommends, or relevant sentencing information indicates, that an accommodation order not be made for the young offender but the court makes an accommodation order.
- (5) Failure to comply with subsection (4) does not invalidate the accommodation order.

**133ZC Accommodation orders—maximum period**

An accommodation order must not be longer than 3 years.

**133ZD Accommodation orders—2 or more orders**

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



**[1.78] Section 136 (4), definition of *criminal justice entity*, paragraph (c)**

*substitute*

- (c) the chief executive responsible for this Act;
- (ca) the chief executive (CYP);

**[1.79] Dictionary, new definition of *accommodation order***

*insert*

*accommodation order*—see section 133Y.

**[1.80] Dictionary, definition of *at***

*substitute*

*at*, in relation to a correctional centre or detention place, includes in the correctional centre or detention place.

**[1.81] Dictionary, new definitions**

*insert*

*chief executive (CYP)* means the chief executive responsible for the *Children and Young People Act 2008*.

*detention place* means a detention place under the *Children and Young People Act 2008*.

*education and training condition*—see section 133N.

**[1.82] Dictionary, definition of *pre-sentence report matter***

*substitute*

*pre-sentence report matter*—

- (a) for part 4.2 (Pre-sentence reports)—see section 40A; and
- (b) for a young offender—see section 133E.

**[1.83] Dictionary, new definitions**

*insert*

*supervision condition*—see section 133U.

*young offender*—see section 133B.

## Part 1.6 Criminal Code 2002

**[1.84] New section 712A**

*in division 7.2.3, insert*

**712A Publishing identifying information about childrens proceedings**

- (1) A person commits an offence if the person publishes information that identifies someone else as a person who is or was a child or young person the subject of a childrens proceeding.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (2) Information that identifies someone includes information that—
- (a) discloses the name, address or suburb of the person, or of a family member of the person; or
  - (b) would allow the identity of the person as a child or young person the subject of a childrens proceeding to be worked out.

**Example—par (b)**

the child's or young person's relationship to another person

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

- (3) This section does not apply if—
- (a) the person the subject of the proceeding is an adult and consents to the publication of the information; or
  - (b) the person the subject of the proceeding has died and—
    - (i) the person’s legal personal representative consents to the publication of the information; or
    - (ii) the information is published more than 100 years after the person’s death.
- (4) To remove any doubt, this section applies to everyone, including, for a proceeding under the *Children and Young People Act 2008*, people required or entitled to attend the proceeding.
- (5) In this section:
- child**—see the *Children and Young People Act 2008*, section 11.
- childrens proceeding**—a child or young person is or was the subject of a childrens proceeding if—
- (a) the child or young person is or was the subject of a proceeding under the *Children and Young People Act 2008*; or
  - (b) any of the following orders is or was in force under that Act for the child or young person:
    - (i) a care and protection order;
    - (ii) an interim care and protection order;
    - (iii) an appraisal order;
    - (iv) a therapeutic protection order; or
    - (v) an interim therapeutic protection order; or
  - (c) the child or young person is or was the subject of a child concern report under that Act; or

- (d) the child or young person is or was the subject of—
  - (i) a proceeding under the *Children and Young People Act 1999*; or
  - (ii) an order or report under that Act that corresponds to an order or report mentioned in paragraph (b) or (c); or
- (e) a chief executive has or had parental responsibility for the child or young person under the *Children and Young People Act 2008* or the *Children and Young People Act 1999*; or
- (f) the child or young person is or was the subject of a criminal proceeding; or
- (g) the child or young person is or was the subject of a proceeding under the *Bail Act 1992*.

**proceeding** includes a proceeding started, or that existed, before the commencement of this section.

**publish** means communicate or disseminate information in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public or anyone else not lawfully entitled to the information.

**young person**—see the *Children and Young People Act 2008*, section 12.

## **Part 1.7**                      **Evidence (Miscellaneous Provisions) Act 1991**

### **[1.85]      New division 4.8**

*insert*

### **Division 4.8**                      **Proceedings against young people**

#### **81A**                      **Exclusion of evidence unlawfully obtained**

- (1) This section applies if, in a proceeding in the Childrens Court against a young person in relation to an offence, the court is satisfied that evidence tendered to the court was obtained in contravention of, or in consequence of a contravention of, the *Crimes Act 1900*, part 10 (Criminal investigation) or the *Crimes Act 1914* (Cwlth).
- (2) The Childrens Court must refuse to admit the evidence in the proceeding unless satisfied that—
  - (a) admission of the evidence is substantially in the public interest in relation to the administration of criminal justice; and
  - (b) the public interest would outweigh any prejudice to the rights of a person, including the young person, that has occurred or is likely to occur as a result of the contravention or the admission of the evidence.
- (3) The matters to which the Childrens Court may have regard in deciding whether it should admit the evidence include—
  - (a) the seriousness of the offence to which the evidence relates, the difficulty of detecting the offender, the need to apprehend the offender and the need to preserve evidence of the facts; and
  - (b) the nature and seriousness of the contravention; and
  - (c) the extent to which the evidence might have been lawfully obtained.

