

FIRST PRINT

CHILDREN (CARE AND PROTECTION) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Community Welfare Bill 1987.

The object of this Bill is to re-enact, with modifications, the provisions of Parts VII and XII of the Community Welfare Act 1982, being the provisions of that Act that relate to the welfare of children and the establishment of a Community Welfare Appeals Tribunal.

PART 1—PRELIMINARY

This Part contains general provisions that are applicable to the whole of the proposed Act including provisions—

- (a) providing for the short title to the proposed Act (clause 1);
- (b) providing for the commencement of the proposed Act on such day or days as the Governor-in-Council may appoint (clause 2);
- (c) defining certain expressions for the purposes of the proposed Act, in particular, the expressions “abuse”, “child”, “child care service”, “Director-General”, “fostering authority”, “parent”, “person responsible”, “private fostering agency”, “private fostering service”, “residential child care centre” and “ward” (clause 3);
- (d) specifying the various family relationships that constitute relationships for the purposes of the proposed Act (clause 4);

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- (e) enabling the Minister administering the proposed Act ("the Minister") to establish facilities for the purposes of the proposed Act (clause 5);
- (f) enabling the Minister to appoint Visitors for facilities (clause 6);
- (g) providing that the placement of a child in care does not imply the granting of custody in relation to the child (clause 7);
- (h) providing that a person is not the guardian of a child merely because the person has the care or custody of the child (clause 8);
- (i) providing that the duties of a person who has the care of a child are the same as those of a person who has the custody of the child (clause 9);
- (j) describing the circumstances under which a child will be deemed to be a child in need of care for the purposes of the proposed Act (clause 10); and
- (k) enabling the Minister and the Director-General to delegate certain functions arising by virtue of their having the care, custody or guardianship of children under the proposed Act (clause 11).

PART 2—CHILDREN'S WELFARE

DIVISION 1—*Provision of care*

This Division deals generally with the provision of services and assistance to children and contains provisions—

- (a) specifying the objects of the proposed Part 2 (clause 12);
- (b) enabling services to be provided for children in need of care (clause 13);
- (c) providing for the making of temporary care arrangements with respect to children under the age of 14 years (clause 14);
- (d) providing for the making of temporary custody orders with respect to children under the age of 16 years (clause 15);
- (e) specifying the effect of temporary care arrangements and temporary custody orders (clause 16);
- (f) enabling temporary refuge to be provided for children (clause 17);
- (g) requiring that children in "alternative care" be accommodated separately from children who are detained in relation to offences committed by them or alleged to be so committed (clause 18);
- (h) requiring the Director-General to maintain a register of children in "alternative care" (clause 19);
- (i) providing for the granting of consent to medical and dental treatment to children in "alternative care" (clause 20);
- (j) controlling the conduct of certain kinds of medical examination in relation to certain classes of children in "alternative care" (clause 21);

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- (k) providing that the Director-General is to be notified of instances of child abuse (clause 22);
- (l) providing for the compulsory medical examination of children allegedly the subject of child abuse (clause 23); and
- (m) providing for the issue of search warrants to facilitate the production of children for medical examination as referred to in clause 23 (clause 24).

DIVISION 2—Offences

This Division creates certain offences in relation to child abuse, in particular—

- (a) the offence of child abuse (clause 25);
- (b) the offence of neglecting to provide adequate food and clothing, etc., for a child (clause 26);
- (c) the offence of removing a child from the care of a person without lawful authority (clause 27);
- (d) the offence of tattooing a child without the consent of the child's parents (clause 28); and
- (e) the offence of leaving a child unsupervised in a motor vehicle (clause 29).

PART 3—LICENSING OF CHILD CARE ARRANGEMENTS

DIVISION 1—Child care services

This Division concerns the licensing of child care services and contains provisions—

- (a) specifying the kinds of child care service to which the Division applies (clause 30);
- (b) prohibiting the provision of certain kinds of child care service by unlicensed persons (clause 31);
- (c) providing for the issue of licences (clause 32 and Schedule 1); and
- (d) providing for the termination of child care services that are being illegally provided (clause 33).

DIVISION 2—Residential child care centres

This Division concerns the licensing of residential child care centres and contains provisions—

- (a) prohibiting the conduct of residential child care centres by unlicensed persons (clause 34);
- (b) prohibiting the conduct of residential child care centres at unlicensed premises (clause 35);
- (c) providing for the issue of licences (clause 36 and Schedule 1);

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- (d) requiring the removal of children from unlicensed residential child care centres (clause 37);
- (e) requiring the notification of deaths occurring at licensed residential child care centres (clause 38); and
- (f) enabling certain persons to enter the premises of a residential child care centre without a warrant (clause 39).

DIVISION 3—Private fostering agencies

This Division concerns the licensing of private fostering agencies and contains provisions—

- (a) prohibiting the conduct of unauthorised private fostering agencies (clause 40); and
- (b) providing for the issue of authorities (clause 41 and Schedule 1).

DIVISION 4—Fostering

This Division concerns the licensing of foster parents and contains provisions—

- (a) prohibiting unlicensed persons from fostering children (clause 42);
- (b) providing for the issue of authorities (clause 43 and Schedule 1);
- (c) prohibiting persons from placing children with unlicensed persons for the purpose of the children's being fostered (clause 44);
- (d) prohibiting the payment of large lump sums in respect of the fostering of children (clause 45); and
- (e) restricting the commencement of proceedings for an offence arising as referred to in clauses 42 and 44 from being taken otherwise than by or with the approval of the Director-General (clause 46).

DIVISION 5—General

This Division concerns general matters arising under the proposed Part 3 and contains provisions—

- (a) requiring the Director-General to report to the Minister on the activities of licensees under proposed Divisions 1 and 2 (clause 47); and
- (b) enabling the Minister to grant and revoke exemptions from specified provisions of the proposed Part (clauses 48 and 49).

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PART 4—EMPLOYMENT OF CHILDREN

This Part concerns the employment of children and contains provisions—

- (a) prohibiting the employment of children who are under the age of 15 years (other than children who hold certificates of exemption from school attendance, granted by the Minister for Education) unless they are licensed (clause 50);
- (b) prohibiting the employment of children for pornographic purposes (clause 51);
- (c) prohibiting the employment of children to take part in inherently dangerous entertainments or exhibitions (clause 52);
- (d) providing for the granting of licences (clause 53); and
- (e) preserving the effect of the Occupational Health and Safety Act 1983 in relation to the employment of children (clause 54).

PART 5—CHILDREN IN NEED OF CARE

DIVISION 1—*Preliminary*

This Division contains an objects clause (clause 55) and an interpretation clause (clause 56).

DIVISION 2—*Care applications*

This Division concerns the making of applications for orders referred to in clause 72 and contains provisions—

- (a) enabling the Director-General (and, in certain cases, the parent of a child) to make care applications in respect of children in need of care (clause 57);
- (b) providing for the service of care applications (clause 58);
- (c) providing for the removal of children from premises pursuant to an order of the Children's Court (clause 59);
- (d) providing for the removal of children from premises without warrant in cases of suspected child abuse (clause 60);
- (e) providing for the removal of children from premises pursuant to a search warrant in cases where children are believed to be in need of care (clause 61);
- (f) enabling the Director-General to have the care of children pending the hearing of care applications made in respect of them (clause 62); and
- (g) imposing certain duties on the Director-General in relation to children kept in the Director-General's care, as referred to in clause 62 (clause 63).

DIVISION 3—*Hearings*

This Division concerns the hearing of care applications and contains provisions—

- (a) facilitating the compulsory attendance of witnesses (clause 64);

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- (b) providing for rights of appearance (clause 65);
- (c) enabling the Children's Court to appoint a guardian ad litem for a child or order separate representation for a child (clause 66);
- (d) providing for the exclusion of the general public from hearings (clause 67);
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- (h) restricting the admissibility of certain statements made by children involved in hearings (clause 71).

DIVISION 4—*Children's Court orders*

This Division concerns the orders that the Children's Court may make in respect of a care application and contains provisions—

- (a) specifying the various orders that may be made in respect of a child in need of care (clause 72);
- (b) imposing restrictions on the kinds of order that may be made and the circumstances under which those kinds of order may be made (clause 73);
- (c) requiring the Children's Court to have regard to an assessment report before making an order that removes a child from the custody of those currently responsible for the child (clause 74); and
- (d) providing for the variation and rescission of orders referred to in clause 72 (clause 75).

DIVISION 5—*Adjournments*

This Division concerns adjournments and contains provisions—

- (a) restricting the power of the Children's Court to grant adjournments for more than 8 days at a time or more than 42 days altogether (clause 76);
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- (d) providing for the enforcement of undertakings given by and with respect to children in relation to their care during the period of an adjournment (clause 79); and

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- (e) enabling certain justices to exercise limited powers of adjournment pending the initial hearing of a care application (clause 80).

DIVISION 6—*Appeals*

This Division (consisting of clause 81) provides for an appeal to the District Court by a person who is dissatisfied with a decision of the Children's Court under the proposed Part 5.

DIVISION 7—*Effect of orders under sec. 72*

This Division concerns the way in which orders referred to in clause 72 may be enforced and contains provisions—

- (a) requiring a child and the premises where the child resides to be subject to inspection and requiring a child to accept supervision (clause 82);
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DIVISION 8—*General*

This Division contains general provisions—

- (a) applying the provisions of the Justices Act 1902 to the issue of summonses and warrants to compel the attendance of witnesses (clause 85);
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This Part concerns wards and protected persons and contains provisions—

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- (e) enabling the Minister to direct a ward or protected person who has left proper custody to return to that custody or be placed in the custody of some other person (clause 93);
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- (h) preserving the jurisdiction of the Supreme Court with regard to custody and guardianship of children (clause 96).

PART 7—CHILDREN'S BOARDS OF REVIEW

This Part concerns the constitution and functions of proposed Children's Boards of Review and contains provisions—

- (a) defining expressions for the purposes of the proposed Part, in particular, the expressions "Board of Review" and "child in care" (clause 97);
- (b) establishing a Children's Review Panel consisting of suitably qualified persons, one of whom is to be an Aboriginal (clause 98 and Schedule 2);
- (c) providing for the establishment of Boards of Review (clause 99);
- (d) specifying the functions of a Board of Review (clause 100); and
- (e) providing for the distribution of copies of reports made by a Board of Review (clause 101).

PART 8—COMMUNITY WELFARE APPEALS TRIBUNAL

This Part concerns the constitution and functions of the proposed Community Welfare Appeals Tribunal and contains provisions—

- (a) defining expressions for the purposes of the proposed Part, in particular, the expression "Tribunal" (clause 102);
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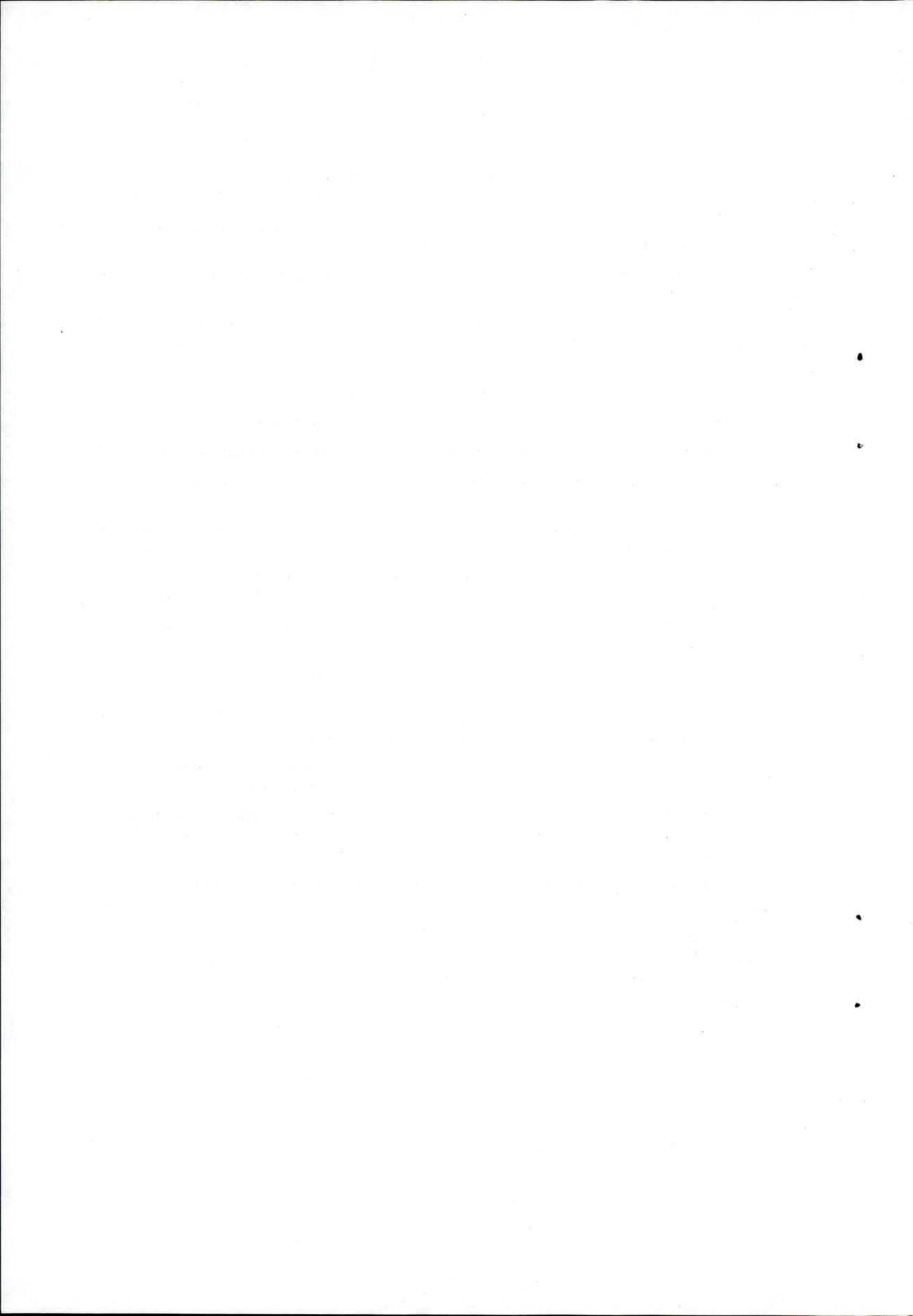
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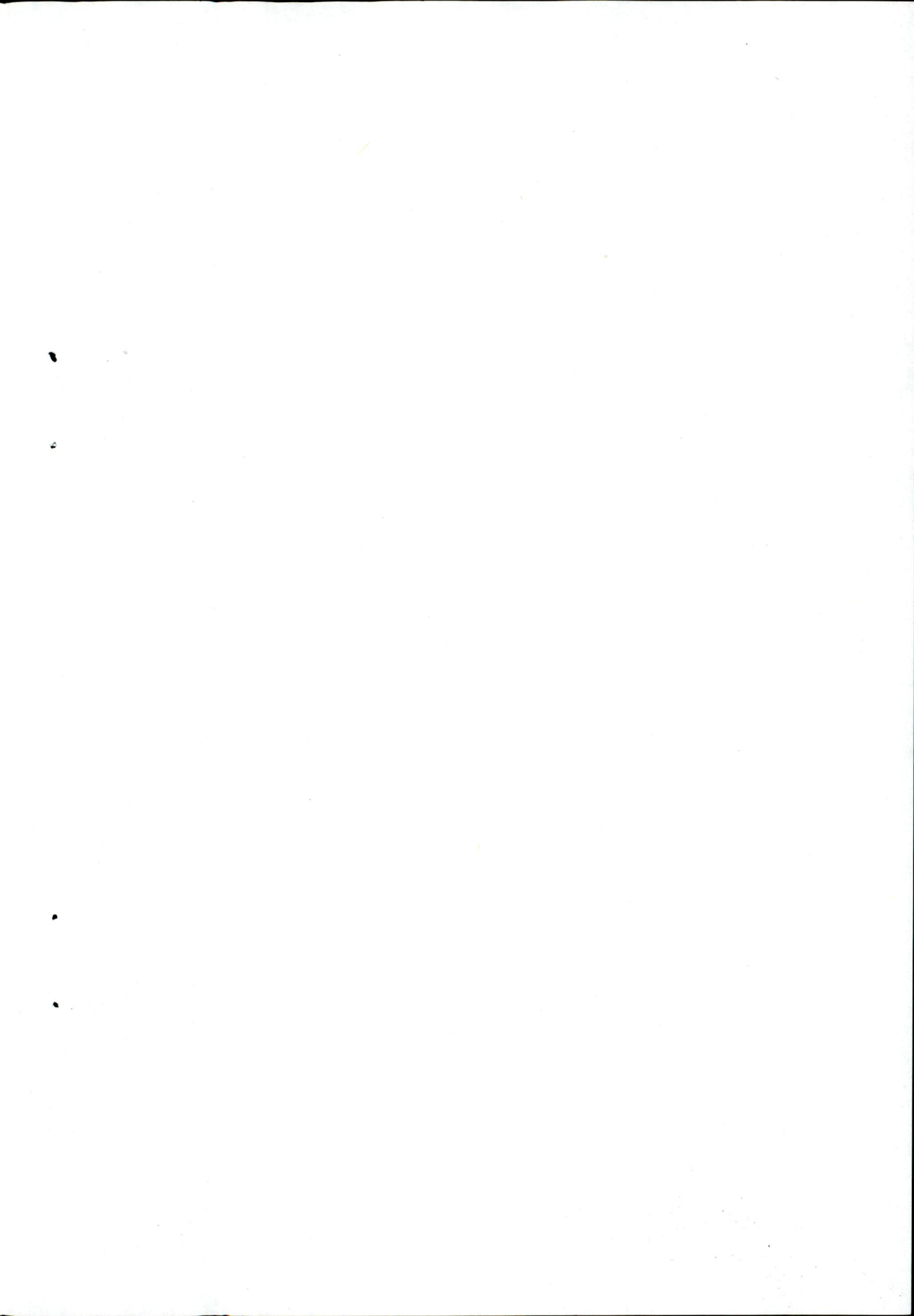
- (i) providing for an appeal to the Supreme Court, on a question of law, from any decision of the Tribunal (clause 110);
- (j) conferring certain powers of entry into premises on members of the Tribunal (clause 111); and
- (k) requiring reports to be furnished to the Minister on the work and activities of the Tribunal (clause 112).

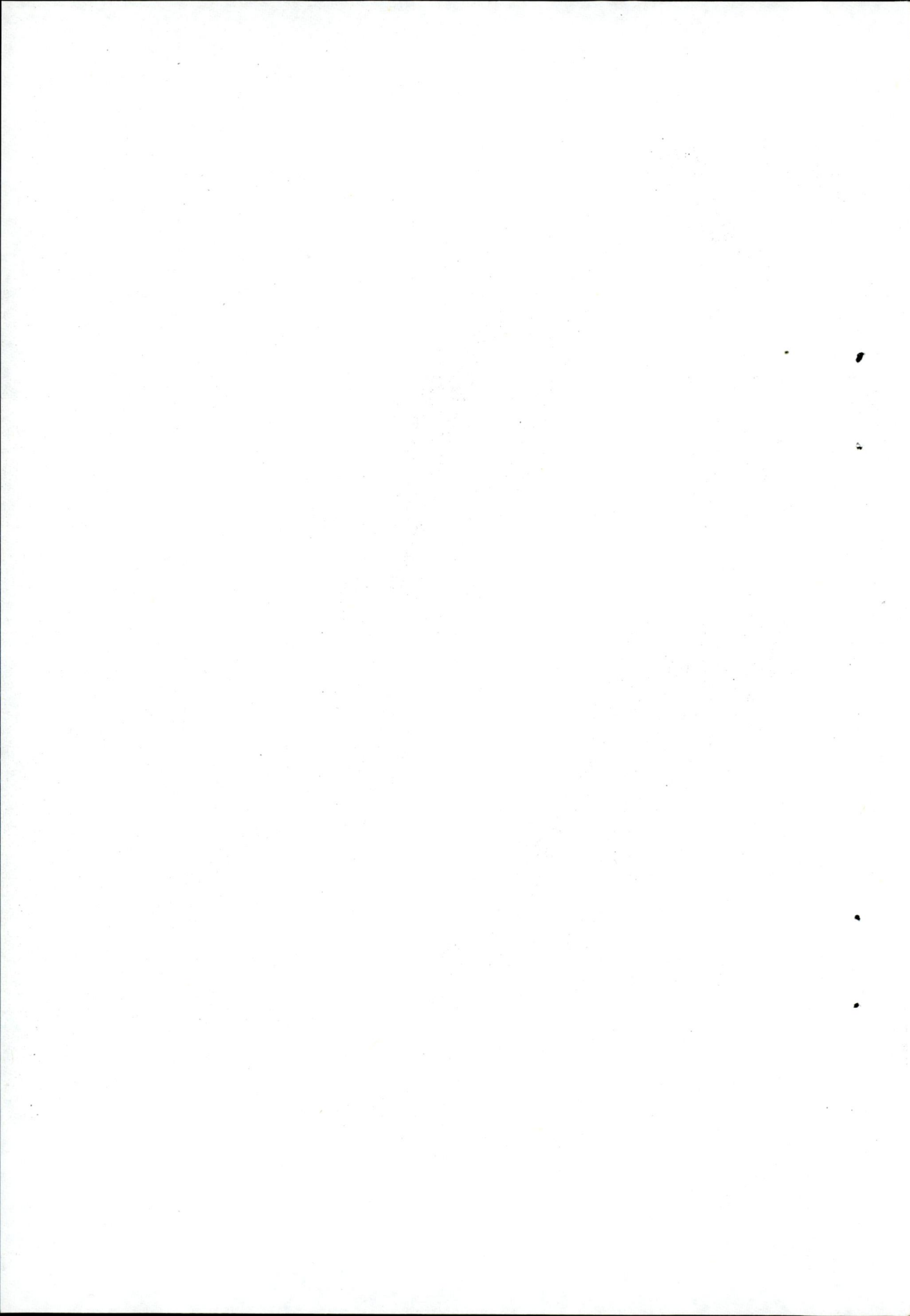
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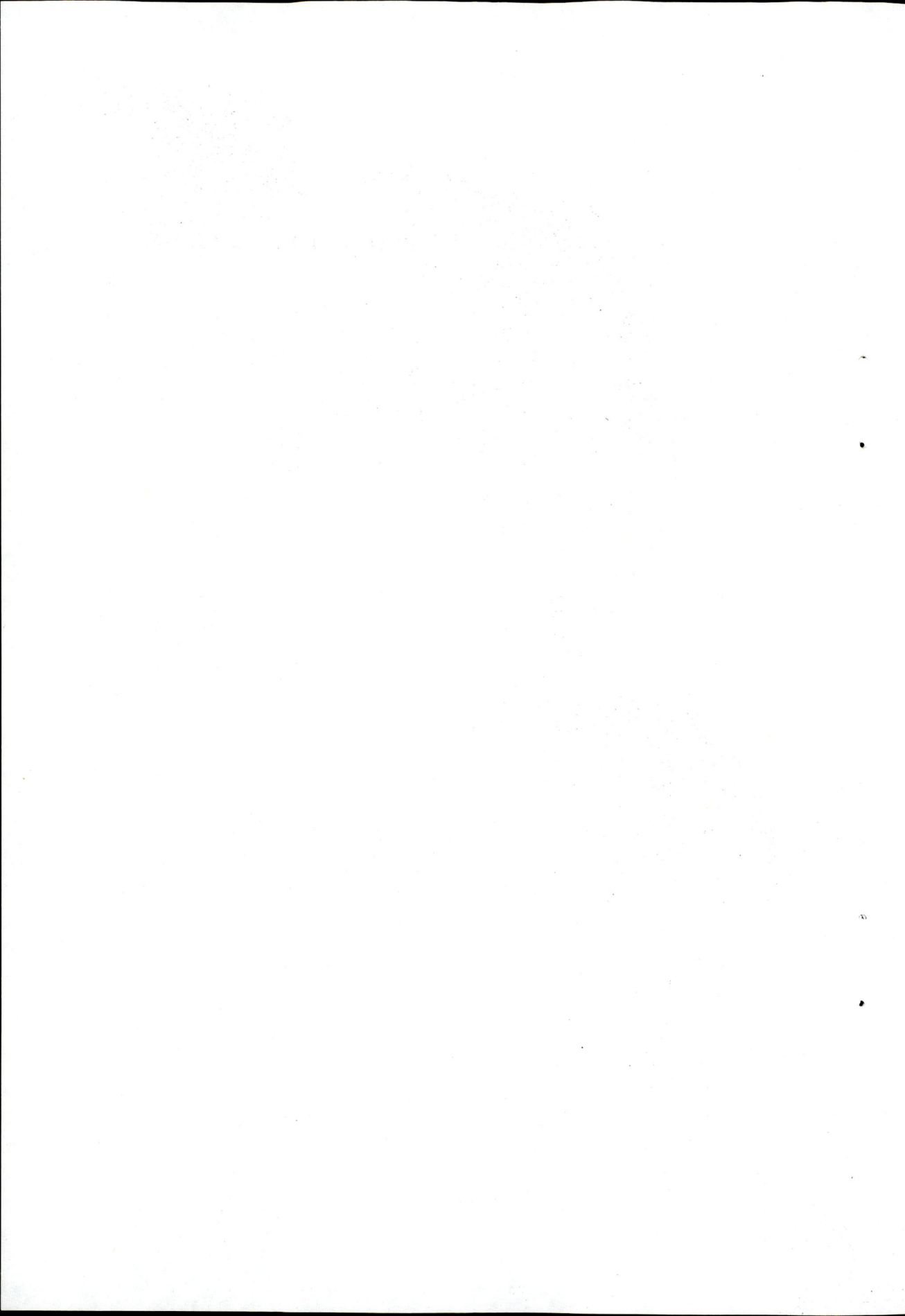
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CHILDREN (CARE AND PROTECTION) BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act with respect to the care and protection of children.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

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PART 1

PRELIMINARY

Short title

1. This Act may be cited as the "Children (Care and Protection) Act 1987".

10 **Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by 15 proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

20 "Aboriginal" has the same meaning as it has in the Aboriginal Land Rights Act 1983;

"abuse", in relation to a child, means assault (including sexually assault) or ill-treat the child or expose or subject the child to behaviour that psychologically harms the child, whether or not, in any case, with the consent of the child;

25 "adult" means a person who is of or above the age of 18 years;

"authorised justice" means—

(a) a Magistrate; or

(b) a justice employed in the Local Courts Administration, Attorney General's Department;

30 "authorised officer", in relation to any provision of this Act, means—

(a) an officer who is declared to be an authorised officer for the purposes of that provision; or

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(b) an officer who belongs to a class of officers who are declared to be authorised officers for the purposes of that provision,

by an order in force under subsection (3);

5 “authorised private fostering agency” means the holder of a private fostering agency authority;

“authorised supervisor”, in relation to a licence for a child care service or the holder of such a licence, means the person for the time being specified under section 32 (1) (c) in the licence for that service;

“child” means a person who is under the age of 18 years;

10 “child care service” means—

(a) any service that is provided by a person for the purpose of educating, minding or caring for (but without providing residential care for) one or more children (disregarding any children who are related to the person providing the service) and that is provided for fee, gain or reward;

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(b) any service that is declared to be a child care service by an order in force under subsection (4); or

(c) the organising or arranging of the provision of any such service, but does not include any such service, or the organising or arranging of the provision of any such service, if the service is or is to be—

20

(d) provided by a person at the premises at which the children for whom that person provides the service reside;

(e) provided at a licensed residential child care centre;

(f) provided at exempt premises; or

25 (g) provided by the holder of a fostering authority in accordance with the authority;

“Children’s Court” means the Children’s Court of New South Wales constituted by the Children’s Court Act 1987;

30 “children’s employment licence” means a licence in force under section 53;

“Community Welfare Appeals Tribunal” means the Community Welfare Appeals Tribunal established by section 103;

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- “control order” means an order in force under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 whereby the Children’s Court, or some other court exercising the functions of the Children’s Court under Division 4 of Part 3 of that Act, has committed a person to the control of the Minister administering the Children (Detention Centres) Act 1987;
- “custody”, in relation to a child, means custody of the child to which a person is entitled by law;
- “Department” means the Department of Youth and Community Services;
- “Director-General” means the person for the time being holding office or acting as the Director-General of the Department;
- “exempt premises” means—
- (a) the premises of—
 - (i) a State school, a certified school, a special school or a certified special school, within the meaning of the Public Instruction (Amendment) Act 1916;
 - (ii) a private hospital or nursing home licensed under the Private Hospitals Act 1908;
 - (iii) an admission centre or a mental hospital within the meaning of the Mental Health Act 1958 or an authorised hospital within the meaning of the Mental Health Act 1958;
 - (iv) an incorporated hospital or a separate institution within the meaning of the Public Hospitals Act 1929, premises controlled by an associated organisation within the meaning of that Act or a hospital specified in the Fifth Schedule to that Act; or
 - (v) a hospital or other institution under the control of an area health service constituted under the Area Health Services Act 1986;
 - (b) any premises belonging to a class of premises prescribed by the regulations; or
 - (c) in relation to any provision of this Act, any premises declared to be exempt premises for the purposes of that provision by an order in force under subsection (5);
- “facility” means any premises the subject of an order in force under section 5 (1);

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- “fostering authority” means an authority that has been granted as a fostering authority under clause 3 of Schedule 1 and that is in force;
- 5 “licence” means a licence for a child care service or a residential child care centre that has been granted under clause 3 of Schedule 1 and that is in force;
- “licensed manager”, in relation to a licensed residential child care centre, means the person for the time being specified under section 36 (1) (c) in the licence for that centre;
- 10 “licensed residential child care centre” means premises specified under section 36 (1) (b) in a licence for a residential child care centre;
- “maintenance” includes clothing, support, training and education;
- “non-Government children’s home” means a home for the accommodation of children that is conducted by a non-Government organisation;
- 15 “non-Government organisation” means a corporation, society, association or other body of persons, not being the Crown, declared to be a non-Government organisation by an order in force under subsection (6);
- “officer” means an officer or temporary employee, within the meaning of the Public Service Act 1979, employed in the Department;
- 20 “parent”, in relation to a child, includes—
- (a) a guardian of the child; and
- (b) a person who has the custody of the child,
- but does not include the Minister or the Director-General, or the father or mother of the child if the father or mother, as the case may be, has
- 25 neither guardianship nor custody of the child;
- “person responsible”, in relation to a child, means—
- (a) a parent of the child;
- (b) a person (other than the Minister or the Director-General) who has the care of the child; or
- 30 (c) in the case of a child who is in the care of the Minister or the Director-General—a person who had the care of the child immediately before the child came to be in the care of the Minister or the Director-General, as the case may be;
- “premises” includes any land, building, vehicle and vessel;

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“principal officer”, in relation to an authorised private fostering agency, means the person for the time being specified under section 41 (1) (b) in the private fostering agency authority held by that agency;

5 “private fostering agency” means a person who performs (whether or not for fee, gain or reward) private fostering services with respect to children (disregarding any children who are related to the person);

“private fostering agency authority” means an authority that has been granted as a private fostering agency authority under clause 3 of Schedule 1 and that is in force;

10 “private fostering service” means the activity of conducting negotiations or making arrangements with a view to the placement of children for fostering;

“proprietor”, in relation to premises, means—

15 (a) if the premises are not leased—the owner or any joint owner of the premises; or

(b) if the premises are leased—the lessee or any joint lessee who is entitled to immediate possession of the premises;

“protected person” means—

20 (a) a child who is a ward of the Supreme Court and of whom the Minister or the Director-General has the custody or care pursuant to an order of the Supreme Court;

(b) a child of whom the Minister or the Director-General has the custody or guardianship pursuant to an order in force under the Family Law Act 1975 of the Commonwealth;

25 (c) a non-citizen child in respect of whom the Director-General exercises the functions of a guardian pursuant to the Immigration (Guardianship of Children) Act 1946 of the Commonwealth; or

30 (d) a child who, having been a child referred to in paragraph (a), (b) or (c), is in the custody of a person referred to in section 91 (1) (d) (i) or (ii);

“regulation” means a regulation made under this Act;

“residential child care centre” means any premises—

35 (a) at which 6 or more children (disregarding any children who are related to the person in charge of the premises) reside and are cared for for fee, gain or reward; or

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(b) that are declared to be a residential child care centre by an order in force under subsection (7),

but does not include any premises that are exempt premises;

“Visitor” means a person appointed as a Visitor for a facility under section 6;

“ward” means—

(a) a child declared to be a ward under this Act by an order in force under section 72 (1) (c) (iii);

(b) a child declared to be a ward under this Act by a declaration under section 95 (4); or

(c) a child declared to be a ward under this Act by an order in force under the Adoption of Children Act 1965.

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) For the purposes of the definition of “authorised officer” in subsection (1), the Minister may, by order published in the Gazette—

(a) declare any officer to be an authorised officer; or

(b) declare any class of officers to be authorised officers,

for the purposes of any provision of this Act.

(4) The Minister may, by order in writing served on a person by whom any service that would (but for the fact that it is being provided otherwise than for fee, gain or reward) be a child care service under paragraph (a) of the definition of “child care service” in subsection (1), declare the service to be a child care service.

(5) For the purposes of paragraph (c) of the definition of “exempt premises” in subsection (1), the Minister may, by order published in the Gazette, declare any premises to be exempt premises for the purposes of any provision of this Act.

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(6) For the purposes of the definition of "non-Government organisation" in subsection (1), the Minister may, by order published in the Gazette, declare any corporation, society, association or other body of persons, not being the Crown, to be a non-Government organisation for the purposes of
5 this Act.

(7) The Minister may, by order in writing served on the proprietor or occupier of premises (other than exempt premises) that would (but for the fact that any one or more of the children, disregarding any children who are related to the person in charge of the premises, residing at those premises
10 are cared for otherwise than for fee, gain or reward) be a residential child care centre under paragraph (a) of the definition of "residential child care centre" in subsection (1), declare those premises to be a residential child care centre.

(8) In this Act—

15 (a) a reference to a person who has the care of a child is a reference to a person who has the care of the child, whether or not the person has the custody of the child; and

20 (b) a reference to a child who is or has been placed in the care of a person includes a reference to a child who is or has been placed in the custody of the person.

(9) In this Act, a reference to a child's having been sexually assaulted is a reference to any of the following offences having been committed with or upon the child:

25 (a) an offence under section 61B, 61C, 61D, 61E, 61F, 66A, 66B, 66C or 66D of the Crimes Act 1900;

(b) an offence under section 67, 68, 71, 72, 73, 74, 78A or 78B of that Act, as in force before the commencement of Schedule 2 to the Crimes (Child Assault) Amendment Act 1985;

30 (c) an offence under section 63, 65, 76 or 76A of that Act, as in force before the commencement of Schedule 1 to the Crimes (Sexual Assault) Amendment Act 1981.

(10) Except in so far as the context or subject-matter otherwise indicates or requires, a word or expression used in a Schedule has the same meaning
35 of that Schedule.

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Related persons

4. For the purposes of this Act, a child is related to another person—

- 5 (a) if the child is the child, step-child, grandchild, brother, sister, step-brother, step-sister, uncle, aunt, niece or nephew (whether by consanguinity or affinity) of the other person;
- (b) if the other person is the guardian of the child; or
- (c) if the child has been placed in the care or custody of the other person in accordance with the provisions of the Adoption of Children Act 1965.

10 Facilities

5. (1) The Minister may, by order published in the Gazette, declare any premises specified or described in the order to be a facility for the purposes of this Act.

15 (2) The Minister may, by the order by which any premises are declared to be a facility or by any subsequent order published in the Gazette, give a name to the facility.

(3) An order under subsection (1) may declare any premises specified or described in the order to be one or more kinds of facility.

20 (4) An order under subsection (1) shall not be made in relation to premises under the control of a person, other than the Crown or a person acting on behalf of the Crown, except with the consent in writing of the firstmentioned person.

25 (5) An order under subsection (1) shall not be made in relation to premises under the control of a Minister other than the Minister administering this Act except with the consent in writing of that other Minister.

30 (6) The Minister may establish and maintain, on any facility that comprises premises that are under the control of the Crown or a person acting on behalf of the Crown, such establishments as the Minister considers necessary for the purpose of carrying out or giving effect to this Act or any other Act administered by the Minister.

Visitors

6. (1) The Minister may appoint eligible persons to be Visitors for each facility.

