

EXPLANATORY STATEMENT

CHILDREN'S SERVICES ORDINANCE 1986 No. 13, 1986  
CHILDREN'S SERVICES (MISCELLANEOUS AMENDMENTS) ORDINANCE 1986

The Children's Services Ordinance 1986 is based on the Australian Law Reform Commission's Report on Child Welfare in the ACT, and the House of Assembly's consideration of that Report.

Whilst the underlying policy of the Australian Law Reform Commission has been adopted, the draft Ordinance annexed to the Commission's Report has been recast to reflect present drafting practice, and to adopt recent reforms to criminal procedure and sentencing.

The Children's Services Ordinance 1986 repeals existing child welfare legislation in the ACT and reforms the law in relation to child welfare as follows:

- welfare services
  - ... provision for the establishment of the Director of Welfare; the Youth Advocate; the Children's Services Council and the Standing Committee of that Council
  - a policy of an integrated approach to the special needs and problems of children is expressly adopted.
- young offenders
  - clear legislative guidelines are placed on the procedures relating to arrest, interview and taking of fingerprints and photographs of children;
  - the policy of diverting children from the Court system by the police (or other authorised persons); whenever appropriate, is adopted and express recognition is given to the system of police warnings as a specific alternative to Court proceedings;
  - where it is appropriate that a child be brought before a Court, the Court is required to adapt its processes to the child's understanding;
  - when a child is prosecuted he or she is to be given all the protection of an adult facing a similar charge;
  - the appointment of a specialist Children's Magistrate is provided for;
  - existing ineffective and antiquated penalties are replaced by an extensive range of sentencing options designed to protect the community but at the same time reflect the special needs of children;

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- . a system of on-going review of children remaining subject to Court orders by the Youth Advocate is provided to ensure that the changing needs of children can be accommodated.
- children in need of care
  - . existing antiquated procedures which result in children who are in need of care being charged with a criminal offence are abolished;
  - . a new procedure to deal efficiently and effectively with children who are genuinely in need of care is provided;
  - . the Office of the Youth Advocate with the full range of powers, functions and responsibilities envisaged by the Australian Law Reform Commission is created to oversight this area;
  - . reliance on court proceedings is minimised.
- abused children
  - . emergency procedures are provided to protect children who are at risk of being abused;
  - . compulsory reporting of abused children is provided;
  - . offences for abusing children are created.
- child care services
  - . a new licensing system is provided which has been designed to protect children placed in child care facilities and control the operating of these facilities without creating an unnecessarily bureaucratic system.
- children in employment
  - . new procedures to protect children, who are particularly liable to exploitation in employment, are introduced.

The Children's Services (Miscellaneous Amendments) Ordinance 1986 makes amendments to a number of Ordinances and the Remand Centres Regulations consequential to the proposed repeal of the Child Welfare Ordinance 1957.

Details of the Children's Services Ordinance 1986 are set out in Attachment "A" and details of the Children's Services (Miscellaneous Amendments) Ordinance 1986 are set out in Attachment "B".

ATTACHMENT "A"

CHILDREN'S SERVICES ORDINANCE 1986

PART 1 PRELIMINARY

Clause 1 provides that the short title of the proposed Ordinance is the Children's Services Ordinance 1986.

Clause 2 provides for the Ordinance to come into operation on a date to be fixed by the Minister for Territories.

Clause 3 repeals existing child welfare legislation and makes transitional provisions consequent on the repeal.

- Sub-clause 1 repeals the ordinances specified in the Schedule.
- Sub-clause 2 qualifies the effect of section 38 of the Interpretation Ordinance 1967, which provides that where a prosecution was commenced under an Ordinance which was subsequently repealed, the legal proceedings may be continued and penalty may be imposed as if the repeal had not occurred. Under this provision the Court may also make orders under the Children's Services Ordinance.
- Sub-clause 3 provides that where a child was a ward under the repealed ordinances, the child becomes a ward of the Director.
- Sub-clause 4 qualifies the effect of section 38 of the Interpretation Ordinance 1967 in relation to licences for day care centres granted before the Ordinance commences, which provides that where a licence was issued, the repeal does not affect a privilege obtained. Under this provision such a licence continues for the period originally granted. Such licences are incorporated within the scheme provided in Part VII of the Ordinance.

Clause 4 deals with interpretation.

Clause 5 provides for matters to be considered by official bodies in the exercise of powers affecting children.

- Sub-clause 1 provides that in court proceedings concerning or affecting a child a court shall seek to procure for a child such care, protection, control or guidance as will best lead to the proper development of the personality of the child and to the child's becoming a responsible and useful member of the community.

- Sub-clause 2 provides that in the exercise of a power by a body, authority or person the exercise of which affects a child, the body, authority or person shall seek to procure for a child such care, protection, control or guidance as will best lead to the proper development of the personality of the child and to the child's becoming a responsible and useful member of the community.
- Sub-clause 3 requires the court, body, authority or person to consider the following matters:
  - . the need to strengthen and preserve the relationship between the child and his or her parents and other members of his or her family;
  - . the desirability of leaving the child in his or her own home;
  - . the desirability of allowing the education, training or lawful employment of the child to be continued without interruption or disturbance;
  - . the desirability of ensuring that the child is aware that he or she must bear responsibility for anything that he or she does that is contrary to law; and
  - . the need to protect the community or a particular person from the violent or other unlawful acts of the child.

Clause 6 provides that every Court in the Territory shall endeavour to ensure that the child and other persons present understand the nature, purpose and outcome of any proceedings to which the child is a party.

## PART II ADMINISTRATION

Clause 7 provides for the office of the Director.

- Sub-clause 1 provides that the Minister to appoint the Director of Welfare.
- Sub-clause 2 provides that the Director must be a public servant.

Clause 8 sets out the duties of the Director.

- Sub-clause 1 provides that the Director shall promote the physical, mental, spiritual and social development of children in a normal and healthy manner.
- Sub-clause 2 provides that the Director may provide counselling services and financial and other assistance in relation to the welfare of children.

Clause 9 provides for the office of the Youth Advocate.

- Sub-clause 1 provides that the Minister shall appoint the Youth Advocate.
- Sub-clause 2 provides that the Youth Advocate is to have such functions as are:
  - (i) conferred by the Ordinance;
  - (ii) conferred by any other law of the Territory; and
  - (iii) specified in the instrument of appointment or determined by the Minister.
- Sub-clause 3 provides that the Youth Advocate is to hold office for a term to be specified in the instrument of appointment not exceeding 7 years.
- Sub-clause 4 provides that the Youth Advocate may not be appointed or hold office after attaining 65 years.
- Sub-clause 5 provides that the Minister is to issue to the Youth Advocate a certificate signed by the Minister to the effect that the person is the Youth Advocate.

Clause 10 provides for acting appointments.

- Sub-clause 1 provides that the Minister may appoint a person to act in the offices of Director and Youth Advocate during:
  - . vacancies in the office; or

- . during periods the officer is unable to perform the functions of his or her office.

- Sub-clause 2 provides that the appointment to act may be expressed to have effect only in certain circumstances.
- Sub-clause 3 provides that if the office becomes vacant whilst a person is acting, the person shall continue to act until the Minister otherwise directs, the vacancy is filled or 12 months elapses.
- Sub-clause 4 provides that an appointment under sub-clause 1 ceases to have effect on resignation in writing delivered to the Minister.
- Sub-clause 5 provides that the appointee may exercise all the powers and shall perform all the functions of the office.
- Sub-clause 6 preserves the validity of the actions of the appointee in the event of a defect in the appointment.

Clause 11 deals with the appointment of officers.

- Sub-clause 1 provides that the Director may appoint officers for the purposes of the Ordinance.
- Sub-clauses 2 - 4 provide that such officers shall be issued with identification cards containing a recent photograph of the officer. These cards shall be returned if the officer ceases to be an officer. Failure to return the card results in a penalty of \$100.

Clause 12 provides that the Director and Youth Advocate shall advise and assist the Council and Standing Committee as reasonably requested by those bodies.

Clause 13 establishes the Childrens Services Council.

- Sub-clause 1 constitutes the Childrens Services Council.
- Sub-clauses 2, 3 and 4 provide that the Council shall have as members the following persons:
  - . the Director;
  - . the Childrens Magistrate;
  - . the Youth Advocate;
  - . a person nominated by the ACT Health Authority and appointed by the Minister;

- . a police officer appointed by the Commissioner of Police of the Australian Federal Police;
  - . a member of the House of Assembly nominated by that Assembly and appointed by the Minister;
  - . a court counsellor nominated by the Principal Director of Court Counselling and appointed by the Minister;
  - . a person nominated by the ACT Schools Authority and appointed by the Minister; and
  - . such other persons being persons concerned with children's welfare as the Minister appoints.
- Sub-clause 5 provides that the Director shall be Chairman and shall preside at meetings.
  - Sub-clause 6 provides that the Chairman shall convene meetings and, if the Chairman is absent, the Youth Advocate shall convene the meeting.
  - Sub-clause 7 provides that Meetings shall be convened at least every 3 months.
  - Sub-clause 8 provides that in the absence of the Director the members shall elect a presiding officer.
  - Sub-clause 9 establishes the quorum at 5 members.
  - Sub-clause 10 provides that questions shall be determined by simple majority vote.
  - Sub-clause 11 provides that where voting is equal the person presiding has a casting vote.
  - Sub-clause 12 provides that persons other than the Director or Youth Advocate may appoint a nominee to attend meetings.
  - Sub-clause 13 preserves the validity of the proceedings and decisions of the Council.