- (4) This section is in addition to, and does not limit, any other law or rule under which the Childrens Court may refuse to admit evidence.

## Part 1.8 Magistrates Court Act 1930

### [1.86] Section 152 (5)

*after*

section 154D (Fine defaulters—imprisonment)

*insert*

or section 154E (Young fine defaulters)

### [1.87] Section 153 (3) (c)

*after*

section 154D (Fine defaulters—imprisonment)

*insert*

or section 154E (Young fine defaulters)

### [1.88] Section 154D (4)

*substitute*

- (4) This section does not apply to a person if—
- (a) the person's liability to pay the fine is derived from a reparation order under the *Crimes (Sentencing) Act 2005*; or
  - (b) section 154E applies to the person.

**[1.89] New sections 154E and 154F**

*insert*

**154E Young fine defaulters**

- (1) This section applies to a fine defaulter if the offence in relation to which the fine was imposed was committed when the person was under 18 years old.
- (2) The court may order the imprisonment of the person if the court—
  - (a) has assessed the person's capacity to pay the fine and is satisfied the person has the capacity to pay; and
  - (b) has offered the person an arrangement under section 152 (Special arrangements) about the payment of the fine; and
  - (c) has notified the road transport authority as required under section 153 (1) (Notice for suspension of driver licence etc).
- (3) The order, or any warrant under the *Crimes (Sentence Administration) Act 2005*, section 12 (Warrant for imprisonment), must not be given effect if the amount of the outstanding fine is paid to the Territory, or to someone acting for the Territory, before the person is imprisoned.
- (4) The period for which the person must be imprisoned is the lesser of—
  - (a) a period worked out at the rate of 1 day for each \$300, or part of \$300, of the outstanding fine; and
  - (b) 7 days.

**154F Young fine defaulters—no capacity to pay**

- (1) This section applies to a fine defaulter if—
  - (a) the offence in relation to which the fine was imposed was committed when the person was under 18 years old; and

- (b) the court—
  - (i) has assessed the person’s capacity to pay the fine; and
  - (ii) is satisfied that the person does not have capacity to pay the fine.
- (2) The court may not order the imprisonment of the person.
- (3) However, the court may (on application or on its own initiative) review the person’s capacity to pay, but not more than once in any 6-month period.

**[1.90] Section 157 (1) (a)**

*after*

section 154D

*insert*

or section 154E

**[1.91] New section 158A**

*insert*

**158A Outstanding fine satisfied by imprisonment—young fine defaulter**

A person imprisoned under section 154E (Young fine defaulters) discharges the person’s liability to pay the outstanding fine—

- (a) at the rate of \$300 for each day or part of a day for which the person is detained under the warrant for imprisonment; or
- (b) if the person is committed for 7 days—at the end of the 7-day period.



**[1.92] New chapter 4A**

*insert*

## **Chapter 4A The Childrens Court**

### **Part 4A.1 The Childrens Court**

#### **287 Childrens Court**

- (1) The Magistrates Court is known as the Childrens Court when it is constituted by the Childrens Court Magistrate exercising the jurisdiction given under section 288.
- (2) The Magistrates Court is also known as the Childrens Court when it is constituted by—
  - (a) a magistrate assigned under section 291C (Assignment of other magistrates for Childrens Court matters) who is exercising the jurisdiction given under section 288; or
  - (b) a magistrate acting under section 291D (2) (Completion of part-heard matters).
- (3) The Childrens Court may use the Magistrates Court seal.

#### **288 Jurisdiction of Childrens Court**

- (1) The Childrens Court has jurisdiction to hear and decide—
  - (a) any criminal proceeding against a person in relation to a summary offence if the person was under 18 years old at the time of the alleged offence; and
  - (b) any criminal proceeding against a person in relation to an indictable offence (other than an offence punishable by imprisonment for life) if the person was under 18 years old at the time of the alleged offence; and

- (c) a proceeding in relation to bail for a child; and
  - (d) any application or other proceeding under the *Children and Young People Act 2008*, including a proceeding transferred to the court under the *Children and Young People Act 2008*, chapter 17 (Care and protection—interstate transfer of orders and proceedings).
- (2) Subsection (1) (b) is subject to the *Crimes Act 1900*, section 375 (Summary disposal of certain cases).
  - (3) Subsection (1) (c) is subject to the *Bail Act 1992*.