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(2) A person is an eligible person for the purposes of subsection (1) if, in the opinion of the Minister, the person—

- (a) is expert in some branch of community welfare; and
- (b) demonstrates concern for persons in need of community welfare services,

but not if the person is an officer.

(3) A Visitor shall, unless sooner removed from office, hold office for 2 years and is, if otherwise qualified, eligible for reappointment.

(4) A Visitor may, in respect of the facility for which the Visitor is appointed—

- (a) enter and inspect the facility at any reasonable time;
- (b) confer privately with any person who is resident, employed or detained in the facility;
- (c) furnish to the Minister advice or reports on any matters relating to the conduct of the facility; and
- (d) exercise such other functions as may be prescribed by the regulations.

(5) A copy of any advice or report furnished to the Minister under subsection (4) (c) shall be forwarded to the Minister for Education if the advice or report relates to any part of an educational establishment that is under the control or direction of the Minister for Education.

Granting of care does not imply granting of custody

7. A power conferred by this Act to place a child in the care of a person does not, except in so far as the context or subject-matter otherwise indicates or requires, include the power to grant custody of the child to the person.

25 Care or custody does not imply guardianship

8. A person in whose care or custody a child is placed under this Act is not, merely because of that placement, the guardian of the child.

Duties of care equivalent to duties of custody

9. A person in whose care a child is placed under this Act has, until the person ceases under this or any other Act or law to have the care of the child, the same duties in respect of the child as if the person had the custody of the child.

*Children (Care and Protection) 1987***Children in need of care**

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

- (a) adequate provision is not being made, or is likely not to be made, for the child's care;
- 5 (b) the child is being, or is likely to be, abused; or
- (c) there is a substantial and presently irretrievable breakdown in the relationship between the child and one or more of the child's parents.

(2) Without limiting the generality of subsection (1), a child who is residing in a non-Government children's home is in need of care—

- 10 (a) if the child has been residing in the home for a period of 12 months or more; and
- (b) if there has been no substantial contact during that period between the child and—
 - (i) any of the child's parents; or
 - 15 (ii) any person in whose care the child was immediately before the child began residing in the home.

Delegation

11. (1) In the exercise of the Minister's powers of delegation under section 5 of the Community Welfare Act 1987, the Minister may delegate
20 to the Director-General, or to any other person, the exercise of—

- (a) any of the Minister's functions arising by virtue of the Minister's having the care or custody of a person; and
- (b) any of the Minister's functions (other than such functions as may be prescribed by the regulations) arising by virtue of the Minister's
25 being the guardian of a ward or protected person.

(2) In the exercise of the Director-General's powers of delegation under section 5 of the Community Welfare Act 1987, the Director-General may delegate to any person the exercise of any of the Director-General's
30 functions arising by virtue of the Director-General's having the care or custody of a person.

PART 2

CHILDREN'S WELFARE

DIVISION 1—*Provision of care***Objects of Part**

5 12. (1) The objects of this Part are—

(a) to identify the special needs of children, whether or not under parental care, with respect to services necessary to promote their optimum development; and

10 (b) to ensure the provision of any necessary services for, and assistance to, families so that, where necessary, the care available to children in the family environment can be enhanced to such a degree as to enable them to remain in or return to family care.

15 (2) With the object of ensuring the provision of any necessary welfare services aimed at complementing the care given to children by persons responsible for them, the Minister may—

(a) disseminate information to the community with respect to welfare services for children and their families;

20 (b) provide assistance and support for non-Government organisations and persons concerned in the establishment or development of welfare services for children and their families; and

(c) furnish advice to non-Government organisations and persons concerned in the provision of welfare services for children and their families with respect to the quality of any such services and the equipment needed to provide them.

25 Provision of services for children in need of care

13. (1) The Director-General may provide any one or more of the following facilities or services for or with respect to a child who is, in the opinion of the Director-General, in need of care:

(a) accommodation;

30 (b) maintenance;

(c) care;

(d) advisory services;

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- (e) any other facility or service prescribed by the regulations or any other facility or service belonging to a class of facilities or services so prescribed.
- (2) Facilities or services shall not be provided under subsection (1) for 5 or with respect to a particular child except on the application of—
- (a) in the case of a child who is under the age of 14 years—a person responsible for the child;
- (b) in the case of a child who is 14 or 15 years of age—either a person responsible for the child or the child; or
- 10 (c) in the case of a child who is of or above the age of 16 years—the child.

Temporary care arrangements

14. (1) The Director-General may, on the application of—
- 15 (a) in the case of a child who is under the age of 14 years—a person responsible for the child; or
- (b) in the case of a child who is of or above the age of 14 years—the child,

make a temporary care arrangement in respect of the child if the child is, in the opinion of the Director-General, in need of care.

- 20 (2) In deciding whether or not to make a temporary care arrangement in respect of a child, the Director-General shall have regard to—
- (a) the views of the persons responsible for the child;
- (b) in the case of a child who is of or above the age of 12 years—the views of the child; and
- 25 (c) the question of whether or not it would be more appropriate for provision to be made with respect to the child under section 13.
- (3) A temporary care arrangement shall not be made in respect of a child on an application made by a person other than a parent of the child unless 30 the Director-General has, not less than 21 days before making the arrangement, informed such of the parents of the child as can reasonably be located that an application for such an arrangement has been made.

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(4) If the Director-General has made a temporary care arrangement in respect of a child on an application made by a person other than a parent of the child, the Director-General shall inform such of the parents of the child as can reasonably be located that the Director-General has made a
5 temporary care arrangement in respect of the child.

(5) A temporary care arrangement ceases to be in force—

(a) upon the receipt by an officer of a request for the termination of the arrangement made by the person by whom the application for the making of the arrangement was made;

10 (b) upon the child the subject of the arrangement attaining the age of 18 years;

(c) upon the expiration of the period of—

(i) except as provided by subparagraph (ii)—3 months; or

15 (ii) if the Director-General has renewed the arrangement pursuant to subsection (6)—6 months,

after the making of the arrangement; or

(d) upon its termination by the Director-General under subsection (8),
whichever first occurs.

20 (6) At the expiration of 3 months after the making of a temporary care arrangement in respect of a child, the Director-General may, if of the opinion that the child is still in need of care, renew the arrangement for a further period of 3 months.

25 (7) A temporary care arrangement shall not be made or renewed in respect of a child if the child has, during the previous 12 months, been the subject of a temporary care arrangement or a temporary custody order for a period, or for periods in the aggregate, exceeding 6 months.

30 (8) The Director-General may, whether on the application of the child or a person responsible for the child or on the Director-General's own motion, at any time terminate a temporary care arrangement in respect of a child if, after consultation with the person by whom the application for the making of the order was made, the Director-General is of the opinion that the child is no longer in need of care.

(9) An application for the review of a temporary care arrangement may, in accordance with the regulations, be made to the Children's Court—

35 (a) by or on behalf of the child the subject of the arrangement; or

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(b) by a person responsible for the child.

(10) The decision of the Children's Court in respect of an application for a review shall be given effect to as if it were the decision of the Director-General with respect to the making of a temporary care arrangement under subsection (1).

Temporary custody orders

15 **15. (1)** The Director-General may make a temporary custody order in respect of a child the subject of a control order if—

(a) the child is under the age of 16 years; and

10 (b) the child would, upon ceasing to be subject to the control order by virtue of the making of the temporary custody order, be, in the opinion of the Director-General, in need of care.

(2) In deciding whether or not to make a temporary custody order in respect of a child, the Director-General shall have regard to—

15 (a) the views of the persons responsible for the child; and

(b) in the case of a child who is of or above the age of 12 years—the views of the child.

20 (3) A temporary custody order shall not be made in respect of a child unless the Director-General has, not less than 21 days before making the order, informed such of the persons responsible for the child as can reasonably be located that the Director-General proposes to make such an order.

25 (4) Upon the making of a temporary custody order in respect of a child, the control order to which the child was subject immediately before the making of the temporary custody order shall cease to have effect.

(5) A temporary custody order ceases to be in force—

(a) upon the expiration of the period for which the relevant control order would have been in force had the temporary custody order not been made;

30 (b) upon the expiration of the period of—

(i) except as provided by subparagraph (ii)—3 months; or

(ii) where the Director-General has renewed the order pursuant to subsection (6)—6 months,

after the making of the order; or

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(c) upon its termination by the Director-General under subsection (8), whichever first occurs.

5 (6) At the expiration of 3 months after the making of a temporary custody order in respect of a child, the Director-General may, if of the opinion that the child is still in need of care, renew the order for a further period of 3 months.

10 (7) A temporary custody order shall not be made or renewed in respect of a child if the child has, during the previous 12 months, been the subject of a temporary care arrangement or a temporary custody order for a period, or for periods in the aggregate, exceeding 6 months.

(8) The Director-General may at any time terminate a temporary custody order in respect of a child if the Director-General is of the opinion that the child is no longer in need of care.

15 (9) An application for the review of a temporary custody order may, in accordance with the regulations, be made to the Children's Court—

(a) by or on behalf of the child the subject of the order; or

(b) by a person responsible for the child.

20 (10) The decision of the Children's Court in respect of an application for a review shall be given effect to as if it were the decision of the Director-General with respect to the making of a temporary custody order under subsection (1).

Effect of temporary care arrangements and temporary custody orders

25 16. (1) The Director-General shall have the custody of a child in respect of whom there is in force a temporary care arrangement or temporary custody order.

(2) In providing for the care of a child the subject of a temporary care arrangement or temporary custody order, the Director-General—

(a) shall have regard to—

(i) the views of the child's parents; and

30 (ii) such other matters as may be prescribed by the regulations, in relation to all matters concerning the welfare of the child; and

(b) shall ensure that—

(i) the child's parents are kept informed as to all matters concerning the welfare of the child; and

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- (ii) all efforts are made to encourage continuing contact between the child and the child's parents.

Temporary refuge

17. (1) A child seeking refuge may place himself or herself in the care
5 of the Director-General.

(2) The Director-General shall discharge a child who is in the Director-General's care under subsection (1)—

- (a) upon the expiration of the period of 72 hours after the child has placed himself or herself in the care of the Director-General;
- 10 (b) if, before the expiration of that period, the Minister authorises the Director-General to keep the child in the Director-General's care for a further period not exceeding 72 hours—upon the expiration of the further period; or
- 15 (c) if, before the expiration of the period or further period referred to in paragraph (a) or (b), the child makes a request to an officer that the child be discharged from the Director-General's care—upon the request being made.

Separation of children from offenders

18. A child who is in the Director-General's care pursuant to this Act
20 shall, so far as is reasonably practicable, be accommodated in premises other than—

- (a) premises for the accommodation of persons who have committed offences; or
- 25 (b) premises for the accommodation of persons who are on remand awaiting proceedings in respect of offences alleged to have been committed by them.

Children in alternative care

19. (1) The Director-General shall maintain a register in which shall be entered particulars of every child who has been a child in alternative care
30 for a continuous period of 14 days or more.

(2) The Director-General may, in respect of any child in alternative care other than a ward or protected person, grant an allowance to any person having the care of the child for any period during which the child is in that person's care.

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(3) If an allowance under subsection (2) was being paid in respect of a person immediately before the person attained the age of 18 years, the Director-General may—

- 5 (a) for the purpose of securing education or vocational training on a full-time basis for the person; and
- (b) subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Director-General may determine,

10 from time to time, and for periods not exceeding 6 months at any one time, continue to pay an allowance in respect of the person for any period during which the person is residing in the home of the person to whom the allowance is granted.

(4) In this section, a reference to a child in alternative care is a reference to—

- 15 (a) a child who resides in a facility, otherwise than as a member of the household of any other person who resides there;
- (b) a child who has been placed in the care or custody of a person under Part 5 or 6;
- (c) a child who is in the care of the Director-General under Part 5;
- 20 (d) a child who resides in a licensed residential child care centre, otherwise than as a member of the household of any other person who resides there;
- (e) a child who is in the care of a person in whose care the child has been placed by an authorised private fostering agency; or
- 25 (f) a child (other than a child referred to in paragraph (a), (b), (c), (d) or (e)) who—
- (i) is in the care of a person (other than a person to whom the child is related) belonging to such class of persons as may be prescribed by the regulations; or
- 30 (ii) is residing at such premises, or at premises belonging to such class of premises, as may be prescribed by the regulations, otherwise than as a member of the household of any other person who resides there.

*Children (Care and Protection) 1987***Ordinary medical and dental treatment**

20. (1) This section applies to a child who is under the age of 16 years, being—

- 5 (a) a child who resides in a facility, otherwise than as a member of the household of any other person who resides there;
- (b) a child who has been placed in the care or custody of a person under Part 5 or 6;
- (c) a child who is in the care of the Director-General under Part 5;
- 10 (d) a child who resides in a licensed residential child care centre, otherwise than as a member of the household of any other person who resides there;
- (e) a child who is in the care of a person in whose care the child has been placed by an authorised private fostering agency; or
- 15 (f) a child (other than a child referred to in paragraph (a), (b), (c), (d) or (e)) who is in the care of a person (other than the parent or guardian of the person of the child, as referred to in section 49 (1) of the Minors (Property and Contracts) Act 1970) pursuant to any law, whether or not of New South Wales.

20 (2) If an authorised person has consented to medical or dental treatment of a child to whom this section applies being carried out, it shall be deemed, for the purposes of section 49 of the Minors (Property and Contracts) Act 1970, that a parent or guardian of the person of the child consented to the treatment being carried out.

(3) This section does not affect—

- 25 (a) such operation as a consent (whether or not a consent referred to in subsection (2) or in section 49 of the Minors (Property and Contracts) Act 1970) may have otherwise than as provided by this section; or
- 30 (b) the circumstances in which medical or dental treatment may be justified in the absence of consent.

(4) In this section—

“authorised person” means—

- (a) in relation to a child referred to in subsection (1) (a)—the Minister;

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- (b) in relation to a child referred to in subsection (1) (b)—
- (i) in respect of medical or dental treatment not involving surgery—either the Minister or the person in whose care or custody the child has been placed; or
 - 5 (ii) in respect of medical or dental treatment involving surgery—the Minister;
- (c) in relation to a child referred to in subsection (1) (c)—
- (i) in respect of medical or dental treatment not involving surgery—either the Director-General or any person in whose
 - 10 care the child has been placed by the Director-General; or
 - (ii) in respect of medical or dental treatment involving surgery—the Director-General;
- (d) in relation to a child referred to in subsection (1) (d)—
- 15 (i) in respect of medical or dental treatment not involving surgery—the person in charge of the licensed residential child care centre in which the child resides; or
 - (ii) in respect of medical or dental treatment involving surgery—
 - 20 either the parent or guardian of the person of the child (as referred to in section 49 (1) of the Minors (Property and Contracts) Act 1970) or (where no such parent or guardian can reasonably be located or it is impracticable to obtain the consent of such a parent or guardian) the person in charge of the licensed residential child care centre in which the child resides;
- 25 (e) in relation to a child referred to in subsection (1) (e)—
- (i) in respect of medical or dental treatment not involving surgery—the person in whose care the child has been placed; or
 - 30 (ii) in respect of medical or dental treatment involving surgery—either the parent or guardian of the person of the child (as referred to in section 49 (1) of the Minors (Property and Contracts) Act 1970) or (where no such parent or guardian can reasonably be located or it is impracticable to obtain the consent of such a parent or guardian)—
 - 35 (A) if the child was placed in the care of a person by an authorised private fostering agency—the principal officer of that agency; or

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(B) if the child was placed in the care of a person otherwise than by an authorised private fostering agency—the Director-General; or

(f) in relation to a child referred to in subsection (1) (f)—

5 (i) in respect of medical or dental treatment not involving surgery—the person in whose care the child has been placed; or

(ii) in respect of medical or dental treatment involving surgery—the Director-General;

10 “dental treatment” has the same meaning as it has in section 49 of the Minors (Property and Contracts) Act 1970;

15 “medical treatment” has the same meaning as it has in section 49 of the Minors (Property and Contracts) Act 1970, but does not include a special medical examination within the meaning of section 21 of this Act.

Special medical examinations

21. (1) This section applies to—

(a) a child who resides in a facility, otherwise than as a member of the household of any other person who resides there; and

20 (b) a child who resides in a licensed residential child care centre, otherwise than as a member of the household of any other person who resides there.

(2) A special medical examination of a child to whom this section applies shall not be carried out—

25 (a) in the case of a child who is under the age of 16 years—unless the Minister has informed such of the parents of the child as can reasonably be located of the rights of a parent under this section; and

30 (b) in the case of a child who is of or above the age of 14 years—unless the Minister has informed the child of the rights of a child under this section.

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(3) If a medical practitioner has advised the Minister that the medical practitioner considers that it is medically necessary to carry out a special medical examination of a child to whom this section applies, a second independent medical opinion as to whether the examination is medically necessary shall be obtained on the request of—

- (a) in the case of a child who is under the age of 14 years—a parent of the child;
- (b) in the case of a child who is 14 or 15 years of age—either a parent of the child or the child; or
- 10 (c) in the case of a child who is of or above the age of 16 years—the child.

(4) A special medical examination of a child to whom this section applies shall not be carried out—

- 15 (a) unless the Minister (after considering the advice of the medical practitioner referred to in subsection (3) and, if a second independent medical opinion was obtained under that subsection, that second opinion) is satisfied that the examination is medically necessary; and
- (b) unless—
 - 20 (i) in the case of a child who is under the age of 14 years—a parent of the child has consented in writing to the examination being carried out;
 - 25 (ii) in the case of a child who is 14 or 15 years of age—both a parent of the child and the child have consented in writing to the examination being carried out;
 - (iii) in the case of a child who is of or above the age of 16 years—the child has consented in writing to the examination being carried out; or
 - 30 (iv) the Children's Court has, under subsection (6), ordered that the examination be carried out.

(5) A consent is void if—

- (a) subsection (2) has not been complied with in relation to the child or parent by whom the consent was given; or
- (b) the child has not been counselled as referred to in subsection (8).

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(6) The Children's Court may, on the application of the Minister and on its being satisfied that any consent to a special medical examination is unreasonably refused or cannot reasonably be obtained, order that the examination be carried out.

5 (7) If the Minister is satisfied that it is medically necessary to carry out a special medical examination of a child to whom this section applies and the consent or consents referred to in subsection (4) has or have been obtained or the Children's Court has, under subsection (6), ordered that the examination be carried out—

- 10 (a) in the case of a child who is under the age of 14 years—a parent of the child;
- (b) in the case of a child who is 14 or 15 years of age—either a parent of the child or the child; or
- 15 (c) in the case of a child who is of or above the age of 16 years—the child,

may nominate a medical practitioner to carry out the examination or may state a preference as to whether the examination shall be carried out by a male or female medical practitioner.

20 (8) Before a special medical examination of a child to whom this section applies is carried out, the child shall be counselled in relation to—

- (a) the nature of the examination and its effects; and
- (b) such other matters as may be prescribed by the regulations,

by a suitable person other than the medical practitioner who is to carry out the examination.

25 (9) A special medical examination of a child to whom this section applies shall not be carried out otherwise than—

- (a) by the medical practitioner nominated under subsection (7);
- (b) if no medical practitioner has been so nominated but a preference has been stated under subsection (7)—by a medical practitioner nominated by the Minister in accordance with the preference so stated;
- 30 (c) if no medical practitioner has been so nominated and a preference has not been so stated—by a medical practitioner nominated by the Minister; or

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(d) if the Minister is of the opinion that it is impracticable for the examination to be carried out by the medical practitioner so nominated or in accordance with the preference so stated—by a medical practitioner nominated by the Minister.

5 (10) If a special medical examination of a child to whom this section applies is carried out—

(a) pursuant to a consent referred to in subsection (4) (b) given by a parent of the child; or

(b) pursuant to an order of the Children's Court under subsection (6),

10 and the special medical examination is carried out in accordance with the provisions of this section, it shall be deemed, for the purposes of section 49 of the Minors (Property and Contracts) Act 1970, that a parent or guardian of the person of the child consented to the examination being carried out.

(11) In this section—

15 “parent”, in relation to a child to whom this section applies, includes the person in whose care the child was immediately before the child became a child to whom this section applies;

“special medical examination” means a vaginal or anal examination or a penile examination involving the insertion of any thing into the penis.

20 Notification of child abuse

22. (1) Any person who forms the belief upon reasonable grounds that a child—

(a) has been, or is in danger of being, abused; or

(b) is a child in need of care,

25 may cause the Director-General to be notified of that belief and the grounds therefor, either orally or in writing.

(2) A person who, in the course of—

(a) practising as a medical practitioner;

30 (b) following another profession, calling or vocation prescribed by the regulations for the purposes of this subsection (other than the profession of a barrister or solicitor); or

(c) exercising the functions of an office so prescribed,

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has reasonable grounds to suspect that a child has been abused (whether the abuse consisted of sexual assault or any other form of abuse) is required to comply with subsection (4) in respect of those grounds unless the person is a minister of religion or a person who is declared by the regulations to be
5 exempt from the provisions of this subsection.

(3) A person who, in the course of—

(a) following a profession, calling or vocation prescribed by the regulations for the purposes of this subsection (other than the profession of a barrister or solicitor); or

10 (b) exercising the functions of an office so prescribed,

has reasonable grounds to suspect that a child has been sexually assaulted is required to comply with subsection (4) in respect of those grounds unless the person is a minister of religion or a person who is declared by the regulations to be exempt from the provisions of this subsection.

15 (4) A person who is required to comply with this subsection in respect of having any grounds to suspect that a child has been abused (whether the abuse consisted of sexual assault or any other form of abuse) shall—

(a) notify the Director-General of the name or a description of the child and those grounds; or

20 (b) cause the Director-General to be so notified,

promptly after those grounds arise.

(5) Regulations may be made with respect to the form of a notification under subsection (4) or with respect to the manner of making such a notification.

25 (6) A person who fails to comply with subsection (4) is guilty of an offence.

(7) Where the Director-General has been notified under subsection (1) or (4), the Director-General shall—

30 (a) promptly cause an investigation to be made into the matters notified to the Director-General; and

(b) if the Director-General is satisfied that the child in respect of whom the Director-General was notified may have been, or is in danger of being, abused or is a child in need of care, take such action as the Director-General considers appropriate, which may include reporting
35 those matters to a member of the police force.

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(8) Where a person notifies the Director-General pursuant to subsection (1) or (4)—

5 (a) the notification shall not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;

(b) no liability for defamation is incurred because of the making of the notification;

10 (c) the notification shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;

(d) the notification shall not be admissible in evidence in any proceedings before a court, tribunal or committee and no evidence of its contents shall be admissible; and

15 (e) a person shall not be compelled in any proceedings before a court, tribunal or committee to produce the notification, or any copy of or extract from the notification, or to disclose, or give any evidence of, any of the contents of the notification.

(9) The provisions of subsection (8) (d) and (e) do not apply in relation to—

20 (a) the admissibility in, or of, evidence of a notification under subsection (1) or (4);

(b) the production of such a notification, a copy thereof or an extract therefrom; or

25 (c) the disclosure or giving of evidence of the contents of such a notification,

either—

30 (d) in any proceedings before the Children's Court under this Act, or a court hearing or determining an appeal from a decision of the Children's Court under this Act, before which the child to whom the notification relates is brought for the purposes of proceedings under this Act; or

35 (e) in support of, or in answer to, a charge or allegation made in proceedings referred to in subsection (8) (d) or (e) against any person in relation to that person's exercising any of that person's functions in pursuance of this Act.

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(10) Subsection (8) (d) does not apply if a notification under subsection (1) or (4) is tendered in evidence, or evidence in respect of such a notification is given—

- (a) by the person by whom the notification was caused to be made; and
- 5 (b) in answer to a charge or allegation made against that person in proceedings referred to in subsection (8) (d).

Medical examination of abused children

23. (1) If the Director-General or a member of the police force believes on reasonable grounds (which may consist wholly or partly of information
10 received by that person) that a child who is under the age of 16 years has been abused, the Director-General or the member of the police force, as the case may be, may serve a notice, in such form as may be prescribed by the regulations—

- (a) naming or describing the child; and
- 15 (b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or some other place so specified for the purpose of the child's being medically examined,

20 on the person (whether or not a parent of the child) who appears to the Director-General or the member of the police force to have the care of the child for the time being.

(2) A person who fails to comply with the requirement contained in a notice served on the person under subsection (1) is guilty of an offence unless it is proved that the person did not have the care of the child at the
25 time the notice was served.

(3) If a person fails to comply with the requirement contained in a notice served on the person under subsection (1), an authorised officer or a member of the police force may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a
30 hospital or elsewhere for the purpose of the child's being medically examined.

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(4) When a child is presented to a medical practitioner under subsection (1) or (3)—

5 (a) the medical practitioner may carry out or cause to be carried out such medical examination of the child as the medical practitioner thinks fit, including examination at a hospital or place that is not the hospital or place specified in the notice referred to in subsection (1) in respect of the child;

(b) the Director-General shall, from the time at which the child is presented to the medical practitioner until the expiration of—

10 (i) such period of time as is reasonably necessary for the child to be examined in accordance with paragraph (a); or

(ii) 72 hours,

15 whichever period first expires, be deemed to be the guardian of the child for the purpose only of enabling the examination to be carried out; and

(c) the medical practitioner or other person by whom any such medical examination has been carried out shall prepare a written report of the examination for transmission to the Director-General.

20 (5) No proceedings lie against an officer, medical practitioner, member of the police force or person employed at any hospital or other place at which a child is examined for or on account of any act, matter or thing done or ordered to be done by that person, and purporting to be done for the purpose of carrying out or assisting in carrying out the provisions of this section, if that person has acted in good faith and with reasonable care.

25 (6) If a medical practitioner or other person transmits a report to the Director-General pursuant to subsection (4) (c)—

30 (a) the transmission of the report shall not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct; and

(b) no liability for defamation is incurred because of the making of the report.

Power of search and removal of abused children

24. (1) An officer or member of the police force may apply to an authorised justice for a search warrant if the officer or member of the police force has reasonable grounds for believing that a person on whom a notice
5 has been served under section 23 (1) has failed to comply with the requirement contained in the notice.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the
10 warrant—

(a) to enter any premises specified in the warrant;

(b) to search the premises for the presence of the child the subject of the notice under section 23 (1); and

(c) to remove the child and to present the child to a medical practitioner
15 under section 23 (3).

(3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force or a medical practitioner, or both—

20 (a) may accompany an officer executing a search warrant issued under this section; and

(b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

(5) It shall not be necessary in any search warrant issued under this
25 section to name any particular child.

(6) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a child pursuant to the warrant, use all reasonable force.

DIVISION 2—Offences**30 Child abuse**

25. A person who abuses a child, or causes or procures a child to be abused, is guilty of an offence.

*Children (Care and Protection) 1987***Neglect of children**

26. A person, whether or not the parent of the child, who, without reasonable excuse, neglects to provide adequate and proper food, nursing, clothing, medical aid or lodging for a child in his or her care, is guilty of an offence.

Unauthorised removal of children, etc.

27. (1) A person who, without lawful excuse—

(a) removes a child or other person from the care of a person into whose care or custody the child or other person has been placed under this Act; or

(b) causes or procures a child or other person to be so removed,

is guilty of an offence.

(2) A person who—

(a) is in charge of any hospital or other premises used for the purpose of receiving (whether or not for fee, gain or reward) more than 1 woman who is at the premises for the purposes of giving birth; and

(b) permits a child who is not in the charge of the child's mother to be taken from the premises without first obtaining the consent of the Director-General,

is guilty of an offence.

Tattooing of children

28. A person who in any manner tattoos any part of the body of a child is guilty of an offence unless the person has first obtained the written consent of a parent of the child to tattoo the child in that manner and on that part of the child's body.

Leaving children unsupervised in motor vehicles

29. A person who leaves any child in the person's care in a motor vehicle without proper supervision for such period or in such circumstances that—

(a) the child becomes or is likely to become emotionally distressed; or

- (b) the child's health becomes or is likely to become permanently or temporarily impaired,
- is guilty of an offence.
-

PART 3

5 LICENSING OF CHILD CARE ARRANGEMENTS

DIVISION 1—*Child care services*

Application of Division

30. This Division applies to such class of child care services as may be prescribed by the regulations for the purposes of this Division.

10 **Unlicensed persons not to provide child care services**

31. (1) A person who provides a child care service to which this Division applies, or who advertises himself or herself or holds himself or herself out as being willing to provide such a child care service, is guilty of an offence unless the person is the licensee under a licence for the child care
15 service.

(2) The licensee under a licence for a child care service is guilty of an offence unless the authorised supervisor under the licence has the overall supervision of the provision of the child care service to which the licence relates.

20 (3) A person who has the overall supervision of the provision of the child care service to which a licence for a child care service relates is guilty of an offence unless the person is the authorised supervisor under that licence.

(4) A person who is the licensee or authorised supervisor under a licence for a child care service is guilty of an offence if the person contravenes or
25 fails to comply with any condition of the licence that applies to the person.

(5) A person who wilfully publishes any advertisement with respect to a child care service to which this Division applies, being a child care service that is not licensed, is guilty of an offence.

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(6) A person who is the authorised supervisor under a licence for a child care service but is not the licensee under the licence is not guilty of an offence by virtue of subsection (1) in respect of any thing done by the person in the course of supervising the provision of the child care service to which the licence relates.

(7) A person is not guilty of an offence by virtue of subsection (1) in respect of any thing done by the person in accordance with directions given by the licensee under a licence for a child care service or by the authorised supervisor under such a licence if that thing is done by the person in the course of providing or assisting in providing the child care service to which the licence relates.

(8) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

15 Licences

32. (1) A licence for a child care service shall specify—

- (a) the person or body to whom or to which it is granted;
- (b) the child care service to which it relates; and
- (c) the person who is authorised by the licence to have the overall supervision of the provision of the child care service to which it relates.

(2) If a licence specifies that it is granted to a body, and the body consists of an unincorporated body of persons, then—

- (a) except as provided by paragraph (b)—the applicant for the licence; or
- (b) if a person who has been appointed by the body to be the licensee under the licence gives written notice to the Minister of the appointment and of the person's full name and residential address—the person so appointed,

shall, for the purposes of this Act, be deemed to be the person to whom the licence is granted.

(3) Schedule 1 applies to a licence for a child care service.

*Children (Care and Protection) 1987***Termination of illegal child care services**

33. (1) If a child care service is being provided for a child and an offence under section 31 is being committed in relation to the child care service (whether or not a person has been proceeded against for the offence),
 5 any person responsible for the child shall, on the request of an officer, forthwith cease to provide the child with the service.

Penalty: \$500.

(2) Subsection (1) does not apply to or in respect of a child who is related to the person by whom the offence under section 31 is being committed.

10

DIVISION 2—Residential child care centres**Unauthorised persons not to conduct residential child care centres**

34. (1) A person who conducts a residential child care centre, or who advertises himself or herself or holds himself or herself out as being willing to conduct a residential child care centre, is guilty of an offence unless the
 15 centre is licensed and the person is the licensed manager of the centre.

(2) A person who is the licensed manager of a licensed residential child care centre is guilty of an offence if the person contravenes or fails to comply with any condition of the licence for the centre that applies to the person.

(3) For the purposes of subsection (1), but without affecting the generality
 20 of that subsection, a person who is in charge of a residential child care centre shall be deemed to have the conduct of the centre.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

25 Unlicensed premises, etc., not to be used as residential child care centres

35. (1) The proprietor of a residential child care centre is guilty of an offence if the centre is not licensed.

(2) The licensee of a licensed residential child care centre is guilty of an offence if—

- 30 (a) the centre does not comply with any condition of the licence for the centre that applies to the centre; or
- (b) the licensee contravenes or fails to comply with any condition of the licence for the centre that applies to the licensee.

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(3) The licensee of a licensed residential child care centre shall produce the licence for the centre to an officer requesting the licensee to do so.

Penalty: \$200.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

Licences

36. (1) A licence for a residential child care centre shall specify—

- (a) the person or body to whom or to which it is granted;
- 10 (b) the premises to which it relates; and
- (c) the person who is authorised by the licence to have the conduct of the centre.

(2) If a licence specifies that it is granted to a body, and the body consists of an unincorporated body of persons, then—

- 15 (a) except as provided by paragraph (b)—the applicant for the licence; or
- (b) if a person who has been appointed by the body to be the licensee under the licence gives written notice to the Minister of the appointment, and of the person's full name and residential address—
- 20 the person so appointed,

shall, for the purposes of this Act, be deemed to be the person to whom the licence is granted.

(3) Schedule 1 applies to a licence for a residential child care centre.

Removal of children from unlicensed residential child care centres

25 37. (1) If—

(a) a child resides—

- (i) at a residential child care centre that is not licensed; or
- (ii) at a licensed residential child care centre that is conducted otherwise than by the licensed manager of the centre;

30 (b) an officer requests a person responsible for the child to remove the child from the residential child care centre; and

(c) the child is not forthwith so removed,

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the child shall be deemed to be a child in need of care.

(2) Subsection (1) does not apply to or in respect of a child who is related to the person who has the care of the child at that centre.

Notification of deaths at licensed residential child care centres

5 38. (1) If a child dies at a licensed residential child care centre, the licensed manager of the centre shall forthwith cause notice of the death to be given to—

- (a) such of the parents of the child as can reasonably be located;
- 10 (b) a member of the police force at the police station nearest the centre; and
- (c) the Director-General.

Penalty: \$500.

(2) Subsection (1) does not apply to or in respect of a child who is related to the licensed manager of the licensed residential child care centre.

15 Entry without warrant into premises of residential child care centres

39. (1) For the purpose of—

- (a) making an inquiry in relation to an application under this Act with respect to the premises of any residential child care centre;
- 20 (b) ensuring that the provisions of this Act and the regulations with respect to the premises of any licensed residential child care centre, and of any conditions imposed on a licence with respect to any such premises, are being complied with; or
- (c) ensuring that the conditions of any exemption relating to the premises of a residential child care centre are being complied with,

25 any authorised officer may at any time, without any authority other than that conferred by this subsection, enter the premises and inspect them and observe and converse with any person apparently residing there.

(2) In exercising the powers conferred by subsection (1), an authorised officer may be accompanied—

- 30 (a) by a medical practitioner; or
- (b) by a member of the police force,

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or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently residing there.

(3) Nothing in subsection (2) authorises—

(a) the examination of a child in contravention of section 20 or 21; or

5 (b) the examination of any other person against that person's will.

DIVISION 3—*Private fostering agencies*

Unauthorised private fostering agencies prohibited

10 **40. (1)** A person who carries on private fostering services, or who advertises himself or herself or holds himself or herself out as being willing to carry on private fostering services, is guilty of an offence unless the person is an authorised private fostering agency.

(2) An authorised private fostering agency is guilty of an offence unless the principal officer of the agency has the overall supervision of the private fostering services carried on by it.

15 **(3)** A person who has the overall supervision of the private fostering services carried on by an authorised private fostering agency is guilty of an offence unless the person is the principal officer of the agency.

20 **(4)** A person who is an authorised private fostering agency or the principal officer of such an agency is guilty of an offence if the person contravenes or fails to comply with any condition of the agency's private fostering agency authority that applies to the person.

(5) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

25 **Private fostering agency authorities**

41. (1) A private fostering agency authority may be granted only to a non-Government organisation and shall specify—

(a) the non-Government organisation to which it is granted; and

30 (b) the person who is authorised by the authority to have the overall supervision of the provision of the private fostering services carried on under the authority.

(2) Schedule 1 applies to a private fostering agency authority.

DIVISION 4—*Fostering***Unauthorised fostering prohibited**

42. (1) A person (other than the holder of a fostering authority) who, for a period, or for periods in the aggregate, exceeding 50 days in any period of 12 months, has in his or her care one or more children for the purpose of fostering the children (whether or not for fee, gain or reward) is guilty of an offence.
- (2) Subsection (1) does not apply to or in respect of—
- (a) a child who has been placed in the care of the person by an authorised private fostering agency;
 - (b) a child who has been placed in the care of the person by, or with the written approval of, the Minister or the Director-General;
 - (c) a child who is related to the person; or
 - (d) a person who, at any licensed residential child care centre, acts as a foster parent to any children.
- (3) The holder of a fostering authority is guilty of an offence—
- (a) if the holder acts as a foster parent—
 - (i) to more children (other than children who are related to the holder) than the maximum number of children specified in the authority;
 - (ii) where the fostering authority specifies the maximum number of children in any age group to whom it applies—to more children (other than children who are related to the holder) in any such age group than the maximum number of children so specified;
 - (iii) where the fostering authority specifies the child or children to whom it applies—to any child (other than a child who is related to the holder) other than the child or children so specified; or
 - (iv) where the fostering authority specifies the maximum period for which the person to whom it is granted may act as a foster parent in respect of any child or children or in respect of any child or children so specified—to any child (other than a child who is related to the holder) for a period exceeding the maximum period so specified; or
 - (b) if the holder contravenes or fails to comply with any condition of the fostering authority.