Clause 14 provides that the function of the Council is to consider and make recommendations on matters related to children's welfare in the Territory, and, in particular:

- . to consider matters related to the welfare of children referred to it by the Minister;
- . to consider any other matter related to the welfare of children;

- . to make recommendations concerning the welfare of children to a Minister, body, authority or agency concerned with the welfare of children;
- . to make recommendations to the Minister with respect to the granting of money, or the furnishing of other assistance, to a body, authority or agency concerned with the welfare of children;
- . to inform itself concerning matters related to children's welfare;
- . to arrange meetings for the discussion of matters related to the welfare of children;
- . to prepare and issue papers related to the welfare of children; and
- . to arrange for the preparation of statistics with respect to any matter dealt with under this Ordinance or otherwise with respect to the welfare of children.

Clause 15 deals with annual reports.

- Sub-clause 1 provides that the Youth Advocate shall furnish to the Council an annual report.
- Sub-clause 2 provides that the Council shall furnish to the Minister an annual report.
- Sub-clause 3 provides that the Minister shall cause each report to be laid before each House of Parliament and the House of Assembly.

Clause 16 concerns the Standing Committee of the Council.

- Sub-clause 1 establishes a Standing Committee of the Council, consisting of:
  - . the Director;
  - . the Youth Advocate;
  - . the ACT Health Authority nominee; and
  - . the Police nominee.
- Sub-clause 2 provides that the Youth Advocate may invite non-voting observers to a meeting of the standing Committee.
- Sub-clause 3 provides that the Youth Advocate is Chairman of the Standing Committee.



- Sub-clause 4 provides that in his or her absence, the members shall elect a person to preside.
- Sub-clause 5 provides that three members form a quorum.
- Sub-clause 6 provides that the Youth Advocate may (and shall if requested by another member) convene a meeting.
- Sub-clause 7 provides that questions are determined by majority vote.
- Sub-clause 8 provides that the person presiding has a casting vote.
- Sub-clause 9 provides that members other than the Director or Youth Advocate may appoint a nominee to attend meetings. Where an acting appointment for the office of Director or Youth Advocate has been made, the appointee (but not a delegate of the Director - clause 19(1)(b)) may attend the meeting by virtue of clause 10.

Clause 17 provides that the function of the Standing Committee is to make proposals and recommendations as to the welfare of a particular child and to advise (but not direct) the Youth Advocate as to whether or not the Youth Advocate should seek an order that a child is in need of care.

Clause 18 provides for assistance by authorities and agencies to the Youth Advocate, the Director, the Council and the Standing Committee as follows.

- (a) Sub-clause 1 provides that a Public Authority or Agency shall assist the Director and the Youth Advocate in the exercise of their functions or Powers; and
- (b) a Public Authority or Agency of the Territory shall provide assistance to the Council and Standing Committee. At common law assistance between officers of state is absolutely privileged. As every member of the Council or Standing Committee may not be an officer of state the duty to assist is made explicit and consequently such assistance attracts a qualified privilege.

Clause 19 permits delegation of the powers of the Director other than the power of delegation or a power exercisable by the Director as a member of the Council or the Standing Committee.

### **PART III THE CHILDRENS COURT**

Clause 20 gives jurisdiction to the Magistrates Court to hear and determine informations against children and other proceedings concerning children under this Ordinance. When exercising that jurisdiction, the Magistrates Court shall be known as the Childrens Court. Both summary and indictable offences may be commenced by information under section 25 of the Magistrates Court Ordinance 1930.

Provision is made to prevent the validity of certain actions of a magistrate other than the Childrens Magistrate from being called into question.

Clause 21 provides that in deciding whether a person is a child for the purpose of determining jurisdiction, other than in criminal proceedings, the persons age at the commencement of the proceedings shall be used.

Clause 22 provides that, subject to this Ordinance and the Regulations under this Ordinance, procedure in the Childrens Court shall be the same as that in the Magistrates Court. The Attorney-General is given power to make regulations prescribing court procedure and other matters relating to the Childrens Court.

#### **PART IV CHILD OFFENDERS**

##### **DIVISION 1: GENERAL**

Clause 23 provides that this part does not affect the operation of other law unless expressly provided for.

Clause 24 concerns the determination of criminal jurisdiction.

- Sub-clause 1 provides that the jurisdiction of the Court is determined by the age of the child at the time of the offence. If a person is under 18 years at the time of the offence and is still under 18 years at the time of the person's first appearance in Court, the Court procedure and sentencing options are determined under this Part.
- Sub-clause 2 provides that if a person is under 18 years at the time of the offence but is between the ages of 18 years and 18 years and 6 months at the time of the person's first appearance in Court, the Court procedure is determined under this Part, but if the offence is found proved the person is then sentenced as an adult.
- Sub-clause 3 provides that if a person is under 18 years at the time of the offence and over 18 years and 6 months at the time of the person's first appearance in Court, this Ordinance does not apply to the Court procedure nor the sentencing of the person.

Clause 25 provides for cases where a child is jointly charged with an adult.

- Sub-clause 1 provides that where there are two or more people charged with an offence and one of them is a child the Court may deal with the child as if the child was charged separately.
- Sub-clause 2 provides that sub-clause 20(1) does not apply to preliminary examinations on order of the Chief Magistrate having regard to the nature of the offence and the time and expense of separate examinations.

Clause 26 provides for the transfer of criminal proceedings to the Youth Advocate where the child is in need of care.

- Sub-clause 1 provides that if the Court considers a child should be dealt with as a child in need of care, the Court may furnish details of the child to the Youth Advocate.
- Sub-clause 2 provides that the child be then released into the custody of an authorised person and the criminal proceedings dismissed or adjourned indefinitely.
- Sub-clause 3 provides that if the proceedings are adjourned indefinitely, the prosecutor, child or Youth Advocate may have the criminal proceedings relisted.

Clause 27 deals with the age of criminal responsibility.

- Sub-clause 1 restates the common law rule that a child under 8 years is incapable of committing an offence.
- Sub-clause 2 restates the common law presumption that a child between 8 and 14 years cannot commit an offence by reason of his or her incapacity to know that the act or omission was wrong. This presumption can be rebutted by evidence that the child knew that the act or omission was wrong.

Clause 28 deals with the power to apprehend under-age children.

- Sub-clause 1 provides that a Police Officer may apprehend a child under 8 years (and who is under sub-clause 29(1) deemed incapable of committing an offence) where the officer has reasonable grounds to believe that the child is doing something which, but for the child's age, would be an offence. The officer may only use such force as is reasonable and necessary to apprehend the child.
- Sub-clause 2 provides that the officer may enter any premises, by such force as is reasonable and necessary, at any time of the day or night, to apprehend such a child or to search for the child if the officer believes a serious offence has been committed and that the child is on the premises.
- Sub-clause 3 provides that upon apprehending such a child, the police officer shall:
  - . take the child to the child's parent; or
  - . if it is not practicable to do so, place the child with a suitable person and notify the Youth Advocate of his or her actions.

## **DIVISION 2: CRIMINAL PROCEEDINGS AGAINST CHILDREN**

Clause 29 deals with interpretation.

Clause 30 deals with the interview of children.

- Sub-clause 1 provides that in specified circumstances, a child may not be interviewed without a certain person being present. The specified circumstances exist when a police officer:
  - . suspects the child has committed a serious offence or an offence against the person or property;
  - . believes the child may be implicated in such an offence; or
  - . when the police officer is in the company of the child for a purpose connected with the investigation of an offence and the police officer would not allow the child to leave if the child wished to.

The persons who may be present are:

- . a parent;
- . a relative acceptable to the child;
- . a barrister or solicitor; or
- . some other appropriate person acceptable to the child.

However, if a person cannot be present after reasonable steps have been taken to secure them and a period of 2 hours has elapsed, another person, (who may be a police officer not concerned in the investigation), may be present.

- Sub-clause 2 qualifies sub-clause 1 to not require a police officer to permit a person to be present who is believed by the officer on reasonable grounds to be a person who is an accomplice or a person likely to secrete, lose, destroy or fabricate evidence relating to the offence.
- Sub-clause 3 is a definition provision.
- Sub-clause 4 provides that a police officer is not prevented from interviewing a child where it would be reasonable to believe it is necessary to do so without delay in order to avoid
  - . danger of the death of or serious injury to any person; or
  - . serious damage to property.

Clause 31 provides that a police officer shall not arrest a child without a warrant unless he or she believes on reasonable grounds that:

- a) the child is committing or has committed an offence;
- b) the arrest is appropriate to:
  - . ensure the child's appearance in Court;
  - . prevent further offences;
  - . prevent the loss of evidence; or
  - . preserve the safety or physical well-being of the child; and

- c) proceedings by summons would not achieve a purpose in b) above.

Clause 32 provides that when a police officer places a child under restraint, the officer shall take all reasonable steps to notify the child's parents and notify an authorised officer.

Clause 33 limits the institution of criminal proceedings against children.

- Sub-clause 1 provides that a prosecution for a criminal offence shall not be initiated unless an authorised officer has consented in writing.
- Sub-clause 2 preserves the operation of other legislation which requires the approval of other agencies prior to the institution of proceedings.
- Sub-clause 3 provides that in determining whether he or she should consent to a prosecution, the authorised officer shall regard:
  - . the seriousness of the offence;
  - . the evidence available;
  - . the circumstances of the offence;
  - . the child's previous criminal record;
  - . whether the child has been previously warned;
  - . the age of the child;
  - . the maturity of the child;
  - . the mental capacity of the child;
  - . whether the parents are able and prepared to exercise discipline and control over the child;
  - . whether a warning would be sufficient;
  - . the prevalence of such offences;
  - . whether the prosecution would be likely to be inappropriate or harmful to the child.
- Sub-clause 4 provides that where the prosecution is one that requires the consent of another person under any other law, the authorised officer shall make a recommendation and forward it to the person whose consent is required.