**289 Proceedings where children jointly charged with adults**

- (1) If a child and an adult are jointly charged with an offence, section 288 (Jurisdiction of Childrens Court) applies to a proceeding against the child arising out of the charge as if the child had been charged separately.
- (2) Section 288 does not apply to the preliminary examination for an indictable offence alleged to have been committed jointly by a child and an adult if a magistrate, having regard to the nature of the alleged offence and the time and expense involved in carrying out the preliminary examinations separately, orders that the section does not apply.
- (3) To remove any doubt, the *Court Procedures Act 2004*, part 7A (Procedural provisions—proceedings involving children or young people) applies to a proceeding against a child even if the proceeding arises out of an offence for which the child and an adult were jointly charged.

**290 Chief Magistrate to arrange business of Childrens Court**

- (1) The Chief Magistrate is responsible for ensuring the orderly and prompt discharge of the business of the Childrens Court.

- (2) The Chief Magistrate may, subject to appropriate and practicable consultation with the magistrates, make arrangements about—
- (a) the magistrate who is to be the Childrens Court Magistrate; and
  - (b) the assignment of a magistrate under—
    - (i) section 291B (Acting Childrens Court Magistrate); or
    - (ii) section 291C (Assignment of other magistrates for Childrens Court matters).

## **291 Childrens Court Magistrate to hear all matters**

- (1) The Childrens Court Magistrate is responsible for dealing with all matters within the jurisdiction of the Childrens Court.
- (2) Subsection (1) is subject to—
- (a) section 291C (Assignment of other magistrates for Childrens Court matters); and
  - (b) section 291D (Completion of part-heard matters).
- (2) Also, subsection (1) does not prevent a magistrate other than the Childrens Court Magistrate from exercising—
- (a) a function or power given to a magistrate under a provision of the *Children and Young People Act 2008*; or
  - (b) a power given to a magistrate under a territory law to admit a child or young person to bail under the *Bail Act 1992* or to remand a child or young person in custody.

## **Part 4A.2 Childrens Court Magistrate**

### **291A Childrens Court Magistrate**

- (1) The Chief Magistrate must declare 1 magistrate to be the Childrens Court Magistrate for a stated term of not longer than 2 years.

- (2) The Chief Magistrate may declare himself or herself to be the Childrens Court Magistrate.
- (3) The Chief Magistrate must not declare a magistrate to be the Childrens Court Magistrate unless satisfied the magistrate is suitably qualified to be the Childrens Court Magistrate.
- (4) The Chief Magistrate must revoke a declaration under this section if asked, in writing, by the Childrens Court Magistrate.
- (5) A declaration, or revocation, under this section is a notifiable instrument.

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

### **291B Acting Childrens Court Magistrate**

- (1) The Chief Magistrate may assign a magistrate to act as Childrens Court Magistrate only if—
  - (a) there is no Childrens Court Magistrate; or
  - (b) the Childrens Court Magistrate—
    - (i) is absent from duty or from the ACT; or
    - (ii) cannot exercise the functions of the Childrens Court Magistrate for another reason.
- (2) A magistrate assigned to act as Childrens Court Magistrate is the Childrens Court Magistrate for this Act and any other Act.

### **291C Assignment of other magistrates for Childrens Court matters**

- (1) The Chief Magistrate may assign another magistrate to deal with a matter if the Childrens Court Magistrate is unable to deal with the matter—
  - (a) without delay that is likely to prejudice the wellbeing of a child or young person; or

- (b) because of a conflict of interest, or a perceived conflict of interest.
- (2) A magistrate may be assigned under subsection (1) (a) only if the Chief Magistrate is satisfied the assignment is necessary having regard to—
- (a) how the delay is likely to prejudice the child's or young person's wellbeing; and
  - (b) the principle in the *Children and Young People Act 2008*, section 8 that in making a decision under that Act in relation to a particular child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration; and
  - (c) the degree of urgency of the matter to be dealt with by the assigned magistrate; and
  - (d) the views and wishes (if any) of the Childrens Court Magistrate on the proposed assignment.
- (3) This section does not create a right in relation to the assignment of a matter under this section.
- (4) Without limiting subsection (3), the decision to assign or not to assign a matter under this section—
- (a) must not be challenged or called into question in any court; and
  - (b) is not subject to prohibition, mandamus or injunction in any court.
- (5) This section is in addition to, and does not limit, section 291B (Acting Childrens Court Magistrate).

### **291D Completion of part-heard matters**

- (1) This section applies if—
  - (a) a magistrate begins to deal with a Childrens Court matter under this chapter; and
  - (b) before the matter is finally decided, the magistrate ceases to—
    - (i) be the Childrens Court Magistrate; or
    - (ii) hold an assignment under section 291B or section 291C.
- (2) The magistrate may continue to deal with the matter until it is finally decided.