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(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of any person exempted from the operation of that provision under section 48.

Fostering authorities

5 43. (1) A fostering authority—

- (a) shall specify the person to whom it is granted;
- (b) shall specify the maximum number (not exceeding 5) of children to whom it applies;
- 10 (c) may specify the maximum number of children in any age group to whom it applies;
- (d) may specify the child or children to whom it applies; and
- (e) may specify the maximum period for which the person to whom it is granted may act as a foster parent in respect of—

(i) any child or children; or

15 (ii) where it specifies the child or children to whom it applies—the child or any of the children so specified.

(2) Schedule 1 applies to a fostering authority.

Unauthorised foster placements prohibited

44. (1) If—

- 20 (a) a person places a child in the care of another person (other than the holder of a fostering authority) for the purpose of the child's being fostered by the other person; and
- 25 (b) the other person has the care of the child (whether or not for fee, gain or reward) for a period, or for periods in the aggregate, exceeding 50 days in the period of 12 months after the child was placed in the person's care,

the person who so placed the child is guilty of an offence.

(2) Subsection (1) does not apply to or in respect of—

- (a) the placement of a child by an authorised private fostering agency;
- 30 (b) the placement of a child by, or with the written approval of, the Minister or the Director-General; or

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- (c) the placement of a child in the care of a person to whom the child is related.

Lump sum payments for care of children

5 **45. (1)** Except pursuant to an order of a court specifying the terms on which the person may do so, a person shall not, in consideration of the receipt by the person of any sum of money or other valuable consideration, other than periodical payments of money—

(a) calculated at not more than the rate per week prescribed by the regulations; and

10 (b) made for not more than 4 weeks in advance,

act as a foster parent to any child unless the child is being cared for at the place where a guardian of the child resides.

(2) Subsection (1) does not apply to or in respect of—

15 (a) the person in charge of a non-Government children's home for the time being approved by order of the Minister for the purposes of this subsection; or

(b) the person in charge of a facility.

20 **(3)** The Director-General shall, if requested to do so by any person wishing to place a child in a non-Government children's home or in the care of the holder of a fostering authority, accept from that person a sum of money from which shall be made such payments, not exceeding periodical payments of money calculated in accordance with subsection (1) (a), as may be agreed upon to the person in charge of that home or to the holder of the fostering authority, as the case may be.

25 **(4)** A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

Proceedings for offences

30 **46.** Proceedings for an offence under section 42 or 44 shall not be commenced otherwise than by, or with the written approval of, the Director-General.

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DIVISION 5—*General***Reports**

47. (1) The Director-General shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the activities of each licensee under a licence for a child care service or a residential child care centre.

(2) A report shall deal with such matters as the Minister directs and with such other matters as the Director-General considers appropriate to include in the report.

10 **Exemptions**

48. (1) The Minister may, by notice in writing served on a person, exempt the person, either absolutely or subject to conditions, from the operation of section 31 (1), (2), (3) or (4), 34 (1) or (2), 35 (1) or (2), 40 (1), (2), (3) or (4), 42 (1) or (3) or 45 (1).

15 (2) A person on whom a notice has been served under this section is exempted from the operation of any provision specified in the notice, but only while the person does not contravene or fail to comply with any condition so specified to which the exemption is subject.

20 (3) The regulations may make provision for or with respect to the exemption of persons from the operation of the provisions referred to in subsection (1).

Revocation of exemptions

49. (1) If the Minister intends to revoke an exemption given under section 48 (1), the Minister shall cause to be served on the person to whom the exemption was given a notice in writing stating that, when 28 days have expired after service of the notice, the Minister intends to revoke the exemption on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the exemption should not be revoked.

30 (2) When 28 days have expired after a notice has been served on a person under this section, the Minister may, after considering any submissions made to the Minister during that period by the person on whom the notice was served, revoke the exemption by a further notice served on that person.

PART 4

EMPLOYMENT OF CHILDREN

Children not to be employed in certain cases unless licensed

50. (1) A person shall not—

- 5 (a) employ a child who is not licensed under a children's employment licence;
- (b) cause or procure such a child to be employed; or
- (c) being a person having the care of such a child, consent to the child's being employed or allow the child to be employed,
- 10 for the purpose of the child's taking part in an entertainment or exhibition or offering any thing for sale.

Penalty: \$1,000.

(2) Subsection (1) does not apply to or in respect of the employment of a child—

- 15 (a) if the child is of or above the age of 15 years;
- (b) if the child is under the age of 15 years but is the holder of a certificate of exemption (granted in respect of the child by or with the authority of the Minister for Education) exempting the child from attendance at school for the purpose of enabling the child to
- 20 take employment;
- (c) if the child is employed for the purpose of an occasional entertainment or exhibition the net proceeds of which are to be wholly applied for the benefit of a school or charitable object; or
- (d) if the employment of the child is exempted from the operation of
- 25 subsection (1) by the regulations.

(3) Subsection (1) does not, to the extent of the exemption, apply to or in respect of any person exempted from the operation of that subsection under subsections (4) and (5).

(4) The Minister may, by notice in writing served on a person, exempt

30 the person, either absolutely or subject to conditions, from the operation of subsection (1).

(5) A person on whom a notice has been served pursuant to subsection (4) is exempted from the operation of subsection (1), but only while the

35 person does not contravene or fail to comply with any condition specified in the notice to which the exemption is subject.

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(6) If the Minister intends to revoke an exemption given under subsection (4), the Minister shall cause to be served on the person to whom the exemption was given a notice in writing stating that, when 28 days have expired after service of the notice, the Minister intends to revoke the exemption on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the exemption should not be revoked.

(7) When 28 days have expired after a notice has been served on a person pursuant to subsection (6), the Minister may, after considering any submissions made to the Minister during that period by the person on whom the notice was served, revoke the exemption by a further notice served on that person.

(8) For the purposes of subsections (1) and (2), a child who takes part in an entertainment or exhibition carried on for profit or who offers any thing for sale shall be deemed to be employed, for the purpose of so taking part or offering the thing for sale, by the person conducting the entertainment or exhibition or owning the thing offered for sale, even though the child is neither an employee of that person nor receives any consideration for the child's so doing.

20 Children not to be employed for pornographic purposes

51. (1) A person shall not—

- (a) employ a child for pornographic purposes;
- (b) cause or procure a child to be so employed; or
- (c) being a person having the care of such a child, consent to the child's being so employed or allow the child to be so employed.

Penalty: \$5,000 or imprisonment for 3 years, or both.

(2) For the purposes of subsection (1), a child is employed for pornographic purposes if, in the course of his or her employment, the child is engaged in an activity of a sexual nature or is in the presence of another person who is so engaged.

Entertainment and performances by children

52. (1) A person who causes or allows a child to take part in an entertainment or exhibition, or in preparing, training or rehearsing for an entertainment or exhibition, in the course of which the child is in danger of suffering death or injury is guilty of an offence.

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(2) Where a child is employed—

(a) to take part in an entertainment or exhibition and, by the nature of the entertainment or exhibition, the child is in danger of suffering death or injury; or

5 (b) to take part in preparing, training or rehearsing for such an entertainment or exhibition,

and an accident causing actual bodily harm occurs to the child, the employer of the child, whether a parent of the child or not, is guilty of an offence.

(3) Where the employer of a child referred to in subsection (2) is not a
10 parent of the child, the court before which the employer is convicted of the offence referred to in that subsection may award, as compensation for the bodily harm so caused, an amount (not exceeding the amount prescribed by the regulations) to be paid by the employer to the child or to some other person, named by the court, on behalf of the child.

15 (4) The recovery of compensation awarded under subsection (3) does not affect any other remedy available to the child, but any compensation so awarded shall be taken into account in any other proceedings by or on behalf of the child for or in respect of the same bodily harm.

Licences to employ children for certain purposes

20 53. (1) In this section, a reference to a child does not include a reference to—

(a) a child who is of or above the age of 15 years; or

25 (b) a child who is under the age of 15 years but is the holder of a certificate of exemption (granted in respect of the child by or with the authority of the Minister for Education) exempting the child from attendance at school for the purpose of enabling the child to take employment.

(2) The Director-General may, on application made by or on behalf of a child, grant a licence authorising the child to be employed for the purpose
30 of taking part in any entertainment or exhibition or offering any thing for sale, being an entertainment, exhibition or thing specified or of a kind specified in the licence.

(3) Subject to subsection (6), a licence shall be in force—

35 (a) for such times and during such periods as may be prescribed by the regulations; and

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(b) subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Director-General may, in a particular case, determine.

5 (4) The times for which a licence is in force, the periods during which it is in force and the conditions to which it is subject shall be endorsed on the licence.

(5) A licence shall not be granted under subsection (2) unless the Director-General is satisfied that the child is fit to be employed and that proper provision has, in the manner specified in the application, been made
10 to safeguard the health, welfare and education of the child.

(6) A licence shall not authorise a child to be employed between the hours of 10 p.m. on any day and 6 a.m. on the following day.

(7) A licence may, at any time, be varied or cancelled by the Director-General.

15 **Occupational health and safety legislation**

54. Nothing in this Part limits the effect of the Occupational Health and Safety Act 1983 or the associated occupational health and safety legislation within the meaning of that Act.

PART 5

20 CHILDREN IN NEED OF CARE

DIVISION 1—*Preliminary*

Objects of Part

25 55. The objects of this Part are to ensure that children in need of care are provided with assistance and supportive services, the provision of that assistance and those services being based on the premises that—

(a) the welfare and interests of children are to be given paramount consideration;

30 (b) children are entitled to special protection and to opportunities and facilities to enable them to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity;

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- 5 (c) children, for the full and harmonious development of their personalities, need love and understanding and, towards that end, should, wherever possible, grow up in the care and under the responsibility of their parents, but if that is not possible, in an environment of affection and moral and material security and, in the case of children of tender years, should not, except in exceptional circumstances, be separated from their parents;
- 10 (d) continuing contact between children and their parents should be encouraged in situations where, pursuant to legal proceedings, children have been separated from their parents;
- (e) children should be protected against all forms of neglect, cruelty and exploitation;
- (f) responsibility for the welfare of children belongs primarily to their parents, but if not fulfilled devolves upon the community; and
- 15 (g) except in exceptional circumstances or pursuant to legal proceedings, there should be no interruption of relationships between children and their parents contrary to the wishes of children and their parents.

Interpretation

56. In this Part—

- 20 “care application” means an application under section 57.

DIVISION 2—*Care applications***Care applications**

57. (1) An application for the making of an order under section 72 in respect of a child may be made—

- 25 (a) by the Director-General; or
- (b) by any parent of the child who has the custody of the child if it is alleged that the child is in need of care on the grounds that there is a substantial and presently irretrievable breakdown in the relationship between the child and that parent.
- 30 (2) Such an application shall specify the grounds on which it is alleged that the child is in need of care.
- (3) Such an application shall not be made by the Director-General unless the Director-General is satisfied that no adequate alternative means are available to provide for the welfare of the child.

*Children (Care and Protection) 1987***Service of care applications**

58. (1) A person who makes a care application shall, as soon as practicable after the application is made, cause a copy of the application (on which is endorsed a notice specifying the time, date and place set down for the hearing of the application) to be served on—

- (a) in the case of a child who is of or above the age of 10 years—the child;
- (b) each person responsible for the child who can reasonably be located;
- 10 (c) in the case of a child who is residing in a non-Government children's home—the person in charge of the home; and
- (d) if the application is made by a parent of the child—the Director-General.

(2) Failure to serve a copy of a care application in accordance with subsection (1) does not vitiate the decision of the Children's Court on the 15 application.

Removal of children pursuant to order of the Children's Court

59. (1) If a care application has been made with respect to a child—

- (a) the Children's Court may make an order for the removal of the child from any premises; and
- 20 (b) an authorised officer, or a member of the police force, may, pursuant to the order, enter the premises, search the premises for the presence of the child and remove the child from the premises.

(2) An authorised officer, or a member of the police force, may, for the purposes of entering and searching premises and removing a child pursuant 25 to an order in force under subsection (1), use all reasonable force.

Removal of children without warrant

60. (1) An authorised officer, or a member of the police force, may, without any authority other than that conferred by this subsection—

- 30 (a) enter any premises in which the officer or member of the police force suspects on reasonable grounds that there is a child in need of care by virtue of the child's being in immediate danger of abuse;
- (b) search the premises for the presence of any such child; and
- (c) remove any such child from the premises.

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(2) An authorised officer, or a member of the police force, may, for the purposes of entering and searching premises and removing a child pursuant to subsection (1), use all reasonable force.

Power of search and removal of children in need of care

5 **61. (1)** An officer or member of the police force may apply to an authorised justice for a search warrant if the officer or member of the police force has reasonable grounds for believing that there is in any premises a child in need of care.

10 **(2)** An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the warrant—

(a) to enter any premises specified in the warrant;

(b) to search the premises for the presence of the child; and

15 (c) to remove the child from the premises.

(3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force or a medical practitioner, or both—

20 (a) may accompany an officer executing a search warrant issued under this section; and

(b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

25 **(5)** It shall not be necessary in any search warrant issued under this section to name any particular child.

(6) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a child pursuant to the warrant, use all reasonable force.

Care of children pending care proceedings

30 **62. (1)** If an officer or member of the police force removes a child from any premises under section 59, 60 or 61, the officer or member of the police force shall forthwith place the child in the care of the Director-General to be kept by the Director-General at a place approved by the Minister for the purposes of this section.

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(2) If a child has been removed from any premises under section 60 or 61 and placed in the care of the Director-General, the Director-General shall not keep the child in the Director-General's care for more than 3 days unless the Director-General has, before the expiration of that period, made a care application in respect of the child.

(3) If a child has been removed from any premises under section 59, 60 or 61 and placed in the care of the Director-General, the Director-General may, subject to any order of the Children's Court—

(a) discharge the child from the Director-General's care—

- 10 (i) without any undertakings being given;
- (ii) upon the giving by a person responsible for the child of undertakings acceptable to the Director-General with respect to the care of the child;
- 15 (iii) upon the giving by the child of undertakings acceptable to the Director-General with respect to the conduct of the child; or
- (iv) upon the giving of undertakings referred to in both subparagraph (ii) and subparagraph (iii); or

20 (b) keep the child in the Director-General's care or, where a person approved by the Director-General is willing to have the care of the child, place the child in the care of that person,

pending the hearing of the care application made or to be made in respect of the child.

25 (4) While a child is in the care of the Director-General, the Director-General may, at any time before the hearing of the care application commences, exercise any of the functions conferred on the Director-General by subsection (3) (a).

(5) In determining whether or not to exercise any function under subsection (3) or (4), the Director-General shall have regard only to the following matters:

- 30 (a) any views expressed by the child as to whether the child wishes that function to be exercised;
- (b) any views expressed by the child as to whether the child intends to return to the care of the person responsible for the child;
- 35 (c) whether the exercise by the Director-General of that function is likely to protect the welfare of the child;

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(d) whether the failure by the Director-General to exercise that function is likely to endanger the welfare of any other person.

(6) An undertaking referred to in subsection (3) shall be in writing signed by the person giving it and shall remain in force until the commencement
5 of the hearing of the care application made or to be made in respect of the child to whom it relates.

(7) A child does not cease to be in the care of the Director-General merely because the child has been placed in the care of some other person under subsection (3) (b).

10 Duties of Director-General to give information to certain persons

63. (1) If the Director-General does not discharge a child from the Director-General's care, as referred to in section 62 (3) (a), the Director-General shall record the Director-General's reasons for not doing so and cause a copy of that record to be served on—

15 (a) in the case of a child who is of or above the age of 10 years—the child; and

(b) each person responsible for the child who can reasonably be located.

(2) If a child—

(a) is the subject of a care application; and

20 (b) is in the care of the Director-General under this Division,

the Director-General shall cause a document containing brief particulars of the laws under which an application may be made for the discharge of the child from the care of the Director-General to be served on—

25 (c) in the case of a child who is of or above the age of 10 years—the child; and

(d) each person responsible for the child who can reasonably be located.

(3) The Director-General shall cause a copy of any undertaking referred to in section 62 (3) to be served on the person giving it.

30 (4) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.

DIVISION 3—*Hearings***Attendance of witnesses, etc.**

64. In any proceedings under this Part with respect to a child, the Children's Court may require the attendance, at the place where the proceedings are being or are to be conducted, of the child and of any person responsible for the child.

Right of appearance

65. (1) In any proceedings under this Part with respect to a child—

(a) the child and each person responsible for the child; and

10 (b) the Director-General,

may appear in person in the proceedings, or be represented by a barrister, solicitor or agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

(2) In any proceedings under this Part with respect to a child, any other person who, in the opinion of the Children's Court, has a genuine concern for the welfare of the child to whom the proceedings relate may, by leave of the Children's Court, appear in person in the proceedings, or be represented by a barrister, solicitor or agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

20 Children's Court's powers with respect to representation for children

66. (1) In any proceedings under this Part with respect to a child, the Children's Court may appoint a person to act as guardian ad litem for the child.

(2) In any proceedings under this Part with respect to a child, the Children's Court may, if it appears to it that the child ought to be separately represented—

(a) order that the child be separately represented; and

(b) make such other orders as it thinks necessary for the purpose of securing separate representation for the child.

30 (3) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the Children's Court has made an order under subsection (2) (b).

Exclusion of general public from proceedings

67. (1) While the Children's Court is hearing proceedings under this Part with respect to a child—

- 5 (a) any person (other than a person referred to in paragraph (b)) who is not directly interested in the proceedings shall, unless the Children's Court otherwise directs, be excluded from the place where the proceedings are being heard; and
- 10 (b) any person who is engaged in preparing a report on the proceedings for dissemination through a public news medium shall, unless the Children's Court otherwise directs, be entitled to enter and remain in the place where the proceedings are being heard.

(2) While the Children's Court is hearing proceedings under this Part with respect to a child—

- 15 (a) the Children's Court may direct the child to leave the place where the proceedings are being heard at any time during the proceedings if it is of the opinion that the prejudicial effect of excluding the child is outweighed by the psychological harm that is likely to be occasioned to the child if the child is allowed to remain there; and
- 20 (b) the Children's Court may direct any person (other than the child) to leave the place where the proceedings are being heard at any time during the examination of any witness if it is of the opinion that it is in the interests of the child that such a direction should be given.

(3) The powers exercisable by the Children's Court under subsection (2) (b) may be exercised even if the person to whom a direction under that paragraph is given is directly interested in the proceedings.

(4) If the Children's Court gives a direction under subsection (2) (a) with respect to a child, it shall also give a direction under subsection (2) (b) with respect to all persons who are engaged in preparing reports of the proceedings for dissemination through a public news medium.

30 **Publication of names, etc.**

68. (1) The name of any child—

- (a) who appears as a witness before the Children's Court in any proceedings under this Part;
- (b) to whom any proceedings under this Part relate; or
- 35 (c) who is mentioned or otherwise involved in any proceedings under this Part,

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shall not be published or broadcast, whether before or after the proceedings are disposed of.

(2) Any person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence.

(3) Subsection (1) does not prohibit—

(a) the publication or broadcasting of an official report of the proceedings of the Children's Court that includes the name of any child the publication or broadcasting of which would otherwise be prohibited by subsection (1); or

(b) the publication or broadcasting of the name of a child—

(i) in the case of a child who is under the age of 14 years at the time of publication or broadcasting—with the consent of the Minister; or

(ii) in the case of a child who is of or above the age of 14 years at the time of publication or broadcasting—with the consent of the child.

(4) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material that identifies the child or is likely to lead to the identification of the child.

Children's Court to explain proceedings to children

69. (1) In any proceedings under this Part with respect to a child, the Children's Court shall take such measures as are reasonably practicable to ensure that the child understands the proceedings and, in particular, that the child understands—

(a) the nature of any assertions made in the proceedings; and

(b) the legal implications of any such assertion.

(2) Without limiting the generality of subsection (1), the Children's Court shall, if requested by the child or by some other person on behalf of the child, explain to the child—

(a) any aspect of the Children's Court's procedure; and

(b) any decision or ruling made by the Children's Court,

in or in relation to the proceedings.

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(3) Without limiting the generality of subsection (1), the Children's Court shall ensure that the child has the fullest opportunity practicable to be heard, and to participate, in the proceedings.

Procedure generally

5 70. (1) Proceedings under this Part shall be conducted with as little formality and legal technicality and form as the circumstances of the case permit.

(2) Proceedings under this Part are not criminal proceedings, but an order shall not be made under section 72 (1) (b) or (c) in respect of a child unless
10 the Children's Court is satisfied that it is very highly probable that the child is in need of care.

(3) In any proceedings under this Part, the Children's Court is not bound by the rules of evidence but may, subject to section 71, consider any statement, document, information or matter that may, in its opinion, assist
15 it in relation to the proceedings, whether or not the statement, document, information or matter would be admissible in accordance with those rules.

(4) In any proceedings under this Part, a member of the Children's Court may examine and cross-examine any witness to such extent as the member thinks proper for the purpose of eliciting information relevant to the exercise
20 of the Children's Court's powers under this Part.

(5) In subsection (4), a reference to a member of the Children's Court includes a reference to an authorised Magistrate within the meaning of the Children's Court Act 1987.

Admissibility of certain statements

25 71. (1) Any statement or information made or given to a member of the police force by a child to whom any proceedings under this Part relate shall not be admitted in evidence in the proceedings unless—

(a) there was present at the place where, and throughout the period of
30 time during which, it was made or given an adult (other than a member of the police force)—

(i) nominated by the child; or

(ii) belonging to a class of persons selected by the child,

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and the child was given (before the statement or information was made or given) an opportunity to consult with the adult in private; or

(b) the Children's Court—

5 (i) is satisfied that there was proper and sufficient reason for no such adult to have been present at the place where, or throughout the period of time during which, the statement or information was made or given; and

10 (ii) considers that, in the particular circumstances of the case, the statement or information should be admitted in evidence in those proceedings.

(2) Subsection (1) does not apply in any proceedings on a care application that alleges that a child is in need of care—

15 (a) because adequate provision is not being made, or is likely not to be made, for the child's care; or

(b) because the child is being, or is likely to be, abused.

DIVISION 4—*Children's Court orders*

Children's Court's powers with respect to children in need of care

20 72. (1) If a care application is made with respect to a child, the Children's Court shall inquire into the matter and—

(a) if it is not satisfied that the child is in need of care, it shall make an order dismissing the application;

(b) if it is satisfied that the child is in need of care—

25 (i) it may make an order accepting such undertakings (given by a person responsible for the child) as it thinks fit with respect to the care of the child;

(ii) it may make an order accepting such undertakings (given by the child) as it thinks fit with respect to the child's conduct; or

30 (iii) it may make an order accepting undertakings referred to in both subparagraph (i) and subparagraph (ii); or

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(c) if it is satisfied that the child is in need of care and that the making of an order under this paragraph is likely to result in a significant improvement in the standard of care being given to the child—

5 (i) it may make an order placing the child under the supervision of an officer (whether or not on the giving of undertakings referred to in paragraph (b) (i) or (ii) or both);

10 (ii) where a suitable person is willing to have the custody of the child—it may make an order placing the child in the custody of that person (whether or not on the giving of undertakings referred to in paragraph (b) (i) or (ii) or both); or

(iii) it may make an order declaring the child to be a ward under this Act,

for such period expiring on or before the day on which the child attains the age of 18 years as it thinks fit.

15 (2) In considering a care application in respect of a child, the Children's Court shall have regard to—

(a) the need to protect the welfare of the child;

(b) the views of the child;

20 (c) the importance of encouraging continuing contact between the child and the persons responsible for the child;

(d) the importance of preserving the particular cultural environment of the child;

25 (e) the practicability of services and facilities being provided to the child without the need for the making of an order under subsection (1) (b) or (c); and

(f) the objects of this Part.

(3) The Children's Court may make an order under subsection (1) (b) or (c) in respect of a child even though the child is not then in need of care if the Children's Court is satisfied that—

30 (a) the child was in need of care when the circumstances that gave rise to the relevant care application occurred or existed; and

(b) the child would be in need of care but for the existence of arrangements for the care of the child made under section 62 or 77.

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(4) An undertaking referred to in subsection (1) shall be in writing signed by the person giving it and shall remain in force for such period (expiring on or before the day on which the child attains the age of 18 years) as may be specified in the undertaking.

5 (5) The Children's Court shall cause a copy of any undertaking referred to in subsection (1) to be served on the person giving it.

(6) If the Children's Court makes an order under subsection (1) (c), it shall cause a copy of the order to be forwarded to the Director-General.

(7) If—

10 (a) an order is made with respect to a child under subsection (1) (c) (ii);

(b) the person in whose custody the child is placed by the order is the principal officer of a private fostering agency; and

(c) no undertakings of the kind referred to in subsection (1) (b) (i) were given by the principal officer on the making of the order,

15 the principal officer may place the child in the care of another person.

Restrictions on making orders under sec. 72

73. (1) An order shall not be made under section 72 (1) (c) in respect of a child unless—

(a) the child is under the age of 16 years; and

20 (b) the Children's Court is satisfied that the exercise of its power under section 72 (1) (b) would be wholly insufficient to meet the child's need for care.

(2) An order shall not be made under section 72 (1) (c) (iii) in respect of a child unless the Children's Court is satisfied that the exercise of its power
25 under a preceding subparagraph of that paragraph would be wholly insufficient to meet the child's need for care.

(3) If the Children's Court is of the opinion that a child the subject of a care application has been brought up substantially in accordance with a particular culture or is regarded as belonging to a particular cultural group,
30 the Children's Court shall not, unless the child has expressed a wish to the contrary, make an order under section 72 (1) (c) (i) or (iii) unless it has taken into account the practicability of making an order under section 72 (1) (c) (ii) placing the child in the custody of a person belonging to that cultural group.

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(4) The Children's Court shall not make an order under section 72 (1) (c) in respect of a child if the order would be inconsistent with any order in relation to the child made by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children.

5 Assessment reports

74. (1) The Children's Court shall not make an order under section 72 (1) (c) (ii) or (iii) unless—

- 10 (a) the Director-General has tendered to the Children's Court an assessment report, prepared in accordance with the regulations, with respect to the child;
- (b) the Director-General has caused copies of the report to be given to the child and to any other person appearing in the proceedings; and
- 15 (c) the Children's Court has taken into account the matters contained in the report and any submissions made in relation to those matters by the persons referred to in paragraph (b).

(2) Such a report shall include, in relation to any case in respect of which the Children's Court has determined that a conflict of cultural factors exists, such advice as is appropriate to enable the Children's Court to make an appropriate order in relation to the child.

20 Variation of orders under sec. 72

75. (1) An application for the rescission or variation of an order under section 72 (1) (b) or (c) may be made—

- (a) by the Director-General;
- (b) by the child the subject of the order;
- 25 (c) by a person responsible for the child; or
- (d) by any person who deems himself or herself to have a sufficient interest in the welfare of the child.

(2) The Children's Court is not required to hear or determine an application made to it with respect to a child by a person referred to in subsection (1) (d) unless it considers the person to have a sufficient interest in the welfare of the child.

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(3) If the Children's Court is satisfied, on an application made to it with respect to a child, that it is appropriate to do so—

(a) it may, by order, vary or rescind any order under section 72 (1) (b) or (c); and

5 (b) if it rescinds such an order—it may, in accordance with this Division, make any one of the orders that it could have made in relation to the child had a care application been made to it with respect to the child.

10 (4) Upon the making of an order under subsection (3) (a) or (b), the Children's Court shall cause notice of the order to be served on the Director-General.

(5) There is no limit to the number of applications that may be made under subsection (1) for the variation or rescission of an order under section 72.

15

DIVISION 5—*Adjournments***Adjournments by the Children's Court**

76. (1) The Children's Court shall not adjourn proceedings on a care application for a period exceeding 8 days on any one occasion if, on the adjournment, it makes an order under section 77 (1) with respect to the
20 child to whom the application relates whereby the child is placed or continued in the care of the Director-General.

(2) Without limiting the generality of subsection (1), the Children's Court—

25 (a) shall not adjourn proceedings on a care application for a period, or for periods in the aggregate, exceeding 8 days except with the consent of—

(i) in the case of a child who is of or above the age of 10 years—the child; and

30 (ii) each person responsible for the child, being a person who is appearing in, or is represented at, the proceedings,

given after they have received advice from a barrister or solicitor instructed to advise them on the question of the adjournment; and

(b) shall not adjourn any such proceedings for a period, or for periods in the aggregate, exceeding 42 days.

Care of children during adjournments

77. (1) On the adjournment of proceedings on a care application with respect to a child, the Children's Court shall do one of the following things:

- (a) if the child is not in the care of the Director-General—
 - 5 (i) it may refuse to make an order under subparagraph (ii), (iii), (iv) or (v);
 - (ii) it may make an order accepting such undertakings (given by a person responsible for the child) as it thinks fit with respect to the care of the child;
 - 10 (iii) it may make an order accepting such undertakings (given by the child) as it thinks fit with respect to the conduct of the child;
 - (iv) it may make an order accepting undertakings referred to in both subparagraph (ii) and subparagraph (iii);
 - 15 (v) it may make an order placing the child in the care of the Director-General;
 - (b) if the child is in the care of the Director-General—
 - (i) it may make an order discharging the child from the care of the Director-General unconditionally;
 - 20 (ii) it may make an order discharging the child from the care of the Director-General on the giving of undertakings referred to in paragraph (a) (ii) or (iii) or both;
 - (iii) it may make an order that the child continue in the care of the Director-General.
- (2) In determining which order to make under subsection (1), the
25 Children's Court shall have regard only to the following matters:
- (a) any views expressed by the child as to whether the child wishes the order to be made;
 - (b) any views expressed by the child as to whether the child intends to return to the care of the person responsible for the child;
 - 30 (c) whether the making of the order is likely to protect the welfare of the child;
 - (d) whether the failure by the Children's Court to make the order is likely to endanger the welfare of any other person.

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(3) An undertaking referred to in subsection (1) shall be in writing signed by the person giving it and shall remain in force for the period of the adjournment.

(4) An order shall not be made under a subparagraph of subsection (1) (a) or (b) unless the Children's Court is satisfied that the exercise of its power under a preceding subparagraph of that paragraph would be wholly insufficient to meet the child's need for care.

(5) If a child is placed or continued in the care of the Director-General and an application for the child to be discharged from the Director-General's care is made to the Director-General by the child or by a person responsible for the child, the Director-General shall, as soon as is reasonably practicable, refer the application to the Children's Court.

(6) Upon the making of any such application, the Children's Court may, under subsection (1) (b), make any one of the orders referred to in that paragraph in respect of the child.

(7) There is no limit to the number of applications that may be made under subsection (5) for the discharge of a child from the care of the Director-General.

Duties of the Children's Court to give information to certain persons

78. (1) If the Children's Court makes an order under section 77 (1) (a) (v) or (b) (iii), it shall record its reasons for doing so and cause a copy of the record to be served on—

(a) in the case of a child who is of or above the age of 10 years—the child; and

(b) each person responsible for the child who can reasonably be located.

(2) The Children's Court shall cause a copy of any undertakings referred to in section 77 (1) to be served on—

(a) in the case of a child who is of or above the age of 10 years—the child; and

(b) each person responsible for the child who can reasonably be located.

(3) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.

Enforcement of undertakings

79. (1) If proceedings on a care application with respect to a child are adjourned and—

5 (a) the child, having been required by the Children's Court to attend at the time and place to which the proceedings are adjourned, does not so attend; or

(b) an undertaking referred to in section 77 (1) given by or with respect to the child is not complied with during the period of adjournment, the Children's Court may require the attendance of the child at a time and
10 place determined by it.

(2) If a child is brought before the Children's Court and it is proved that an undertaking referred to in section 77 (1) given by or with respect to the child has not been complied with, the Children's Court may, under section 77 (1) (a), make any one of the orders referred to in that paragraph in
15 respect of the child.

Adjournments by authorised justices prior to hearings

80. (1) If—

(a) a care application has been made with respect to a child; and

(b) the hearing of the application has not commenced,

20 an authorised justice may, on application made by the Director-General or by a person responsible for the child, exercise the powers of the Children's Court to adjourn the proceedings on the application.

(2) Not more than 2 adjournments may be granted under subsection (1) in respect of any one care application.

25 (3) An adjournment under subsection (1) shall not be granted—

(a) in the case of the first such adjournment—for more than 3 days; or

(b) in the case of the second such adjournment—for more than 2 days,

if, on the adjournment, the authorised justice makes an order under section 77 (1) whereby the child is placed or continued in the care of the Director-
30 General.

(4) Proceedings adjourned by an authorised justice on a second occasion shall be adjourned to the Children's Court sitting at the place at which it appears to the justice the Children's Court will be sitting when the adjournment expires.

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(5) The authorised justice by whom a second adjournment is granted shall, forthwith after the adjournment, transmit to an officer of the Children's Court employed at the place to which the application is adjourned all documents and depositions that are in the possession of the
5 justice and that relate to the application.

(6) Sections 77-79 apply to an adjournment granted by an authorised justice in the same way as those sections apply to an adjournment granted by the Children's Court.

DIVISION 6—*Appeals***10 Appeals**

81. (1) Any person who is dissatisfied with a decision of the Children's Court under this Part may, in accordance with the rules of the District Court, appeal to the District Court against the decision.

(2) An appeal may not be taken by the Director-General except on a
15 question of law.

(3) An appeal shall be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision was made, may be given on the appeal.

(4) In addition to any functions and discretions that the District Court
20 has apart from this section, the District Court shall, for the purposes of hearing and disposing of an appeal, have all the functions and discretions that the Children's Court has under this Part.

(5) The decision of the District Court in respect of an appeal shall be deemed to be the decision of the Children's Court and shall be given effect
25 to accordingly.

(6) Subject to any interlocutory order made by the District Court, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

(7) The provisions of Division 3 apply to and in respect of the hearing
30 of an appeal under this section in the same way as they apply to and in respect of the hearing of a care application under that Division.

*Children (Care and Protection) 1987***DIVISION 7—Effect of orders under sec. 72****Supervision, etc., of children subject to orders under sec. 72**

82. (1) While a child is subject to an order in force under section 72 (1) (c) (i)—

- 5 (a) the child and the premises in which the child resides shall be subject to inspection by an authorised officer; and
- (b) the child shall—
- (i) accept the supervision of an authorised officer; and
- (ii) obey all reasonable directions of the officer.

10 **(2)** While a child is subject to an order in force under section 72 (1) (c) (ii), the child and the premises in which the child resides shall be subject to inspection by an authorised officer.

Entry without warrant into certain premises

15 **83. (1)** For the purpose of inspecting any premises subject to inspection under section 82, an authorised officer may at any time, without any authority other than that conferred by this subsection, enter the premises and inspect them and observe and converse with any person apparently residing there.

20 **(2)** In exercising the powers conferred by subsection (1), an authorised officer may be accompanied—

- (a) by a medical practitioner; or
- (b) by a member of the police force,

or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently residing there.

25 **(3)** Nothing in subsection (2) authorises—

- (a) the examination of a child in contravention of section 20 or 21; or
- (b) the examination of any other person against that person's will.

Enforcement of undertakings

84. (1) If—

- 30 (a) an undertaking referred to in section 72 (1) given by or with respect to a child is not complied with;

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(b) a child placed in the custody of a person under section 72 (1) (c) (ii) ceases, without lawful authority, to be in that person's care; or

(c) a direction referred to in section 82 (1) (b) (ii) given to a child is not obeyed,

5 the Children's Court may require the attendance of the child at a time and place determined by it.

(2) If a child is brought before the Children's Court and it is proved that—

10 (a) an undertaking referred to in section 72 (1) given by or with respect to the child has not been complied with; or

(b) a direction referred to in section 82 (1) (b) (ii) given to the child has not been obeyed,

then—

15 (c) the Children's Court may vary or rescind any order under section 72 (1) (b) or (c); and

(d) if the Children's Court rescinds such an order—it may, in accordance with Division 4, make any one of the orders that it could have made in relation to the child had a care application been made to it with respect to the child.