- Sub-clause 5 provides that the authorised officer shall only consent if he or she believes a prosecution to be justified.
- Sub-clause 6 provides that where the child is a first offender the authorised officer, shall record in writing his or her reasons for giving consent.
- Sub-clause 7 provides that the authorised officer shall decide whether or not to consent to a prosecution as soon as practicable where the child is being detained and provides that if he or she does not do so within 48 hours and the child is being detained the child shall be released.

Clause 34 provides that a police officer shall not charge a child unless he or she believes that proceeding by way of summons would not be effective. The officer shall have regard to the matters in paragraph 31(b).

Clause 35 provides that a person who charges a child with an offence shall take all reasonable steps to notify the parent of the charge and the time of the first Court appearance.

Clause 36 deals with taking identifying materials from children.

- Sub-clause 1 is an interpretation provision.
- Sub-clause 2 provides that before a police officer takes finger, hand, toe or foot prints, voice recordings, photographs, handwriting samples or body samples from a child, a magistrate must approve the taking of the sample.
- Sub-clause 3 provides that an application must be made to the Childrens Magistrate for the taking of identifying material.
- Sub-clause 4 provides that the Magistrate may approve the application, and if so, shall do so in writing.
- Sub-clause 5 provides that the Magistrate may inform the officer of his or her decision by telephone.

Clause 37 deals with the granting of bail for a child.

- Sub-clause 1 provides that where a child has been charged with an offence and is detained,
  - . the police officer who has charged the child;
  - . the authorised person; and

. the Court

shall consider whether the child should be admitted to bail.

- Sub-clauses 2 and 4 provide that a child has a right to bail and shall be admitted to bail, unless the person considering whether the child should be admitted to bail is satisfied the child should not be admitted to bail after consideration of the following matters:
  - . the probability of the child appearing in Court;
  - . the interests of the child;
  - . the protection of the community;
  - . where a report is furnished to the Court, that report; and
  - . such other matters as are relevant.
- Sub-clause 3 provides that in admitting a child to bail, the Court or officer may order that the child enter into a recognizance (a written promise) with or without a surety that the child will attend Court at a later date.
- Sub-clause 5 is an interpretation provision.
- Sub-clause 6 provides that this clause does not remove any other right the child might have to be admitted to bail.
- Sub-clause 7 provides that the Court may impose such further conditions on the bail as the Court considers are appropriate.

Clause 38 deals with the detention of children.

- Sub-clause 1 provides that where a child has been charged and not admitted to bail, the child shall be detained at a shelter.
- Sub-clause 2 provides that for good cause, the child may be detained at a remand centre.
- Sub-clauses 3 and 4 provide that a child who requires medical attention may be taken to a hospital, and with the consent of the person in charge, detained there. On discharge from hospital, the child shall be returned to the shelter or remand centre.



- Sub-clause 5 provides that a child in custody will be separated from adult offenders whilst at Court or in transit between Court and the shelter, remand centre or hospital.

Clause 39 provides that an arrested child will be brought promptly before a Court. If 48 hours has elapsed from the time the child was arrested and the child has not been taken to Court, the child shall be released.

Clause 40 deals with the admission of evidence which has been unlawfully obtained.

- Sub-clause 1 provides that evidence unlawfully obtained shall be excluded unless the Court is satisfied that:

- a) admission is in the public interest; and
- b) that interest outweighs the prejudice to any individual.

- Sub-clause 2 provides that the Court may take into account:

- a) the seriousness of the offence;
- b) the nature and seriousness of the contravention; and
- c) the extent to which evidence might have lawfully been obtained.

- Sub-clause 3 provides that this provision does not otherwise affect the general laws of evidence concerning the admissibility of evidence.

Clause 41 permits the summary disposal of certain indictable offences.

- Sub-clauses 1 and 2 provide that where a child is charged with an indictable offence (not punishable by imprisonment for life) and the Court is of the opinion that it can be disposed of summarily, the Court may hear and dispose of the charge summarily.

- Sub-clause 3 provides that in determining whether an indictable offence can be disposed of summarily, the Court may take into account:

- . representations made by the defendant;
- . representations made by the prosecutor;
- . the facts of the case;

- . the seriousness of the offence;
- . the circumstances of the offence;
- . the age of the child;
- . the maturity of the child;
- . the mental capacity of the child;
- . the suitability of the penalties that the Court is empowered to impose; and
- . the difficulty of any question of law.

Clause 42 provides that where a child is charged with an indictable offence and the Court does not proceed summarily the Court shall proceed under the provisions of the Magistrates Courts Ordinance.

Clause 43 deals with the right of a child to elect to go to trial.

- Sub-clause 1 provides that the Court shall not proceed to deal with an indictable matter summarily without the consent of the child.
- Sub-clause 2 provides that the Court shall inform the child and the child's parents of sub-clause 1.
- Sub-clauses 3 and 4 provide that where a parent is not present the Court may adjourn the hearing or continue the hearing.
- Sub-clause 5 provides that at any time the Court may adjourn the hearing to enable the child to obtain legal advice.

Clause 44 deals with the committal of a child to the Supreme Court.

- Sub-clause 1 provides that the Court may commit a child to the Supreme Court for sentence where the Court convicts a child of an indictable offence.
- Sub-clause 2 provides that the Supreme Court may deal with the child as though that Court convicted the child.
- Sub-clause 3 provides that before committing a child to the Supreme Court, the Court shall have regard to any welfare report provided to the Court.

Clause 45 provides that where the Court makes an order under clause 45 the Court shall state the reasons for its decision and cause those reasons to be entered in the Court records.

Clause 46 deals with the Supreme Court returning the case to the Childrens Court.

- Sub-clauses 1 and 2 provide that the Supreme Court may remit a matter to the Court if it convicts the child, and the Court may deal with it as though it convicted the child.
- Sub-clause 3 provides that the Supreme Court may give directions as to the custody of the child until the child comes before the Court and the Registrar of the Supreme Court shall notify the Court of its findings.

**Division 3: DISPOSITION OF YOUNG OFFENDERS**

Clause 47 deals with the disposition of young offenders.

- Sub-clause 1 provides that within 6 months of the date of the conviction of a child the Court may make one or more of the following orders:
  - (a) an order reprimanding the child;
  - (b) a conditional discharge order;
  - (c) an order imposing a penalty provided by law;
  - (d) any other order provided by law;
  - (e) where no fine is provided, a fine not exceeding \$1000;
  - (f) reparation or compensation (limited to \$1000);
  - (g) a probation order;
  - (h) an attendance centre order;
  - (i) a residential order (not exceeding 2 years);
  - (j) committal to a State institution (not exceeding 2 years);
  - (k) committal to an ACT institution (not exceeding 6 months).
- Sub-clause 2 provides that the Court may make a residential or committal order and impose a probation order expressed to have effect when the residential or committal order ceases to have effect.
- Sub-clause 3 provides that a conditional discharge order shall specify the conditions to be complied with within a specified time (not exceeding 6 months).

Clause 48 provides that where the Court is satisfied that an offence has been proved but having regard to the circumstances of the case the Court is of the opinion that it should not proceed to convict, the Court shall, within 6 months:

- i) dismiss the charge; or
- ii) make an order set out in paragraphs 47(1) (a), (b), (f) or (g) notwithstanding that a conviction has not been entered.

This provision has the effect of leaving the child without a criminal record.

Clause 49 prohibits certain orders.

- Sub-clause 1 provides that notwithstanding paragraph 46(1)(c) the Court shall not make an order:
  - for the imprisonment of the child (as distinct from the committal of the child to an institution);
  - releasing the child upon the child giving security to be of good behaviour (a common law bond);
  - under paragraph 47(1)(h)(i)(j) or (k) where an adult offender could not be imprisoned, another order would be appropriate, or the period of the detention exceeds that for which an adult offender could be imprisoned.
- Sub-clause 2 provides that this provision does not affect sections 556A or 556B of the Crimes Act 1900 of the State of New South Wales in its application to the Territory.

Clause 50 provides that where a conditional discharge order is made application may be made by a parent or the child to revoke or vary the order.

Clause 51 deals with the breach of conditional discharge orders by the child.

- Sub-clauses 1 and 2 provide that where a child is in breach of a conditional discharge order the Court may direct by order served on parent and child that the child appear before the Court and if the child does not so appear, may issue a warrant for the apprehension of the child.
- Sub-clause 3 provides that the Court may make an order:
  - revoking the conditional discharge order together with a new order under sub-clause 47(1) other than another conditional discharge order; or

- . continuing the conditional discharge order for such period as the Court specifies (with or without a variation of conditions).
- Sub-clause 4 provides that before making an order under sub-clause 3, the Court may take into account the fact that a conditional order (and other orders, if any) had been made and what was done under the order.
- Sub-clause 5 provides that the Court shall not make an order under paragraphs 47(1) (c)-(e), (h)-(k) without first convicting the child, or make an order imposing a penalty which exceeds the maximum penalty the Court could have imposed in respect of the offence.

Clause 52 deals with fines and other like orders.