## **Part 4A.3 Criminal proceedings**

### **291E Procedures for hearing indictable offences**

- (1) This section applies if—
  - (a) a child charged with an indictable offence is brought before the Childrens Court; and
  - (b) the court—
    - (i) has no power to hear and decide the charge summarily; or
    - (ii) has the power to hear and decide the charge summarily, but decides not to.
- (2) The Childrens Court must deal with the charge as if—
  - (a) the charge were a charge for an indictable offence to which this Act applied; and
  - (b) the Childrens Court were the Magistrates Court; and
  - (c) any necessary changes were made.

**291F Childrens Court may adjourn hearings to allow access to legal advice**

- (1) This section applies to a charge for an indictable offence against a child that the Childrens Court is hearing summarily.
- (2) The court may, at any time, adjourn the hearing to allow any of the following people to get legal advice:
  - (a) the child;
  - (b) a parent of the child;
  - (c) someone else who has daily care responsibility, or long-term care responsibility, for the child.

- (3) In this section:

*daily care responsibility*—see the *Children and Young People Act 2008*, section 19.

*long-term care responsibility*—see the *Children and Young People Act 2008*, section 20.

**291G Childrens Court may send cases to Supreme Court for sentencing**

- (1) This section applies if the Childrens Court convicts a person of an indictable offence.
- (2) The Childrens Court may, by order, commit the person to the Supreme Court for sentence if satisfied that—
  - (a) sentence should be passed on the person by the Supreme Court because of the character and history of the person; or
  - (b) the sentence that is likely to be appropriate is a sentence the Childrens Court does not have power to impose.

- (3) In deciding whether to make an order under subsection (2) (a), the Childrens Court must consider any report provided under the *Court Procedures Act 2004*, section 74D (Court may order report about young person).
- (4) If the Childrens Court makes an order under subsection (2), the Supreme Court may deal with the person as if the person had been convicted of the offence in the Supreme Court.



## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- administrative appeals tribunal
- administrative unit
- adult
- chief executive (see s 163)
- chief police officer
- children and young people commissioner
- Childrens Court
- corrections officer
- dentist
- director of corrective services
- disallowable instrument (see s 9)
- doctor
- domestic partner (see s 169 (1))
- entity
- Executive
- function
- human rights commission
- indictable offence (s 190)
- individual
- in relation to
- intersex person (see s 169B)
- judge
- lawyer
- legal aid commission
- magistrate

- mental health tribunal
- midwife
- Minister (see s 162)
- notifiable instrument (see s 10)
- nurse
- ombudsman
- parent
- penalty unit (see s 133)
- police officer
- privacy commissioner
- public advocate
- public employee
- public servant
- State
- statutory office holder
- territory authority
- territory instrumentality
- the Territory
- transgender person (see s 169A (1) and (2))
- working day.

**Aboriginal** means a person who—

- (a) is a descendant of the indigenous inhabitants of Australia; and
- (b) either—
  - (i) for any person—regards himself or herself as an Aboriginal; or
  - (ii) if the person is a child—is regarded as an Aboriginal by a parent or family member; and
- (c) is accepted as an Aboriginal by an Aboriginal community.

**Aboriginal and Torres Strait Islander organisation** means an organisation whose purpose is to represent the interests of Aboriginal and Torres Strait Islander people.

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***abuse***, of a child or young person—see section 342.

***accredited person***—

- (a) in relation to a young detainee, for chapter 6 (Criminal matters—detention places)—see section 137; and
- (b) for a child or young person in therapeutic protection, division 16.3.3—see section 576.

***accused detainee***, for chapter 8 (Criminal matters—discipline at detention places)—see section 286.

***administrator***, for chapter 8 (Criminal matters—discipline at detention places)—see section 286.

***admission***, of a young detainee to a detention place, for part 6.4 (Admission to detention places)—see section 155.

***affected child***, for division 20.4.3 (Childcare service licences—suspension and cancellation)—see section 759.

***allegation report***, for chapter 8 (Criminal matters—discipline at detention places)—see section 293.

***annual review report***, for a reviewable care and protection order, for chapter 14 (Care and protection—care and protection orders )—see section 494.

***application***, for chapter 19 (Care and protection—provisions applying to all proceedings under care and protection chapters)—see section 695.

***appraisal order***, for the care and protection chapters—see section 372.

***approved research project***, for chapter 22 (Research involving children and young people)—see section 805.

***assessment order***, for the care and protection chapters—see section 436.

***at risk of abuse or neglect***, in the care and protection chapters—see section 344.

***authorised assessor***—see section 438.

***authorised person***—see section 26.

***behaviour breach***—see section 287.

***behaviour management consequence***—

- (a) for part 8.3 (Dealing with minor behaviour breaches)—see section 298; and
- (b) for part 8.4 (Disciplinary action—behaviour breach charged)—see section 318.