20

DIVISION 8—*General*

Application of Justices Act 1902 to secure attendance of witnesses, etc.

85. The provisions of the Justices Act 1902 relating to warrants and summonses for the attendance of witnesses in proceedings before justices for offences punishable on summary conviction apply to—

25 (a) the attendance of witnesses in proceedings under this Part; and

(b) the attendance of any person required under section 64, 79 or 84 to attend at a place at which proceedings under this Part are being or are to be conducted,

30 in the same way as those provisions apply to the attendance of witnesses in proceedings for such offences.

*Children (Care and Protection) 1987***Care of children arrested under sec. 85**

86. (1) If an officer or member of the police force arrests a child under a warrant referred to in section 85, the officer or member of the police force shall forthwith place the child in the care of the Director-General to be kept
5 at a place approved by the Minister for the purposes of this section.

(2) If a child has been placed in the care of the Director-General in accordance with subsection (1), the Director-General shall, subject to any action taken by a justice under any of the provisions of the Justices Act 1902 referred to in section 85, cause the child to be brought before the Children's
10 Court as soon as practicable.

Care of Aboriginal children

87. An Aboriginal child shall not be placed in the custody or care of another person under this Part unless—

- 15 (a) the child is placed in the care of a member of the child's extended family, as recognised by the Aboriginal community to which the child belongs;
- 20 (b) if it is not practicable for the child to be placed in accordance with paragraph (a) or it would be detrimental to the welfare of the child to be so placed—the child is placed in the care of a member of the Aboriginal community to which the child belongs;
- 25 (c) if it is not practicable for the child to be placed in accordance with paragraph (a) or (b) or it would be detrimental to the welfare of the child to be so placed—the child is placed in the care of a member of some other Aboriginal family residing in the vicinity of the child's usual place of residence; or
- 30 (d) if it is not practicable for the child to be placed in accordance with paragraph (a), (b) or (c) or it would be detrimental to the welfare of the child to be so placed—the child is placed in the care of a suitable person approved by the Director-General after consultation with—
- (i) members of the child's extended family, as recognised by the Aboriginal community to which the child belongs; and
- (ii) such Aboriginal welfare organisations as are appropriate in relation to the child.

Power of Supreme Court

88. (1) The Supreme Court may, at any time, make an order discharging a child who is in the care of the Director-General under this Part from the Director-General's care, whether or not on the giving of undertakings of the kind referred to in section 77 (1).

(2) If the Supreme Court makes an order discharging a child from the Director-General's care subject to the giving of undertakings, the undertakings shall, for the purposes of section 79, be deemed to be undertakings referred to in section 77 (1).

(3) There is no limit to the number of applications that may be made for the purposes of subsection (1) for the discharge of a child from the care of the Director-General.

(4) Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the custody and guardianship of children.

PART 6**WARDS AND PROTECTED PERSONS****Administration**

89. (1) In the administration of this Part, the welfare and interests of wards and protected persons shall be given paramount consideration.

(2) In determining any matter relevant to the welfare or interests of a ward or protected person, regard shall be had to the wishes of the ward or protected person.

Guardianship of wards

90. (1) The Minister is the guardian of a ward, and, subject to this Act, has the custody of a ward to the exclusion of any other person, until—

(a) the ward attains the age of 18 years;

(b) the guardianship of the Minister—

(i) is terminated by the Minister under subsection (2); or

(ii) is terminated by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children; or

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- (c) the ward ceases to be a ward by virtue of any other provision of this Act,

whichever first occurs.

(2) The Minister may terminate the Minister's guardianship of a ward.

- 5 (3) Where the Minister terminates the Minister's guardianship of a child who is a ward, the child ceases to be a ward.

(4) The guardianship of a child who has ceased to be a ward shall be determined as if the child had never been a ward.

Functions of the Minister in relation to wards and protected persons

10 91. (1) The Minister—

(a) shall provide for the accommodation, care and maintenance of wards and protected persons;

(b) may make payments, at such rates as may be prescribed by the regulations, to persons having the care of wards or protected persons;

15 (c) may direct the removal of any ward or protected person from one place to another;

(d) may, subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Minister may determine, place any ward or protected person—

20 (i) in the custody of a person in charge of a non-Government organisation; or

(ii) for the purpose of the ward or protected person being fostered, in the custody of any person approved by the Minister,

25 being a person who is willing to undertake the custody of the ward or protected person;

(e) may terminate the custody of a ward or protected person who has been placed in the custody of a person referred to in paragraph (d) (i) or (ii); and

30 (f) may direct that a ward be restored to the custody of a parent of the ward or be placed in the custody of any other person.

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(2) Payment to a person in respect of a ward or protected person shall not continue after the ward or protected person has attained the age of 15 years unless—

- 5 (a) the payment is made for the purpose of securing education or vocational training on a full-time basis for the ward or protected person;
- (b) the ward or protected person is an invalid or is otherwise incapacitated; or
- 10 (c) the case possesses unusual features which, in the opinion of the Minister, call for special consideration,

and the Minister authorises the making of the payment.

(3) This section is subject, in relation to a ward or protected person, to the requirements imposed by the provisions of this or any other Act or of any declaration, order or other thing under which the person became a ward
15 or protected person.

Functions of the Minister in relation to former wards and protected persons

92. (1) The Minister may give to, or provide for, any person who has ceased to be a ward or protected person—

- 20 (a) such assistance as the Minister was empowered to give to, or provide for, the person while the person was a ward or protected person; and
- (b) such other assistance (whether financial or other),

as, in the Minister's opinion, is reasonable having regard to the circumstances of the case.

25 (2) For the purpose of securing education or vocational training on a full-time basis for any person who has ceased to be a ward or protected person, the Minister may, subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Minister may determine, from time to time and for periods not exceeding 6 months at any one time, authorise the making of payments for that purpose as if the
30 person were a ward or protected person.

(3) Any payment continued under the provisions of subsection (2) may, at the discretion of the Minister, be discontinued or varied at any time.

Wards or protected persons leaving custody, etc.

93. If a ward or protected person has, without lawful excuse, left, or been removed from, proper custody and the Minister is of the opinion that the ward or protected person should be returned to that custody, or be placed
5 in the custody of some other person, the Minister may, by order in writing, direct that the ward or protected person be returned to proper custody, or be placed in the custody of that other person, as the Minister may specify in the order.

Search warrants

10 94. (1) An officer may apply to an authorised justice for a search warrant if the officer has reasonable grounds for believing that a ward or protected person the subject of an order in force under section 93 may be found in any premises.

15 (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or officers named in the warrant—

- (a) to enter any premises specified in the warrant;
- (b) to search the premises for the presence of the ward or protected person;
- 20 (c) to remove the ward or protected person from the premises; and
- (d) to return the ward or protected person to, or to place the ward or protected person in, the custody of the person specified in the order in force under section 93 in respect of the ward or protected person.

25 (3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force—

- (a) may accompany an officer executing a search warrant issued under this section; and
- 30 (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

(5) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a ward or protected person pursuant to the warrant, use all reasonable force.

Reciprocity between States and Territories

95. (1) In this section—

“appropriate authority” means a person who, under—

5 (a) the law of a State of the Commonwealth other than New South Wales; or

(b) the law of a Territory,

corresponding to this Act, is competent to take action equivalent to the undertaking of guardianship of wards under this Act;

10 “interstate ward” means a child who is in New South Wales and who, immediately before entering New South Wales, was under the guardianship of an appropriate authority;

“Territory” means Territory of the Commonwealth, including a Territory under the trusteeship of the Commonwealth.

(2) The Minister—

15 (a) may make financial and other arrangements with an appropriate authority for the care of an interstate ward or a ward under this Act;

(b) may, at the Minister’s discretion, or in accordance with any such arrangements, return an interstate ward to the care of the appropriate authority for the interstate ward; and

20 (c) shall, where the appropriate authority for an interstate ward requests the Minister to do so, return the interstate ward to the care of that appropriate authority.

(3) The Minister shall provide for the accommodation, care and maintenance of an interstate ward to whom an arrangement referred to in 25 subsection (2) applies as if the interstate ward were a ward under this Act.

(4) The Minister may, at the request of an appropriate authority, declare an interstate ward to be a ward under this Act.

(5) If an interstate ward who was made a ward for a specified period is 30 notwithstanding any other provision of this Part, that person shall, if, upon the expiration of that period, that person is a ward under this Act, cease to be a ward under this Act by virtue of that declaration.

(6) If, in the opinion of the Minister—

35 (a) the law of a State of the Commonwealth other than New South Wales; or

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(b) the law of a Territory,

contains a provision corresponding to subsection (4) and, upon the request of the Minister, a ward under this Act is declared, under that provision, to be a ward for the purposes of the law of that other State or that Territory, the functions conferred or imposed by or under this Act upon the Minister and any other person shall be deemed to have been suspended in relation to that ward while the ward remains under guardianship by virtue of the declaration under that provision, except in so far as those functions may be exercised in accordance with arrangements made under subsection (2) (a).

10 Jurisdiction of Supreme Court not affected

96. Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the custody and guardianship of children.

PART 7

CHILDREN'S BOARDS OF REVIEW

15 Interpretation

97. In this Part—

“Board of Review” means a Board of Review established under section 99;

“child in care” means—

- 20 (a) a child who is in the custody of the Director-General pursuant to a temporary care arrangement or a temporary custody order;
- (b) a child who is residing in a residential child care centre, otherwise than as a member of the household of any other person who resides there;
- 25 (c) a child who is being fostered by a person into whose care the child has been placed—
- (i) by an authorised private fostering agency; or
- (ii) by or with the written approval of the Minister or the Director-General;
- 30 (d) a child who is in the custody of a person pursuant to an order in force under section 72 (1) (c) (ii); or

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(e) a child who is a ward or protected person;

“Deputy President” means the Deputy President of the Boards of Review;

5 “full-time President” means a person who is required, by an instrument referred to in section 98 (4), to devote the whole of his or her time to the duties of his or her office as President;

“member” means a member of the Panel;

“Panel” means the Children’s Review Panel established by section 98;

“President” means the President of the Boards of Review.

Children’s Review Panel

10 **98. (1)** There shall be a Children’s Review Panel.

(2) The Panel shall consist of persons, appointed by the Governor—

(a) at least one of whom is an officer who, in the opinion of the Minister, has knowledge of or experience in administration, education, psychology or social work;

15 (b) at least one of whom is an Aboriginal who, in the opinion of the Minister, has knowledge of or experience in matters relating to the welfare of Aboriginal children; and

20 (c) the remainder of whom are persons who, in the opinion of the Minister, have suitable qualifications or experience warranting their appointment as members of the Panel.

(3) Of the members of the Panel—

(a) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as the President of the Boards of Review; and

25 (b) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as the Deputy President of the Boards of Review.

30 (4) The President shall, if required to do so by his or her instrument of appointment as President or by a subsequent instrument executed by the Governor, devote the whole of his or her time to the duties of his or her office as President.

(5) Schedule 2 applies to the Panel.

Boards of Review

99. (1) The President may establish Boards of Review.

(2) Each Board of Review shall consist of 2 members of the Panel of whom not more than one is an officer.

5 (3) The President may establish Boards of Review generally for the purpose of carrying out reviews of children under this Part or may establish a Board of Review for the purpose of carrying out a particular review under this Part.

10 (4) In respect of any review concerning an Aboriginal child, a Board of Review shall include at least one member of the Panel who is an Aboriginal.

(5) The procedure of a Board of Review shall, subject to the regulations, be as directed by the President.

Functions of a Board of Review

15 100. (1) An application may be made to the President for the review of a child who has been a child in care for a period of 3 months or more.

(2) The Director-General shall ensure that such an application is made—

(a) in relation to—

20 (i) any child who is in the custody of the Director-General pursuant to a temporary care arrangement or temporary custody order;

(ii) any child who is being fostered by a person into whose care the child has been placed by or with the written approval of the Minister or the Director-General; and

25 (iii) any child who is a ward or protected person, within 28 days after the expiration of 6 months from when the child became a child in care; and

(b) in relation to any child in care whose need for care is, in the opinion of the Director-General, not being met by the person in whose care or custody the child is placed.

30 (3) Without limiting the generality of subsection (2), such an application may be made—

(a) in any case—

(i) by the child;

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- (ii) by a person responsible for the child;
- (iii) by a foster parent of the child;
- (iv) by any person who deems himself or herself to have a sufficient interest in the welfare of the child; or
- 5 (v) by the Minister or the Director-General;
- (b) in the case of a child who is residing in a licensed residential child care centre—by the licensed manager of the centre;
- (c) in the case of a child who is being fostered by a person into whose care the child has been placed—
- 10 (i) by an authorised private fostering agency—by the principal officer of the agency; or
- (ii) by or with the written approval of the Minister or the Director-General—by the Minister or the Director-General;
- 15 (d) in the case of a child who is in the custody of a person pursuant to an order in force under section 72 (1) (c) (ii)—by a person responsible for the child; or
- (e) in the case of a child who is residing in a facility—by a Visitor for the facility.
- (4) The President—**
- 20 (a) shall, upon receipt of an application under this section in respect of a child who has been a child in care for a period of 3 months or more, request a Board of Review to carry out a review of the child; and
- 25 (b) may, at any time and for any reason, request a Board of Review to carry out a review of any child in care.
- (5) The President is not required to make a request with respect to a child in respect of whom an application has been made by a person referred to in subsection (3) (a) (iv) unless the President considers the person to have a sufficient interest in the welfare of the child.
- 30 **(6) A Board of Review, when requested by the President to carry out a review of a child in care, shall—**
- (a) review such aspects of the welfare, status, progress and circumstances of the child as are referred to in the request, having particular regard to any arrangements that exist to encourage continuing contact
- 35 between the child and the child's parents; and

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(b) make a written report that—

- (i) informs the Minister as to the results of the review; and
- (ii) advises the Minister as to whether any change (and if so, what change) in the circumstances or status of the child would, in its opinion, promote the welfare and interests of the child.

5

(7) In the exercise of its functions under subsection (6) in relation to a review of a child in care, a Board of Review may—

- (a) inspect files, records or papers in respect of the child that are kept in the offices of the Department, any residential child care centre or any authorised private fostering agency; and
- (b) hear or receive submissions from any person, including the child.

10

Copies of report

101. When a Board of Review has made a report to the Minister in relation to a child in care, the Board—

15

- (a) shall give a copy of the report—
 - (i) to the person, if any, who applied for the review of the child; and
 - (ii) if the child is of or above the age of 10 years and if the Board considers it in the best interests of the child to do so—to the child; and
- (b) may give a copy of the report to any other person who it considers has a sufficient interest in the welfare of the child.

20

PART 8**COMMUNITY WELFARE APPEALS TRIBUNAL****25 Interpretation**

102. In this Part—

“Deputy President” means the Deputy President of the Tribunal;

“member” means a member of the Tribunal;

“President” means the President of the Tribunal;

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“Tribunal” means the Community Welfare Appeals Tribunal established by section 103.

Constitution of Tribunal

103. (1) There shall be a Community Welfare Appeals Tribunal.

5 **(2)** The Tribunal shall consist of persons, appointed by the Governor, from one or more of the following classes of persons:

(a) persons who, in the opinion of the Minister, have knowledge of and experience in administration, education, psychology, social work or child care;

10 (b) medical practitioners;

(c) barristers;

(d) solicitors;

15 (e) other persons who, in the opinion of the Minister, have suitable qualifications or experience warranting their appointment as members of the Tribunal.

(3) Of the members—

(a) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as President of the Tribunal; and

20 (b) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as Deputy President of the Tribunal.

(4) Schedule 3 applies to the constitution of the Tribunal.

(5) Schedule 4 applies to the procedure of the Tribunal.

25 Appeals

104. (1) An appeal may be made to the Tribunal against any of the following decisions:

(a) a decision of the Minister or the Director-General, as the case may be—

30 (i) to grant a licence or authority;

(ii) to grant a consent;

(iii) to impose a condition on a licence or authority;

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- (iv) to revoke or vary any condition of, or to impose a further condition on, a licence or authority;
- (v) to grant an application to vary a fostering authority; or
- (vi) to suspend or revoke a licence or authority,
- 5 as referred to in Schedule 1;
- (b) a decision of the Minister to make an order under section 3 (4) or (7);
- (c) a decision of the Minister to grant an exemption under section 48 (1) or 50, to limit the extent of any such exemption or to impose
- 10 conditions on any such exemption;
- (d) a decision of the Minister or the Director-General to give an approval referred to in section 42 (2) or 44 (2);
- (e) a decision of the Minister to delegate any of the Minister's functions referred to in section 11 (1) (b) or to revoke a delegation of any such
- 15 function;
- (f) a decision of the Minister or the Director-General, as the case may be, to refuse to make a decision referred to in paragraph (a), (b), (c), (d) or (e) that the Minister or Director-General, as the case may be, is empowered and has been requested to make;
- 20 (g) a decision of the Minister to refuse to terminate the Minister's guardianship of a ward under section 90 (2);
- (h) a decision of the Minister to terminate the custody of a ward or protected person under section 91 (1) (e);
- 25 (i) a decision of the Minister or the Director-General belonging to such class of decisions as may be prescribed by the regulations.

(2) If, under subsection (1), an appeal may be made against a decision to refuse to do any thing, an appeal may, in such circumstances as may be prescribed by the regulations, be made against the failure to make the decision by the person empowered to make it as if that person had refused

30 to make the decision.

Parties to appeals

105. (1) An appeal against a decision referred to in section 104 (1) may be made by any person who deems himself or herself to have a genuine concern in the subject-matter of the decision.

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(2) Without limiting the generality of subsection (1), an appeal against a decision concerning a child may be made by any person responsible for the child the subject of the decision.

(3) An appeal shall be made within a period of 28 days after the making of the decision appealed against or within such longer period as the Tribunal may (whether before or after the expiration of that period) determine.

(4) The parties to an appeal to the Tribunal with respect to a decision of the Minister or the Director-General are—

- (a) the Minister or the Director-General, as the case may require;
- 10 (b) the person who appeals against the decision;
- (c) any person who was entitled to, but did not, appeal against the decision, but only if that person applies to the Tribunal to be made such a party and the application is approved by the Tribunal; and
- 15 (d) any person who would, if the decision of the Minister or the Director-General were reversed or varied, be entitled to appeal against the decision as so reversed or varied, but only if that person applies to the Tribunal to be made such a party and the application is approved by the Tribunal.

(5) The Tribunal is not required to hear or determine an appeal made by a person referred to in subsection (1) unless it considers the person to have a genuine concern in the subject-matter of the decision to which the appeal relates.

Lodging of material documents with the Tribunal

106. (1) A person who has made a decision that is the subject of an appeal to the Tribunal shall, within a period of 28 days after receiving notice of the appeal, lodge with the Tribunal such number of copies as the Tribunal directs of every document or part of a document that is in that person's possession or under that person's control and is considered by that person to be relevant to the determination of the appeal.

(2) If it appears to the Tribunal that a party to an appeal would or might suffer hardship if the period prescribed by subsection (1) for lodging with it the copies of the documents referred to in that subsection is not shortened, the Tribunal may, upon request being made by that party, make an order directing that those copies be lodged with the Tribunal within such period (being a period of less than 28 days) after the person who made the decision receives or received notice of the appeal as is specified in the order.

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(3) If the Tribunal is of the opinion that particular other documents or that other documents included in a particular class of documents may be relevant to the determination of the appeal, it may cause to be served on the person who made the decision a notice in writing—

- 5 (a) stating that the Tribunal is of that opinion; and
- (b) requiring the person to lodge with the Tribunal, within a time specified in the notice, such number of copies as it may specify of each of those other documents that is in that person's possession or under that person's control,
- 10 and a person on whom such a notice is served shall comply with the notice.

Operation and implementation of a decision pending appeal

107. (1) Subject to this section, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

- 15 (2) The Tribunal or the President may, on request being made by a party to an appeal and if the Tribunal or President is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the determination of the appeal, make such order or orders staying or otherwise affecting the operation or implementation of the
- 20 decision to which the appeal relates, or a part of that decision, as the Tribunal or President considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

- (3) While an order is in force under subsection (2) (including an order that has previously been varied on one or more occasions under this
- 25 subsection), the Tribunal or President may, on request being made by a party to the appeal, make an order varying or revoking the firstmentioned order.

(4) Subject to subsection (5), neither the Tribunal nor the President shall—

- 30 (a) make an order under subsection (2) unless the person who made the decision to which the appeal relates has been given a reasonable opportunity to make submissions to the Tribunal or the President, as the case may be, in relation to the matter; or
- 35 (b) make an order varying or revoking an order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3)) unless—
- (i) the person who made the decision to which the appeal relates;

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(ii) the person who requested the making of the order under subsection (2); and

(iii) if the order under subsection (2) has previously been varied by an order or orders under subsection (3)—the person or persons who requested the making of the lastmentioned order or orders,

have been given a reasonable opportunity to make submissions to the Tribunal or President, as the case may be, in relation to the matter.

(5) Subsection (4) does not prohibit the Tribunal or the President from making an order without giving to any person referred to in that subsection a reasonable opportunity to make submissions to the Tribunal or President in relation to a matter if the Tribunal or President is satisfied that, because of the urgency of the case or otherwise, it is not practicable to give that person such an opportunity but, where an order is so made without giving such an opportunity to the person who made the decision to which the appeal relates, the order does not come into operation until a notice setting out the terms of the order is served on the lastmentioned person.

(6) An order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3))—

(a) is subject to such conditions as are specified in the order; and

(b) has effect—

(i) if a period for the operation of the order is specified in the order—until the expiration of that period or, if the appeal is decided by the Tribunal before the expiration of that period, until the decision of the Tribunal on the appeal comes into operation; or

(ii) if no period is so specified—until the decision of the Tribunal on the appeal comes into operation.

Powers of the Tribunal in respect of appeals

108. (1) The Tribunal, in determining an appeal, shall have and may exercise the functions of the Minister or the Director-General, as the case may be, with respect to the matter the subject of the appeal.

(2) In addition to its functions under subsection (1), the Tribunal, in relation to an appeal made by or on behalf of any person, may, having regard to—

(a) the frequency of appeals made by or on behalf of that person; or

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(b) any other matter that the Tribunal considers relevant,

determine that no further right of appeal may be exercised by or on behalf of that person in respect of the matter the subject of the appeal until the expiration of such period as it may specify in its determination.

5 Effect of decisions of the Tribunal

109. Subject to section 110, a decision of the Tribunal with respect to proceedings before it shall be final and shall be given effect to as if it were the decision of the person in respect of whose decision the proceedings were brought.

10 Appeals to Supreme Court from decisions of the Tribunal

110. (1) A party to a proceeding before the Tribunal may appeal to the Supreme Court, on a question of law, from any decision of the Tribunal in that proceeding.

(2) If a person has appealed to the Tribunal against a decision, or has applied to be made a party to a proceeding before the Tribunal, and the Tribunal decides that the person was not entitled so to appeal or has not approved that person's application, the person may appeal to the Supreme Court from the decision of the Tribunal.

(3) An appeal by a person under subsection (1) or (2) shall be instituted—

(a) within the period of 28 days after the day on which a document setting out the terms of the decision of the Tribunal is furnished to the person; or

(b) within such further time as the Supreme Court (whether before or after the expiration of that period) allows.

(4) The Supreme Court shall hear and determine the appeal and may make such order as it thinks appropriate in the light of its decision.

(5) Without affecting the generality of subsection (4), the orders that may be made by the Supreme Court on an appeal include—

(a) an order affirming or setting aside the decision of the Tribunal; and

(b) an order remitting the case to be heard and decided again by the Tribunal, either with or without the hearing of further evidence, in accordance with the directions of the Supreme Court.

Power of entry

111. Section 83 applies to a member of the Tribunal in the same way as it applies to an authorised officer, but as if the powers conferred by that section were conferred on the member for the purpose of the member's functions as such a member instead of for the purposes specified in that section.

Reports

112. (1) The President shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Tribunal.

(2) A report shall deal with such matters as the Minister directs and with such other matters as the President considers appropriate to include in the report.

PART 9**MISCELLANEOUS**

15

Service of notices, etc.

113. (1) Any notice or other instrument required or authorised by this Act to be served on a person is sufficiently served if the notice or other instrument is—

- 20 (a) delivered personally to the person;
- (b) left with a person who is apparently of or above the age of 16 years at, or sent by prepaid post to, the address last known to the Director-General of the person on whom the notice or other instrument is to be served; or
- 25 (c) where no address of the person is known to the Director-General, published or otherwise dealt with as may be prescribed by the regulations.

(2) If such a notice or instrument is—

- 30 (a) sent by post as referred to in subsection (1) (b), it shall be deemed to have been served at the time it would be delivered in the ordinary course of post; or

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(b) published or otherwise dealt with as referred to in subsection (1) (c), it shall be deemed to have been served at such time as may be prescribed by the regulations.

(3) Subsection (1) does not affect any other provision of this Act relating to the service of notices or other instruments.

Notices, etc., to be written in other languages

114. (1) If—

(a) the Director-General is required, by or under this Act, to cause a notice or other instrument to be served on any person; and

10 (b) it appears to the Director-General that the person is not literate in the English language but is literate in another language,

the Director-General shall, in so far as it is reasonably practicable, cause the notice or other instrument to be written in that other language.

(2) Failure to comply with subsection (1) does not vitiate any thing done under any other provision of this Act.

Disclosure of information

115. A person who discloses any information obtained in connection with the administration or execution of this Act is guilty of an offence unless the disclosure is made—

20 (a) with the consent of the person from whom the information was obtained;

(b) in connection with the administration or execution of this Act;

(c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;

25 (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or

(e) with other lawful excuse.

Search warrants

116. (1) An officer or member of the police force may apply to an authorised justice for a search warrant if the officer or member of the police force has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened at any premises.

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(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the warrant—

- 5 (a) to enter the premises; and
 (b) to inspect the premises for evidence of a contravention of this Act or the regulations.

(3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

10 (4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force—

- (a) may accompany an officer executing a search warrant issued under this section; and
 15 (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this Act or the regulations.

Obstruction of officers

117. A person who wilfully hinders, obstructs, delays, assaults or threatens with violence any person in the exercise of that person's functions under this Act is guilty of an offence.

20 Person falsely representing as an officer

118. A person, not being an officer, who—

- (a) assumes or uses the designation of officer or falsely represents himself or herself to be officially associated in any capacity with the Department; or
 25 (b) uses, for any fraudulent purpose, any designation which that person previously held in the Department,
 is guilty of an offence.

False or misleading statements

30 119. A person shall not, in any application under this Act or in connection with an inquiry made by an officer in relation to any such application—

- (a) make a statement; or
 (b) furnish information,

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that the person knows to be false or misleading in a material particular.

Penalty: \$500.

Penalties

120. A person who is guilty of an offence under this Act is, for every
5 such offence, liable to a penalty not exceeding the penalty expressly imposed
or, if no penalty is expressly imposed, to a penalty not exceeding \$1,000 or
imprisonment for a period not exceeding 12 months, or both.

Proceedings for offences

121. Proceedings for an offence against this Act or the regulations shall
10 be dealt with summarily before a Local Court constituted by a Magistrate
sitting alone.

Evidence of young children

122. (1) If an authorised justice is satisfied by the evidence of a medical
practitioner that the attendance before a court of a child to whom an offence
15 against this Act or the regulations relates would be injurious or dangerous
to the child's health, the justice may take in writing the statement of the
child in pursuance of section 406 of the Crimes Act 1900 as if the child
were dangerously ill, whereby the child's evidence would probably be lost
if not forthwith taken.

20 (2) If, in any proceedings for an offence against this Act or the regulations
relating to a child, a court is satisfied by the evidence of a medical
practitioner that the attendance before the court of the child would be
injurious or dangerous to the child's health, any deposition taken under
section 406 of the Crimes Act 1900, or any statement of the child taken
25 under subsection (1), may be read in evidence, and shall have effect in the
same manner as if it were proved that the child were so ill as not to be able
to travel or (in the case of any such statement) that there was no reasonable
probability that the child would ever be able to travel or give evidence.

(3) If, in any proceedings for an offence against this Act or the regulations
30 relating to a child, a court is satisfied by the evidence of a medical
practitioner that the attendance of the child for the purpose of giving
evidence before the court would be injurious or dangerous to the child's
health, and it is further satisfied that the evidence of the child is not essential
to the just hearing of the case, the case may be proceeded with and
35 determined in the absence of the child.

Procedural matters

123. (1) In the absence of proof to the contrary, the authority of the Minister, the Director-General or any officer to exercise any function conferred or imposed on the Minister, the Director-General or any such officer by or under this Act, or to take any proceedings for the purposes of this Act, shall be presumed.

(2) In any proceedings under this Act with respect to a child, the Minister, the Director-General or any authorised officer shall be entitled to appear and to be heard.

10 (3) An averment in any complaint or information made or laid under this Act—

15 (a) that any instrument, purporting to have been made under this Act and specified in the averment, was or was not, at a time or during a period so specified, in force under this Act and was or was not made, granted or issued subject to conditions so specified;

(b) that any officer has been appointed, authorised or directed, for the purposes of this Act or the regulations, by the Minister as stated in the averment;

20 (c) that any person was, on a date specified in the averment, a ward or protected person; or

(d) that any person was, on a date specified in the averment, an officer, shall be prima facie evidence of the facts averred.

Regulations

25 124. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

30 (a) the control and regulation of child care services and authorised supervisors of licensed child care services;

(b) the control and regulation of residential child care centres and licensed managers of licensed residential child care centres;

(c) the control and regulation of private fostering agencies and principal officers of authorised private fostering agencies;

35 (d) the control and regulation of holders of fostering authorities;

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- (e) the control and regulation of the employment of children;
 - (f) the making of care applications under Part 5;
 - (g) the undertakings that may be given by or with respect to a child for the purposes of Part 5;
 - 5 (h) the control and regulation of wards and protected persons; and
 - (i) registers for the purposes of this Act.
- (2) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - 10 (b) apply differently according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.
- (3) A regulation may create an offence punishable by a penalty not
15 exceeding \$500.

SCHEDULE 1

(Secs. 32,36,41,43)

PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES

Interpretation

- 20 1. In this Schedule—
- “approved person” means—
- (a) in relation to a licence for a child care service—the authorised supervisor under the licence;
 - 25 (b) in relation to a licence for a residential child care centre—the licensed manager under the licence; or
 - (c) in relation to a private fostering agency authority—the principal officer under the authority;
- “authority” means a private fostering agency authority or a fostering authority;
- “licence” means a licence for a child care service or a residential child care centre.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
*continued***Eligible applicants**

2. A person is not eligible to make an application for a licence for a residential child care centre unless the person is the proprietor of the premises for which the licence is applied for.

5 Grant of licences or authorities

3. (1) When a person makes an application to the Minister for a licence or authority, the Minister shall cause an inquiry to be made with respect to the application by officers and a report on the application to be made and furnished to the Minister by an officer.

(2) Upon receipt of the report, the Minister shall—

- 10 (a) grant the licence or authority to the applicant; or
- (b) cause to be served on the applicant a notice stating that, when 28 days have expired after service of the notice, the Minister intends to refuse the licence or authority on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the licence or authority should not be refused.

15 (3) When 28 days have expired after a notice has been served under subclause (2) (b), the Minister shall, after considering any submissions made during that period by the applicant—

- (a) grant the licence or authority to the applicant; or
- 20 (b) refuse the licence or authority and cause to be served on the applicant a notice stating the grounds on which the licence or authority has been refused.

(4) Without limiting the Minister's power to refuse a licence, the Minister may refuse a licence on the ground that, in the locality in which it is proposed—

- (a) to provide the child care service; or
- (b) to conduct the residential child care centre,
- 25 there are already available adequate child care services or residential child care centres, as the case may be, of a similar kind to that in relation to which the licence is applied for.

Change of approved persons under licences or private fostering agency authorities

4. (1) A licensee or holder of a private fostering agency authority may apply for the
30 Minister's consent to the replacement of the approved person under the licence or authority by another person.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(2) When the Minister receives an application under subclause (1), the Minister shall, by notice served on the applicant, the approved person and the other person specified in the application—

5 (a) if the Minister considers the other person suitable to act as the approved person under the licence or authority—consent to the other person's becoming the approved person under the licence or authority; or

(b) refuse the application.

(3) When the Minister has consented to another person's becoming the approved person under a licence or authority—

10 (a) any person who was the approved person under the licence or authority immediately before the consent was given ceases to be the approved person under the licence or authority; and

(b) the other person shall be deemed to be the person specified under section 32 (1) (c), 36 (1) (c) or 41 (1) (b), as the case may be, in the licence or authority.

15 (4) A notice served for the purpose of giving a consent under subclause (2) shall specify any conditions, other than such conditions as may be prescribed by the regulations, which are in force when the notice is served and to which the licence or authority to which it relates is subject.

Duration of licences and authorities

20 5. (1) Unless sooner revoked, a licence or private fostering agency authority shall remain in force for such period, not exceeding 3 years, as is specified in the licence or authority, commencing on the date on which it is granted, or such later date as is specified in the licence or authority, as the case may be.

25 (2) If an application for a further licence or private fostering agency authority in relation to the same child care service, residential child care centre or private fostering agency, as the case may be, as that to which the licence or authority relates is made by the licensee under the licence or the holder of the authority while the licence or authority is in force, the licence or authority shall remain in force until the application is finally dealt with.

30 (3) Subject to any condition specified in the authority under section 43 (1) (e), a fostering authority shall remain in force until it is revoked.

Conditions of licence or authority

6. A licence or authority is subject to—

35 (a) any condition prescribed by the regulations for licences or authorities or for a class of licences or authorities to which the licence or authority belongs; and

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(b) any other condition in force in relation to the licence or authority, being a condition that the Minister thought fit to impose on the licence or authority and that was—

- (i) specified in the licence or authority when it was granted; or
5 (ii) subsequently imposed on the licence or authority under clause 7.

Revocation, variation or addition of conditions on licences and authorities

7. (1) If the Minister intends to revoke or vary any condition of a licence or authority or to impose a further condition on a licence or authority, the Minister shall cause to be served on—

- 10 (a) the licensee under the licence or the holder of the authority; and
(b) the approved person, if any, under the licence or authority,

a notice stating that, when 28 days have expired after service of the notice, the Minister intends to revoke or vary a condition of the licence or authority specified in the notice or to impose on the licence or authority a further condition specified in the notice, as

- 15 the case may be, unless it has been established to the Minister's satisfaction that the Minister should not do so.

(2) When 28 days have expired after notices have been served under subclause (1), the Minister may, after considering any submissions made during that period by the person or persons on whom the notices were served—

- 20 (a) revoke or vary the condition specified in the notices; or
(b) impose the further condition, as specified in the notices, on the licence or authority to which the notices relate,

by a further notice served on that person or those persons.

- 25 (3) Notwithstanding subclauses (1) and (2), if the licensee under a licence or the holder of an authority has requested that a condition of the licence or authority be revoked or varied or that a further condition be imposed on the licence or authority, the Minister may, by notice served on the licensee or holder of the authority and the approved person, if any, under the licence or authority—

- (a) revoke or vary the condition; or
30 (b) impose the further condition,

as the case may require.

Application for variation of matters specified in a fostering authority

8. Any matter specified in a fostering authority pursuant to section 43 (1) (b)–(e) shall, for the purposes of clauses 5 and 7, be deemed to be a condition of the fostering
35 authority.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
*continued***Suspension and revocation of licence or authority**

9. (1) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a licence, are that—

- 5 (a) the licensee under the licence has requested that the licence be suspended or revoked;
- (b) either the licensee or the approved person under the licence is no longer a fit and proper person to be concerned in the provision of the child care service or the conduct of the residential child care centre to which the licence relates;
- 10 (c) either of those persons has contravened or failed to comply with a provision of this Act or the regulations that applies to that person;
- (d) in the case of a licence for a child care service—
- 15 (i) any premises on which the child care service is provided do not comply with any provision of this Act or the regulations, or of a condition of the licence, that applies to them; or
- (ii) the authorised supervisor under the licence does not have the overall supervision of the provision of the child care service to which the licence relates; or
- (e) in the case of a licence for a residential child care centre—
- 20 (i) the premises of the centre do not comply with a provision of this Act or the regulations, or of a condition of the licence, that applies to them;
- (ii) the premises of the centre are not being used as a residential child care centre;
- (iii) the licensee (not being a person deemed to have been granted the licence under section 36 (2)) is not the proprietor of the premises of the centre; or
- 25 (iv) the licensed manager does not conduct the centre.
- (2) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a private fostering agency authority, are that—
- (a) the authorised private fostering agency under the authority has requested that the authority be suspended or revoked;
- 30 (b) either the authorised private fostering agency or the principal officer under the authority is no longer a fit and proper person to be concerned in the carrying on of private fostering services; or
- (c) either of those persons has contravened or failed to comply with a provision of this Act or the regulations that applies to that person.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(3) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a fostering authority, are that—

- (a) the holder of the authority has requested that the authority be suspended or revoked;
- 5 (b) the holder of the authority is no longer a fit and proper person to hold the authority; or
- (c) the holder of the authority has contravened or failed to comply with a provision of this Act or the regulations that applies to that person.