- Sub-clause 1 is an interpretation provision.
- Sub-clause 2 provides that before fining a child, the Court shall have regard to the ability of the child to comply with the order.
- Sub-clause 3 provides that in making an order the Court may:
  - . allow time for the payment; or
  - . allow payment by installments.
- Sub-clause 4 provides that the child may seek a variation of the order at any time.
- Sub-clause 5 provides that the powers conferred on the Court are in addition to any other powers possessed by the Court.

Clause 53 provides that where the child breaches an order to pay a fine the Court may by order served on parent and child direct the child to appear before the Court and may issue a warrant for the child's apprehension.

Clause 54 deals with the enforcement of fines and other like orders.

- Sub-clause 1 is an interpretation provision.
- Sub-clause 2 provides that the Court may enforce an order that an amount of money be paid by any means open to the Magistrates Court.
- Sub-clause 3 provides that the Court shall not make an order for the imprisonment of a child.

- Sub-clause 4 provides that no warrant committing the child to prison may be issued.
- Sub-clause 5 provides that if the child defaults under the order, the Court may make an order:
  - . reducing the fine;
  - . allowing time for payment;
  - . referred to in paragraphs 47(1)(a)-(d) or (g)-(h);
  - . placing the child in a shelter for a period not exceeding 30 days;
  - . committing the child to an institution or State institution for a period not exceeding 30 days.
- Sub-clause 6 provides that an order placing the child in a shelter or committing a child to an institution shall not be made unless the Court is satisfied that the breach of the order was, in the circumstances, unreasonable.

Clause 55 provides that a probation order may contain conditions requiring a child to be counselled and other conditions which the Court considers in the interests of the welfare of the child. A probation order shall not continue for more than one year unless the Court considers it necessary to specify a period not exceeding 2 years.

Clause 56 deals with the entry and inspection of supervisors in relation to a probation order.

- Sub-clause 1 deals with the situation where a child is the subject of a probation order and is living with the person who normally has the care and control of the child. In such circumstances, the Supervisor may at reasonable time on reasonable grounds enter the premises where the child resides and inspect the premises and the child.
- Sub-clause 2 deals with the situation where a child is the subject of a probation order and is not living with the person who normally has the care and control of the child. In such circumstances, the Supervisor may enter the premises and inspect the premises and child if and only if he or she has the consent of the occupier or has a warrant issued under this clause.
- Sub-clause 3 provides that a Magistrate may issue a warrant authorising the Supervisor to enter with such assistance as is necessary and reasonable force and inspect the premises and the child.

- Sub-clause 4 provides that the Magistrate shall not issue such a warrant unless such evidence as is required by the Magistrate is given and the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

Clause 57 deals with attendance centre orders.

- Sub-clause 1 provides that where the Court makes an order that a child attend an attendance centre, the order shall specify:
  - . the number of occasions the child shall report, or that the child is to report on such number of occasions in each week as the Director from time to time specifies;
  - . the date and time on which the child is to first report; and
  - . such other recommendations as the Court determines.
- Sub-clause 2 provides that the duration of each session at the attendance centre shall be determined by the Director.
- Sub-clause 3 provides that the total time spent at an attendance centre shall not exceed 60 hours each week.
- Sub-clauses 4 and 5 provide that the days and times of required attendance after the first attendance shall be determined by the Director and will be such as to avoid interference in the education, training or genuine religious observation of the child.
- Sub-clause 6 provides that the Director may excuse a child from attending on a particular occasion or during an entire week for good cause.

Clause 58 deals with the duties of a child the subject of an attendance centre order.

- Sub-clause 1 provides that a child is subject to control of the Director or authorised person while the child is:
  - . at the attendance centre;
  - . outside the centre by direction from the Director; or
  - . travelling to the centre.
- Sub-clause 2 provides that such a child may be required to engage in work, training or employment as the Director considers is in the interests of the child.

- Sub-clause 3 provides that before giving directions to the child, the Director shall take into account the religious and conscientious beliefs of the child.
- Sub-clause 4 provides that a child may not work for a person who benefits directly from the work.
- Sub-clause 5 provides that a child is not entitled to any remuneration for work performed.
- Sub-clause 6 provides that the Director shall at all times take into account any recommendation made by the Court concerning the child.
- Sub-clause 7 is an interpretation provision.

Clause 59 deals with compensation of a child the subject of an attendance centre order.

- Sub-clause 1 is an interpretation provision.
- Sub-clause 2 applies the provisions of the Workman's Compensation Ordinance 1951 to a child whilst working pursuant to an attendance centre order as though the child were an employee of the Commonwealth.
- Sub-clauses 3, 4 and 5 determine the amount of compensation payable to such a child and that the amount be paid, in the first instance, to the child's employer.
- Sub-clause 6 provides that no compensation is payable if the child was employed only in work of a casual nature or if the child was unemployed and not qualified to receive an unemployment benefit.

Clause 60 deems certain acts and omissions of the child to be breaches of an attendance centre order.

Clause 61 deals with the breach of probation, attendance centre or residential orders.

- Sub-clause 1 provides that a person who breaches a probation order, attendance centre order, a residential order or a condition of such an order is guilty of an offence.
- Sub-clause 2 provides that in addition to making an order for a new penalty the Court may (with or without proceeding to a conviction) revoke or vary the order or make an order directing the person to comply with the order.



- Sub-clause 3 provides that in making an order under sub-clause 2 the Court may take into account anything done under the order breached.
- Sub-clause 4 provides that the Court shall not make an order which together with the previous order exceeds the maximum penalty a Court could have made.
- Sub-clause 5 provides that the Court may make a probation order commencing when another order ceases to have effect.

Clause 62 deals with the revocation and variation of orders.

- Sub-clause 1 provides that the Youth Advocate or any other person may apply to the Court to revoke or vary a conditional discharge order, a probation order, an attendance centre order, a residential order or an order committing a child to an institution.
- Sub-clause 2 provides for service of documents.
- Sub-clauses 3 and 4 provide that the Court may make any order of the kind in sub-clause 47 which it considers appropriate in the circumstances existing at the time of hearing.
- Sub-clause 5 provides for the conviction of a child as a precondition to the making of certain orders.
- Sub-clause 6 provides that this provision has effect whether the child is in or outside the Territory.

#### DIVISION 4: MISCELLANEOUS

Clause 63 provides that where the Supreme Court, convicts a child of an offence it may make the same orders that the Childrens Court could have made.

Clause 64 deals with the adjournment of proceedings.

- Sub-clause 1 provides that the Court may not adjourn a criminal hearing for periods exceeding 21 days except in special circumstances.
- Sub-clause 2 provides that the Court may make an order relating to the custody of the child during such period.
- Sub-clause 3 provides that in granting bail the Court shall have regard to the matters in sub-clause 37(4).
- Sub-clause 4 provides that the Court shall not order a child to a remand centre except in exceptional circumstances.

Clause 65 deals with the committal of a child to a State Institution. The administrative arrangements of such a committal are the subject of agreement between the ACT and the various states under clause 176.

- Sub-clauses 1 and 2 provide that where a child is committed to a State institution he or she shall be detained in a shelter or remand centre for not more than 14 days (unless the Court otherwise orders or the Director approves in writing) pending removal to the institution.
- Sub-clause 3 provides that the order authorises an officer or police officer to move the child to and from shelters and remand centres.

Clause 66 provides that the provisions of the Remand Centres Ordinance 1976 apply to a child at the Remand Centre.

Clause 67 provides that having regard to a child's excellence in conduct and industry or to special circumstances, the Director may remit a period of committal by one third unless the Court has made a contrary order.

Clause 68 deals with special leave from a shelter or institution.

- Sub-clause 1 provides that the Director may grant leave of absence from an institution or shelter for reasons of education, employment, compassion, health, recreation or participation in a community project or attendance centre programme.
- Sub-clause 2 provides that such periods shall be counted as part of the committal period.
- Sub-clauses 3 and 4 provide that the Director's decision not to grant leave or not to grant the full leave of absence requested may be reviewed by the Court.

Clause 69 provides that the provisions of Part IV are not intended to unduly prejudice any other right or freedom enjoyed by the child including the exercise of the Royal prerogative of mercy.

**PART V CHILD CARE PROCEEDINGS**

**DIVISION 1: PRELIMINARY**

Clause 70 deals with interpretation.

Clause 71 deals with the general circumstances in which a child may be regarded as being in need of care for the purposes of the Ordinance.

- Sub-clause 1 provides that a child is in need of care if:

- . the child has been or is likely to be physically or sexually abused by the child's parents or a member of the child's household or some other person and parents are unable or unwilling to protect the child;
- . the child is living in such conditions that the child's health is or is likely to be impaired; or the child has suffered or is likely to suffer serious psychological damage;
- . the child's behaviour is harmful to him or her and the child's parents or guardians do not control the behaviour;
- . there is no appropriate person to care for the child because:
  - . the child's parents or guardians have abandoned the child or cannot be found; or
  - . the child's parents are dead and the child has no guardian;
- . there is incompatibility between the child and one of the child's parents or guardians; or
- . the child is persistently failing to attend school and the failure is harmful to the child.

- Sub-clause 2 provides that in administering this part, authorised officers, the Youth Advocate and the Court shall have regard for the child's real need for care and shall disregard trivial matters.

Clause 72 provides that if a person appears to be a child then the person may be dealt with under this Part. If it becomes known that such a person is not a child:

- . no further proceeding shall be taken; and
- . if the person is in custody, the person shall be entitled to be released.