***behaviour management framework***, for chapter 8 (Criminal matters—discipline at detention places)—see section 286.

***body*** includes an agency or organisation.

***body search***—

- (a) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and
- (b) for part 16.3 (Children and young people in therapeutic protection)—see section 588.

***cancellation notice***, for chapter 20 (Childcare services)—see section 766.

***care and protection appraisal***—see section 366.

***care and protection assessment***, for the care and protection chapters—see section 367.

***care and protection chapters***—see section 336.

***care and protection order***—see section 422.

***care and protection principles***—see section 350.

***care entities***, for division 15.4.3 (Information to be kept by foster carers and residential care services)—see section 526.

***care plan***—see section 455.

***case management plan***, for chapter 6 (Criminal matters—detention places)—see section 137.

***charge***, for chapter 8 (Criminal matters—discipline at detention places)—see section 286.

***charge notice***, for chapter 8 (Criminal matters—discipline at detention places)—see section 296.

***child***—see section 11.

***childcare centre***—see section 733.

***childcare service***—see section 732.

***childcare service licence***, for chapter 20 (Childcare services)—see section 728.

***childcare services standards***—see section 887 (2) (e).

***childcare worker***, for chapter 20 (Childcare services)—see section 728.

***child concern report***, for part 11.1 (Care and protection—reporting abuse and neglect)—see section 353.

***children and young people employment standards***—see section 887 (2) (f).

***child welfare law***, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 640.

***child welfare order***, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 638.

***child welfare proceeding***, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 639.

**compliance notice**, for chapter 20 (Childcare services)—see section 760.

**compliance suspension notice**, for chapter 20 (Childcare services)—see section 761.

**conduct**—see the Criminal Code, section 13.

**confidential report**—see section 876.

**connected**, for chapter 23 (Enforcement)—see section 812.

**contact**—see section 348.

**contact provision**, in a care and protection chapter—see section 485.

**contrary to the best interests of a child or young person**, for chapter 21 (Employment of children and young people)—see section 780.

**controlled drug**—see the Criminal Code, section 600.

**controlling person**, for a childcare service or proposed childcare service, for chapter 20 (Childcare services)—see section 736.

**court**, for part 25.4 (Courts and investigative entities)—see section 864.

**court cell** means a cell (however described) for the detention of a person at a court.

**criminal matters chapters**—see section 91.

**daily care responsibility**—see section 19.

**dangerous thing**, for part 16.3 (Children and young people in therapeutic protection)—see section 590.

**decision-maker** includes any court exercising jurisdiction under this Act.

**detention place** means a place declared to be a detention place under section 142.

***disciplinary action***, for chapter 8 (Criminal matters—discipline at detention places)—see section 317.

***divulge***, for chapter 25 (Information secrecy and sharing)—see section 842.

***domestic violence***, for division 14.3.5 (Orders under Domestic Violence and Protection Orders Act)—see section 458.

***drug***, for Part 6.7 (Alcohol and drug testing)—see section 235.

***drug of dependence***—see the *Drugs of Dependence Act 1989*, section 3 (1).

***drug testing standards***—see section 887 (2) (b).

***drug use provision***, in a care and protection order, for the care and protection chapters—see section 488.

***DVPO final protection order***, for division 14.3.5 (Orders under Domestic Violence and Protection Orders Act)—see section 458.

***DVPO interim protection order***, for division 14.3.5 (Orders under Domestic Violence and Protection Orders Act)—see section 458.

***DVPO protection order***, for division 14.3.5 (Orders under Domestic Violence and Protection Orders Act)—see section 458.

***educational institution***, for chapter 21 (Employment of children and young people)—see section 780.

***emergency action***—see section 405.

***emergency action release order***—see section 416.

***employment***, for chapter 21 (Employment of children and young people)—see section 781.

***employment conditions notice***, for chapter 21 (Employment of children and young people)—see section 790.

***employment prohibition notice***, for chapter 21 (Employment of children and young people)—see section 788.

***enduring parental responsibility provision***, in the care and protection chapters—see section 481.

***engage in conduct***—see the Criminal Code, section 13.

***entitled child or young person***, for part 2.3 (Official visitors)—see section 37.

***escort officer*** means—

- (a) a police officer; or
- (b) a corrections officer; or
- (c) a youth detention officer.

***ethics committee***, for chapter 22 (Research involving children and young people)—see section 805.

***external reviewer***—

- (a) for division 6.6.3 (Segregation)—see section 204; and
- (b) for division 8.4.3 (External review of internal review decisions)—see section 308.