10 (4) If the Director-General intends to suspend or revoke a licence or authority, the Director-General shall cause to be served on—

- (a) the licensee under the licence or the holder of the authority; and
- (b) the approved person, if any, under the licence or authority,

15 a notice stating that, when 28 days have expired after service of the notice, the Director-General intends to suspend the licence or authority for a period (not exceeding 6 months) specified in the notice or to revoke the licence or authority, as the case may be, on the prescribed grounds specified in the notice, unless it has been established to the Director-General's satisfaction that the Director-General should not do so.

20 (5) When 28 days have expired after notices have been served under subclause (4), the Director-General may, after considering any submissions made during that period by the person or persons on whom the notices were served—

- (a) suspend the licence or authority to which the notices relate for the period (not exceeding 6 months) specified in the notices; or
- (b) revoke the licence or authority to which the notices relate,

25 by a further notice served on that person or those persons, which further notice shall specify the prescribed grounds on which the licence or authority is suspended or revoked, as the case may be.

30 (6) Notwithstanding subclauses (4) and (5), if the licensee under a licence or the holder of an authority has requested that the licence or authority be suspended or revoked, the Director-General may, by notice served on the licensee or holder of the authority and the approved person, if any, under the licence or authority—

- (a) suspend the licence or authority for the period (not exceeding 6 months) specified in the notice; or
- (b) revoke the licence or authority,

as the case may require.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(7) A licence or authority shall be deemed not to be in force during any period for which it is suspended.

(8) If a licence or authority has been suspended under this clause for a period, the Director-General may, at any time during that period, restore the licence or authority by serving on both the person who was the licensee under the licence or the holder of the authority, and the person who was the approved person, if any, under the licence or authority, immediately before it was suspended a notice stating that the licence or authority is restored.

Temporary authorised supervisors and licensed managers

10 10. (1) The Minister may, by an instrument in writing, authorise a person specified in the instrument to act as the approved person under a licence or private fostering agency authority for a period so specified that occurs during an absence (by reason of illness or otherwise) of the approved person under the licence or authority.

15 (2) While a person is authorised by an instrument referred to in subclause (1) to act as an approved person under a licence or authority—

(a) that person shall be deemed to be the person specified under section 32 (1) (c), 36 (1) (c) or 41 (1) (b), as the case may be, in the licence or authority; and

20 (b) the conditions of the licence or authority that apply to the approved person under the licence or authority shall, for the purposes of section 31 (4), 34 (2) or 40 (4), as the case may require, be deemed to apply to the person so authorised as if that person were the approved person under the licence or authority.

25 (3) The Minister may, by notice served on the person specified in an instrument referred to in subclause (1) by which that person was authorised to act as the approved person under a licence or authority, revoke the instrument on any ground that the Minister considers sufficient.

SCHEDULE 2

(Sec. 98)

CONSTITUTION OF THE CHILDREN'S REVIEW PANEL

Age of members

30 1. A person of or above the age of 65 years is not eligible to be appointed as a member.

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued***Term and vacation of office, etc.**

2. (1) A member shall hold office for the period of 3 years commencing with the day from which the member is declared to be appointed in the instrument of the member's appointment or such shorter period as is specified in that instrument and is, if otherwise qualified, eligible for reappointment.
- (2) The Governor may, for any cause that seems sufficient, remove a member from office.
- (3) A member shall be deemed to have vacated office—
- (a) if the member dies;
 - 10 (b) if the member resigns office by instrument in writing addressed to the Minister;
 - (c) if the member becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
 - 15 (d) upon the member's reaching the age of 65 years;
 - (e) if the member is removed from office by the Governor; or
 - (f) if, being an officer when the member was appointed a member, the member ceases to be an officer.

Remuneration, etc.

- 20 3. (1) A member (other than a full-time President or a public servant) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (2) A full-time President is entitled to be paid—
- 25 (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the full-time President.
- (3) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

30 President and Deputy President

4. (1) The President or Deputy President holds office until ceasing to be a member and is eligible, if reappointed as a member, to be appointed or reappointed, as the case may be, as President or Deputy President.

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued*

(2) The Deputy President may exercise the President's functions—

(a) if the President—

(i) delegates those functions to the Deputy President under clause 5;

(ii) is absent from New South Wales; or

5 (iii) is prevented by illness or other incapacity from exercising those functions;
or

(b) if there is no person holding the office of President.

(3) While the Deputy President is entitled to exercise the President's functions, a
10 reference in Part 7 and this Schedule to the President shall be construed as a reference
to the Deputy President.

(4) While the Deputy President exercises the President's functions, the Deputy
President shall be deemed to be the President.

(5) No person shall be concerned to inquire whether or not any occasion has arisen
15 authorising the Deputy President to exercise the President's functions, and all acts or
things done or omitted to be done by the Deputy President when exercising those
functions shall be as valid and shall have the same consequences as if they had been
done or omitted to be done by the President.

Delegation

5. (1) The President may delegate to the Deputy President the exercise of any of
20 the President's functions.

(2) A delegation—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the President.

25 (3) The Deputy President is, in the exercise of a function delegated under this clause,
subject to such conditions as are specified in the instrument of delegation.

(4) A delegation under this clause does not prevent the exercise of a function by the
President.

Preservation of rights of full-time President previously public servant, etc.

30 6. (1) Subject to subclause (2) and to the terms of appointment, where the full-time
President was, immediately before being appointed as full-time President—

(a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued*

- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

- 5 (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as full-time President; and
- 10 (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as full-time President and—

- 15 (h) his or her service as full-time President shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee, and the Government shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

- 20 (2) If the full-time President would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as full-time President or at any later time while holding office as full-time President) a contributor to any other superannuation scheme, and the provisions
- 25 of subclause (1) (i) cease to apply to or in respect of him or her and the Government in any case where he or she becomes a contributor to any such other superannuation scheme.

- 30 (3) Subclause (2) does not prevent the payment to the full-time President upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(4) The full-time President shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

(5) In this clause—

- 35 “statutory body” means any body declared under clause 8 to be a statutory body for the purposes of this Schedule;

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued*

"superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

Full-time President entitled to reappointment to former employment in certain cases

- 5 7. (1) A person who—
- (a) ceases to be a full-time President because of the expiration of the period for which the person was appointed or by reason of resignation;
 - (b) was, immediately before being appointed as full-time President—
 - 10 (i) an officer of the Public Service or a Teaching Service; or
 - (ii) an officer or employee of a statutory body; and
 - (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

15 shall be entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as full-time President.

(2) Where subclause (1) does not apply to a person who—

- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
- 20 (b) is after that appointment appointed as full-time President,

the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be full-time President, as are specified in the instrument of appointment as full-time President or as are agreed upon by the person and by or on behalf of the Government.

25 (3) In this clause—

"statutory body" means any body declared under clause 8 to be a statutory body for the purposes of this Schedule.

Declaration of statutory bodies

30 8. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

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SCHEDULE 3

(Sec. 103)

CONSTITUTION OF THE COMMUNITY WELFARE APPEALS TRIBUNAL

Age of members

- 5 1. A person of or above the age of 65 years is not eligible to be appointed as a member.

Term and vacation of office, etc.

- 10 2. (1) A member shall hold office for the period of 3 years commencing with the day from which the member is declared to be appointed in the instrument of the member's appointment or such shorter period as is specified in that instrument and is, if otherwise qualified, eligible for reappointment.

(2) The Governor may remove a member from office for inability, misbehaviour or failure to comply with the conditions of the member's appointment.

(3) A member shall be deemed to have vacated office—

- (a) if the member dies;
- 15 (b) if the member resigns office by instrument in writing addressed to the Minister;
- (c) if the member becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- 20 (d) upon the member's reaching the age of 65 years; or
- (e) if the member is removed from office by the Governor.

Remuneration, etc.

- 25 3. (1) A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

(2) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

President and Deputy President

- 30 4. (1) The President or Deputy President holds office until ceasing to be a member and is eligible, if reappointed as a member, to be appointed or reappointed, as the case may be, as President or Deputy President.

(2) The Deputy President may exercise the President's functions—

- (a) if the President—
- (i) delegates those functions to the Deputy President under clause 5;
- 35 (ii) is absent from New South Wales; or
- (iii) is prevented by illness or other incapacity from exercising those functions;
- or

*Children (Care and Protection) 1987*SCHEDULE 3—*continued*CONSTITUTION OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

(b) if there is no person holding the office of President.

(3) While the Deputy President is entitled to exercise the President's functions, a reference in Part 8 and this Schedule to the President shall be construed as a reference to the Deputy President.

5 (4) While the Deputy President exercises the President's functions, the Deputy President shall be deemed to be the President.

(5) No person shall be concerned to inquire whether or not any occasion has arisen authorising the Deputy President to exercise the President's functions, and all acts or things done or omitted to be done by the Deputy President when exercising those
10 functions shall be as valid and shall have the same consequences as if they had been done or omitted to be done by the President.

Delegation

5. (1) The President may delegate to the Deputy President the exercise of any of the President's functions.

15 (2) A delegation—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the President.

(3) The Deputy President is, in the exercise of a function delegated under this clause,
20 subject to such conditions as are specified in the instrument of delegation.

(4) A delegation under this clause does not prevent the exercise of a function by the President.

SCHEDULE 4

(Sec. 103)

25 PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL

Composition of the Tribunal for the purpose of hearing proceedings

1. (1) The Tribunal shall, for the purpose of hearing proceedings, be constituted by not less than 3 and not more than 5 members nominated by the President.

(2) A nomination may be made generally or for a particular case or class of cases.

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

(3) The President shall notify a nominated member of the member's nomination as soon as practicable after the nomination is made.

(4) If the nominated members do not include the President or the Deputy President, the President shall nominate one of the members so nominated as Chairperson of the Tribunal and shall, when notifying the member so nominated of the member's nomination, notify the member also of the member's nomination as Chairperson.

Sittings of the Tribunal

2. If the Governor has appointed 6 or more members, more than one sitting of the Tribunal may be held at the same time.

10 Procedure at sittings of the Tribunal

3. The procedure for the arranging of, and for the conduct of business at, any sitting of the Tribunal shall, subject to this Schedule and any rules of the Tribunal made under clause 21, be as determined by the Tribunal.

Chairperson and votes of members

15 4. (1) At a sitting of the Tribunal—

(a) if the President has nominated himself or herself as a member of the Tribunal—the President;

(b) if the President has not nominated himself or herself, but has nominated the Deputy President, as a member of the Tribunal—the Deputy President; or

20 (c) if the President has nominated a member as Chairperson as referred to in clause 1 (4)—the member,

shall preside as Chairperson of the Tribunal.

(2) Questions arising at a sitting of the Tribunal shall be determined by a majority of votes of the members present and voting.

25 (3) The member presiding as Chairperson at a sitting of the Tribunal shall have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

Preliminary conference

5. The Tribunal or, if the Tribunal so directs, a member may, before formally commencing to hear any proceedings with respect to any decision of the Minister or the Director-General, confer informally with the parties to the proceedings and make any determination with respect to the decision that is agreed to by the parties to the proceedings.

Adjournment

6. (1) The Tribunal may from time to time adjourn its proceedings to such times, 35 dates and places, and for such reasons, as it thinks fit.

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

(2) In the absence from a sitting of the Tribunal of one or more, but not all, of the members nominated to constitute the Tribunal at that sitting, the remaining member or members may exercise the Tribunal's function under subclause (1).

Evidence

5 7. (1) The Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

(2) Proceedings before the Tribunal shall be by way of a new hearing and no weight shall be given to the decision of the Minister or the Director-General that is the subject of the proceedings.

10 **Exclusion of the public**

8. (1) Proceedings before the Tribunal shall be open to the public unless the Tribunal, in any particular case, determines that the proceedings shall be conducted wholly or partly in camera.

15 (2) The provisions of section 68 apply to proceedings before the Tribunal with respect to a child in the same way as they apply to proceedings referred to in those provisions.

Right of appearance

9. (1) In any proceedings before the Tribunal, the parties to the proceedings may appear in person or be represented by a barrister or solicitor or, by leave of the Tribunal, by an agent.

20 (2) The Tribunal, in proceedings before it with respect to a child, may appoint a person to act as guardian ad litem for the child.

(3) The Tribunal, in proceedings before it relating to a child, may, if it appears to the Tribunal that the child ought to be separately represented—

- (a) order that the child be separately represented; and
25 (b) make such other orders as it thinks necessary for the purpose of securing separate representation for the child.

(4) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the Tribunal has made an order under subclause (3) (b).

Presentation of cases

30 10. A party to proceedings before the Tribunal may—

- (a) call and examine any witness;
(b) cross-examine any witness called by another party;
(c) examine any copy of any document or part of a document lodged with the Tribunal under section 106;

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

- (d) give evidence on oath;
- (e) produce documents and exhibits to the Tribunal; and
- (f) otherwise adduce, orally or in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the proceedings.

5 Powers of the Chairperson of the Tribunal

11. (1) The member presiding as Chairperson at a sitting of the Tribunal may—

- (a) by instrument in writing require any person on whom the instrument is served personally or by post—

- (i) to appear before the Tribunal for the purpose of giving evidence; or

10 (ii) to produce to the Tribunal any document (including a document in the possession of or belonging to the Crown) that is relevant to the proceedings before the Tribunal,

at a time, date and place specified in the instrument;

15 (b) require a person who appears before the Tribunal to be sworn for the purpose of giving evidence on oath; and

- (c) administer an oath referred to in paragraph (b).

(2) When a document is produced to the Tribunal pursuant to a requirement made under subclause (1), the Tribunal may take possession of the document for such period as it considers necessary for the purpose of hearing the proceedings before it.

20 Questions of a member

12. (1) A member may require a person (including an officer or employee of the Crown) who appears before the Tribunal to answer a question that is reasonably related to the proceedings before the Tribunal.

25 (2) A person is not excused from answering a question put to the person by a member on the ground that the answer might tend to incriminate the person but, where the person claims, before answering the question, that the answer might tend to incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings, other than proceedings under clause 13 (c) or proceedings in relation to a charge of perjury in respect of the answer.

30 Offences

13. A person shall not—

- (a) refuse, fail or neglect to comply with a requirement made of the person under clause 11 or 12 by a member to the extent to which the person is lawfully able to comply with the requirement;

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

- (b) in purported compliance with a requirement made of the person under clause 11 (1) (a) (ii) by a member, produce any document knowing it to be false or misleading in a material particular; or
- 5 (c) not having been sworn, make a statement that is false or misleading in a material particular when the person is appearing before the Tribunal.

Penalty: \$100.

Witnesses' expenses

14. A person, other than an officer, who is required to appear or to give evidence before the Tribunal is entitled to be paid such allowances and expenses as the Minister
10 may determine in respect of the person.

Form of decisions of the Tribunal

15. (1) A decision of the Tribunal with respect to proceedings before it shall be in the form of an instrument in writing setting out the reasons for the decision and shall be signed by the member who presided as Chairperson at the sitting of the Tribunal at
15 which the decision was made.

(2) No decision of the Tribunal shall be vitiated merely because of any informality or want of form.

Costs

- 20 16. (1) The costs of any proceedings before the Tribunal shall be in the discretion of the Tribunal which may direct to and by whom, and in what manner, those costs or any part of those costs shall be paid.

(2) Any such costs may be recovered as a debt in any court of competent jurisdiction.

- (3) A certificate purporting to be signed by the President and containing a statement as to any matters relating to the award of costs under this clause is admissible in evidence
25 and is prima facie evidence of those matters.

Records of proceedings

17. (1) The member presiding as Chairperson at a sitting of the Tribunal shall cause a record of the proceedings at the sitting to be made.

- 30 (2) Records made for the purposes of subclause (1) may be destroyed after the expiration of such period as may be prescribed by the regulations.

Authentication of documents, etc.

18. (1) Any document requiring authentication by the Tribunal is sufficiently authenticated if it is signed by the President or the Deputy President.

- 35 (2) Judicial notice shall be taken of the signature of the President or the Deputy President when appearing on a document issued by the Tribunal.

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
*continued***Certain proceedings prohibited**

19. No proceedings lie against the Tribunal or a member for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal or member and purporting to be done, ordered, omitted or suffered, for the purpose of carrying out the provisions of this Act, if the Tribunal or member has acted in good faith and with reasonable care.

Application of the Defamation Act 1974

20. For the purposes of section 18 of the Defamation Act 1974, the proceedings of the Tribunal shall be deemed to be an inquiry within the meaning of that section.

10 Rules

21. (1) Five members nominated by the President (who shall include the President or the Deputy President, or both) may together make rules, not inconsistent with this Act or the regulations, for or with respect to the practice and procedure of the Tribunal.

(2) A provision of a rule may—

- 15 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- 20 or may do any combination of those things.

(3) If there is an inconsistency between the rules and the regulations, the regulations shall prevail to the extent of the inconsistency.

(4) A rule shall—

- (a) be published in the Gazette;
- 25 (b) take effect on and from the date of publication or a later date specified in the rule; and
- (c) be laid before each House of Parliament within 14 sitting days of that House after the date of publication.

30 (5) If either House of Parliament passes a resolution, of which notice has been given within 15 sitting days of that House after a rule has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.

(6) For the purposes of subclauses (4) and (5), sitting days shall be counted, whether or not they occur during the same session.

Children (Care and Protection) 1987

SCHEDULE 4—*continued*

PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

- (7) Judicial notice shall be taken—
- (a) of a rule made or purporting to have been made under this Act and published in the Gazette; and
 - (b) of the date of its publication.
- 5 (8) It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule have been complied with and performed.

CHILDREN (CARE AND PROTECTION) BILL 1987

NEW SOUTH WALES



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TRIBUNAL

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, , 1987*

NEW SOUTH WALES



Act No. , 1987

An Act with respect to the care and protection of children.

Children (Care and Protection) 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Children (Care and Protection) Act 1987".

10 **Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by
15 proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

20 "Aboriginal" has the same meaning as it has in the Aboriginal Land Rights Act 1983;

"abuse", in relation to a child, means assault (including sexually assault) or ill-treat the child or expose or subject the child to behaviour that psychologically harms the child, whether or not, in any case, with the consent of the child;

25 "adult" means a person who is of or above the age of 18 years;

"authorised justice" means—

(a) a Magistrate; or

(b) a justice employed in the Local Courts Administration, Attorney General's Department;

30 "authorised officer", in relation to any provision of this Act, means—

(a) an officer who is declared to be an authorised officer for the purposes of that provision; or

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- (b) an officer who belongs to a class of officers who are declared to be authorised officers for the purposes of that provision,
by an order in force under subsection (3);
- 5 “authorised private fostering agency” means the holder of a private fostering agency authority;
- “authorised supervisor”, in relation to a licence for a child care service or the holder of such a licence, means the person for the time being specified under section 32 (1) (c) in the licence for that service;
- “child” means a person who is under the age of 18 years;
- 10 “child care service” means—
- (a) any service that is provided by a person for the purpose of educating, minding or caring for (but without providing residential care for) one or more children (disregarding any children who are related to the person providing the service) and that is provided
15 for fee, gain or reward;
- (b) any service that is declared to be a child care service by an order in force under subsection (4); or
- (c) the organising or arranging of the provision of any such service,
20 but does not include any such service, or the organising or arranging of the provision of any such service, if the service is or is to be—
- (d) provided by a person at the premises at which the children for whom that person provides the service reside;
- (e) provided at a licensed residential child care centre;
- (f) provided at exempt premises; or
- 25 (g) provided by the holder of a fostering authority in accordance with the authority;
- “Children’s Court” means the Children’s Court of New South Wales constituted by the Children’s Court Act 1987;
- 30 “children’s employment licence” means a licence in force under section 53;
- “Community Welfare Appeals Tribunal” means the Community Welfare Appeals Tribunal established by section 103;

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5 “control order” means an order in force under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 whereby the Children’s Court, or some other court exercising the functions of the Children’s Court under Division 4 of Part 3 of that Act, has committed a person to the control of the Minister administering the Children (Detention Centres) Act 1987;

“custody”, in relation to a child, means custody of the child to which a person is entitled by law;

“Department” means the Department of Youth and Community Services;

10 “Director-General” means the person for the time being holding office or acting as the Director-General of the Department;

“exempt premises” means—

(a) the premises of—

15 (i) a State school, a certified school, a special school or a certified special school, within the meaning of the Public Instruction (Amendment) Act 1916;

(ii) a private hospital or nursing home licensed under the Private Hospitals Act 1908;

20 (iii) an admission centre or a mental hospital within the meaning of the Mental Health Act 1958 or an authorised hospital within the meaning of the Mental Health Act 1958;

25 (iv) an incorporated hospital or a separate institution within the meaning of the Public Hospitals Act 1929, premises controlled by an associated organisation within the meaning of that Act or a hospital specified in the Fifth Schedule to that Act; or

(v) a hospital or other institution under the control of an area health service constituted under the Area Health Services Act 1986;

30 (b) any premises belonging to a class of premises prescribed by the regulations; or

(c) in relation to any provision of this Act, any premises declared to be exempt premises for the purposes of that provision by an order in force under subsection (5);

35 “facility” means any premises the subject of an order in force under section 5 (1);

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- “fostering authority” means an authority that has been granted as a fostering authority under clause 3 of Schedule 1 and that is in force;
- 5 “licence” means a licence for a child care service or a residential child care centre that has been granted under clause 3 of Schedule 1 and that is in force;
- “licensed manager”, in relation to a licensed residential child care centre, means the person for the time being specified under section 36 (1) (c) in the licence for that centre;
- 10 “licensed residential child care centre” means premises specified under section 36 (1) (b) in a licence for a residential child care centre;
- “maintenance” includes clothing, support, training and education;
- “non-Government children’s home” means a home for the accommodation of children that is conducted by a non-Government organisation;
- 15 “non-Government organisation” means a corporation, society, association or other body of persons, not being the Crown, declared to be a non-Government organisation by an order in force under subsection (6);
- “officer” means an officer or temporary employee, within the meaning of the Public Service Act 1979, employed in the Department;
- 20 “parent”, in relation to a child, includes—
- (a) a guardian of the child; and
 - (b) a person who has the custody of the child,
- but does not include the Minister or the Director-General, or the father or mother of the child if the father or mother, as the case may be, has
- 25 neither guardianship nor custody of the child;
- “person responsible”, in relation to a child, means—
- (a) a parent of the child;
 - (b) a person (other than the Minister or the Director-General) who has the care of the child; or
 - 30 (c) in the case of a child who is in the care of the Minister or the Director-General—a person who had the care of the child immediately before the child came to be in the care of the Minister or the Director-General, as the case may be;
- “premises” includes any land, building, vehicle and vessel;

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“principal officer”, in relation to an authorised private fostering agency, means the person for the time being specified under section 41 (1) (b) in the private fostering agency authority held by that agency;

5 “private fostering agency” means a person who performs (whether or not for fee, gain or reward) private fostering services with respect to children (disregarding any children who are related to the person);

“private fostering agency authority” means an authority that has been granted as a private fostering agency authority under clause 3 of Schedule 1 and that is in force;

10 “private fostering service” means the activity of conducting negotiations or making arrangements with a view to the placement of children for fostering;

“proprietor”, in relation to premises, means—

15 (a) if the premises are not leased—the owner or any joint owner of the premises; or

(b) if the premises are leased—the lessee or any joint lessee who is entitled to immediate possession of the premises;

“protected person” means—

20 (a) a child who is a ward of the Supreme Court and of whom the Minister or the Director-General has the custody or care pursuant to an order of the Supreme Court;

(b) a child of whom the Minister or the Director-General has the custody or guardianship pursuant to an order in force under the Family Law Act 1975 of the Commonwealth;

25 (c) a non-citizen child in respect of whom the Director-General exercises the functions of a guardian pursuant to the Immigration (Guardianship of Children) Act 1946 of the Commonwealth; or

30 (d) a child who, having been a child referred to in paragraph (a), (b) or (c), is in the custody of a person referred to in section 91 (1) (d) (i) or (ii);

“regulation” means a regulation made under this Act;

“residential child care centre” means any premises—

35 (a) at which 6 or more children (disregarding any children who are related to the person in charge of the premises) reside and are cared for for fee, gain or reward; or

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(b) that are declared to be a residential child care centre by an order in force under subsection (7),

but does not include any premises that are exempt premises;

5 “Visitor” means a person appointed as a Visitor for a facility under section 6;

“ward” means—

(a) a child declared to be a ward under this Act by an order in force under section 72 (1) (c) (iii);

10 (b) a child declared to be a ward under this Act by a declaration under section 95 (4); or

(c) a child declared to be a ward under this Act by an order in force under the Adoption of Children Act 1965.

(2) In this Act—

15 (a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) For the purposes of the definition of “authorised officer” in subsection (1), the Minister may, by order published in the Gazette—

20 (a) declare any officer to be an authorised officer; or

(b) declare any class of officers to be authorised officers,

for the purposes of any provision of this Act.

25 (4) The Minister may, by order in writing served on a person by whom any service that would (but for the fact that it is being provided otherwise than for fee, gain or reward) be a child care service under paragraph (a) of the definition of “child care service” in subsection (1), declare the service to be a child care service.

30 (5) For the purposes of paragraph (c) of the definition of “exempt premises” in subsection (1), the Minister may, by order published in the Gazette, declare any premises to be exempt premises for the purposes of any provision of this Act.

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(6) For the purposes of the definition of “non-Government organisation” in subsection (1), the Minister may, by order published in the Gazette, declare any corporation, society, association or other body of persons, not being the Crown, to be a non-Government organisation for the purposes of
5 this Act.

(7) The Minister may, by order in writing served on the proprietor or occupier of premises (other than exempt premises) that would (but for the fact that any one or more of the children, disregarding any children who
10 are related to the person in charge of the premises, residing at those premises are cared for otherwise than for fee, gain or reward) be a residential child care centre under paragraph (a) of the definition of “residential child care centre” in subsection (1), declare those premises to be a residential child care centre.

(8) In this Act—

15 (a) a reference to a person who has the care of a child is a reference to a person who has the care of the child, whether or not the person has the custody of the child; and

20 (b) a reference to a child who is or has been placed in the care of a person includes a reference to a child who is or has been placed in the custody of the person.

(9) In this Act, a reference to a child’s having been sexually assaulted is a reference to any of the following offences having been committed with or upon the child:

25 (a) an offence under section 61B, 61C, 61D, 61E, 61F, 66A, 66B, 66C or 66D of the Crimes Act 1900;

(b) an offence under section 67, 68, 71, 72, 73, 74, 78A or 78B of that Act, as in force before the commencement of Schedule 2 to the Crimes (Child Assault) Amendment Act 1985;

30 (c) an offence under section 63, 65, 76 or 76A of that Act, as in force before the commencement of Schedule 1 to the Crimes (Sexual Assault) Amendment Act 1981.

(10) Except in so far as the context or subject-matter otherwise indicates or requires, a word or expression used in a Schedule has the same meaning as it has in the relevant provisions of this Act relating to the subject-matter
35 of that Schedule.

Related persons

4. For the purposes of this Act, a child is related to another person—
- (a) if the child is the child, step-child, grandchild, brother, sister, step-brother, step-sister, uncle, aunt, niece or nephew (whether by
5 consanguinity or affinity) of the other person;
 - (b) if the other person is the guardian of the child; or
 - (c) if the child has been placed in the care or custody of the other person in accordance with the provisions of the Adoption of Children Act 1965.

10 Facilities

5. (1) The Minister may, by order published in the Gazette, declare any premises specified or described in the order to be a facility for the purposes of this Act.

15 (2) The Minister may, by the order by which any premises are declared to be a facility or by any subsequent order published in the Gazette, give a name to the facility.

(3) An order under subsection (1) may declare any premises specified or described in the order to be one or more kinds of facility.

20 (4) An order under subsection (1) shall not be made in relation to premises under the control of a person, other than the Crown or a person acting on behalf of the Crown, except with the consent in writing of the firstmentioned person.

25 (5) An order under subsection (1) shall not be made in relation to premises under the control of a Minister other than the Minister administering this Act except with the consent in writing of that other Minister.

30 (6) The Minister may establish and maintain, on any facility that comprises premises that are under the control of the Crown or a person acting on behalf of the Crown, such establishments as the Minister considers necessary for the purpose of carrying out or giving effect to this Act or any other Act administered by the Minister.

Visitors

6. (1) The Minister may appoint eligible persons to be Visitors for each facility.

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(2) A person is an eligible person for the purposes of subsection (1) if, in the opinion of the Minister, the person—

(a) is expert in some branch of community welfare; and

5 (b) demonstrates concern for persons in need of community welfare services,

but not if the person is an officer.

(3) A Visitor shall, unless sooner removed from office, hold office for 2 years and is, if otherwise qualified, eligible for reappointment.

10 (4) A Visitor may, in respect of the facility for which the Visitor is appointed—

(a) enter and inspect the facility at any reasonable time;

(b) confer privately with any person who is resident, employed or detained in the facility;

15 (c) furnish to the Minister advice or reports on any matters relating to the conduct of the facility; and

(d) exercise such other functions as may be prescribed by the regulations.

20 (5) A copy of any advice or report furnished to the Minister under subsection (4) (c) shall be forwarded to the Minister for Education if the advice or report relates to any part of an educational establishment that is under the control or direction of the Minister for Education.

Granting of care does not imply granting of custody

7. A power conferred by this Act to place a child in the care of a person does not, except in so far as the context or subject-matter otherwise indicates or requires, include the power to grant custody of the child to the person.

25 **Care or custody does not imply guardianship**

8. A person in whose care or custody a child is placed under this Act is not, merely because of that placement, the guardian of the child.

Duties of care equivalent to duties of custody

30 9. A person in whose care a child is placed under this Act has, until the person ceases under this or any other Act or law to have the care of the child, the same duties in respect of the child as if the person had the custody of the child.

*Children (Care and Protection) 1987***Children in need of care**

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

- (a) adequate provision is not being made, or is likely not to be made, for the child's care;
- 5 (b) the child is being, or is likely to be, abused; or
- (c) there is a substantial and presently irretrievable breakdown in the relationship between the child and one or more of the child's parents.

(2) Without limiting the generality of subsection (1), a child who is residing in a non-Government children's home is in need of care—

- 10 (a) if the child has been residing in the home for a period of 12 months or more; and
- (b) if there has been no substantial contact during that period between the child and—
 - (i) any of the child's parents; or
 - 15 (ii) any person in whose care the child was immediately before the child began residing in the home.

Delegation

11. (1) In the exercise of the Minister's powers of delegation under section 5 of the Community Welfare Act 1987, the Minister may delegate 20 to the Director-General, or to any other person, the exercise of—

- (a) any of the Minister's functions arising by virtue of the Minister's having the care or custody of a person; and
- (b) any of the Minister's functions (other than such functions as may be prescribed by the regulations) arising by virtue of the Minister's 25 being the guardian of a ward or protected person.

(2) In the exercise of the Director-General's powers of delegation under section 5 of the Community Welfare Act 1987, the Director-General may delegate to any person the exercise of any of the Director-General's 30 functions arising by virtue of the Director-General's having the care or custody of a person.

PART 2

CHILDREN'S WELFARE

DIVISION 1—*Provision of care***Objects of Part**

- 5 12. (1) The objects of this Part are—
- (a) to identify the special needs of children, whether or not under parental care, with respect to services necessary to promote their optimum development; and
 - 10 (b) to ensure the provision of any necessary services for, and assistance to, families so that, where necessary, the care available to children in the family environment can be enhanced to such a degree as to enable them to remain in or return to family care.
- (2) With the object of ensuring the provision of any necessary welfare services aimed at complementing the care given to children by persons
15 responsible for them, the Minister may—
- (a) disseminate information to the community with respect to welfare services for children and their families;
 - 20 (b) provide assistance and support for non-Government organisations and persons concerned in the establishment or development of welfare services for children and their families; and
 - (c) furnish advice to non-Government organisations and persons concerned in the provision of welfare services for children and their families with respect to the quality of any such services and the equipment needed to provide them.
- 25 **Provision of services for children in need of care**
13. (1) The Director-General may provide any one or more of the following facilities or services for or with respect to a child who is, in the opinion of the Director-General, in need of care:
- (a) accommodation;
 - 30 (b) maintenance;
 - (c) care;
 - (d) advisory services;

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(e) any other facility or service prescribed by the regulations or any other facility or service belonging to a class of facilities or services so prescribed.

(2) Facilities or services shall not be provided under subsection (1) for 5 or with respect to a particular child except on the application of—

(a) in the case of a child who is under the age of 14 years—a person responsible for the child;

(b) in the case of a child who is 14 or 15 years of age—either a person responsible for the child or the child; or

10 (c) in the case of a child who is of or above the age of 16 years—the child.

Temporary care arrangements

14. (1) The Director-General may, on the application of—

15 (a) in the case of a child who is under the age of 14 years—a person responsible for the child; or

(b) in the case of a child who is of or above the age of 14 years—the child,

make a temporary care arrangement in respect of the child if the child is, in the opinion of the Director-General, in need of care.

20 (2) In deciding whether or not to make a temporary care arrangement in respect of a child, the Director-General shall have regard to—

(a) the views of the persons responsible for the child;

(b) in the case of a child who is of or above the age of 12 years—the views of the child; and

25 (c) the question of whether or not it would be more appropriate for provision to be made with respect to the child under section 13.

30 (3) A temporary care arrangement shall not be made in respect of a child on an application made by a person other than a parent of the child unless the Director-General has, not less than 21 days before making the arrangement, informed such of the parents of the child as can reasonably be located that an application for such an arrangement has been made.

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(4) If the Director-General has made a temporary care arrangement in respect of a child on an application made by a person other than a parent of the child, the Director-General shall inform such of the parents of the child as can reasonably be located that the Director-General has made a
5 temporary care arrangement in respect of the child.

(5) A temporary care arrangement ceases to be in force—

(a) upon the receipt by an officer of a request for the termination of the arrangement made by the person by whom the application for the making of the arrangement was made;

10 (b) upon the child the subject of the arrangement attaining the age of 18 years;

(c) upon the expiration of the period of—

(i) except as provided by subparagraph (ii)—3 months; or

15 (ii) if the Director-General has renewed the arrangement pursuant to subsection (6)—6 months,

after the making of the arrangement; or

(d) upon its termination by the Director-General under subsection (8), whichever first occurs.

20 (6) At the expiration of 3 months after the making of a temporary care arrangement in respect of a child, the Director-General may, if of the opinion that the child is still in need of care, renew the arrangement for a further period of 3 months.

25 (7) A temporary care arrangement shall not be made or renewed in respect of a child if the child has, during the previous 12 months, been the subject of a temporary care arrangement or a temporary custody order for a period, or for periods in the aggregate, exceeding 6 months.

30 (8) The Director-General may, whether on the application of the child or a person responsible for the child or on the Director-General's own motion, at any time terminate a temporary care arrangement in respect of a child if, after consultation with the person by whom the application for the making of the order was made, the Director-General is of the opinion that the child is no longer in need of care.

(9) An application for the review of a temporary care arrangement may, in accordance with the regulations, be made to the Children's Court—

35 (a) by or on behalf of the child the subject of the arrangement; or

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(b) by a person responsible for the child.

(10) The decision of the Children's Court in respect of an application for a review shall be given effect to as if it were the decision of the Director-General with respect to the making of a temporary care arrangement under subsection (1).

(11) The provisions of Division 3 of Part 5 apply to and in respect of the hearing of an application for a review in the same way as they apply to and in respect of the hearing of a care application under that Division.

Temporary custody orders

10 15. (1) The Director-General may make a temporary custody order in respect of a child the subject of a control order if—

(a) the child is under the age of 16 years; and

15 (b) the child would, upon ceasing to be subject to the control order by virtue of the making of the temporary custody order, be, in the opinion of the Director-General, in need of care.

(2) In deciding whether or not to make a temporary custody order in respect of a child, the Director-General shall have regard to—

(a) the views of the persons responsible for the child; and

20 (b) in the case of a child who is of or above the age of 12 years—the views of the child.