**DIVISION 2: CHILD CARE PROCEEDINGS GENERALLY**

Clause 73 deals with proceedings with respect to children in need of care.

- Sub-clause 1 provides that a person authorised by the Minister or a police officer may take a child into his or her custody and place the child in a shelter or approved home or hospital if:
  - it appears to the authorised person that the child is in need of care; and
  - action should be taken to immediately safeguard the welfare of the child.
- Sub-clause 2 extends the operation of sub-clause 1 to children in the Territory who normally reside out of the Territory
- Sub-clause 3 provides that the authorised person shall notify the Youth Advocate of the child's details.
- Sub-clause 4 provides that the Youth Advocate shall keep a written record of all notifications and of any action he or she takes in relation to the child.
- Sub-clause 5 provides that the person who took action under sub-clause 1 shall take all reasonable steps to notify the child's parents as soon as is reasonably practicable of the child's circumstances.

Clause 74 deals with children in need of care who are in hospital.

- Sub-clause 1 provides that a person authorised by the Minister or a police officer may, in writing, direct that a child be detained in hospital if it appears to the person that a child is in need of care or would be in need of care upon leaving hospital.
- Sub-clause 2 extends the operation of sub-clause 1 to children in the Territory who normally reside out of the Territory
- Sub-clause 3 provides that the authorised person shall notify the Youth Advocate of the child's details.
- Sub-clause 4 provides that the Youth Advocate shall keep a written record of all notifications and of any action he or she takes in relation to the child.
- Sub-clause 5 provides that the person who took action under sub-clause 1 shall take all reasonable steps to

notify the child's parents as soon as is reasonably practicable of the child's circumstances.

Clause 75 deals with the actions which the Youth Advocate may take after being informed that a child is in need of care.

- Sub-clause 1 provides that upon being notified that a child is in need of care by a person acting under the last two preceding clauses:
  - . the Youth Advocate shall forthwith notify a Magistrate of the child's circumstances; or
  - . direct the immediate release of the child.
- Sub-clause 2 provides that if the Magistrate takes no action under this provision within 48 hours of the child being taken into custody the child shall be released without the need for a formal hearing.
- Sub-clause 3 provides that the Magistrate may during the 48 hour period specified in sub-clause 2 make an order:
  - . detaining the child for 72 hours; or
  - . releasing the child.
- Sub-clause 4 provides that the Magistrate may make the order in chambers on the basis of information given by the Youth Advocate. If an application is not made under sub-clause 5, the Magistrate may make the order without hearing any person on behalf of the child.
- Sub-clause 5 provides that if a parent, the child or another person having the custody of the child applies to the Magistrate to be heard, the Magistrate shall hear them before making an order. The Magistrate may hear the application by way of a formal hearing.
- Sub-clause 6 provides that a child who is ordered to be detained for a further period of 72 hours by the Magistrate shall be released if that period expires and the child is not detained by further order. Where the child is released all reasonable steps shall be taken to return the child to his or her usual place of living.

Clause 76 deals with orders of detention which may be made by a Magistrate in the course of a formal hearing.

- Sub-clause 1 provides that where a Magistrate makes an order of detention under the previous clause, the Youth Advocate shall make enquiries as to the child's welfare. During the period of the 72 hour detention the Youth Advocate may apply to the Court for an order for a further period of detention under sub-clause 3.

- Sub-clause 2 provides that where the Youth Advocate makes an application for further detention the child will continue to be detained in a shelter, approved home or hospital unless the Court otherwise orders.
- Sub-clauses 3 and 4 provide that a Magistrate may make an order that:
  - . the child be released; or
  - . the child be detained for not more than 7 days at a shelter, approved home or hospital or in the custody of a suitable person
  - . the child be placed in the care of a suitable person for not more than 7 days.
- Sub-clause 5 provides that the Court may make one further order, extending the period of detention under sub-clause 3 by not more than 7 days.

Clause 77 deals with the procedure on application for an order for detention.

- Sub-clause 1 provides that the notification of an application under the preceding clause shall if practicable be given to the person having custody of the child and to at least one of the child's parents (even if the parent is resident out of the Territory).
- Sub-clause 2 provides that each person notified and the child shall be respondents to the application.

Clause 78 provides that the Youth Advocate after consulting with the Standing Committee may make an application to the Court for a declaration that a child is in need of care.

Clause 79 deals with service and parties to an application that a child is in need of care.

- Sub-clause 1 provides that an application under the preceding clause shall, if reasonably practicable, be served on the child (if the child is over 8) and at least one parent and on any other person that the Court directs.
- Sub-clause 2 provides that the child and the parents who are served with the application are the respondents to the application.

Clause 80 deals with the hearing and application of an application that a child is in need of care.

- Sub-clause 1 provides that upon hearing an application that a child is in need of care, the Court may declare that the child is in need of care and make an order under clause 83 or dismiss the application.
- Sub-clause 2 provides that the Court shall not declare that the child is in need of care unless it is satisfied that the child is unlikely to receive suitable care otherwise.
- Sub-clause 3 restates the common law standard of proof applicable in cases concerning the determination of care for children. The legal burden of proof shall be determined on the balance of probabilities.
- Sub-clause 4 provides that if an order is not made within 6 months, the application lapses and the child shall be released.

Clause 81 deals with adjournment of an application that a child is in need of care.

- Sub-clause 1 provides that a hearing may be adjourned from time to time for periods not exceeding 21 days.
- Sub-clause 2 provides that when making an order adjourning an application that a child is in need of care, the Court may order a child to:
  - . live at home;
  - . live with a specific suitable person;
  - . live in an approved home;
  - . live in a shelter; or
  - . be detained at a specific hospital,during the period of an adjournment.

Clause 82 concerns child care conferences convened by the Youth Advocate by direction of the Court.

- Sub-clause 1 provides that where the Youth Advocate has made application to the Court for a declaration that a child is in need of care and the Court has adjourned the hearing of the application, the Court may direct the Youth Advocate to convene a conference to consider the welfare of the child. The Court may order that the child attend the conference and may give leave for the barrister and solicitor acting for the child or another person to attend the conference. A parent of the child and a person who is or may be concerned with the welfare

of the child may attend the conference, and shall attend if so ordered by the Court.

- Sub-clause 2 provides that the Youth Advocate shall attend and preside at the conference and report the result to the Court.
- Sub-clause 3 provides that the Youth Advocate shall keep a written record of the proceedings.
- Sub-clause 4 provides that evidence of anything said or any admissions made at the conference is not admissible in court without either:
  - . the consent of all people present; or
  - . the leave of the Court.
- Sub-clauses 5 and 6 provide that it is an offence for a person who attends a conference to disclose any information furnished at the conference punishable by a fine not exceeding \$2,000 or 12 months imprisonment or both.

Clause 83 deals with the orders a Court may make if it finds that a child is in need of care.

- Sub-clause 1 provides that the following orders may be made by a Court if it finds that a child is in need of care:
  - (a) a supervision order;
  - (b) a residential order;
  - (c) an order of committal to a State institution;
  - (d) an order of committal to a Territory institution; or
  - (e) a wardship order.
- Sub-clause 2 provides that the period during which the order is to have effect must be stipulated in the order.
- Sub-clause 3 provides that an order of wardship or committal shall not be made unless the Court is satisfied that no other order would be in the interests of the welfare of the child.
- Sub-clause 4 provides that a supervision order may include provisions concerning counselling and such other provisions as the Court considers to be in the interests of the child.



- Sub-clause 5 provides that a supervision order may be expressed to have effect when a residential or committal order ceases to have effect.
- Sub-clause 6 provides that a supervision order may also impose conditions on a parent who is a respondent to an application that a child is in need of care.
- Sub-clause 7 provides that an order that a child become a ward may include a provision requiring the Director to consult with a parent of the ward before exercising a power under the wardship.

Clause 84 provides that where the Court makes a residential, committal or wardship order, the Court may grant an applicant access to the child. Before making such an order, the Court shall have regard to the wishes of the child and to the conduct and wishes of the parent and any other person.

Clause 85 deals with entry and inspection where a child is the subject of a residential or supervision order.

- Sub-clause 1 deals with a child who is living with the person who normally has the care and control of the child. The Director or an officer on reasonable grounds at reasonable times may enter and inspect the premises and the child.
- Sub-clause 2 deals with a child who is not living with the person who normally has the care and control of the child. The Director or an officer may only enter the premises with the consent of the occupier of the premises or in pursuance of a warrant.
- Sub-clause 3 provides that the Court may issue a warrant permitting entry with assistance and with such reasonable force as is reasonably necessary.
- Sub-clause 4 provides that the Court shall not issue the warrant unless such further evidence as is required by the Court is given and the Court is satisfied that there are reasonable grounds for issuing the warrant.

Clause 86 deals with children who have been committed to a State institution. The administrative arrangements of such a committal are the subject of agreement between the ACT and the various states under clause 176.

- Sub-clauses 1 and 2 provide that where a child is committed to a State institution he or she shall be detained in a shelter or remand centre for not more than 14 days (unless the Court otherwise orders or the Director approves in writing) pending removal to the institution.

- Sub-clause 3 provides that the order authorises an officer or police officer to move the child to and from shelters and remand centres.

Clause 87 deals with applications by other persons than the Youth Advocate for an application that the child is in need of care.