***family day care scheme***—see section 734.

***family group conference***—see section 75.

***family group conference agreement***—see section 76.

***family group conference facilitator***—see section 78.

***family group conference outcome report***, for chapter 3 (Family group conferences)—see section 88.

***family group conference standards***—see section 887 (2) (a).

***family member***, of a person—see section 13.

***former caregiver***, of a child or young person, for the care and protection chapters—see section 347.

***foster carer***, for a child or young person—see section 510.



***foster care service***—see section 515.

***frisk search***—

- (a) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and
- (b) for part 16.3 (Children and young people in therapeutic protection)—see section 586.

***general parental authority***—see section 515.

***government agency*** for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 637.

***harmful conduct***, engaged in by a child or young person—see section 533.

***health care assessment*** means an assessment of the child's or young person's physical or mental wellbeing (including admission to hospital).

***health care treatment*** means treatment of an illness, disability, disorder or condition by a health professional.

***health facility*** means a hospital or other facility where health services are provided.

***health professional*** means a health professional registered under the *Health Professionals Act 2004* or someone who is a health professional registered under a corresponding law of a local jurisdiction within the meaning of that Act.

***health segregation direction***, for division 6.6.3 (Segregation)—see section 204.

***health service***—see the *Health Professionals Act 2004*, section 15.

***hearing***, for a review, for chapter 8 (Criminal matters—discipline at detention places)—see section 286.

***high risk employment***, for part 21.4 (Employment of children and young people under school-leaving age)—see section 794.

**information**, for chapter 25 (Information secrecy and sharing)—see section 842.

**information holder**, for chapter 25 (Information secrecy and sharing)—see section 843.

**information sharing entity**, for part 25.3 (Sharing protected information)—see section 859.

**information sharing standards**—see section 887 (2) (i).

**in need of care and protection**—see section 345.

**in need of emergency care and protection**, for the care and protection chapters—see section 403.

**in need of emergency therapeutic protection**—see section 404.

**intention to cancel notice**, for chapter 20 (Childcare services)—see section 764.

**interim care and protection order**, for chapter 14 (Care and protection—care and protection orders)—see section 433.

**interim child welfare order**, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 661.

**interim therapeutic protection order**—see section 543.

**interstate care and protection report**—see section 845 (2), definition of **interstate care and protection information**, paragraph (a).

**interstate child welfare order**—see section 666.

**interstate law**, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 641.

**interstate leave permit**—see section 242.

**interstate officer**, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 642.

**interstate proceedings transfer order**—see section 672.

***in therapeutic protection***—see section 572.

***investigative entity*** means an entity with power to require the production of documents or the answering of questions including, for example, the chief police officer, the human rights commission, the public advocate and the ombudsman.

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

***investigator***, for part 8.2 (Responding to behaviour breaches)—see section 291.

***kinship carer***, for a child or young person—see section 509.

***licensed childcare service***, for chapter 20 (Childcare services)—see section 728.

***licensed proprietor***, of a childcare service, for chapter 20 (Childcare services)—see section 728.

***light work***, for part 21.4 (Employment of children and young people under school-leaving age)—see section 793.

***long-term care responsibility***—see section 20.

***long-term parental responsibility provision***, for the care and protection chapters—see section 479.

***mail*** means postal mail.

***mandatory report***—see section 356.

***mental dysfunction***—see section 530.

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

***mental health tribunal provision***—see section 491.

***mental illness***—see section 530.

**Minister of a State**, for part 5.2 (Interstate transfers)—see section 114.

**minor behaviour breach**, for chapter 8 (Criminal matters—discipline at detention places)—see section 288.

**neglect**—see section 343.

**nominated person**, for a young detainee—see section 185 (2) (n).

**non-treating doctor**—

- (a) for chapter 6 (Criminal matters—detention places)—see section 137; and
- (b) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and
- (c) for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 530.

**non-treating nurse**—

- (a) for part 6.7 (Alcohol and drug testing)—see section 235; and
- (b) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and
- (c) for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 530.

**non-treating health professional**—

- (a) for the criminal matters chapters—see section 98; and
- (b) for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 530.

**occupier**, for chapter 23 (Enforcement)—see section 812.

**offence**—

- (a) includes an offence against a Commonwealth law; and
- (b) for chapter 23 (Enforcement)—see section 812.

**official visitor** means a person appointed as an official visitor under section 38.

**operating entity**, for a therapeutic protection place or place of care, means—

- (a) if the Territory operates the place—the chief executive; or
- (b) in any other case—the entity that operates the place.

**operating procedure**, for chapter 6 (Criminal matters—detention places) and chapter 7 (Criminal matters—search and seizure at detention places) means an operating procedure made by the chief executive under section 143.