(3) A temporary custody order shall not be made in respect of a child unless the Director-General has, not less than 21 days before making the order, informed such of the persons responsible for the child as can reasonably be located that the Director-General proposes to make such an order.

(4) Upon the making of a temporary custody order in respect of a child, the control order to which the child was subject immediately before the making of the temporary custody order shall cease to have effect.

(5) A temporary custody order ceases to be in force—

30 (a) upon the expiration of the period for which the relevant control order would have been in force had the temporary custody order not been made;

(b) upon the expiration of the period of—

(i) except as provided by subparagraph (ii)—3 months; or

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(ii) where the Director-General has renewed the order pursuant to subsection (6)—6 months,

after the making of the order; or

(c) upon its termination by the Director-General under subsection (8),

5 whichever first occurs.

(6) At the expiration of 3 months after the making of a temporary custody order in respect of a child, the Director-General may, if of the opinion that the child is still in need of care, renew the order for a further period of 3 months.

10 (7) A temporary custody order shall not be made or renewed in respect of a child if the child has, during the previous 12 months, been the subject of a temporary care arrangement or a temporary custody order for a period, or for periods in the aggregate, exceeding 6 months.

15 (8) The Director-General may at any time terminate a temporary custody order in respect of a child if the Director-General is of the opinion that the child is no longer in need of care.

(9) An application for the review of a temporary custody order may, in accordance with the regulations, be made to the Children's Court—

(a) by or on behalf of the child the subject of the order; or

20 (b) by a person responsible for the child.

(10) The decision of the Children's Court in respect of an application for a review shall be given effect to as if it were the decision of the Director-General with respect to the making of a temporary custody order under subsection (1).

25 (11) The provisions of Division 3 of Part 5 apply to and in respect of the hearing of an application for a review in the same way as they apply to and in respect of the hearing of a care application under that Division.

Effect of temporary care arrangements and temporary custody orders

30 16. (1) The Director-General shall have the custody of a child in respect of whom there is in force a temporary care arrangement or temporary custody order.

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(2) In providing for the care of a child the subject of a temporary care arrangement or temporary custody order, the Director-General—

(a) shall have regard to—

- (i) the views of the child's parents; and
- 5 (ii) such other matters as may be prescribed by the regulations, in relation to all matters concerning the welfare of the child; and

(b) shall ensure that—

- (i) the child's parents are kept informed as to all matters concerning the welfare of the child; and
- 10 (ii) all efforts are made to encourage continuing contact between the child and the child's parents.

Temporary refuge

17. (1) A child seeking refuge may place himself or herself in the care of the Director-General.

15 (2) The Director-General shall discharge a child who is in the Director-General's care under subsection (1)—

- (a) upon the expiration of the period of 72 hours after the child has placed himself or herself in the care of the Director-General;
- 20 (b) if, before the expiration of that period, the Minister authorises the Director-General to keep the child in the Director-General's care for a further period not exceeding 72 hours—upon the expiration of the further period; or
- 25 (c) if, before the expiration of the period or further period referred to in paragraph (a) or (b), the child makes a request to an officer that the child be discharged from the Director-General's care—upon the request being made.

Separation of children from offenders

18. A child who is in the Director-General's care pursuant to this Act shall, so far as is reasonably practicable, be accommodated in premises other than—

- 30 (a) premises for the accommodation of persons who have committed offences; or

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- (b) premises for the accommodation of persons who are on remand awaiting proceedings in respect of offences alleged to have been committed by them.

Children in alternative care

5 19. (1) The Director-General shall maintain a register in which shall be entered particulars of every child who has been a child in alternative care for a continuous period of 14 days or more.

(2) The Director-General may, in respect of any child in alternative care other than a ward or protected person, grant an allowance to any person
10 having the care of the child for any period during which the child is in that person's care.

(3) If an allowance under subsection (2) was being paid in respect of a person immediately before the person attained the age of 18 years, the Director-General may—

15 (a) for the purpose of securing education or vocational training on a full-time basis for the person; and

(b) subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Director-General may determine,

20 from time to time, and for periods not exceeding 6 months at any one time, continue to pay an allowance in respect of the person for any period during which the person is residing in the home of the person to whom the allowance is granted.

(4) In this section, a reference to a child in alternative care is a reference
25 to—

(a) a child who resides in a facility, otherwise than as a member of the household of any other person who resides there;

(b) a child who has been placed in the care or custody of a person under Part 5 or 6;

30 (c) a child who is in the care of the Director-General under Part 5;

(d) a child who resides in a licensed residential child care centre, otherwise than as a member of the household of any other person who resides there;

35 (e) a child who is in the care of a person in whose care the child has been placed by an authorised private fostering agency; or

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(f) a child (other than a child referred to in paragraph (a), (b), (c), (d) or (e)) who—

5 (i) is in the care of a person (other than a person to whom the child is related) belonging to such class of persons as may be prescribed by the regulations; or

(ii) is residing at such premises, or at premises belonging to such class of premises, as may be prescribed by the regulations, otherwise than as a member of the household of any other person who resides there.

10 Ordinary medical and dental treatment

20. (1) This section applies to a child who is under the age of 16 years, being—

(a) a child who resides in a facility, otherwise than as a member of the household of any other person who resides there;

15 (b) a child who has been placed in the care or custody of a person under Part 5 or 6;

(c) a child who is in the care of the Director-General under Part 5;

20 (d) a child who resides in a licensed residential child care centre, otherwise than as a member of the household of any other person who resides there;

(e) a child who is in the care of a person in whose care the child has been placed by an authorised private fostering agency; or

25 (f) a child (other than a child referred to in paragraph (a), (b), (c), (d) or (e)) who is in the care of a person (other than the parent or guardian of the person of the child, as referred to in section 49 (1) of the Minors (Property and Contracts) Act 1970) pursuant to any law, whether or not of New South Wales.

30 (2) If an authorised person has consented to medical or dental treatment of a child to whom this section applies being carried out, it shall be deemed, for the purposes of section 49 of the Minors (Property and Contracts) Act 1970, that a parent or guardian of the person of the child consented to the treatment being carried out.

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(3) This section does not affect—

- (a) such operation as a consent (whether or not a consent referred to in subsection (2) or in section 49 of the Minors (Property and Contracts) Act 1970) may have otherwise than as provided by this section; or
- (b) the circumstances in which medical or dental treatment may be justified in the absence of consent.

(4) In this section—

“authorised person” means—

- (a) in relation to a child referred to in subsection (1) (a)—the Minister;
- (b) in relation to a child referred to in subsection (1) (b)—
- (i) in respect of medical or dental treatment not involving surgery—either the Minister or the person in whose care or custody the child has been placed; or
- (ii) in respect of medical or dental treatment involving surgery—the Minister;
- (c) in relation to a child referred to in subsection (1) (c)—
- (i) in respect of medical or dental treatment not involving surgery—either the Director-General or any person in whose care the child has been placed by the Director-General; or
- (ii) in respect of medical or dental treatment involving surgery—the Director-General;
- (d) in relation to a child referred to in subsection (1) (d)—
- (i) in respect of medical or dental treatment not involving surgery—the person in charge of the licensed residential child care centre in which the child resides; or
- (ii) in respect of medical or dental treatment involving surgery—either the parent or guardian of the person of the child (as referred to in section 49 (1) of the Minors (Property and Contracts) Act 1970) or (where no such parent or guardian can reasonably be located or it is impracticable to obtain the consent of such a parent or guardian) the person in charge of the licensed residential child care centre in which the child resides;

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(e) in relation to a child referred to in subsection (1) (e)—

(i) in respect of medical or dental treatment not involving surgery—the person in whose care the child has been placed; or

5 (ii) in respect of medical or dental treatment involving surgery—
either the parent or guardian of the person of the child (as
referred to in section 49 (1) of the Minors (Property and
Contracts) Act 1970) or (where no such parent or guardian
can reasonably be located or it is impracticable to obtain the
10 consent of such a parent or guardian)—

(A) if the child was placed in the care of a person by an
authorised private fostering agency—the principal officer
of that agency; or

15 (B) if the child was placed in the care of a person otherwise
than by an authorised private fostering agency—the
Director-General; or

(f) in relation to a child referred to in subsection (1) (f)—

20 (i) in respect of medical or dental treatment not involving
surgery—the person in whose care the child has been placed;
or

(ii) in respect of medical or dental treatment involving surgery—
the Director-General;

“dental treatment” has the same meaning as it has in section 49 of the
Minors (Property and Contracts) Act 1970;

25 “medical treatment” has the same meaning as it has in section 49 of the
Minors (Property and Contracts) Act 1970, but does not include a
special medical examination within the meaning of section 21 of this
Act.

Special medical examinations

30 **21. (1)** This section applies to—

(a) a child who resides in a facility, otherwise than as a member of the
household of any other person who resides there; and

(b) a child who resides in a licensed residential child care centre,
otherwise than as a member of the household of any other person
35 who resides there.

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(2) A special medical examination of a child to whom this section applies shall not be carried out—

- 5 (a) in the case of a child who is under the age of 16 years—unless the Minister has informed such of the parents of the child as can reasonably be located of the rights of a parent under this section; and
- (b) in the case of a child who is of or above the age of 14 years—unless the Minister has informed the child of the rights of a child under this section.

10 (3) If a medical practitioner has advised the Minister that the medical practitioner considers that it is medically necessary to carry out a special medical examination of a child to whom this section applies, a second independent medical opinion as to whether the examination is medically necessary shall be obtained on the request of—

- 15 (a) in the case of a child who is under the age of 14 years—a parent of the child;
- (b) in the case of a child who is 14 or 15 years of age—either a parent of the child or the child; or
- 20 (c) in the case of a child who is of or above the age of 16 years—the child.

(4) A special medical examination of a child to whom this section applies shall not be carried out—

- 25 (a) unless the Minister (after considering the advice of the medical practitioner referred to in subsection (3) and, if a second independent medical opinion was obtained under that subsection, that second opinion) is satisfied that the examination is medically necessary; and
- (b) unless—
- 30 (i) in the case of a child who is under the age of 14 years—a parent of the child has consented in writing to the examination being carried out;
- (ii) in the case of a child who is 14 or 15 years of age—both a parent of the child and the child have consented in writing to the examination being carried out;

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- (iii) in the case of a child who is of or above the age of 16 years—
the child has consented in writing to the examination being
carried out; or
- (iv) the Children's Court has, under subsection (6), ordered that
5 the examination be carried out.
- (5) A consent is void if—
- (a) subsection (2) has not been complied with in relation to the child or
parent by whom the consent was given; or
- (b) the child has not been counselled as referred to in subsection (8).
- 10 (6) The Children's Court may, on the application of the Minister and on
its being satisfied that any consent to a special medical examination is
unreasonably refused or cannot reasonably be obtained, order that the
examination be carried out.
- (7) If the Minister is satisfied that it is medically necessary to carry out
15 a special medical examination of a child to whom this section applies and
the consent or consents referred to in subsection (4) has or have been
obtained or the Children's Court has, under subsection (6), ordered that the
examination be carried out—
- 20 (a) in the case of a child who is under the age of 14 years—a parent of
the child;
- (b) in the case of a child who is 14 or 15 years of age—either a parent
of the child or the child; or
- (c) in the case of a child who is of or above the age of 16 years—the
child,
- 25 may nominate a medical practitioner to carry out the examination or may
state a preference as to whether the examination shall be carried out by a
male or female medical practitioner.
- (8) Before a special medical examination of a child to whom this section
applies is carried out, the child shall be counselled in relation to—
- 30 (a) the nature of the examination and its effects; and
- (b) such other matters as may be prescribed by the regulations,
by a suitable person other than the medical practitioner who is to carry out
the examination.

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(9) A special medical examination of a child to whom this section applies shall not be carried out otherwise than—

(a) by the medical practitioner nominated under subsection (7);

5 (b) if no medical practitioner has been so nominated but a preference has been stated under subsection (7)—by a medical practitioner nominated by the Minister in accordance with the preference so stated;

10 (c) if no medical practitioner has been so nominated and a preference has not been so stated—by a medical practitioner nominated by the Minister; or

(d) if the Minister is of the opinion that it is impracticable for the examination to be carried out by the medical practitioner so nominated or in accordance with the preference so stated—by a medical practitioner nominated by the Minister.

15 (10) If a special medical examination of a child to whom this section applies is carried out—

(a) pursuant to a consent referred to in subsection (4) (b) given by a parent of the child; or

(b) pursuant to an order of the Children's Court under subsection (6),

20 and the special medical examination is carried out in accordance with the provisions of this section, it shall be deemed, for the purposes of section 49 of the Minors (Property and Contracts) Act 1970, that a parent or guardian of the person of the child consented to the examination being carried out.

25 (11) The provisions of Division 3 of Part 5 apply to and in respect of the hearing of an application under subsection (6) in the same way as they apply to and in respect of the hearing of a care application under that Division.

(12) In this section—

30 "parent", in relation to a child to whom this section applies, includes the person in whose care the child was immediately before the child became a child to whom this section applies;

"special medical examination" means a vaginal or anal examination or a penile examination involving the insertion of any thing into the penis.

*Children (Care and Protection) 1987***Notification of child abuse**

22. (1) Any person who forms the belief upon reasonable grounds that a child—

- (a) has been, or is in danger of being, abused; or
- 5 (b) is a child in need of care,

may cause the Director-General to be notified of that belief and the grounds therefor, either orally or in writing.

(2) A person who, in the course of—

- (a) practising as a medical practitioner;
- 10 (b) following another profession, calling or vocation prescribed by the regulations for the purposes of this subsection (other than the profession of a barrister or solicitor); or
- (c) exercising the functions of an office so prescribed,

15 has reasonable grounds to suspect that a child has been abused (whether the abuse consisted of sexual assault or any other form of abuse) is required to comply with subsection (4) in respect of those grounds unless the person is a minister of religion or a person who is declared by the regulations to be exempt from the provisions of this subsection.

(3) A person who, in the course of—

- 20 (a) following a profession, calling or vocation prescribed by the regulations for the purposes of this subsection (other than the profession of a barrister or solicitor); or
- (b) exercising the functions of an office so prescribed,

25 has reasonable grounds to suspect that a child has been sexually assaulted is required to comply with subsection (4) in respect of those grounds unless the person is a minister of religion or a person who is declared by the regulations to be exempt from the provisions of this subsection.

30 (4) A person who is required to comply with this subsection in respect of having any grounds to suspect that a child has been abused (whether the abuse consisted of sexual assault or any other form of abuse) shall—

- (a) notify the Director-General of the name or a description of the child and those grounds; or
 - (b) cause the Director-General to be so notified,
- promptly after those grounds arise.

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(5) Regulations may be made with respect to the form of a notification under subsection (4) or with respect to the manner of making such a notification.

(6) A person who fails to comply with subsection (4) is guilty of an offence.

(7) Where the Director-General has been notified under subsection (1) or (4), the Director-General shall—

(a) promptly cause an investigation to be made into the matters notified to the Director-General; and

(b) if the Director-General is satisfied that the child in respect of whom the Director-General was notified may have been, or is in danger of being, abused or is a child in need of care, take such action as the Director-General considers appropriate, which may include reporting those matters to a member of the police force.

(8) Where a person notifies the Director-General pursuant to subsection (1) or (4)—

(a) the notification shall not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;

(b) no liability for defamation is incurred because of the making of the notification;

(c) the notification shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;

(d) the notification shall not be admissible in evidence in any proceedings before a court, tribunal or committee and no evidence of its contents shall be admissible; and

(e) a person shall not be compelled in any proceedings before a court, tribunal or committee to produce the notification, or any copy of or extract from the notification, or to disclose, or give any evidence of, any of the contents of the notification.

(9) The provisions of subsection (8) (d) and (e) do not apply in relation to—

(a) the admissibility in, or of, evidence of a notification under subsection (1) or (4);

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- (b) the production of such a notification, a copy thereof or an extract therefrom; or
- (c) the disclosure or giving of evidence of the contents of such a notification,

5 either—

- (d) in any proceedings before the Children's Court under Part 5, or a court hearing or determining an appeal from a decision of the Children's Court under Part 5, before which the child to whom the notification relates is brought for the purposes of proceedings under Part 5; or

10

- (e) in support of, or in answer to, a charge or allegation made in proceedings referred to in subsection (8) (d) or (e) against any person in relation to that person's exercising any of that person's functions in pursuance of this Act.

15 (10) Subsection (8) (d) does not apply if a notification under subsection (1) or (4) is tendered in evidence, or evidence in respect of such a notification is given—

- (a) by the person by whom the notification was caused to be made; and

- (b) in answer to a charge or allegation made against that person in proceedings referred to in subsection (8) (d).

20

Medical examination of abused children

23. (1) If the Director-General or a member of the police force believes on reasonable grounds (which may consist wholly or partly of information received by that person) that a child who is under the age of 16 years has been abused, the Director-General or the member of the police force, as the case may be, may serve a notice, in such form as may be prescribed by the regulations—

25

- (a) naming or describing the child; and

- (b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or some other place so specified for the purpose of the child's being medically examined,

30

on the person (whether or not a parent of the child) who appears to the Director-General or the member of the police force to have the care of the child for the time being.

35

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(2) A person who fails to comply with the requirement contained in a notice served on the person under subsection (1) is guilty of an offence unless it is proved that the person did not have the care of the child at the time the notice was served.

5 (3) If a person fails to comply with the requirement contained in a notice served on the person under subsection (1), an authorised officer or a member of the police force may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a hospital or elsewhere for the purpose of the child's being medically
10 examined.

(4) When a child is presented to a medical practitioner under subsection (1) or (3)—

(a) the medical practitioner may carry out or cause to be carried out
15 such medical examination of the child as the medical practitioner thinks fit, including examination at a hospital or place that is not the hospital or place specified in the notice referred to in subsection (1) in respect of the child;

(b) the Director-General shall, from the time at which the child is presented to the medical practitioner until the expiration of—

20 (i) such period of time as is reasonably necessary for the child to be examined in accordance with paragraph (a); or

(ii) 72 hours,

25 whichever period first expires, be deemed to be the guardian of the child for the purpose only of enabling the examination to be carried out; and

(c) the medical practitioner or other person by whom any such medical examination has been carried out shall prepare a written report of the examination for transmission to the Director-General.

30 (5) No proceedings lie against an officer, medical practitioner, member of the police force or person employed at any hospital or other place at which a child is examined for or on account of any act, matter or thing done or ordered to be done by that person, and purporting to be done for the purpose of carrying out or assisting in carrying out the provisions of this section, if that person has acted in good faith and with reasonable care.

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(6) If a medical practitioner or other person transmits a report to the Director-General pursuant to subsection (4) (c)—

- 5 (a) the transmission of the report shall not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct; and
- (b) no liability for defamation is incurred because of the making of the report.

Power of search and removal of abused children

10 24. (1) An officer or member of the police force may apply to an authorised justice for a search warrant if the officer or member of the police force has reasonable grounds for believing that a person on whom a notice has been served under section 23 (1) has failed to comply with the requirement contained in the notice.

15 (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the warrant—

- (a) to enter any premises specified in the warrant;
- 20 (b) to search the premises for the presence of the child the subject of the notice under section 23 (1); and
- (c) to remove the child and to present the child to a medical practitioner under section 23 (3).

(3) Part III of the Search Warrants Act 1985 applies to a search warrant 25 issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force or a medical practitioner, or both—

- (a) may accompany an officer executing a search warrant issued under this section; and
- 30 (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

(5) It shall not be necessary in any search warrant issued under this section to name any particular child.

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(6) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a child pursuant to the warrant, use all reasonable force.

DIVISION 2—*Offences*5 **Child abuse**

25. A person who abuses a child, or causes or procures a child to be abused, is guilty of an offence.

Neglect of children

10 26. A person, whether or not the parent of the child, who, without reasonable excuse, neglects to provide adequate and proper food, nursing, clothing, medical aid or lodging for a child in his or her care, is guilty of an offence.

Unauthorised removal of children, etc.

27. (1) A person who, without lawful excuse—

15 (a) removes a child or other person from the care of a person into whose care or custody the child or other person has been placed under this Act; or

(b) causes or procures a child or other person to be so removed,
is guilty of an offence.

20 (2) A person who—

(a) is in charge of any hospital or other premises used for the purpose of receiving (whether or not for fee, gain or reward) more than 1 woman who is at the premises for the purposes of giving birth; and

25 (b) permits a child who is not in the charge of the child's mother to be taken from the premises without first obtaining the consent of the Director-General,

is guilty of an offence.

Tattooing of children

30 28. A person who in any manner tattoos any part of the body of a child is guilty of an offence unless the person has first obtained the written consent of a parent of the child to tattoo the child in that manner and on that part of the child's body.

Leaving children unsupervised in motor vehicles

29. A person who leaves any child in the person's care in a motor vehicle without proper supervision for such period or in such circumstances that—

- 5 (a) the child becomes or is likely to become emotionally distressed; or
(b) the child's health becomes or is likely to become permanently or temporarily impaired,
is guilty of an offence.
-

PART 3**10 LICENSING OF CHILD CARE ARRANGEMENTS****DIVISION 1—*Child care services*****Application of Division**

30. This Division applies to such class of child care services as may be prescribed by the regulations for the purposes of this Division.

15 Unlicensed persons not to provide child care services

31. (1) A person who provides a child care service to which this Division applies, or who advertises himself or herself or holds himself or herself out as being willing to provide such a child care service, is guilty of an offence unless the person is the licensee under a licence for the child care
20 service.

(2) The licensee under a licence for a child care service is guilty of an offence unless the authorised supervisor under the licence has the overall supervision of the provision of the child care service to which the licence relates.

25 (3) A person who has the overall supervision of the provision of the child care service to which a licence for a child care service relates is guilty of an offence unless the person is the authorised supervisor under that licence.

(4) A person who is the licensee or authorised supervisor under a licence for a child care service is guilty of an offence if the person contravenes or
30 fails to comply with any condition of the licence that applies to the person.

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(5) A person who wilfully publishes any advertisement with respect to a child care service to which this Division applies, being a child care service that is not licensed, is guilty of an offence.

5 (6) A person who is the authorised supervisor under a licence for a child care service but is not the licensee under the licence is not guilty of an offence by virtue of subsection (1) in respect of any thing done by the person in the course of supervising the provision of the child care service to which the licence relates.

10 (7) A person is not guilty of an offence by virtue of subsection (1) in respect of any thing done by the person in accordance with directions given by the licensee under a licence for a child care service or by the authorised supervisor under such a licence if that thing is done by the person in the course of providing or assisting in providing the child care service to which the licence relates.

15 (8) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

Licences

32. (1) A licence for a child care service shall specify—

- 20 (a) the person or body to whom or to which it is granted;
- (b) the child care service to which it relates; and
- (c) the person who is authorised by the licence to have the overall supervision of the provision of the child care service to which it relates.

25 (2) If a licence specifies that it is granted to a body, and the body consists of an unincorporated body of persons, then—

- (a) except as provided by paragraph (b)—the applicant for the licence; or
- 30 (b) if a person who has been appointed by the body to be the licensee under the licence gives written notice to the Minister of the appointment and of the person's full name and residential address—the person so appointed,

shall, for the purposes of this Act, be deemed to be the person to whom the licence is granted.

35 (3) Schedule 1 applies to a licence for a child care service.

Termination of illegal child care services

33. (1) If a child care service is being provided for a child and an offence under section 31 is being committed in relation to the child care service (whether or not a person has been proceeded against for the offence),
 5 any person responsible for the child shall, on the request of an officer, forthwith cease to provide the child with the service.

Penalty: \$500.

(2) Subsection (1) does not apply to or in respect of a child who is related to the person by whom the offence under section 31 is being committed.

10

DIVISION 2—Residential child care centres**Unauthorised persons not to conduct residential child care centres**

34. (1) A person who conducts a residential child care centre, or who advertises himself or herself or holds himself or herself out as being willing to conduct a residential child care centre, is guilty of an offence unless the
 15 centre is licensed and the person is the licensed manager of the centre.

(2) A person who is the licensed manager of a licensed residential child care centre is guilty of an offence if the person contravenes or fails to comply with any condition of the licence for the centre that applies to the person.

(3) For the purposes of subsection (1), but without affecting the generality
 20 of that subsection, a person who is in charge of a residential child care centre shall be deemed to have the conduct of the centre.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

25 Unlicensed premises, etc., not to be used as residential child care centres

35. (1) The proprietor of a residential child care centre is guilty of an offence if the centre is not licensed.

(2) The licensee of a licensed residential child care centre is guilty of an offence if—

- 30 (a) the centre does not comply with any condition of the licence for the centre that applies to the centre; or
- (b) the licensee contravenes or fails to comply with any condition of the licence for the centre that applies to the licensee.

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(3) The licensee of a licensed residential child care centre shall produce the licence for the centre to an officer requesting the licensee to do so.

Penalty: \$200.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

Licences

36. (1) A licence for a residential child care centre shall specify—

- (a) the person or body to whom or to which it is granted;
- 10 (b) the premises to which it relates; and
- (c) the person who is authorised by the licence to have the conduct of the centre.

(2) If a licence specifies that it is granted to a body, and the body consists of an unincorporated body of persons, then—

- 15 (a) except as provided by paragraph (b)—the applicant for the licence; or
- (b) if a person who has been appointed by the body to be the licensee under the licence gives written notice to the Minister of the appointment, and of the person's full name and residential address—
- 20 the person so appointed,

shall, for the purposes of this Act, be deemed to be the person to whom the licence is granted.

(3) Schedule 1 applies to a licence for a residential child care centre.

Removal of children from unlicensed residential child care centres

25 37. (1) If—

- (a) a child resides—
 - (i) at a residential child care centre that is not licensed; or
 - (ii) at a licensed residential child care centre that is conducted otherwise than by the licensed manager of the centre;
- 30 (b) an officer requests a person responsible for the child to remove the child from the residential child care centre; and
- (c) the child is not forthwith so removed,

the child shall be deemed to be a child in need of care.

(2) Subsection (1) does not apply to or in respect of a child who is related to the person who has the care of the child at that centre.

Notification of deaths at licensed residential child care centres

5 **38. (1)** If a child dies at a licensed residential child care centre, the licensed manager of the centre shall forthwith cause notice of the death to be given to—

- (a) such of the parents of the child as can reasonably be located;
- 10 (b) a member of the police force at the police station nearest the centre; and
- (c) the Director-General.

Penalty: \$500.

(2) Subsection (1) does not apply to or in respect of a child who is related to the licensed manager of the licensed residential child care centre.

15 Entry without warrant into premises of residential child care centres

39. (1) For the purpose of—

- (a) making an inquiry in relation to an application under this Act with respect to the premises of any residential child care centre;
- 20 (b) ensuring that the provisions of this Act and the regulations with respect to the premises of any licensed residential child care centre, and of any conditions imposed on a licence with respect to any such premises, are being complied with; or
- (c) ensuring that the conditions of any exemption relating to the premises of a residential child care centre are being complied with,

25 any authorised officer may at any time, without any authority other than that conferred by this subsection, enter the premises and inspect them and observe and converse with any person apparently residing there.

(2) In exercising the powers conferred by subsection (1), an authorised officer may be accompanied—

- 30 (a) by a medical practitioner; or
- (b) by a member of the police force,

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or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently residing there.

(3) Nothing in subsection (2) authorises—

- (a) the examination of a child in contravention of section 20 or 21; or
 5 (b) the examination of any other person against that person's will.

DIVISION 3—*Private fostering agencies*

Unauthorised private fostering agencies prohibited

10 **40. (1)** A person who carries on private fostering services, or who advertises himself or herself or holds himself or herself out as being willing to carry on private fostering services, is guilty of an offence unless the person is an authorised private fostering agency.

(2) An authorised private fostering agency is guilty of an offence unless the principal officer of the agency has the overall supervision of the private fostering services carried on by it.

15 (3) A person who has the overall supervision of the private fostering services carried on by an authorised private fostering agency is guilty of an offence unless the person is the principal officer of the agency.

20 (4) A person who is an authorised private fostering agency or the principal officer of such an agency is guilty of an offence if the person contravenes or fails to comply with any condition of the agency's private fostering agency authority that applies to the person.

(5) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

25 **Private fostering agency authorities**

41. (1) A private fostering agency authority may be granted only to a non-Government organisation and shall specify—

- (a) the non-Government organisation to which it is granted; and
 30 (b) the person who is authorised by the authority to have the overall supervision of the provision of the private fostering services carried on under the authority.

(2) Schedule 1 applies to a private fostering agency authority.

DIVISION 4—*Fostering***Unauthorised fostering prohibited**

42. (1) A person (other than the holder of a fostering authority) who, for a period, or for periods in the aggregate, exceeding 50 days in any period of 12 months, has in his or her care one or more children for the purpose of fostering the children (whether or not for fee, gain or reward) is guilty of an offence.

(2) Subsection (1) does not apply to or in respect of—

- (a) a child who has been placed in the care of the person by an authorised private fostering agency;
- (b) a child who has been placed in the care of the person by, or with the written approval of, the Minister or the Director-General;
- (c) a child who is related to the person; or
- (d) a person who, at any licensed residential child care centre, acts as a foster parent to any children.

(3) The holder of a fostering authority is guilty of an offence—

- (a) if the holder acts as a foster parent—
 - (i) to more children (other than children who are related to the holder) than the maximum number of children specified in the authority;
 - (ii) where the fostering authority specifies the maximum number of children in any age group to whom it applies—to more children (other than children who are related to the holder) in any such age group than the maximum number of children so specified;
 - (iii) where the fostering authority specifies the child or children to whom it applies—to any child (other than a child who is related to the holder) other than the child or children so specified; or
 - (iv) where the fostering authority specifies the maximum period for which the person to whom it is granted may act as a foster parent in respect of any child or children or in respect of any child or children so specified—to any child (other than a child who is related to the holder) for a period exceeding the maximum period so specified; or
- (b) if the holder contravenes or fails to comply with any condition of the fostering authority.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of any person exempted from the operation of that provision under section 48.

Fostering authorities

- 5 **43. (1)** A fostering authority—
- (a) shall specify the person to whom it is granted;
 - (b) shall specify the maximum number (not exceeding 5) of children to whom it applies;
 - 10 (c) may specify the maximum number of children in any age group to whom it applies;
 - (d) may specify the child or children to whom it applies; and
 - (e) may specify the maximum period for which the person to whom it is granted may act as a foster parent in respect of—
 - (i) any child or children; or
 - 15 (ii) where it specifies the child or children to whom it applies—the child or any of the children so specified.
- (2) Schedule 1 applies to a fostering authority.

Unauthorised foster placements prohibited

- 44. (1)** If—
- 20 (a) a person places a child in the care of another person (other than the holder of a fostering authority) for the purpose of the child's being fostered by the other person; and
 - 25 (b) the other person has the care of the child (whether or not for fee, gain or reward) for a period, or for periods in the aggregate, exceeding 50 days in the period of 12 months after the child was placed in the person's care,

the person who so placed the child is guilty of an offence.

- (2) Subsection (1) does not apply to or in respect of—
- (a) the placement of a child by an authorised private fostering agency;
 - 30 (b) the placement of a child by, or with the written approval of, the Minister or the Director-General; or

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- (c) the placement of a child in the care of a person to whom the child is related.

Lump sum payments for care of children

5 **45. (1)** Except pursuant to an order of a court specifying the terms on which the person may do so, a person shall not, in consideration of the receipt by the person of any sum of money or other valuable consideration, other than periodical payments of money—

- (a) calculated at not more than the rate per week prescribed by the regulations; and
 10 (b) made for not more than 4 weeks in advance,

act as a foster parent to any child unless the child is being cared for at the place where a guardian of the child resides.

(2) Subsection (1) does not apply to or in respect of—

- 15 (a) the person in charge of a non-Government children's home for the time being approved by order of the Minister for the purposes of this subsection; or
 (b) the person in charge of a facility.

20 **(3)** The Director-General shall, if requested to do so by any person wishing to place a child in a non-Government children's home or in the care of the holder of a fostering authority, accept from that person a sum of money from which shall be made such payments, not exceeding periodical payments of money calculated in accordance with subsection (1) (a), as may be agreed upon to the person in charge of that home or to the holder of the fostering authority, as the case may be.

25 **(4)** A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

Proceedings for offences

30 **46.** Proceedings for an offence under section 42 or 44 shall not be commenced otherwise than by, or with the written approval of, the Director-General.

DIVISION 5—*General***Reports**

47. (1) The Director-General shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the activities of each licensee under a licence for a child care service or a residential child care centre.

(2) A report shall deal with such matters as the Minister directs and with such other matters as the Director-General considers appropriate to include in the report.

10 **Exemptions**

48. (1) The Minister may, by notice in writing served on a person, exempt the person, either absolutely or subject to conditions, from the operation of section 31 (1), (2), (3) or (4), 34 (1) or (2), 35 (1) or (2), 40 (1), (2), (3) or (4), 42 (1) or (3) or 45 (1).

15 (2) A person on whom a notice has been served under this section is exempted from the operation of any provision specified in the notice, but only while the person does not contravene or fail to comply with any condition so specified to which the exemption is subject.

20 (3) The regulations may make provision for or with respect to the exemption of persons from the operation of the provisions referred to in subsection (1).

Revocation of exemptions

25 49. (1) If the Minister intends to revoke an exemption given under section 48 (1), the Minister shall cause to be served on the person to whom the exemption was given a notice in writing stating that, when 28 days have expired after service of the notice, the Minister intends to revoke the exemption on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the exemption should not be revoked.

30 (2) When 28 days have expired after a notice has been served on a person under this section, the Minister may, after considering any submissions made to the Minister during that period by the person on whom the notice was served, revoke the exemption by a further notice served on that person.

PART 4

EMPLOYMENT OF CHILDREN

Children not to be employed in certain cases unless licensed

50. (1) A person shall not—

- 5 (a) employ a child who is not licensed under a children's employment licence;
- (b) cause or procure such a child to be employed; or
- (c) being a person having the care of such a child, consent to the child's being employed or allow the child to be employed,
- 10 for the purpose of the child's taking part in an entertainment or exhibition or offering any thing for sale.

Penalty: \$1,000.

(2) Subsection (1) does not apply to or in respect of the employment of a child—

- 15 (a) if the child is of or above the age of 15 years;
- (b) if the child is under the age of 15 years but is the holder of a certificate of exemption (granted in respect of the child by or with the authority of the Minister for Education) exempting the child from attendance at school for the purpose of enabling the child to take employment;
- 20 (c) if the child is employed for the purpose of an occasional entertainment or exhibition the net proceeds of which are to be wholly applied for the benefit of a school or charitable object; or
- (d) if the employment of the child is exempted from the operation of subsection (1) by the regulations.
- 25

(3) Subsection (1) does not, to the extent of the exemption, apply to or in respect of any person exempted from the operation of that subsection under subsections (4) and (5).

(4) The Minister may, by notice in writing served on a person, exempt 30 the person, either absolutely or subject to conditions, from the operation of subsection (1).

(5) A person on whom a notice has been served pursuant to subsection (4) is exempted from the operation of subsection (1), but only while the person does not contravene or fail to comply with any condition specified 35 in the notice to which the exemption is subject.

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(6) If the Minister intends to revoke an exemption given under subsection (4), the Minister shall cause to be served on the person to whom the exemption was given a notice in writing stating that, when 28 days have expired after service of the notice, the Minister intends to revoke the exemption on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the exemption should not be revoked.

(7) When 28 days have expired after a notice has been served on a person pursuant to subsection (6), the Minister may, after considering any submissions made to the Minister during that period by the person on whom the notice was served, revoke the exemption by a further notice served on that person.

(8) For the purposes of subsections (1) and (2), a child who takes part in an entertainment or exhibition carried on for profit or who offers any thing for sale shall be deemed to be employed, for the purpose of so taking part or offering the thing for sale, by the person conducting the entertainment or exhibition or owning the thing offered for sale, even though the child is neither an employee of that person nor receives any consideration for the child's so doing.

20 Children not to be employed for pornographic purposes

51. (1) A person shall not—

- (a) employ a child for pornographic purposes;
- (b) cause or procure a child to be so employed; or
- (c) being a person having the care of such a child, consent to the child's being so employed or allow the child to be so employed.

Penalty: \$5,000 or imprisonment for 3 years, or both.

(2) For the purposes of subsection (1), a child is employed for pornographic purposes if, in the course of his or her employment, the child is engaged in an activity of a sexual nature or is in the presence of another person who is so engaged.