- Sub-clause 1 provides that where the Youth Advocate does not make an application for an order that a child is in need of care another person, after consulting with the Youth Advocate, may seek leave of the Court to make the application.
- Sub-clause 2 provides that after hearing the person and the Youth Advocate, the Court may make an order permitting the person to make the application.
- Sub-clause 3 provides that the person, in making the application, must serve it on the Youth Advocate. Certain powers and obligations of the Youth Advocate are to be exercised by the person.

Clause 88 concerns the review of orders.

- Sub-clause 1 provides that the Youth Advocate or any other person may apply to the Court to revoke or vary a previous order made under clause 80.
- Sub-clause 2 provides that the Youth Advocate may consult the Standing Committee before making an application.
- Sub-clauses 3, 4, 5 and 6 provide that in making an order under this clause the Court has the same powers as under clause 80 and the Court shall have regard to the child's circumstances at the time of the new hearing. The child need not be in the Territory.
- Sub-clause 7 provides that this clause applies to an order made on appeal.

Clause 89 provides for the periodic review of orders made under this Part.

- Sub-clause 1 provides that the Youth Advocate shall apply to the Court for a review of any order still in force under clause 80 or an order substituted for such an order, within 2 months before the expiration of each period of 12 months after the making of the order.
- Sub-clause 2 provides that the Youth Advocate shall serve a statement concerning the child with each application.

- Sub-clauses 3,4,5 and 6 provide that the Court may revoke or vary the order. A varied order shall be one the Court may make under clause 80, and the Court shall not make a varied order unless it is satisfied that the child is unlikely to receive suitable care unless the Court so acts. The child need not be in the Territory.
- Sub-clause 7 provides that this clause applies to an order made on appeal.
- Sub-clause 8 provides that where the Youth Advocate does not make an application under this clause, the order ceases to have effect 12 months after its making.

Clause 90 provides that copies of applications under clauses 88 and 89 shall be served on:

- . the Youth Advocate;
- . if practicable, at least one of the child's parents;
- . the child (if at least 8 years); and
- . any other person the Court directs.

Clause 91 provides that provisions relating to a hearing under clause 78 are also applicable to a hearing under clause 88 or 89.

Clause 92 provides that where a disagreement arises between a parent and a person having care of the child under this Ordinance, an application may be made by the child, the parent or the person having care of the child (or if an order under clause 83 has been made, the Director) for an order resolving the disagreement. Each of the persons who may apply shall be served and be parties to the application. The procedure under clause 78 is to apply to the hearing.

Clause 93 deals with the procedure at hearings under this Part.

- Sub-clause 1 provides that this clause applies to proceedings under this Part.
- Sub-clause 2 provides that procedure shall be determined by the Court.
- Sub-clause 3 provides that the Court is not bound by the rules of evidence.
- Sub-clause 4 provides that a child or parent is not competent to admit that the child is in need of care.
- Sub-clause 5 provides that the Court may hear submissions from:

- . the Youth Advocate;
  - . a parent or relative;
  - . the child's legal representative;
  - . the next friend of the child;
  - . any other relevant person; and
  - . the child, whether or not the child's legal representative has made representations.
- Sub-clause 6 provides that the Youth Advocate or other person may be represented by a Barrister or a solicitor. Clause 166 also entitles a person authorised by the Youth Advocate or Director to appear.
  - Sub-clause 7 provides that a child may make representations in person to the Court.
  - Sub-clause 8 provides that the Court, for good reason may order a person, including the child or parent, to leave the Court during the hearing.
  - Sub-clause 9 provides that an order is not invalidated by reason only of a failure to comply with this clause.

### DIVISION 3: CHILD CARE AGREEMENTS

Clause 94 provides for Child care agreements.

- Sub-clause 1 provides that at the request of a parent, the Director may approve the placement of a child with a suitable person.
- Sub-clause 2 provides that the Director shall consider the assistance which could be offered by the parents and the child's wishes. The Director shall endeavour to ensure that the child understands any arrangement.
- Sub-clause 3 provides that where the Director approves and the suitable person agrees to the placement, the parent and the Director will enter into a written agreement concerning the care and custody of the child.
- Sub-clauses 4 and 5 provide that the agreement will be in force for 3 months but can be extended for two further periods of not more than 6 months with consent of both parties.

- Sub-clause 6 provides that the Director may also enter into an agreement with the suitable person or with a person or organisation in whose care the child has been placed under clause 85, with respect to the care and custody of the child.
- Sub-clauses 7 and 8 provide that where the Director does not give approval or refuses to extend an agreement the parent may appeal to the Court and the Court may confirm or vary the decision of the Director.

Clause 95 provides that an agreement with a parent or suitable person is neither void nor voidable because of the age of the child.

Clause 96 provides that an agreement under clause 94 with respect to a child who has attained school leaving age shall not be made without the consent of the child, unless the child is incapable of giving consent.

Clause 97 provides that a party to a clause 94 agreement may terminate the agreement with not less than 21 days notice in writing and within 21 days of termination the child shall be returned to the person entitled to custody of the child.

Clause 98 provides that the Director may pay for the expenses of a person or organisation caring for the child under a clause 94 agreement.

Clause 99 deals with contributions by parents.

- Sub-clause 1 provides that where the Court makes an order under paragraph 83 (1)(b),(c),(d) or (e) the Court may also order the parents to contribute a specified amount towards the costs of care.
- Sub-clause 2 provides that an agreement under this Division may require the parents to contribute an amount determined by the Director towards the costs of care.
- Sub-clause 3 provides that such an amount may not exceed the amount paid under clause 98 and is a debt due to the Commonwealth.

#### **DIVISION 4: MISCELLANEOUS**

Clause 100 provides that copies of Orders made by the Court are to be furnished to the Director and the Youth Advocate.

Clause 101 provides that the Court may dispense with service and may make an order for substituted service.

Clause 102 deals with children who run away to a place of safety.

- Sub-clauses 1, 2 and 3 provide that in relation to a child who runs away to a place of safety, the occupant of the place of safety shall, on pain of penalty:

- . where the child appears to be under 8 years, notify the child's parents on pain of penalty of \$500;
- . where the child is 8 years or over, consult with the child to seek permission to notify the child's parents, and:
  - if given permission, notify the parents; or
  - if not given permission, where the child remains for 12 hours, notify the Youth Advocate or the police;

on pain of penalty of \$500;

- . where the place regularly receives and cares for children temporarily, notify the Youth Advocate within 12 hours on pain of penalty of \$1,000.
- Sub-clauses 4 and 5 provide that the Youth Advocate shall make enquiries into the welfare of the child and consider whether an application should be made under Division 2, and shall notify the parents that the child is in a place of safety.

Clause 103 deals with the compulsory reporting of child abuse. It also deals with the notification of children in need of care and child abuse.

- Sub-clause 1 provides that a person who, on reasonable grounds, believes that proceedings should be taken concerning a child under this Part, may notify the Youth Advocate.
- Sub-clause 2 requires that if the person is:
  - . a medical practitioner, dentist, nurse, police officer, teacher or school counsellor;
  - . a person employed in the Department of Territories or by the ACT Health Authority; or
  - . a person providing care at premises in which a licence under Part IV is in force;

and, in the course of his or her work on reasonable grounds becomes aware that a child has suffered physical injury (other than by accident) or has been sexually abused, the person shall notify the Youth Advocate on pain of penalty of \$1,000 or 6 months imprisonment or both.

Clause 104 provides that the Youth Advocate shall keep a record of each notification under clause 103 and of the actions he or she takes in consequence.

Clause 105 protects persons making notifications under the last clause.

- Sub-clause 1 provides that where a person makes a notification under clause 103 in good faith:
  - . the notification is neither a breach of confidence nor of ethics;
  - . no civil or criminal liability is incurred;
  - . the notification is not admissible as evidence in any court; and
  - . no person may be compelled to produce the notification.
- Sub-clause 2 provides that the notification is admissible and the notification may be produced in proceedings before the Childrens Court or in respect to a charge or allegation in relation to the person's exercise of powers or performance of duties under the Ordinance.
- Sub-clause 3 provides that the notification may be received into evidence when tendered by the person who made the notification.

Clause 106 deals with the effect of the child turning 18 years.

- Sub-clause 1 requires that all orders under the Part cease to apply to a child when the person attains 18 years.
- Sub-clause 2 provides that this clause does not apply to a person detained under this Part.

#### PART VI WARDS

Clause 107 provides that a person ceases to be a ward when he or she marries.

Clause 108 provides that where the child is a ward the Director is the child's only guardian to the exclusion of all other persons. A ward outside the Territory continues to be subject to the Director's guardianship.

Clause 109 deals with the meaning of wardship.

- Sub-clause 1 provides that the Director is in the same position in relation to a ward as a natural parent is to a child.
- Sub-clause 2 provides that the Director has the same rights, powers, duties, and liabilities as a natural parent and in particular:
  - . is entitled to the custody of the child;
  - . is responsible for providing for the child; and
  - . is responsible for the well-being generally of the child.

Clause 110 deals with placing the ward in a home.

- Sub-clause 1 provides that the Director may place the child with:
  - . the parent or relative of the child or some other suitable person; or
  - . the person in charge of a home in the ACT approved by the Director, a hospital, a home for the accommodation of children or some other appropriate place.
- Sub-clause 2 provides that the person who becomes entitled to the custody and control of the child has responsibilities for providing for the child and seeing to the well-being of the child (whilst he or she has the care of the child).

Clause 111 provides that in making a decision the Director considers to be in the interests of a ward concerning the religious upbringing of a ward the Director shall take into account:

- . the wishes of the child;
- . the child's previous religious upbringing; and



- . the wishes of the child's parents or any former guardians.