**order**, for chapter 24 (Appeals and review), includes a decision.

**ordinary search**—

- (a) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and
- (b) for part 16.3 (Children and young people in therapeutic protection)—see section 587.

**out-of-home carer**—see section 508.

**out-of-home carer authorisation**—see section 515.

**out-of-home care standards**—see section 887 (2) (c).

**owner**, of a thing—

- (a) for part 7.9 (Seizing property)—see section 279; and
- (b) for division 16.3.6 (Seizing dangerous things)—see section 620.

**paediatrician** means a doctor who is registered under the *Health Professionals Regulation 2004* in the specialist area of paediatric medicine.

**parental responsibility**—see division 1.3.2.

**parental responsibility provision**, for the care and protection chapters—see section 474.

**participant**, for chapter 3 (Family group conferences)—see section 73.

**participating state**—for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 637.

**parties**, for chapter 3 (Family group conferences)—see section 73.

**party**—

- (a) for part 12.3 (Voluntary agreement to share parental responsibility with chief executive)—see section 396; and
- (b) for an application, for the care and protection chapters—see section 700.

**personal information**, about a child or young person, for division 15.4.3 (Information to be kept by foster carers and residential care services)—see section 526.

**person responsible**, for a young offender, for part 5.2 (Interstate transfers)—see section 114.

**place** includes premises.

**placement**, for a child or young person, for division 19.4.5—see section 526.

**place of care** means a place approved as a place of care under section 525.

**police cell** means a cell (however described) for the detention of a person at a police station.

**positive test sample**, for part 6.7 (Alcohol and drug testing)—see section 236.

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**possession**, of a thing, includes the following:

- (a) receiving or obtaining possession of the thing;
- (b) having control over the disposition of the thing (whether or not having custody of the thing);
- (c) having joint possession of the thing.

**prenatal report**—see section 362.

**privilege**, for chapter 8 (Criminal matters—discipline at detention places)—see section 289.

**privileged**, in relation to material, for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246.

**produce**, for part 25.4 (Courts and investigative entities)—see section 864.

**prohibited area**, for a criminal matters chapter—see section 147.

**prohibited thing**—

- (a) for chapter 6 (Criminal matters—detention places)—see section 137; and
- (b) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246.

**proposed controlling person**, for a childcare service, for chapter 20 (Childcare services)—see section 728.

**proposed proprietor**, for a childcare service, for chapter 20 (Childcare services)—see section 728.

**proprietor**, of a childcare service, for chapter 20 (Childcare services)—see section 735.

**protected information**—see section 844.

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

**provision**, in a care and protection order, for chapter 14 (Care and protection—care and protection orders)—see section 421.

**psychiatrist** means a doctor who is registered under the *Health Professionals Regulation 2004* in the specialist area of psychiatry.

**receiving State**, for part 5.2 (Interstate transfers)—see section 114.

**registered**, for a family group conference, for Chapter 12 (Care and protection—voluntary agreements to transfer or share parental responsibility)—see section 389.

**register of young detainees**, for chapter 6 (Criminal matters—detention places)—see section 137.

**relevant conference participant**, for a family group conference about a child or young person—see section 73.

**relevant presiding officer**, for division 8.4.4 (Disciplinary action generally)—see section 316.

**reporting and investigation procedures** means the procedures made by the chief executive under section 294.

**representative**, for a child or young person, means a lawyer or other person representing the child or young person, but does not include a child or young person who represents himself or herself.

**requirement notice**, for part 2.4 (Suitable entities for purposes under Act)—see section 68.

**researcher**, for a research project, for chapter 22 (Research involving children and young people)—see section 805.

**research project**, for a research project, for chapter 22 (Research involving children and young people)—see section 806.

**research standards**—see section 887 (2) (h).

**residence provision**, for the care and protection chapters—see section 484.

**residential care service**—see section 511



**responsible person**, for a childcare service, for chapter 20 (Childcare services)—see section 738.

**review**, for chapter 8 (Criminal matters—discipline at detention places)—see section 286.

**reviewable care and protection order**, for chapter 14 (Care and protection—care and protection orders)—see section 493.

**review officer**—

- (a) for division 8.4.2 (Internal review)—see section 303; and
- (b) for chapter 9 (Criminal matters—conduct of disciplinary reviews)—see section 322.

**risk assessment**, for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 534.

**safe custody warrant**—see section 684.

**safe room segregation direction**, for division 6.6.3 (Segregation)—see section 204.

**safety and wellbeing information**, for division 25.3.2 (Sharing safety and wellbeing information)—see section 858.

**scanning search**—

- (a) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and
- (b) for part 16.3 (Children and young people in therapeutic protection)—see section 585.

**school** means—

- (a) a government or non-government school under the *Education Act 2004*; or
- (b) an educational institution conducted by the Canberra Institute of Technology.