Entertainment and performances by children

52. (1) A person who causes or allows a child to take part in an entertainment or exhibition, or in preparing, training or rehearsing for an entertainment or exhibition, in the course of which the child is in danger of suffering death or injury is guilty of an offence.

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(2) Where a child is employed—

- (a) to take part in an entertainment or exhibition and, by the nature of the entertainment or exhibition, the child is in danger of suffering death or injury; or
- 5 (b) to take part in preparing, training or rehearsing for such an entertainment or exhibition,

and an accident causing actual bodily harm occurs to the child, the employer of the child, whether a parent of the child or not, is guilty of an offence.

(3) Where the employer of a child referred to in subsection (2) is not a
10 parent of the child, the court before which the employer is convicted of the offence referred to in that subsection may award, as compensation for the bodily harm so caused, an amount (not exceeding the amount prescribed by the regulations) to be paid by the employer to the child or to some other person, named by the court, on behalf of the child.

15 (4) The recovery of compensation awarded under subsection (3) does not affect any other remedy available to the child, but any compensation so awarded shall be taken into account in any other proceedings by or on behalf of the child for or in respect of the same bodily harm.

Licences to employ children for certain purposes

20 **53. (1)** In this section, a reference to a child does not include a reference to—

- (a) a child who is of or above the age of 15 years; or
- 25 (b) a child who is under the age of 15 years but is the holder of a certificate of exemption (granted in respect of the child by or with the authority of the Minister for Education) exempting the child from attendance at school for the purpose of enabling the child to take employment.

(2) The Director-General may, on application made by or on behalf of a child, grant a licence authorising the child to be employed for the purpose
30 of taking part in any entertainment or exhibition or offering any thing for sale, being an entertainment, exhibition or thing specified or of a kind specified in the licence.

(3) Subject to subsection (6), a licence shall be in force—

- 35 (a) for such times and during such periods as may be prescribed by the regulations; and

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(b) subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Director-General may, in a particular case, determine.

(4) The times for which a licence is in force, the periods during which it is in force and the conditions to which it is subject shall be endorsed on the licence.

(5) A licence shall not be granted under subsection (2) unless the Director-General is satisfied that the child is fit to be employed and that proper provision has, in the manner specified in the application, been made to safeguard the health, welfare and education of the child.

(6) A licence shall not authorise a child to be employed between the hours of 10 p.m. on any day and 6 a.m. on the following day.

(7) A licence may, at any time, be varied or cancelled by the Director-General.

15 Occupational health and safety legislation

54. Nothing in this Part limits the effect of the Occupational Health and Safety Act 1983 or the associated occupational health and safety legislation within the meaning of that Act.

PART 5

CHILDREN IN NEED OF CARE

DIVISION 1—*Preliminary*

Objects of Part

55. The objects of this Part are to ensure that children in need of care are provided with assistance and supportive services, the provision of that assistance and those services being based on the premises that—

(a) the welfare and interests of children are to be given paramount consideration;

(b) children are entitled to special protection and to opportunities and facilities to enable them to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity;

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- 5 (c) children, for the full and harmonious development of their personalities, need love and understanding and, towards that end, should, wherever possible, grow up in the care and under the responsibility of their parents, but if that is not possible, in an environment of affection and moral and material security and, in the case of children of tender years, should not, except in exceptional circumstances, be separated from their parents;
- 10 (d) continuing contact between children and their parents should be encouraged in situations where, pursuant to legal proceedings, children have been separated from their parents;
- (e) children should be protected against all forms of neglect, cruelty and exploitation;
- (f) responsibility for the welfare of children belongs primarily to their parents, but if not fulfilled devolves upon the community; and
- 15 (g) except in exceptional circumstances or pursuant to legal proceedings, there should be no interruption of relationships between children and their parents contrary to the wishes of children and their parents.

Interpretation

56. In this Part—
- 20 “care application” means an application under section 57.

DIVISION 2—Care applications**Care applications**

57. (1) An application for the making of an order under section 72 in respect of a child may be made—
- 25 (a) by the Director-General; or
- (b) by any parent of the child who has the custody of the child if it is alleged that the child is in need of care on the grounds that there is a substantial and presently irretrievable breakdown in the relationship between the child and that parent.
- 30 (2) Such an application shall specify the grounds on which it is alleged that the child is in need of care.
- (3) Such an application shall not be made by the Director-General unless the Director-General is satisfied that no adequate alternative means are available to provide for the welfare of the child.

Service of care applications

58. (1) A person who makes a care application shall, as soon as practicable after the application is made, cause a copy of the application (on which is endorsed a notice specifying the time, date and place set down for the hearing of the application) to be served on—

- (a) in the case of a child who is of or above the age of 10 years—the child;
- (b) each person responsible for the child who can reasonably be located;
- 10 (c) in the case of a child who is residing in a non-Government children's home—the person in charge of the home; and
- (d) if the application is made by a parent of the child—the Director-General.

(2) Failure to serve a copy of a care application in accordance with subsection (1) does not vitiate the decision of the Children's Court on the
15 application.

Removal of children pursuant to order of the Children's Court

59. (1) If a care application has been made with respect to a child—

- (a) the Children's Court may make an order for the removal of the child from any premises; and
- 20 (b) an authorised officer, or a member of the police force, may, pursuant to the order, enter the premises, search the premises for the presence of the child and remove the child from the premises.

(2) An authorised officer, or a member of the police force, may, for the purposes of entering and searching premises and removing a child pursuant
25 to an order in force under subsection (1), use all reasonable force.

Removal of children without warrant

60. (1) An authorised officer, or a member of the police force, may, without any authority other than that conferred by this subsection—

- 30 (a) enter any premises in which the officer or member of the police force suspects on reasonable grounds that there is a child in need of care by virtue of the child's being in immediate danger of abuse;
- (b) search the premises for the presence of any such child; and
- (c) remove any such child from the premises.

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(2) An authorised officer, or a member of the police force, may, for the purposes of entering and searching premises and removing a child pursuant to subsection (1), use all reasonable force.

Power of search and removal of children in need of care

5 **61. (1)** An officer or member of the police force may apply to an authorised justice for a search warrant if the officer or member of the police force has reasonable grounds for believing that there is in any premises a child in need of care.

10 (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the warrant—

(a) to enter any premises specified in the warrant;

(b) to search the premises for the presence of the child; and

15 (c) to remove the child from the premises.

(3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force or a medical practitioner, or both—

20 (a) may accompany an officer executing a search warrant issued under this section; and

(b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

25 (5) It shall not be necessary in any search warrant issued under this section to name any particular child.

(6) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a child pursuant to the warrant, use all reasonable force.

Care of children pending care proceedings

30 **62. (1)** If an officer or member of the police force removes a child from any premises under section 59, 60 or 61, the officer or member of the police force shall forthwith place the child in the care of the Director-General to be kept by the Director-General at a place approved by the Minister for the purposes of this section.

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(2) If a child has been removed from any premises under section 60 or 61 and placed in the care of the Director-General, the Director-General shall not keep the child in the Director-General's care for more than 3 days unless the Director-General has, before the expiration of that period, made a care application in respect of the child.

(3) If a child has been removed from any premises under section 59, 60 or 61 and placed in the care of the Director-General, the Director-General may, subject to any order of the Children's Court—

(a) discharge the child from the Director-General's care—

- 10 (i) without any undertakings being given;
- (ii) upon the giving by a person responsible for the child of undertakings acceptable to the Director-General with respect to the care of the child;
- 15 (iii) upon the giving by the child of undertakings acceptable to the Director-General with respect to the conduct of the child; or
- (iv) upon the giving of undertakings referred to in both subparagraph (ii) and subparagraph (iii); or

(b) keep the child in the Director-General's care or, where a person approved by the Director-General is willing to have the care of the child, place the child in the care of that person,

20 pending the hearing of the care application made or to be made in respect of the child.

(4) While a child is in the care of the Director-General, the Director-General may, at any time before the hearing of the care application commences, exercise any of the functions conferred on the Director-General by subsection (3) (a).

(5) In determining whether or not to exercise any function under subsection (3) or (4), the Director-General shall have regard only to the following matters:

- 30 (a) any views expressed by the child as to whether the child wishes that function to be exercised;
- (b) any views expressed by the child as to whether the child intends to return to the care of the person responsible for the child;
- 35 (c) whether the exercise by the Director-General of that function is likely to protect the welfare of the child;

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(d) whether the failure by the Director-General to exercise that function is likely to endanger the welfare of any other person.

(6) An undertaking referred to in subsection (3) shall be in writing signed by the person giving it and shall remain in force until the commencement of the hearing of the care application made or to be made in respect of the child to whom it relates.

(7) A child does not cease to be in the care of the Director-General merely because the child has been placed in the care of some other person under subsection (3) (b).

10 Duties of Director-General to give information to certain persons

63. (1) If the Director-General does not discharge a child from the Director-General's care, as referred to in section 62 (3) (a), the Director-General shall record the Director-General's reasons for not doing so and cause a copy of that record to be served on—

15 (a) in the case of a child who is of or above the age of 10 years—the child; and

(b) each person responsible for the child who can reasonably be located.

(2) If a child—

(a) is the subject of a care application; and

20 (b) is in the care of the Director-General under this Division,

the Director-General shall cause a document containing brief particulars of the laws under which an application may be made for the discharge of the child from the care of the Director-General to be served on—

25 (c) in the case of a child who is of or above the age of 10 years—the child; and

(d) each person responsible for the child who can reasonably be located.

(3) The Director-General shall cause a copy of any undertaking referred to in section 62 (3) to be served on the person giving it.

30 (4) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.

DIVISION 3—*Hearings***Attendance of witnesses, etc.**

64. In any proceedings under this Part with respect to a child, the Children's Court may require the attendance, at the place where the proceedings are being or are to be conducted, of the child and of any person responsible for the child.

Right of appearance

65. (1) In any proceedings under this Part with respect to a child—

(a) the child and each person responsible for the child; and

10 (b) the Director-General,

may appear in person in the proceedings, or be represented by a barrister or solicitor or, by leave of the Children's Court, by an agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

15 (2) In any proceedings under this Part with respect to a child, any other person who, in the opinion of the Children's Court, has a genuine concern for the welfare of the child to whom the proceedings relate may, by leave of the Children's Court, appear in person in the proceedings, or be represented by a barrister, solicitor or agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

20 **Children's Court's powers with respect to representation for children**

66. (1) In any proceedings under this Part with respect to a child, the Children's Court may appoint a person to act as guardian ad litem for the child.

25 (2) In any proceedings under this Part with respect to a child, the Children's Court may, if it appears to it that the child ought to be separately represented—

(a) order that the child be separately represented; and

(b) make such other orders as it thinks necessary for the purpose of securing separate representation for the child.

30 (3) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the Children's Court has made an order under subsection (2) (b).

Exclusion of general public from proceedings

67. (1) While the Children's Court is hearing proceedings under this Part with respect to a child—

5 (a) any person (other than a person referred to in paragraph (b)) who is not directly interested in the proceedings shall, unless the Children's Court otherwise directs, be excluded from the place where the proceedings are being heard; and

10 (b) any person who is engaged in preparing a report on the proceedings for dissemination through a public news medium shall, unless the Children's Court otherwise directs, be entitled to enter and remain in the place where the proceedings are being heard.

(2) While the Children's Court is hearing proceedings under this Part with respect to a child—

15 (a) the Children's Court may direct the child to leave the place where the proceedings are being heard at any time during the proceedings if it is of the opinion that the prejudicial effect of excluding the child is outweighed by the psychological harm that is likely to be occasioned to the child if the child is allowed to remain there; and

20 (b) the Children's Court may direct any person (other than the child) to leave the place where the proceedings are being heard at any time during the examination of any witness if it is of the opinion that it is in the interests of the child that such a direction should be given.

(3) The powers exercisable by the Children's Court under subsection (2) (b) may be exercised even if the person to whom a direction under that paragraph is given is directly interested in the proceedings.

25 (4) If the Children's Court gives a direction under subsection (2) (a) with respect to a child, it shall also give a direction under subsection (2) (b) with respect to all persons who are engaged in preparing reports of the proceedings for dissemination through a public news medium.

30 **Publication of names, etc.**

68. (1) The name of any child—

(a) who appears as a witness before the Children's Court in any proceedings under this Part;

(b) to whom any proceedings under this Part relate; or

35 (c) who is mentioned or otherwise involved in any proceedings under this Part,

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shall not be published or broadcast, whether before or after the proceedings are disposed of.

(2) Any person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) is guilty
5 of an offence.

(3) Subsection (1) does not prohibit—

(a) the publication or broadcasting of an official report of the proceedings of the Children's Court that includes the name of any child the publication or broadcasting of which would otherwise be
10 prohibited by subsection (1); or

(b) the publication or broadcasting of the name of a child—

- (i) in the case of a child who is under the age of 14 years at the time of publication or broadcasting—with the consent of the Minister; or
15 (ii) in the case of a child who is of or above the age of 14 years at the time of publication or broadcasting—with the consent of the child.

(4) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material that
20 identifies the child or is likely to lead to the identification of the child.

Children's Court to explain proceedings to children

69. (1) In any proceedings under this Part with respect to a child, the Children's Court shall take such measures as are reasonably practicable to ensure that the child understands the proceedings and, in particular, that
25 the child understands—

- (a) the nature of any assertions made in the proceedings; and
(b) the legal implications of any such assertion.

(2) Without limiting the generality of subsection (1), the Children's Court shall, if requested by the child or by some other person on behalf of the
30 child, explain to the child—

- (a) any aspect of the Children's Court's procedure; and
(b) any decision or ruling made by the Children's Court,
in or in relation to the proceedings.

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(3) Without limiting the generality of subsection (1), the Children's Court shall ensure that the child has the fullest opportunity practicable to be heard, and to participate, in the proceedings.

Procedure generally

5 70. (1) Proceedings under this Part shall be conducted with as little formality and legal technicality and form as the circumstances of the case permit.

(2) Proceedings under this Part are not criminal proceedings, but an order shall not be made under section 72 (1) (b) or (c) in respect of a child unless 15 the Children's Court is satisfied that it is very highly probable that the child is in need of care.

(3) In any proceedings under this Part, the Children's Court is not bound by the rules of evidence but may, subject to section 71, consider any statement, document, information or matter that may, in its opinion, assist 15 it in relation to the proceedings, whether or not the statement, document, information or matter would be admissible in accordance with those rules.

(4) In any proceedings under this Part, a member of the Children's Court may examine and cross-examine any witness to such extent as the member thinks proper for the purpose of eliciting information relevant to the exercise 20 of the Children's Court's powers under this Part.

(5) In subsection (4), a reference to a member of the Children's Court includes a reference to an authorised Magistrate within the meaning of the Children's Court Act 1987.

Admissibility of certain statements

25 71. (1) Any statement or information made or given to a member of the police force by a child to whom any proceedings under this Part relate shall not be admitted in evidence in the proceedings unless—

(a) there was present at the place where, and throughout the period of 30 time during which, it was made or given an adult (other than a member of the police force)—

(i) nominated by the child; or

(ii) belonging to a class of persons selected by the child,

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and the child was given (before the statement or information was made or given) an opportunity to consult with the adult in private; or

(b) the Children's Court—

5 (i) is satisfied that there was proper and sufficient reason for no such adult to have been present at the place where, or throughout the period of time during which, the statement or information was made or given; and

10 (ii) considers that, in the particular circumstances of the case, the statement or information should be admitted in evidence in those proceedings.

(2) Subsection (1) does not apply in any proceedings on a care application that alleges that a child is in need of care—

15 (a) because adequate provision is not being made, or is likely not to be made, for the child's care; or

(b) because the child is being, or is likely to be, abused.

DIVISION 4—*Children's Court orders*

Children's Court's powers with respect to children in need of care

20 72. (1) If a care application is made with respect to a child, the Children's Court shall inquire into the matter and—

(a) if it is not satisfied that the child is in need of care, it shall make an order dismissing the application;

(b) if it is satisfied that the child is in need of care—

25 (i) it may make an order accepting such undertakings (given by a person responsible for the child) as it thinks fit with respect to the care of the child;

(ii) it may make an order accepting such undertakings (given by the child) as it thinks fit with respect to the child's conduct; or

30 (iii) it may make an order accepting undertakings referred to in both subparagraph (i) and subparagraph (ii); or

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- (c) if it is satisfied that the child is in need of care and that the making of an order under this paragraph is likely to result in a significant improvement in the standard of care being given to the child—
- 5 (i) it may make an order placing the child under the supervision of an officer (whether or not on the giving of undertakings referred to in paragraph (b) (i) or (ii) or both);
 - 10 (ii) where a suitable person is willing to have the custody of the child—it may make an order placing the child in the custody of that person (whether or not on the giving of undertakings referred to in paragraph (b) (i) or (ii) or both); or
 - (iii) it may make an order declaring the child to be a ward under this Act,
- for such period expiring on or before the day on which the child attains the age of 18 years as it thinks fit.
- 15 (2) In considering a care application in respect of a child, the Children's Court shall have regard to—
- (a) the need to protect the welfare of the child;
 - (b) the views of the child;
 - 20 (c) the importance of encouraging continuing contact between the child and the persons responsible for the child;
 - (d) the importance of preserving the particular cultural environment of the child;
 - 25 (e) the practicability of services and facilities being provided to the child without the need for the making of an order under subsection (1) (b) or (c); and
 - (f) the objects of this Part.
- (3) The Children's Court may make an order under subsection (1) (b) or (c) in respect of a child even though the child is not then in need of care if the Children's Court is satisfied that—
- 30 (a) the child was in need of care when the circumstances that gave rise to the relevant care application occurred or existed; and
 - (b) the child would be in need of care but for the existence of arrangements for the care of the child made under section 62 or 77.

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(4) An undertaking referred to in subsection (1) shall be in writing signed by the person giving it and shall remain in force for such period (expiring on or before the day on which the child attains the age of 18 years) as may be specified in the undertaking.

5 (5) The Children's Court shall cause a copy of any undertaking referred to in subsection (1) to be served on the person giving it.

(6) If the Children's Court makes an order under subsection (1) (c), it shall cause a copy of the order to be forwarded to the Director-General.

(7) If—

- 10 (a) an order is made with respect to a child under subsection (1) (c) (ii);
 (b) the person in whose custody the child is placed by the order is the principal officer of a private fostering agency; and
 (c) no undertakings of the kind referred to in subsection (1) (b) (i) were given by the principal officer on the making of the order,

15 the principal officer may place the child in the care of another person.

Restrictions on making orders under sec. 72

73. (1) An order shall not be made under section 72 (1) (c) in respect of a child unless—

- (a) the child is under the age of 16 years; and
 20 (b) the Children's Court is satisfied that the exercise of its power under section 72 (1) (b) would be wholly insufficient to meet the child's need for care.

(2) An order shall not be made under section 72 (1) (c) (iii) in respect of
 25 a child unless the Children's Court is satisfied that the exercise of its power under a preceding subparagraph of that paragraph would be wholly insufficient to meet the child's need for care.

(3) If the Children's Court is of the opinion that a child the subject of a care application has been brought up substantially in accordance with a particular culture or is regarded as belonging to a particular cultural group,
 30 the Children's Court shall not, unless the child has expressed a wish to the contrary, make an order under section 72 (1) (c) (i) or (iii) unless it has taken into account the practicability of making an order under section 72 (1) (c) (ii) placing the child in the custody of a person belonging to that cultural group.

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(4) The Children's Court shall not make an order under section 72 (1) (c) in respect of a child if the order would be inconsistent with any order in relation to the child made by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children.

5 Assessment reports

74. (1) The Children's Court shall not make an order under section 72 (1) (c) (ii) or (iii) unless—

- 10 (a) the Director-General has tendered to the Children's Court an assessment report, prepared in accordance with the regulations, with respect to the child;
- (b) the Director-General has caused copies of the report to be given to the child and to any other person appearing in the proceedings; and
- 15 (c) the Children's Court has taken into account the matters contained in the report and any submissions made in relation to those matters by the persons referred to in paragraph (b).

(2) Such a report shall include, in relation to any case in respect of which the Children's Court has determined that a conflict of cultural factors exists, such advice as is appropriate to enable the Children's Court to make an appropriate order in relation to the child.

20 Variation of orders under sec. 72

75. (1) An application for the rescission or variation of an order under section 72 (1) (b) or (c) may be made—

- (a) by the Director-General;
- (b) by the child the subject of the order;
- 25 (c) by a person responsible for the child; or
- (d) by any person who deems himself or herself to have a sufficient interest in the welfare of the child.

(2) The Children's Court is not required to hear or determine an application made to it with respect to a child by a person referred to in subsection (1) (d) unless it considers the person to have a sufficient interest in the welfare of the child.

30

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(3) If the Children's Court is satisfied, on an application made to it with respect to a child, that it is appropriate to do so—

(a) it may, by order, vary or rescind any order under section 72 (1) (b) or (c); and

5 (b) if it rescinds such an order—it may, in accordance with this Division, make any one of the orders that it could have made in relation to the child had a care application been made to it with respect to the child.

10 (4) Upon the making of an order under subsection (3) (a) or (b), the Children's Court shall cause notice of the order to be served on the Director-General.

(5) There is no limit to the number of applications that may be made under subsection (1) for the variation or rescission of an order under section 72.

15

DIVISION 5—*Adjournments***Adjournments by the Children's Court**

76. (1) The Children's Court shall not adjourn proceedings on a care application for a period exceeding 8 days on any one occasion if, on the adjournment, it makes an order under section 77 (1) with respect to the
20 child to whom the application relates whereby the child is placed or continued in the care of the Director-General.

(2) Without limiting the generality of subsection (1), the Children's Court—

25 (a) shall not adjourn proceedings on a care application for a period, or for periods in the aggregate, exceeding 8 days except with the consent of—

(i) in the case of a child who is of or above the age of 10 years—the child; and

30 (ii) each person responsible for the child, being a person who is appearing in, or is represented at, the proceedings,

given after they have received advice from a barrister or solicitor instructed to advise them on the question of the adjournment; and

(b) shall not adjourn any such proceedings for a period, or for periods in the aggregate, exceeding 42 days.

Care of children during adjournments

77. (1) On the adjournment of proceedings on a care application with respect to a child, the Children's Court shall do one of the following things:

- (a) if the child is not in the care of the Director-General—
 - 5 (i) it may refuse to make an order under subparagraph (ii), (iii), (iv) or (v);
 - (ii) it may make an order accepting such undertakings (given by a person responsible for the child) as it thinks fit with respect to the care of the child;
 - 10 (iii) it may make an order accepting such undertakings (given by the child) as it thinks fit with respect to the conduct of the child;
 - (iv) it may make an order accepting undertakings referred to in both subparagraph (ii) and subparagraph (iii);
 - 15 (v) it may make an order placing the child in the care of the Director-General;
- (b) if the child is in the care of the Director-General—
 - (i) it may make an order discharging the child from the care of the Director-General unconditionally;
 - 20 (ii) it may make an order discharging the child from the care of the Director-General on the giving of undertakings referred to in paragraph (a) (ii) or (iii) or both;
 - (iii) it may make an order that the child continue in the care of the Director-General.

25 (2) In determining which order to make under subsection (1), the Children's Court shall have regard only to the following matters:

- (a) any views expressed by the child as to whether the child wishes the order to be made;
- (b) any views expressed by the child as to whether the child intends to return to the care of the person responsible for the child;
- 30 (c) whether the making of the order is likely to protect the welfare of the child;
- (d) whether the failure by the Children's Court to make the order is likely to endanger the welfare of any other person.

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(3) An undertaking referred to in subsection (1) shall be in writing signed by the person giving it and shall remain in force for the period of the adjournment.

5 (4) An order shall not be made under a subparagraph of subsection (1) (a) or (b) unless the Children's Court is satisfied that the exercise of its power under a preceding subparagraph of that paragraph would be wholly insufficient to meet the child's need for care.

10 (5) If a child is placed or continued in the care of the Director-General and an application for the child to be discharged from the Director-General's care is made to the Director-General by the child or by a person responsible for the child, the Director-General shall, as soon as is reasonably practicable, refer the application to the Children's Court.

15 (6) Upon the making of any such application, the Children's Court may, under subsection (1) (b), make any one of the orders referred to in that paragraph in respect of the child.

(7) There is no limit to the number of applications that may be made under subsection (5) for the discharge of a child from the care of the Director-General.

Duties of the Children's Court to give information to certain persons

20 78. (1) If the Children's Court makes an order under section 77 (1) (a) (v) or (b) (iii), it shall record its reasons for doing so and cause a copy of the record to be served on—

(a) in the case of a child who is of or above the age of 10 years—the child; and

25 (b) each person responsible for the child who can reasonably be located.

(2) The Children's Court shall cause a copy of any undertakings referred to in section 77 (1) to be served on—

(a) in the case of a child who is of or above the age of 10 years—the child; and

30 (b) each person responsible for the child who can reasonably be located.

(3) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.

Enforcement of undertakings

79. (1) If proceedings on a care application with respect to a child are adjourned and—

- 5 (a) the child, having been required by the Children's Court to attend at the time and place to which the proceedings are adjourned, does not so attend; or
- (b) an undertaking referred to in section 77 (1) given by or with respect to the child is not complied with during the period of adjournment,
- 10 the Children's Court may require the attendance of the child at a time and place determined by it.

(2) If a child is brought before the Children's Court and it is proved that an undertaking referred to in section 77 (1) given by or with respect to the child has not been complied with, the Children's Court may, under section 77 (1) (a), make any one of the orders referred to in that paragraph in

15 respect of the child.

Adjournments by authorised justices prior to hearings

80. (1) If—

- (a) a care application has been made with respect to a child; and
- (b) the hearing of the application has not commenced,
- 20 an authorised justice may, on application made by the Director-General or by a person responsible for the child, exercise the powers of the Children's Court to adjourn the proceedings on the application.

(2) Not more than 2 adjournments may be granted under subsection (1) in respect of any one care application.

25 (3) An adjournment under subsection (1) shall not be granted—

- (a) in the case of the first such adjournment—for more than 3 days; or
- (b) in the case of the second such adjournment—for more than 2 days,
- if, on the adjournment, the authorised justice makes an order under section 77 (1) whereby the child is placed or continued in the care of the Director-
- 30 General.

(4) Proceedings adjourned by an authorised justice on a second occasion shall be adjourned to the Children's Court sitting at the place at which it appears to the justice the Children's Court will be sitting when the adjournment expires.

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(5) The authorised justice by whom a second adjournment is granted shall, forthwith after the adjournment, transmit to an officer of the Children's Court employed at the place to which the application is adjourned all documents and depositions that are in the possession of the justice and that relate to the application.

(6) Sections 77-79 apply to an adjournment granted by an authorised justice in the same way as those sections apply to an adjournment granted by the Children's Court.

DIVISION 6—*Appeals*10 **Appeals**

81. (1) Any person who is dissatisfied with a decision of the Children's Court under this Part may, in accordance with the rules of the District Court, appeal to the District Court against the decision.

(2) An appeal may not be taken by the Director-General except on a question of law.

(3) An appeal shall be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision was made, may be given on the appeal.

(4) In addition to any functions and discretions that the District Court has apart from this section, the District Court shall, for the purposes of hearing and disposing of an appeal, have all the functions and discretions that the Children's Court has under this Part.

(5) The decision of the District Court in respect of an appeal shall be deemed to be the decision of the Children's Court and shall be given effect to accordingly.

(6) Subject to any interlocutory order made by the District Court, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

(7) The provisions of Division 3 apply to and in respect of the hearing of an appeal under this section in the same way as they apply to and in respect of the hearing of a care application under that Division.

*Children (Care and Protection) 1987*DIVISION 7—*Effect of orders under sec. 72***Supervision, etc., of children subject to orders under sec. 72**

82. (1) While a child is subject to an order in force under section 72 (1) (c) (i)—

- 5 (a) the child and the premises in which the child resides shall be subject to inspection by an authorised officer; and
- (b) the child shall—
- (i) accept the supervision of an authorised officer; and
- (ii) obey all reasonable directions of the officer.

10 (2) While a child is subject to an order in force under section 72 (1) (c) (ii), the child and the premises in which the child resides shall be subject to inspection by an authorised officer.

Entry without warrant into certain premises

15 83. (1) For the purpose of inspecting any premises subject to inspection under section 82, an authorised officer may at any time, without any authority other than that conferred by this subsection, enter the premises and inspect them and observe and converse with any person apparently residing there.

20 (2) In exercising the powers conferred by subsection (1), an authorised officer may be accompanied—

- (a) by a medical practitioner; or
- (b) by a member of the police force,

or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently residing there.

25 (3) Nothing in subsection (2) authorises—

- (a) the examination of a child in contravention of section 20 or 21; or
- (b) the examination of any other person against that person's will.

Enforcement of undertakings

84. (1) If—

- 30 (a) an undertaking referred to in section 72 (1) given by or with respect to a child is not complied with;

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(b) a child placed in the custody of a person under section 72 (1) (c) (ii) ceases, without lawful authority, to be in that person's care; or

(c) a direction referred to in section 82 (1) (b) (ii) given to a child is not obeyed,

5 the Children's Court may require the attendance of the child at a time and place determined by it.

(2) If a child is brought before the Children's Court and it is proved that—

10 (a) an undertaking referred to in section 72 (1) given by or with respect to the child has not been complied with; or

(b) a direction referred to in section 82 (1) (b) (ii) given to the child has not been obeyed,

then—

15 (c) the Children's Court may vary or rescind any order under section 72 (1) (b) or (c); and

(d) if the Children's Court rescinds such an order—it may, in accordance with Division 4, make any one of the orders that it could have made in relation to the child had a care application been made to it with respect to the child.

20 **DIVISION 8—General**

Application of Justices Act 1902 to secure attendance of witnesses, etc.

85. The provisions of the Justices Act 1902 relating to warrants and summonses for the attendance of witnesses in proceedings before justices for offences punishable on summary conviction apply to—

25 (a) the attendance of witnesses in proceedings under this Part; and

(b) the attendance of any person required under section 64, 79 or 84 to attend at a place at which proceedings under this Part are being or are to be conducted,

30 in the same way as those provisions apply to the attendance of witnesses in proceedings for such offences.

Care of children arrested under sec. 85

86. (1) If an officer or member of the police force arrests a child under a warrant referred to in section 85, the officer or member of the police force shall forthwith place the child in the care of the Director-General to be kept
5 at a place approved by the Minister for the purposes of this section.

(2) If a child has been placed in the care of the Director-General in accordance with subsection (1), the Director-General shall, subject to any action taken by a justice under any of the provisions of the Justices Act 1902 referred to in section 85, cause the child to be brought before the Children's
10 Court as soon as practicable.

Care of Aboriginal children

87. An Aboriginal child shall not be placed in the custody or care of another person under this Part unless—

- 15 (a) the child is placed in the care of a member of the child's extended family, as recognised by the Aboriginal community to which the child belongs;
- (b) if it is not practicable for the child to be placed in accordance with paragraph (a) or it would be detrimental to the welfare of the child to be so placed—the child is placed in the care of a member of the
20 Aboriginal community to which the child belongs;
- (c) if it is not practicable for the child to be placed in accordance with paragraph (a) or (b) or it would be detrimental to the welfare of the child to be so placed—the child is placed in the care of a member of some other Aboriginal family residing in the vicinity of the child's
25 usual place of residence; or
- (d) if it is not practicable for the child to be placed in accordance with paragraph (a), (b) or (c) or it would be detrimental to the welfare of the child to be so placed—the child is placed in the care of a suitable person approved by the Director-General after consultation with—
30
 - (i) members of the child's extended family, as recognised by the Aboriginal community to which the child belongs; and
 - (ii) such Aboriginal welfare organisations as are appropriate in relation to the child.

Power of Supreme Court

5 **88. (1)** The Supreme Court may, at any time, make an order discharging a child who is in the care of the Director-General under this Part from the Director-General's care, whether or not on the giving of undertakings of the kind referred to in section 77 (1).

(2) If the Supreme Court makes an order discharging a child from the Director-General's care subject to the giving of undertakings, the undertakings shall, for the purposes of section 79, be deemed to be undertakings referred to in section 77 (1).

10 **(3)** There is no limit to the number of applications that may be made for the purposes of subsection (1) for the discharge of a child from the care of the Director-General.

(4) Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the custody and guardianship of children.

15

PART 6**WARDS AND PROTECTED PERSONS****Administration**

89. (1) In the administration of this Part, the welfare and interests of wards and protected persons shall be given paramount consideration.

20 **(2)** In determining any matter relevant to the welfare or interests of a ward or protected person, regard shall be had to the wishes of the ward or protected person.

Guardianship of wards

25 **90. (1)** The Minister is the guardian of a ward, and, subject to this Act, has the custody of a ward to the exclusion of any other person, until—

(a) the ward attains the age of 18 years;

(b) the guardianship of the Minister—

(i) is terminated by the Minister under subsection (2); or

30 (ii) is terminated by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children; or

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- (c) the ward ceases to be a ward by virtue of any other provision of this Act,

whichever first occurs.

- (2) The Minister may terminate the Minister's guardianship of a ward.

- 5 (3) Where the Minister terminates the Minister's guardianship of a child who is a ward, the child ceases to be a ward.

- (4) The guardianship of a child who has ceased to be a ward shall be determined as if the child had never been a ward.

Functions of the Minister in relation to wards and protected persons

- 10 91. (1) The Minister—

- (a) shall provide for the accommodation, care and maintenance of wards and protected persons;

- (b) may make payments, at such rates as may be prescribed by the regulations, to persons having the care of wards or protected persons;

- 15 (c) may direct the removal of any ward or protected person from one place to another;

- (d) may, subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Minister may determine, place any ward or protected person—

- 20 (i) in the custody of a person in charge of a non-Government organisation; or

- (ii) for the purpose of the ward or protected person being fostered, in the custody of any person approved by the Minister,

- 25 being a person who is willing to undertake the custody of the ward or protected person;

- (e) may terminate the custody of a ward or protected person who has been placed in the custody of a person referred to in paragraph (d) (i) or (ii); and

- 30 (f) may direct that a ward be restored to the custody of a parent of the ward or be placed in the custody of any other person.

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(2) Payment to a person in respect of a ward or protected person shall not continue after the ward or protected person has attained the age of 15 years unless—

- 5 (a) the payment is made for the purpose of securing education or vocational training on a full-time basis for the ward or protected person;
- (b) the ward or protected person is an invalid or is otherwise incapacitated; or
- 10 (c) the case possesses unusual features which, in the opinion of the Minister, call for special consideration,

and the Minister authorises the making of the payment.

(3) This section is subject, in relation to a ward or protected person, to the requirements imposed by the provisions of this or any other Act or of any declaration, order or other thing under which the person became a ward
15 or protected person.

Functions of the Minister in relation to former wards and protected persons

92. (1) The Minister may give to, or provide for, any person who has ceased to be a ward or protected person—

- 20 (a) such assistance as the Minister was empowered to give to, or provide for, the person while the person was a ward or protected person; and
- (b) such other assistance (whether financial or other),

as, in the Minister's opinion, is reasonable having regard to the circumstances of the case.

25 (2) For the purpose of securing education or vocational training on a full-time basis for any person who has ceased to be a ward or protected person, the Minister may, subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Minister may determine, from time to time and for periods not exceeding 6 months at
30 any one time, authorise the making of payments for that purpose as if the person were a ward or protected person.

(3) Any payment continued under the provisions of subsection (2) may, at the discretion of the Minister, be discontinued or varied at any time.

Wards or protected persons leaving custody, etc.

93. If a ward or protected person has, without lawful excuse, left, or been removed from, proper custody and the Minister is of the opinion that the ward or protected person should be returned to that custody, or be placed
5 in the custody of some other person, the Minister may, by order in writing, direct that the ward or protected person be returned to proper custody, or be placed in the custody of that other person, as the Minister may specify in the order.

Search warrants

10 94. (1) An officer may apply to an authorised justice for a search warrant if the officer has reasonable grounds for believing that a ward or protected person the subject of an order in force under section 93 may be found in any premises.

15 (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or officers named in the warrant—

- (a) to enter any premises specified in the warrant;
- (b) to search the premises for the presence of the ward or protected person;
- 20 (c) to remove the ward or protected person from the premises; and
- (d) to return the ward or protected person to, or to place the ward or protected person in, the custody of the person specified in the order in force under section 93 in respect of the ward or protected person.

25 (3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force—

- (a) may accompany an officer executing a search warrant issued under this section; and
- 30 (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

(5) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a ward or protected person pursuant to the warrant, use all reasonable force.