Clause 112 deals with visits to wards.

- Sub-clause 1 provides that at all reasonable times, the Director or officer may visit a ward.
- Sub-clause 2 provides that the person having the care of the ward shall permit them to interview the ward and make such inspections and examinations as they consider necessary.
- Sub-clause 3 provides that before taking an action under sub-clause 2, the Director or officer shall produce their instrument of appointment.
- Sub-clause 4 provides that if the person does not comply the Director may remove the child from the person's care.

Clause 113 deals with wards who run away.

- Sub-clause 1 is an interpretation provision.
- Sub-clause 2 provides that an officer appointed by the Director for this purpose may return a ward who has run away or has been unlawfully removed from proper custody.
- Sub-clause 3 provides that a police officer may assist the officer at the officer's request.

Clause 114 deals with the property of wards.

- Sub-clause 1 provides that the Court may make an order (on the Director's application):
  - . allowing the Director power to manage the ward's property; or
  - . appointing the Public Trustee as manager of the ward's property.
- Sub-clause 2 provides that the Court may make supplementary orders.
- Sub-clause 3 provides that the Court shall not make such an order if some other person (not being the ward) has power to manage the ward's property.
- Sub-clause 4 provides that the Court may make such other orders as are necessary to give effect to the order, may direct that service of documents take place on certain persons, and may determine Court procedure.

Clause 115 provides that the Director may make financial or other assistance available to former wards.

Clause 116 deals with children outside the ACT who are wards.

- Sub-clause 1 provides that the Director may declare a ward from outside the ACT to be a ward if requested to do so by the State or Territory authority having the custody or control of the ward, provided that the child is in or about to come to the ACT.
- Sub-clause 2 provides that this declaration is deemed to be a court order to the effect that the child is a ward of the Director and the Director may make financial arrangements with the authority regarding the child.
- Sub-clause 3 provides that the declaration ceases to have effect if the child ceases to be under the custody and control of the authority.
- Sub-clause 4 provides that the Director may request a State or Territory authority having similar powers to the Director under this clause to do likewise in relation to a ward leaving this territory for that jurisdiction.
- Sub-clause 5 provides that upon such a declaration being made, the functions and duties of the Director are suspended.
- Sub-clause 6 provides that sub-clause 5 does not apply where the Director makes financial or other arrangements with the authority.
- Sub-clause 7 provides that the Director may make financial arrangements with other States and Territories in relation to the ward.
- Sub-clause 8 provides that the Director may arrange for the child to be returned to his or her former custody.

## PART VII CHILDREN'S DAY CARE SERVICES

Clause 117 specifies the type of care to be regulated by this Part.

- Sub-clauses 1 and 4 are an interpretation provisions.
- Sub-clauses 2 and 4 provide that child care is care for more than 8 children who have not attained 12 years or more than 4 children who have not attained 6 years. For the purposes of determining numbers, children who normally live at the place care is being given or who have been placed there in emergency or unexpected circumstances in the past 2 days are excluded but children who are temporarily absent are included.

To be child care for the purposes of this part care must be provided:

- . on a business basis, or a basis incidental to the carrying on of some other business; or
- . as a service to the community or a section of the community, or on a basis incidental to the carrying on of some other service to the community.
- Sub-clause 3 provides that certain kinds of care are expressly excluded from the Part including:
  - . foster care;
  - . care in a place controlled by the Department;
  - . care by the ACT Schools Authority;
  - . care by a person conducting a registered school; or
  - . care by a hospital in relation to child patients.

Clause 118 provides for offences for providing unlicensed care or for breaching a condition of a licence.

Sub-clause 1 provides that it is an offence for a person to provide care without a licence on pain of penalty of \$10,000 (if a company) or \$2,000 if a natural person.

Sub-clause 2 provides that it is an offence for a person who provides care to fail to comply with a condition in a licence on pain of penalty of \$5,000 (if a company) or \$1,000 if a natural person.

Clause 119 provides for the Minister to exempt persons from this Part.

- Sub-clauses 1 and 2 provide that the Minister may by instrument exempt persons otherwise regulated by this Part for a specified time where the Director considers it desirable to do so bearing in mind:
  - . the circumstances of the care;
  - . the number of children involved;
  - . the nature of the premises; or
  - . the days on which care is to be provided.
- Sub-clause 3 provides that the exemption may be revoked or varied by the Minister by instrument.
- Sub-clause 4 provides that the Minister shall not proceed under sub-clause 3 unless at least 28 days previously he or she has given the person providing care an opportunity of providing reasons why the exemption should not be revoked.
- Sub-clause 5 provides that instruments must be published in the Gazette within 21 days.
- Sub-clause 6 provides that the Minister shall lay each instrument before each House of Parliament within 15 days of publication in the Gazette.
- Sub-clause 7 provides that the instruments are subject to disallowance by either House of Parliament within 15 sitting days.

Clause 120 deals with licences. The scheme of the Ordinance is to regulate child care centres through a licencing system.

- Sub-clause 1 provides that the Minister may grant or refuse to grant a licence for child care. Where the Director refuses to grant a licence, the refusal must be in writing served on an applicant.
- Sub-clause 2 provides that application shall be in writing and contain the prescribed details and be accompanied by the determined fee.
- Sub-clause 3 provides that the Minister shall determine the period the licence is to be in force.
- Sub-clause 4 provides that a licence shall include conditions as to:
  - . the period the licence is to remain in force;

- . the maximum number of children for whom care may be provided; and
- . the ages of these children.

A licence may include other conditions as the Minister thinks fit including:

- . the number of supervisors;
  - . supervisor qualifications;
  - . health and safety;
  - . premises and facilities;
  - . insurance;
  - . activities;
  - . management; or
  - . such other conditions as the Minister considers fit.
- Sub-clause 6 provides that the licence remains in force for the period specified in the licence.

Clause 121 provides that where the Minister is satisfied that there is an emergency and the licence should be suspended, the Minister may suspend the licence by notice in writing for a period not exceeding 14 days.

Clause 122 deals with a direction to comply with conditions.

- Sub-clause 1 provides that if a condition in a licence is not being complied with, the Minister may notify the licensee in writing of the non-compliance and that steps may be taken to revoke or suspend the licence if the condition is not complied with.
- Sub-clause 2 provides that the Minister may vary or revoke the condition, having regard to an explanation offered as to the non-compliance.

Clause 123 deals with the cancellation or variation.

- Sub-clause 1 provides that on the application of the licensee, the Minister may cancel or suspend the licence or vary or revoke a condition of the licence.
- Sub-clause 2 provides that the Minister may cancel a licence if the licensee is convicted of the offence of failing to comply with a condition of a licence.

- Sub-clause 3 provides that the Minister may by notice in writing served on the licensee require the licensee to show cause why a licence should not be cancelled or suspended or a condition of a licence be varied, revoked or added to the licence.
- Sub-clause 4 provides that twenty-eight days after service of the notice the Minister may take the action specified in the notice.
- Sub-clause 5 provides that a notice has effect from the date served or such later date as appears on the notice.

Clause 124 deals with the removal of children from unlicensed care.

- Sub-clause 1 provides that where a person regulated under this Part does not have a licence which is in force, the Director or officer may take steps to remove children from the premises by requesting the parent to remove the child or removing the child himself or herself to his or her parents or another suitable person.
- Sub-clause 2 provides that the direction in sub-clause 1 may be given by telephone.
- Sub-clause 3 provides that where the child is not placed with the parents, the Director or officer shall notify the parent, without delay, of the child's whereabouts.

Clause 125 provides that the Director or officer may at any reasonable time enter and inspect premises specified in a licence. They must produce evidence of their appointment or leave the premises.

#### PART VIII EMPLOYMENT OF CHILDREN

Clause 126 is an interpretation section

Clause 127 provides that where an age has been prescribed by Regulation for a particular business, it is an offence punishable by \$10,000 (if a company) and \$2,000 or imprisonment for 12 months or both (if a natural person) to employ a child in that business if the child is under that age.

Clause 128 provides that it is an offence to employ a child who has not attained school leaving age except where:

- . the employment is sanctioned by this Part; or
- . the employment is in relation to a school.

The penalty is \$10,000 (for a company) and \$5,000 or imprisonment for 12 months or both for a natural person.

Clause 129 deals with excepting light work.

- Sub-clause 1 provides that it is not an offence for a child to be employed in light work of the following nature:

- . baby sitting;
- . errands;
- . casual work in or around a private home;
- . golf caddying;
- . clerical work;
- . gardening;
- . selling or delivering newspapers or advertising for the purposes of or at a place providing entertainment;
- . sporting activities;
- . singing, dancing, playing a musical instrument;
- . performing in a media production (not news)
- . as a model;
- . as the subject of photography;
- . in or in connection with a circus; or

. any other prescribed work.

- Sub-clause 2 provides that where the light work will continue for more than 10 hours a week, it is not exempted unless the employer gives the Director a notice containing details of the child and the employment.

Clause 130 provides that it is not an offence for a person to employ a child in a family business.

Clause 131 provides that if permitted employment (light work or family business) constitutes a breach of the Education Ordinance or prejudices the education, health, safety or personal or social development of a child, the employment is not permitted.

Clause 132 provides that the Director must supply a copy of a notice under sub-clause 129(2) to the Secretary under the Education Ordinance.