***school-leaving age***—see the *Education Act 2004*, dictionary.

*Note* The *Education Act 2004*, dictionary defines school-leaving age as 15 years old.

***security classification***, for chapter 6 (Criminal matters—detention places)—see section 137.

***segregation***, for division 6.6.3 (Segregation)—see section 204.

***segregation direction***—

- (a) for division 6.6.3 (Segregation)—see section 204; but
- (b) for subdivision 6.6.3.4 (Review of certain segregation directions)—see section 216.

***sending State***—

- (a) for part 5.2 (Interstate transfers)—see section 114; and
- (b) for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 637.

***sensitive information***—see section 845.

***short-term parental responsibility provision***, in a care and protection order, for the care and protection chapters—see section 476.

***sibling***, of a child or young person, includes a stepbrother or stepsister of the child or young person and a half-brother or half-sister of the child or young person.

***significant harm***, for the care and protection chapters—see section 341.

***significant person***, for a child or young person—see section 14.

***specific issues provision***—see section 492.

***specific parental authority***—see section 515.

***stability proposal***, for a child or young person—see section 456.

**State**—

- (a) for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 637; and
- (b) for chapter 25 (Information secrecy and sharing) see section 842 (2).

**State Childrens Court**, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 637.

**strip search**—

- (a) for chapter 7 (Criminal matters—search and seizure at detention places)—see section 246; and
- (b) for part 16.3 (Children and young people in therapeutic protection)—see section 589.

**suitability information**—see section 65.

**suitability information notice**, for part 2.4 (Suitable entities for purposes under Act)—see section 66 (2).

**suitable entities register**, for part 2.4 (Suitable entities for purposes under the Act)—see section 72.

**suitable entity**, to provide a service—see section 61.

**supervision provision**, for the care and protection chapters—see section 489.

**support person**, of an accused detainee—

- (a) for chapter 8 (Criminal matters—discipline at detention places)—see section 286; and
- (b) for chapter 9 (Criminal matters—conduct of disciplinary reviews)—see section 286.

**temporary parental responsibility provision**, in the care and protection chapters—see section 373.

**test sample**, for part 6.7 (Alcohol and drug testing)—see section 235.

**therapeutic protection history**—see section 537.

**therapeutic protection order**—see section 532.

**therapeutic protection person**, for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 530.

**therapeutic protection place**—see section 535.

**therapeutic protection plan**—see section 536.

**therapeutic protection standards**—see section 887 (2) (d).

**Torres Strait Islander** means a person who—

- (a) is a descendant of the indigenous inhabitants of the Torres Strait Islands; and
- (b) either—
  - (i) for any person—regards himself or herself as a Torres Strait Islander; or
  - (ii) if the person is a child—is regarded as a Torres Strait Islander by a parent or family member; and
- (c) is accepted as a Torres Strait Islander by a Torres Strait Islander community.

**transfer agreement**, for part 5.2 (Interstate transfers)—see section 115.

**transfer arrangement**, means a transfer arrangement under section 116 (Transfer arrangements—general) or, if the transfer arrangement has been amended by another transfer arrangement under that section, the transfer arrangement as amended.

**transfer escort**, for part 5.2 (Interstate transfers)—see section 114.

**transfer order**—for part 5.2 (Interstate transfers)—see section 120.

**transition plan**, for chapter 16 (Care and protection—therapeutic protection of children and young people)—see section 538.

**treating doctor**, for the criminal matters chapters—see section 97.

**visiting conditions**, for chapter 6 (Criminal matters—detention places)—see section 137.

**visitor**, for chapter 6 (Criminal matters—detention places)—see section 137.

**voluntary care agreement**—see section 394.

**voluntary report**—see section 354.

**welfare body**, for chapter 17 (Care and protection—interstate transfer of orders and proceedings)—see section 637.

**work experience**, for chapter 21 (Employment of children and young people)—see section 780.

**work experience standards**—see section 887 (2) (g).

**young detainee**—see section 95.

**young offender** means—

(a) a person who—

(i) has been convicted or found guilty of an offence by a court; and

(ii) was under 18 years old when the offence was committed; but

(b) for part 5.2 (Interstate transfers)—see section 114.

**young person**—see section 12.

**young remandee**, for chapter 6 (Criminal matters—detention places)—see section 137.

**youth detention officer**, for the criminal matters chapters—see section 96.

*youth detention policy*, for chapter 6 (Criminal matters—detention places)—see section 137.

*youth justice principles*—see section 94.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 6 March 2008.

**2 Notification**

Notified under the Legislation Act on 17 July 2008.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Children and Young People Bill 2008, which was passed by the Legislative Assembly on 1 July 2008.

Acting Clerk of the Legislative Assembly

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