Clause 133 provides that a person may apply to the Director to employ a child in activity dangerous to the health and safety of a child. The Director may consent to such employment, with conditions relating to the preservation of the health and safety of the child, or may refuse to grant consent. It is an offence to employ a child in such circumstances without the consent of the Director or in contravention of conditions imposed by the Director. The penalty is \$25,000 (for a company) and \$5,000 or imprisonment for 2 years or both for a natural person. The Director must supply a copy of the consent to the Secretary under the Education Ordinance.

Clause 134 provides that this section enables the Director to prohibit employment or specify conditions to be complied with by the employer in employing a child. By notice in writing the Director may, on pain of penalty:

- . prohibit employment of a child if the Director believes on reasonable grounds that the employment may prejudice the education, health, safety or personal or social development of the child; or
- . specify conditions to be complied with by the employer which will preserve the education, health, safety or personal or social development of the child.

The penalty is \$5,000 (for a company) and \$1,000 for a natural person.

Clause 135 provides that an employer is required without fail to do everything to ensure a child's health and safety. The penalty is \$10,000 (for a company) and \$2,000 for a natural person.



Clause 136 provides that a child shall not do things which have the effect of making less effective:

- . measures taken by an employer to ensure the health and safety of the child; or
- . measures taken by an employer in order to comply with a condition to which the employment is subject.

Clause 137 provides that Part VIII is subject to certain provisions of the Education Ordinance 1937:

- . compulsory attendance at school; and
- . granting of certificate exempting a child from attendance at school.

#### PART IX OFFENCES

Clause 138 expedites the proof of age of a child in cases where another person is charged with an offence in relation to the child.

Clause 139 deals with the neglect of children.

- Sub-clause 1 makes it an offence to:

- . ill-treat a child; or
- . fail to provide adequate care to a child.

The penalty for a breach of sub-clause 1 is \$5,000 or imprisonment for 2 years or both.

- Sub-clause 2 makes it an offence to leave a child unattended if the child's health is endangered. The penalty for a breach of sub-clause 2 is \$2,000 or imprisonment for 12 months or both.
- Sub-clause 3 provides that a police officer, doctor or officer appointed by the Director may take immediate steps to safeguard a child who has been left unattended as above.
- Sub-clause 4 provides that such persons are protected against action if they acted in good faith and with reasonable care.
- Sub-clause 5 provides that sub-clause 3 does not affect Part V.

Clause 140 provides that it is an offence punishable by \$1,000 or imprisonment for 6 months or both for a person without lawful authority to cause or arrange the removal of a child from the care of a person into whose care or custody a child has been placed.

Clause 141 provides that it is an offence punishable by \$1,000 or imprisonment for 6 months or both for a person to knowingly make a false or misleading statement for the purposes of the Ordinance.

Clause 142 provides that it is an offence punishable by \$1,000 to tattoo a child without the written permission of a parent.

#### PART X APPEALS

Clause 143 provides that this is an interpretation section.

Clause 144 provides that this section details the jurisdiction of the Supreme Court. The Supreme Court may hear:

- . an appeal against an order under Part IV (Child Offenders) other than an order under clauses 44 and 68;
- . an appeal against a decision that a charge against the child was proved;
- . an appeal against an order under Part V (Child Care Proceedings) or clauses 68, 114 and 166; and
- . an appeal by way of order to review from an order dismissing an information or an order under Part IV (Child Offenders).

This clause does not affect the operation of other laws concerning the appellate jurisdiction of the Supreme Court.

Clause 145 provides that appeals are determined in accordance with existing procedures.

Clause 146 provides that where an appeal by way of order to review has been instituted under the Magistrates Court Ordinance and an order nisi granted, the appellant may not also appeal under this Ordinance.

Clause 147 provides that the Supreme Court on an appeal referred to in clause 146(1)(a) may make orders that could have been made by the Children's Court, but may not make orders which would not have been made by the Children's Court.

Clause 148 provides that the Administrative Appeals Tribunal may review decisions of the Director or Minister under:

- . clause 98
- . clause 120
- . clause 122(2)
- . clause 123
- . clause 133 or
- . clause 134.

## **PART XI MISCELLANEOUS**

### **DIVISION 1: POWERS OF ENTRY AND SEARCH**

Clause 149 deals with interpretation.

Clause 150 provides that the Director or an authorised officer may enter upon property and search for or seize anything connected with an offence if and only if the entry is:

- . in pursuance of a warrant;
- . in circumstances of seriousness and urgency; or
- . with consent of the occupier.

Clause 151 deals with the issuing of a warrant for the purposes of clause 150.

Clause 152 provides that the Director or an authorised officer may enter upon property in an emergency without a warrant.

Clause 153 provides the procedure the Director or authorised officer must adopt when seeking consent of a person to enter property under the Ordinance.

Clause 154 provides that it is an offence punishable by \$2,000 or imprisonment for 12 months or both to obstruct a person in the exercise of his or her powers under the Ordinance.

### **Division 2: GENERAL**

Clause 155 provides that when the Director makes a decision which is reviewable under clause 148 he or she must within 28 days give a person affected by the decision reasons for the decision and a statement indicating that the decision is reviewable by the Administrative Appeals Tribunal.

Clause 156 provides that where a child is ordered by the Court to be placed in the care of a suitable person or an approved home or to live at such a place as the Director determines and the child disobeys the reasonable lawful directions of the person in charge, the child is deemed to have failed to comply with the order.

Clause 157 provides that the Minister may declare shelters, attendance centres and institutions.

Clause 158 provides that the Director may arrange for medical or dental examination and treatment if advised that it is in the child's interest by a doctor or dentist of a child who is:

- . a child who is in an institution, approved home, shelter or remand centre; or
- . a ward.

Clause 159 provides that an authorised police officer may furnish to a person who has suffered loss by reason of an act the name, age and address of a child involved and the

particulars of the act if the child has been charged with an offence or warned by the police.

Clause 160 provides that notifications may be given by any appropriate means.

Clause 161 provides that where agreements in place between the ACT and NSW allow for a procedure whereby a child sent to NSW after proceedings under the Child Welfare Ordinance may, after determination of the Minister, be returned to the ACT into the custody of a specific person.

Any person may apply for and the Court, if it considers it in the interests of the child, may make an order directing that the Minister make such a determination. The procedure for such applications is to be as the Court directs.

Clause 162 provides that a Court may order the Director or a person employed by the Health Authority to furnish a report concerning the child to a Court. That person shall then prepare a report, and may:

- . interview the child, parents or guardians;
- . interview teachers or other persons concerned with the education or welfare of the child; or
- . require the child to be interviewed by a Doctor or other person.

Where a doctor or other person supplies a report in good faith to a Court, this is not to constitute a breach of confidence or ethics.

Clause 163 provides that a report under clause 162 shall be made available to a child, parent or guardian, and their solicitors, unless the Court otherwise orders. The person furnishing the report may be called as a witness.

Clause 164 provides that the Director and Youth Advocate or a person authorised by one of them is entitled to appear and call witnesses in proceedings under the Ordinance.

Clause 165 provides that the sittings of the Court are required to be arranged to minimise contact between persons attending at Court within the precincts of the Court.

Clause 166 provides that a next friend may be appointed for a child by the Court. Once appointed, the next friend may take any step in the proceedings which the child could have taken and is entitled and liable for any order for costs.

Clause 167 provides that if a child before a Court is not but should be legally represented, the Court may delay the proceedings and assist the child to obtain representation.

Clause 168 provides that parents and guardians of a child who is the subject of proceedings, if aware of proceedings, must attend at Court during the determination of these proceedings. If a notice of proceedings, is served on a parent or guardian and the parent or guardian does not attend Court, the Court may issue a warrant to bring the person before Court and then bail the person to attend at the proceedings. The notice must contain details of the time and place of the proceedings as well as a warning of the consequence of non-attendance.

Clause 169 provides that proceedings in the Childrens Court are not open to the public. The only persons who may be present, apart from those persons required or permitted to be present, are:

- . an officer of the Court;
- . a party to the proceedings and their solicitor;
- . parents and guardians, a person having the care of a child or a person admitted as a representative of the child;
- . the Director or his or her representative;
- . the Youth Advocate or his or her representative;
- . a person who has, or a representative of a body, authority or agency which has, furnished a report under clause 162; and
- . an authorised news reporter.

Clause 170 makes it an offence punishable by \$25,000 (if a company) or \$5,000 or imprisonment for 2 years or both (if a natural person) to report proceedings under the Ordinance in such a way as to enable the identity of the child or the child's family to be ascertained. Before a prosecution takes place under this section, the consent in writing of the Attorney-General or the Director of Public Prosecutions must be given.

Clause 171 gives the Supreme Court similar power to order that clause 169 (restrictions on people present at hearings) apply in proceedings before the Supreme Court relating to children.

Clause 172 which does not effect other laws relating to confidentiality, makes it an offence punishable by \$2,000 or imprisonment for 12 months or both for a person to reveal information acquired as a result of the operation of the Ordinance unless it is permitted by law.

Clause 173 provides for certain evidence to be given by certificate.

Clause 174 provides that the Minister may determine fees under the Ordinance.

Clause 175 provides that no court fees are payable under section 292 of the Magistrates Court (Civil Jurisdiction) Ordinance 1982.

Clause 176 allows the Minister to enter into agreement with other States and Territories in order to facilitate:

- . the movement of children committed to a state institution from the Territory to another State or Territory; and
- . the movement of children dealt with in other States or Territories into this Territory and their detention in shelters or institutions.

Clause 177 provides that the Minister may make Regulations under the Ordinance and may prescribe penalties for the breach of such regulations not exceeding \$500.