Reciprocity between States and Territories

95. (1) In this section—

“appropriate authority” means a person who, under—

- 5 (a) the law of a State of the Commonwealth other than New South Wales; or
 (b) the law of a Territory,

corresponding to this Act, is competent to take action equivalent to the undertaking of guardianship of wards under this Act;

10 “interstate ward” means a child who is in New South Wales and who, immediately before entering New South Wales, was under the guardianship of an appropriate authority;

“Territory” means Territory of the Commonwealth, including a Territory under the trusteeship of the Commonwealth.

(2) The Minister—

- 15 (a) may make financial and other arrangements with an appropriate authority for the care of an interstate ward or a ward under this Act;
 (b) may, at the Minister’s discretion, or in accordance with any such arrangements, return an interstate ward to the care of the appropriate authority for the interstate ward; and
 20 (c) shall, where the appropriate authority for an interstate ward requests the Minister to do so, return the interstate ward to the care of that appropriate authority.

(3) The Minister shall provide for the accommodation, care and maintenance of an interstate ward to whom an arrangement referred to in
 25 subsection (2) applies as if the interstate ward were a ward under this Act.

(4) The Minister may, at the request of an appropriate authority, declare an interstate ward to be a ward under this Act.

(5) If an interstate ward who was made a ward for a specified period is
 30 declared to be a ward under this Act pursuant to subsection (4), then, notwithstanding any other provision of this Part, that person shall, if, upon the expiration of that period, that person is a ward under this Act, cease to be a ward under this Act by virtue of that declaration.

(6) If, in the opinion of the Minister—

- 35 (a) the law of a State of the Commonwealth other than New South Wales; or

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(b) the law of a Territory,

contains a provision corresponding to subsection (4) and, upon the request of the Minister, a ward under this Act is declared, under that provision, to be a ward for the purposes of the law of that other State or that Territory, the functions conferred or imposed by or under this Act upon the Minister and any other person shall be deemed to have been suspended in relation to that ward while the ward remains under guardianship by virtue of the declaration under that provision, except in so far as those functions may be exercised in accordance with arrangements made under subsection (2) (a).

10 Jurisdiction of Supreme Court not affected

96. Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the custody and guardianship of children.

PART 7

CHILDREN'S BOARDS OF REVIEW

15 Interpretation

97. In this Part—

“Board of Review” means a Board of Review established under section 99;

“child in care” means—

- 20 (a) a child who is in the custody of the Director-General pursuant to a temporary care arrangement or a temporary custody order;
- (b) a child who is residing in a residential child care centre, otherwise than as a member of the household of any other person who resides there;
- 25 (c) a child who is being fostered by a person into whose care the child has been placed—
- (i) by an authorised private fostering agency; or
- (ii) by or with the written approval of the Minister or the Director-General;
- 30 (d) a child who is in the custody of a person pursuant to an order in force under section 72 (1) (c) (ii); or

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(e) a child who is a ward or protected person;

“Deputy President” means the Deputy President of the Boards of Review;

5 “full-time President” means a person who is required, by an instrument referred to in section 98 (4), to devote the whole of his or her time to the duties of his or her office as President;

“member” means a member of the Panel;

“Panel” means the Children’s Review Panel established by section 98;

“President” means the President of the Boards of Review.

Children’s Review Panel

10 **98. (1)** There shall be a Children’s Review Panel.

(2) The Panel shall consist of persons, appointed by the Governor—

(a) at least one of whom is an officer who, in the opinion of the Minister, has knowledge of or experience in administration, education, psychology or social work;

15 (b) at least one of whom is an Aboriginal who, in the opinion of the Minister, has knowledge of or experience in matters relating to the welfare of Aboriginal children; and

20 (c) the remainder of whom are persons who, in the opinion of the Minister, have suitable qualifications or experience warranting their appointment as members of the Panel.

(3) Of the members of the Panel—

(a) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as the President of the Boards of Review; and

25 (b) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as the Deputy President of the Boards of Review.

30 **(4)** The President shall, if required to do so by his or her instrument of appointment as President or by a subsequent instrument executed by the Governor, devote the whole of his or her time to the duties of his or her office as President.

(5) Schedule 2 applies to the Panel.

Boards of Review

99. (1) The President may establish Boards of Review.

(2) Each Board of Review shall consist of 2 members of the Panel of whom not more than one is an officer.

5 (3) The President may establish Boards of Review generally for the purpose of carrying out reviews of children under this Part or may establish a Board of Review for the purpose of carrying out a particular review under this Part.

10 (4) In respect of any review concerning an Aboriginal child, a Board of Review shall include at least one member of the Panel who is an Aboriginal.

(5) The procedure of a Board of Review shall, subject to the regulations, be as directed by the President.

Functions of a Board of Review

15 100. (1) An application may be made to the President for the review of a child who has been a child in care for a period of 3 months or more.

(2) The Director-General shall ensure that such an application is made—

(a) in relation to—

20 (i) any child who is in the custody of the Director-General pursuant to a temporary care arrangement or temporary custody order;

(ii) any child who is being fostered by a person into whose care the child has been placed by or with the written approval of the Minister or the Director-General; and

25 (iii) any child who is a ward or protected person, within 28 days after the expiration of 6 months from when the child became a child in care; and

(b) in relation to any child in care whose need for care is, in the opinion of the Director-General, not being met by the person in whose care or custody the child is placed.

30 (3) Without limiting the generality of subsection (2), such an application may be made—

(a) in any case—

(i) by the child;

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- (ii) by a person responsible for the child;
- (iii) by a foster parent of the child;
- (iv) by any person who deems himself or herself to have a sufficient interest in the welfare of the child; or
- 5 (v) by the Minister or the Director-General;
- (b) in the case of a child who is residing in a licensed residential child care centre—by the licensed manager of the centre;
- (c) in the case of a child who is being fostered by a person into whose care the child has been placed—
- 10 (i) by an authorised private fostering agency—by the principal officer of the agency; or
- (ii) by or with the written approval of the Minister or the Director-General—by the Minister or the Director-General;
- (d) in the case of a child who is in the custody of a person pursuant to an order in force under section 72 (1) (c) (ii)—by a person
- 15 responsible for the child; or
- (e) in the case of a child who is residing in a facility—by a Visitor for the facility.
- (4) The President—**
- 20 (a) shall, upon receipt of an application under this section in respect of a child who has been a child in care for a period of 3 months or more, request a Board of Review to carry out a review of the child; and
- (b) may, at any time and for any reason, request a Board of Review to
- 25 carry out a review of any child in care.
- (5) The President is not required to make a request with respect to a child in respect of whom an application has been made by a person referred to in subsection (3) (a) (iv) unless the President considers the person to have a sufficient interest in the welfare of the child.**
- 30 **(6) A Board of Review, when requested by the President to carry out a review of a child in care, shall—**
- (a) review such aspects of the welfare, status, progress and circumstances of the child as are referred to in the request, having particular regard to any arrangements that exist to encourage continuing contact
- 35 between the child and the child's parents; and

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(b) make a written report that—

(i) informs the Minister as to the results of the review; and

(ii) advises the Minister as to whether any change (and if so, what change) in the circumstances or status of the child would, in its opinion, promote the welfare and interests of the child.

(7) In the exercise of its functions under subsection (6) in relation to a review of a child in care, a Board of Review may—

(a) inspect files, records or papers in respect of the child that are kept in the offices of the Department, any residential child care centre or any authorised private fostering agency; and

(b) hear or receive submissions from any person, including the child.

Copies of report

101. When a Board of Review has made a report to the Minister in relation to a child in care, the Board—

(a) shall give a copy of the report—

(i) to the person, if any, who applied for the review of the child; and

(ii) if the child is of or above the age of 10 years and if the Board considers it in the best interests of the child to do so—to the child; and

(b) may give a copy of the report to any other person who it considers has a sufficient interest in the welfare of the child.

PART 8**COMMUNITY WELFARE APPEALS TRIBUNAL****25 Interpretation**

102. In this Part—

“Deputy President” means the Deputy President of the Tribunal;

“member” means a member of the Tribunal;

“President” means the President of the Tribunal;

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“Tribunal” means the Community Welfare Appeals Tribunal established by section 103.

Constitution of Tribunal

103. (1) There shall be a Community Welfare Appeals Tribunal.

5 **(2)** The Tribunal shall consist of persons, appointed by the Governor, from one or more of the following classes of persons:

(a) persons who, in the opinion of the Minister, have knowledge of and experience in administration, education, psychology, social work or child care;

10 (b) medical practitioners;

(c) barristers;

(d) solicitors;

15 (e) other persons who, in the opinion of the Minister, have suitable qualifications or experience warranting their appointment as members of the Tribunal.

(3) Of the members—

(a) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as President of the Tribunal; and

20 (b) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as Deputy President of the Tribunal.

(4) Schedule 3 applies to the constitution of the Tribunal.

(5) Schedule 4 applies to the procedure of the Tribunal.

25 Appeals

104. (1) An appeal may be made to the Tribunal against any of the following decisions:

(a) a decision of the Minister or the Director-General, as the case may be—

30 (i) to grant a licence or authority;

(ii) to grant a consent;

(iii) to impose a condition on a licence or authority;

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- (iv) to revoke or vary any condition of, or to impose a further condition on, a licence or authority;
- (v) to grant an application to vary a fostering authority; or
- (vi) to suspend or revoke a licence or authority,
- 5 as referred to in Schedule 1;
- (b) a decision of the Minister to make an order under section 3 (4) or (7);
- (c) a decision of the Minister to grant an exemption under section 48 (1) or 50, to limit the extent of any such exemption or to impose
- 10 conditions on any such exemption;
- (d) a decision of the Minister or the Director-General to give an approval referred to in section 42 (2) or 44 (2);
- (e) a decision of the Minister to delegate any of the Minister's functions referred to in section 11 (1) (b) or to revoke a delegation of any such
- 15 function;
- (f) a decision of the Minister or the Director-General, as the case may be, to refuse to make a decision referred to in paragraph (a), (b), (c), (d) or (e) that the Minister or Director-General, as the case may be, is empowered and has been requested to make;
- (g) a decision of the Minister to refuse to terminate the Minister's guardianship of a ward under section 90 (2);
- (h) a decision of the Minister to terminate the custody of a ward or protected person under section 91 (1) (e);
- (i) a decision of the Minister or the Director-General belonging to such
- 25 class of decisions as may be prescribed by the regulations.

(2) If, under subsection (1), an appeal may be made against a decision to refuse to do any thing, an appeal may, in such circumstances as may be prescribed by the regulations, be made against the failure to make the decision by the person empowered to make it as if that person had refused

30 to make the decision.

Parties to appeals

105. (1) An appeal against a decision referred to in section 104 (1) may be made by any person who deems himself or herself to have a genuine concern in the subject-matter of the decision.

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(2) Without limiting the generality of subsection (1), an appeal against a decision concerning a child may be made by any person responsible for the child the subject of the decision.

5 (3) An appeal shall be made within a period of 28 days after the making of the decision appealed against or within such longer period as the Tribunal may (whether before or after the expiration of that period) determine.

(4) The parties to an appeal to the Tribunal with respect to a decision of the Minister or the Director-General are—

(a) the Minister or the Director-General, as the case may require;

10 (b) the person who appeals against the decision;

(c) any person who was entitled to, but did not, appeal against the decision, but only if that person applies to the Tribunal to be made such a party and the application is approved by the Tribunal; and

15 (d) any person who would, if the decision of the Minister or the Director-General were reversed or varied, be entitled to appeal against the decision as so reversed or varied, but only if that person applies to the Tribunal to be made such a party and the application is approved by the Tribunal.

20 (5) The Tribunal is not required to hear or determine an appeal made by a person referred to in subsection (1) unless it considers the person to have a genuine concern in the subject-matter of the decision to which the appeal relates.

Lodging of material documents with the Tribunal

25 **106. (1)** A person who has made a decision that is the subject of an appeal to the Tribunal shall, within a period of 28 days after receiving notice of the appeal, lodge with the Tribunal such number of copies as the Tribunal directs of every document or part of a document that is in that person's possession or under that person's control and is considered by that person to be relevant to the determination of the appeal.

30 (2) If it appears to the Tribunal that a party to an appeal would or might suffer hardship if the period prescribed by subsection (1) for lodging with it the copies of the documents referred to in that subsection is not shortened, the Tribunal may, upon request being made by that party, make an order directing that those copies be lodged with the Tribunal within such period
35 (being a period of less than 28 days) after the person who made the decision receives or received notice of the appeal as is specified in the order.

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(3) If the Tribunal is of the opinion that particular other documents or that other documents included in a particular class of documents may be relevant to the determination of the appeal, it may cause to be served on the person who made the decision a notice in writing—

- 5 (a) stating that the Tribunal is of that opinion; and
- (b) requiring the person to lodge with the Tribunal, within a time specified in the notice, such number of copies as it may specify of each of those other documents that is in that person's possession or under that person's control,
- 10 and a person on whom such a notice is served shall comply with the notice.

Operation and implementation of a decision pending appeal

107. (1) Subject to this section, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

- 15 (2) The Tribunal or the President may, on request being made by a party to an appeal and if the Tribunal or President is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the determination of the appeal, make such order or orders staying or otherwise affecting the operation or implementation of the
- 20 decision to which the appeal relates, or a part of that decision, as the Tribunal or President considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

- (3) While an order is in force under subsection (2) (including an order that has previously been varied on one or more occasions under this
- 25 subsection), the Tribunal or President may, on request being made by a party to the appeal, make an order varying or revoking the firstmentioned order.

(4) Subject to subsection (5), neither the Tribunal nor the President shall—

- 30 (a) make an order under subsection (2) unless the person who made the decision to which the appeal relates has been given a reasonable opportunity to make submissions to the Tribunal or the President, as the case may be, in relation to the matter; or
- 35 (b) make an order varying or revoking an order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3)) unless—
- (i) the person who made the decision to which the appeal relates;

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(ii) the person who requested the making of the order under subsection (2); and

(iii) if the order under subsection (2) has previously been varied by an order or orders under subsection (3)—the person or persons who requested the making of the lastmentioned order or orders,

have been given a reasonable opportunity to make submissions to the Tribunal or President, as the case may be, in relation to the matter.

(5) Subsection (4) does not prohibit the Tribunal or the President from making an order without giving to any person referred to in that subsection a reasonable opportunity to make submissions to the Tribunal or President in relation to a matter if the Tribunal or President is satisfied that, because of the urgency of the case or otherwise, it is not practicable to give that person such an opportunity but, where an order is so made without giving such an opportunity to the person who made the decision to which the appeal relates, the order does not come into operation until a notice setting out the terms of the order is served on the lastmentioned person.

(6) An order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3))—

(a) is subject to such conditions as are specified in the order; and

(b) has effect—

(i) if a period for the operation of the order is specified in the order—until the expiration of that period or, if the appeal is decided by the Tribunal before the expiration of that period, until the decision of the Tribunal on the appeal comes into operation; or

(ii) if no period is so specified—until the decision of the Tribunal on the appeal comes into operation.

Powers of the Tribunal in respect of appeals

108. (1) The Tribunal, in determining an appeal, shall have and may exercise the functions of the Minister or the Director-General, as the case may be, with respect to the matter the subject of the appeal.

(2) In addition to its functions under subsection (1), the Tribunal, in relation to an appeal made by or on behalf of any person, may, having regard to—

(a) the frequency of appeals made by or on behalf of that person; or

(b) any other matter that the Tribunal considers relevant,

determine that no further right of appeal may be exercised by or on behalf of that person in respect of the matter the subject of the appeal until the expiration of such period as it may specify in its determination.

5 Effect of decisions of the Tribunal

109. Subject to section 110, a decision of the Tribunal with respect to proceedings before it shall be final and shall be given effect to as if it were the decision of the person in respect of whose decision the proceedings were brought.

10 Appeals to Supreme Court from decisions of the Tribunal

110. (1) A party to a proceeding before the Tribunal may appeal to the Supreme Court, on a question of law, from any decision of the Tribunal in that proceeding.

(2) If a person has appealed to the Tribunal against a decision, or has applied to be made a party to a proceeding before the Tribunal, and the Tribunal decides that the person was not entitled so to appeal or has not approved that person's application, the person may appeal to the Supreme Court from the decision of the Tribunal.

(3) An appeal by a person under subsection (1) or (2) shall be instituted—

20 (a) within the period of 28 days after the day on which a document setting out the terms of the decision of the Tribunal is furnished to the person; or

(b) within such further time as the Supreme Court (whether before or after the expiration of that period) allows.

25 **(4)** The Supreme Court shall hear and determine the appeal and may make such order as it thinks appropriate in the light of its decision.

(5) Without affecting the generality of subsection (4), the orders that may be made by the Supreme Court on an appeal include—

(a) an order affirming or setting aside the decision of the Tribunal; and

30 (b) an order remitting the case to be heard and decided again by the Tribunal, either with or without the hearing of further evidence, in accordance with the directions of the Supreme Court.

Power of entry

111. Section 83 applies to a member of the Tribunal in the same way as it applies to an authorised officer, but as if the powers conferred by that section were conferred on the member for the purpose of the member's
5 functions as such a member instead of for the purposes specified in that section.

Reports

112. (1) The President shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and
10 activities of the Tribunal.

(2) A report shall deal with such matters as the Minister directs and with such other matters as the President considers appropriate to include in the report.

PART 9**MISCELLANEOUS****Service of notices, etc.**

113. (1) Any notice or other instrument required or authorised by this Act to be served on a person is sufficiently served if the notice or other instrument is—

- 20 (a) delivered personally to the person;
- (b) left with a person who is apparently of or above the age of 16 years at, or sent by prepaid post to, the address last known to the Director-General of the person on whom the notice or other instrument is to be served; or
- 25 (c) where no address of the person is known to the Director-General, published or otherwise dealt with as may be prescribed by the regulations.

(2) If such a notice or instrument is—

- 30 (a) sent by post as referred to in subsection (1) (b), it shall be deemed to have been served at the time it would be delivered in the ordinary course of post; or

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(b) published or otherwise dealt with as referred to in subsection (1) (c), it shall be deemed to have been served at such time as may be prescribed by the regulations.

(3) Subsection (1) does not affect any other provision of this Act relating to the service of notices or other instruments.

Notices, etc., to be written in other languages

114. (1) If—

(a) the Director-General is required, by or under this Act, to cause a notice or other instrument to be served on any person; and

10 (b) it appears to the Director-General that the person is not literate in the English language but is literate in another language,

the Director-General shall, in so far as it is reasonably practicable, cause the notice or other instrument to be written in that other language.

(2) Failure to comply with subsection (1) does not vitiate any thing done 15 under any other provision of this Act.

Disclosure of information

115. A person who discloses any information obtained in connection with the administration or execution of this Act is guilty of an offence unless the disclosure is made—

20 (a) with the consent of the person from whom the information was obtained;

(b) in connection with the administration or execution of this Act;

(c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;

25 (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or

(e) with other lawful excuse.

Search warrants

30 **116. (1)** An officer or member of the police force may apply to an authorised justice for a search warrant if the officer or member of the police force has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened at any premises.

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(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the warrant—

- 5 (a) to enter the premises; and
 (b) to inspect the premises for evidence of a contravention of this Act or the regulations.

(3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

10 (4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force—

- (a) may accompany an officer executing a search warrant issued under this section; and
 15 (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this Act or the regulations.

Obstruction of officers

117. A person who wilfully hinders, obstructs, delays, assaults or threatens with violence any person in the exercise of that person's functions under this Act is guilty of an offence.

20 Person falsely representing as an officer

118. A person, not being an officer, who—

- (a) assumes or uses the designation of officer or falsely represents himself or herself to be officially associated in any capacity with the Department; or
 25 (b) uses, for any fraudulent purpose, any designation which that person previously held in the Department,
 is guilty of an offence.

False or misleading statements

30 119. A person shall not, in any application under this Act or in connection with an inquiry made by an officer in relation to any such application—

- (a) make a statement; or
 (b) furnish information,

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that the person knows to be false or misleading in a material particular.

Penalty: \$500.

Penalties

120. A person who is guilty of an offence under this Act is, for every
5 such offence, liable to a penalty not exceeding the penalty expressly imposed
or, if no penalty is expressly imposed, to a penalty not exceeding \$1,000 or
imprisonment for a period not exceeding 12 months, or both.

Proceedings for offences

121. Proceedings for an offence against this Act or the regulations shall
10 be dealt with summarily before a Local Court constituted by a Magistrate
sitting alone.

Evidence of young children

122. (1) If an authorised justice is satisfied by the evidence of a medical
practitioner that the attendance before a court of a child to whom an offence
15 against this Act or the regulations relates would be injurious or dangerous
to the child's health, the justice may take in writing the statement of the
child in pursuance of section 406 of the Crimes Act 1900 as if the child
were dangerously ill, whereby the child's evidence would probably be lost
if not forthwith taken.

20 (2) If, in any proceedings for an offence against this Act or the regulations
relating to a child, a court is satisfied by the evidence of a medical
practitioner that the attendance before the court of the child would be
injurious or dangerous to the child's health, any deposition taken under
section 406 of the Crimes Act 1900, or any statement of the child taken
25 under subsection (1), may be read in evidence, and shall have effect in the
same manner as if it were proved that the child were so ill as not to be able
to travel or (in the case of any such statement) that there was no reasonable
probability that the child would ever be able to travel or give evidence.

(3) If, in any proceedings for an offence against this Act or the regulations
30 relating to a child, a court is satisfied by the evidence of a medical
practitioner that the attendance of the child for the purpose of giving
evidence before the court would be injurious or dangerous to the child's
health, and it is further satisfied that the evidence of the child is not essential
to the just hearing of the case, the case may be proceeded with and
35 determined in the absence of the child.

Procedural matters

123. (1) In the absence of proof to the contrary, the authority of the Minister, the Director-General or any officer to exercise any function conferred or imposed on the Minister, the Director-General or any such officer by or under this Act, or to take any proceedings for the purposes of this Act, shall be presumed.

(2) In any proceedings under this Act with respect to a child, the Minister, the Director-General or any authorised officer shall be entitled to appear and to be heard.

10 (3) An averment in any complaint or information made or laid under this Act—

(a) that any instrument, purporting to have been made under this Act and specified in the averment, was or was not, at a time or during a period so specified, in force under this Act and was or was not made, granted or issued subject to conditions so specified;

(b) that any officer has been appointed, authorised or directed, for the purposes of this Act or the regulations, by the Minister as stated in the averment;

20 (c) that any person was, on a date specified in the averment, a ward or protected person; or

(d) that any person was, on a date specified in the averment, an officer, shall be prima facie evidence of the facts averred.

Regulations

124. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

30 (a) the control and regulation of child care services and authorised supervisors of licensed child care services;

(b) the control and regulation of residential child care centres and licensed managers of licensed residential child care centres;

(c) the control and regulation of private fostering agencies and principal officers of authorised private fostering agencies;

35 (d) the control and regulation of holders of fostering authorities;

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- (e) the control and regulation of the employment of children;
- (f) the making of care applications under Part 5;
- (g) the undertakings that may be given by or with respect to a child for the purposes of Part 5;
- 5 (h) the control and regulation of wards and protected persons; and
- (i) registers for the purposes of this Act.
- (2) A provision of a regulation may—
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - 10 (b) apply differently according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
 or may do any combination of those things.
- (3) A regulation may create an offence punishable by a penalty not
15 exceeding \$500.

 SCHEDULE 1

(Secs. 32,36,41,43)

PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES

Interpretation

- 20 1. In this Schedule—
 - “approved person” means—
 - (a) in relation to a licence for a child care service—the authorised supervisor under the licence;
 - 25 (b) in relation to a licence for a residential child care centre—the licensed manager under the licence; or
 - (c) in relation to a private fostering agency authority—the principal officer under the authority;
- “authority” means a private fostering agency authority or a fostering authority;
- “licence” means a licence for a child care service or a residential child care centre.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
*continued***Eligible applicants**

2. A person is not eligible to make an application for a licence for a residential child care centre unless the person is the proprietor of the premises for which the licence is applied for.

5 Grant of licences or authorities

3. (1) When a person makes an application to the Minister for a licence or authority, the Minister shall cause an inquiry to be made with respect to the application by officers and a report on the application to be made and furnished to the Minister by an officer.

(2) Upon receipt of the report, the Minister shall—

10 (a) grant the licence or authority to the applicant; or

(b) cause to be served on the applicant a notice stating that, when 28 days have expired after service of the notice, the Minister intends to refuse the licence or authority on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the licence or authority should not be refused.

15 (3) When 28 days have expired after a notice has been served under subclause (2) (b), the Minister shall, after considering any submissions made during that period by the applicant—

(a) grant the licence or authority to the applicant; or

20 (b) refuse the licence or authority and cause to be served on the applicant a notice stating the grounds on which the licence or authority has been refused.

(4) Without limiting the Minister's power to refuse a licence, the Minister may refuse a licence on the ground that, in the locality in which it is proposed—

(a) to provide the child care service; or

(b) to conduct the residential child care centre,

25 there are already available adequate child care services or residential child care centres, as the case may be, of a similar kind to that in relation to which the licence is applied for.

Change of approved persons under licences or private fostering agency authorities

30 4. (1) A licensee or holder of a private fostering agency authority may apply for the Minister's consent to the replacement of the approved person under the licence or authority by another person.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(2) When the Minister receives an application under subclause (1), the Minister shall, by notice served on the applicant, the approved person and the other person specified in the application—

- 5 (a) if the Minister considers the other person suitable to act as the approved person under the licence or authority—consent to the other person's becoming the approved person under the licence or authority; or
- (b) refuse the application.

(3) When the Minister has consented to another person's becoming the approved person under a licence or authority—

- 10 (a) any person who was the approved person under the licence or authority immediately before the consent was given ceases to be the approved person under the licence or authority; and
- (b) the other person shall be deemed to be the person specified under section 32 (1) (c), 36 (1) (c) or 41 (1) (b), as the case may be, in the licence or authority.

- 15 (4) A notice served for the purpose of giving a consent under subclause (2) shall specify any conditions, other than such conditions as may be prescribed by the regulations, which are in force when the notice is served and to which the licence or authority to which it relates is subject.

Duration of licences and authorities

- 20 5. (1) Unless sooner revoked, a licence or private fostering agency authority shall remain in force for such period, not exceeding 3 years, as is specified in the licence or authority, commencing on the date on which it is granted, or such later date as is specified in the licence or authority, as the case may be.

- 25 (2) If an application for a further licence or private fostering agency authority in relation to the same child care service, residential child care centre or private fostering agency, as the case may be, as that to which the licence or authority relates is made by the licensee under the licence or the holder of the authority while the licence or authority is in force, the licence or authority shall remain in force until the application is finally dealt with.

- 30 (3) Subject to any condition specified in the authority under section 43 (1) (e), a fostering authority shall remain in force until it is revoked.

Conditions of licence or authority

6. A licence or authority is subject to—
- 35 (a) any condition prescribed by the regulations for licences or authorities or for a class of licences or authorities to which the licence or authority belongs; and

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(b) any other condition in force in relation to the licence or authority, being a condition that the Minister thought fit to impose on the licence or authority and that was—

(i) specified in the licence or authority when it was granted; or

5 (ii) subsequently imposed on the licence or authority under clause 7.

Revocation, variation or addition of conditions on licences and authorities

7. (1) If the Minister intends to revoke or vary any condition of a licence or authority or to impose a further condition on a licence or authority, the Minister shall cause to be served on—

10 (a) the licensee under the licence or the holder of the authority; and

(b) the approved person, if any, under the licence or authority,

a notice stating that, when 28 days have expired after service of the notice, the Minister intends to revoke or vary a condition of the licence or authority specified in the notice or to impose on the licence or authority a further condition specified in the notice, as
15 the case may be, unless it has been established to the Minister's satisfaction that the Minister should not do so.

(2) When 28 days have expired after notices have been served under subclause (1), the Minister may, after considering any submissions made during that period by the person or persons on whom the notices were served—

20 (a) revoke or vary the condition specified in the notices; or

(b) impose the further condition, as specified in the notices, on the licence or authority to which the notices relate,

by a further notice served on that person or those persons.

(3) Notwithstanding subclauses (1) and (2), if the licensee under a licence or the holder
25 of an authority has requested that a condition of the licence or authority be revoked or varied or that a further condition be imposed on the licence or authority, the Minister may, by notice served on the licensee or holder of the authority and the approved person, if any, under the licence or authority—

(a) revoke or vary the condition; or

30 (b) impose the further condition,

as the case may require.

Application for variation of matters specified in a fostering authority

8. Any matter specified in a fostering authority pursuant to section 43 (1) (b)–(e) shall,
35 for the purposes of clauses 5 and 7, be deemed to be a condition of the fostering authority.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
*continued***Suspension and revocation of licence or authority**

9. (1) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a licence, are that—

- 5 (a) the licensee under the licence has requested that the licence be suspended or revoked;
- (b) either the licensee or the approved person under the licence is no longer a fit and proper person to be concerned in the provision of the child care service or the conduct of the residential child care centre to which the licence relates;
- 10 (c) either of those persons has contravened or failed to comply with a provision of this Act or the regulations that applies to that person;
- (d) in the case of a licence for a child care service—
- (i) any premises on which the child care service is provided do not comply with any provision of this Act or the regulations, or of a condition of the licence, that applies to them; or
- 15 (ii) the authorised supervisor under the licence does not have the overall supervision of the provision of the child care service to which the licence relates; or
- (e) in the case of a licence for a residential child care centre—
- (i) the premises of the centre do not comply with a provision of this Act or the regulations, or of a condition of the licence, that applies to them;
- 20 (ii) the premises of the centre are not being used as a residential child care centre;
- (iii) the licensee (not being a person deemed to have been granted the licence under section 36 (2)) is not the proprietor of the premises of the centre; or
- 25 (iv) the licensed manager does not conduct the centre.

(2) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a private fostering agency authority, are that—

- (a) the authorised private fostering agency under the authority has requested that the authority be suspended or revoked;
- 30 (b) either the authorised private fostering agency or the principal officer under the authority is no longer a fit and proper person to be concerned in the carrying on of private fostering services; or
- (c) either of those persons has contravened or failed to comply with a provision of this Act or the regulations that applies to that person.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(3) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a fostering authority, are that—

- (a) the holder of the authority has requested that the authority be suspended or revoked;
- 5 (b) the holder of the authority is no longer a fit and proper person to hold the authority; or
- (c) the holder of the authority has contravened or failed to comply with a provision of this Act or the regulations that applies to that person.

(4) If the Director-General intends to suspend or revoke a licence or authority, the
10 Director-General shall cause to be served on—

- (a) the licensee under the licence or the holder of the authority; and
- (b) the approved person, if any, under the licence or authority,

a notice stating that, when 28 days have expired after service of the notice, the Director-General intends to suspend the licence or authority for a period (not exceeding 6 months)
15 specified in the notice or to revoke the licence or authority, as the case may be, on the prescribed grounds specified in the notice, unless it has been established to the Director-General's satisfaction that the Director-General should not do so.

(5) When 28 days have expired after notices have been served under subclause (4),
20 the Director-General may, after considering any submissions made during that period by the person or persons on whom the notices were served—

- (a) suspend the licence or authority to which the notices relate for the period (not exceeding 6 months) specified in the notices; or
- (b) revoke the licence or authority to which the notices relate,

by a further notice served on that person or those persons, which further notice shall
25 specify the prescribed grounds on which the licence or authority is suspended or revoked, as the case may be.

(6) Notwithstanding subclauses (4) and (5), if the licensee under a licence or the holder of an authority has requested that the licence or authority be suspended or revoked, the
30 Director-General may, by notice served on the licensee or holder of the authority and the approved person, if any, under the licence or authority—

- (a) suspend the licence or authority for the period (not exceeding 6 months) specified in the notice; or
- (b) revoke the licence or authority,

as the case may require.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(7) A licence or authority shall be deemed not to be in force during any period for which it is suspended.

(8) If a licence or authority has been suspended under this clause for a period, the Director-General may, at any time during that period, restore the licence or authority by serving on both the person who was the licensee under the licence or the holder of the authority, and the person who was the approved person, if any, under the licence or authority, immediately before it was suspended a notice stating that the licence or authority is restored.

Temporary authorised supervisors and licensed managers

10 10. (1) The Minister may, by an instrument in writing, authorise a person specified in the instrument to act as the approved person under a licence or private fostering agency authority for a period so specified that occurs during an absence (by reason of illness or otherwise) of the approved person under the licence or authority.

15 (2) While a person is authorised by an instrument referred to in subclause (1) to act as an approved person under a licence or authority—

(a) that person shall be deemed to be the person specified under section 32 (1) (c), 36 (1) (c) or 41 (1) (b), as the case may be, in the licence or authority; and

20 (b) the conditions of the licence or authority that apply to the approved person under the licence or authority shall, for the purposes of section 31 (4), 34 (2) or 40 (4), as the case may require, be deemed to apply to the person so authorised as if that person were the approved person under the licence or authority.

25 (3) The Minister may, by notice served on the person specified in an instrument referred to in subclause (1) by which that person was authorised to act as the approved person under a licence or authority, revoke the instrument on any ground that the Minister considers sufficient.

SCHEDULE 2

(Sec. 98)

CONSTITUTION OF THE CHILDREN'S REVIEW PANEL

Age of members

1. A person of or above the age of 65 years is not eligible to be appointed as a member.

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued***Term and vacation of office, etc.**

2. (1) A member shall hold office for the period of 3 years commencing with the day from which the member is declared to be appointed in the instrument of the member's appointment or such shorter period as is specified in that instrument and is, if otherwise qualified, eligible for reappointment.

(2) The Governor may, for any cause that seems sufficient, remove a member from office.

(3) A member shall be deemed to have vacated office—

- (a) if the member dies;
- 10 (b) if the member resigns office by instrument in writing addressed to the Minister;
- (c) if the member becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- 15 (d) upon the member's reaching the age of 65 years;
- (e) if the member is removed from office by the Governor; or
- (f) if, being an officer when the member was appointed a member, the member ceases to be an officer.

Remuneration, etc.

20 3. (1) A member (other than a full-time President or a public servant) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

(2) A full-time President is entitled to be paid—

- 25 (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the full-time President.

(3) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

30 President and Deputy President

4. (1) The President or Deputy President holds office until ceasing to be a member and is eligible, if reappointed as a member, to be appointed or reappointed, as the case may be, as President or Deputy President.

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued*

(2) The Deputy President may exercise the President's functions—

(a) if the President—

(i) delegates those functions to the Deputy President under clause 5;

(ii) is absent from New South Wales; or

5 (iii) is prevented by illness or other incapacity from exercising those functions;
or

(b) if there is no person holding the office of President.

(3) While the Deputy President is entitled to exercise the President's functions, a reference in Part 7 and this Schedule to the President shall be construed as a reference
10 to the Deputy President.

(4) While the Deputy President exercises the President's functions, the Deputy President shall be deemed to be the President.

(5) No person shall be concerned to inquire whether or not any occasion has arisen authorising the Deputy President to exercise the President's functions, and all acts or
15 things done or omitted to be done by the Deputy President when exercising those functions shall be as valid and shall have the same consequences as if they had been done or omitted to be done by the President.

Delegation

20 5. (1) The President may delegate to the Deputy President the exercise of any of the President's functions.

(2) A delegation—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the President.

25 (3) The Deputy President is, in the exercise of a function delegated under this clause, subject to such conditions as are specified in the instrument of delegation.

(4) A delegation under this clause does not prevent the exercise of a function by the President.

Preservation of rights of full-time President previously public servant, etc.

30 6. (1) Subject to subclause (2) and to the terms of appointment, where the full-time President was, immediately before being appointed as full-time President—

(a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued*

(c) an officer employed by a statutory body; or

(d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

5 (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;

(f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as full-time President; and

10 (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as full-time President and—

15 (h) his or her service as full-time President shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and

(i) he or she shall be deemed to be an officer or employee, and the Government shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

20 (2) If the full-time President would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as full-time President or at any later time while holding office as full-time President) a contributor to any other superannuation scheme, and the provisions
25 of subclause (1) (i) cease to apply to or in respect of him or her and the Government in any case where he or she becomes a contributor to any such other superannuation scheme.

30 (3) Subclause (2) does not prevent the payment to the full-time President upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(4) The full-time President shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

(5) In this clause—

35 "statutory body" means any body declared under clause 8 to be a statutory body for the purposes of this Schedule;

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued*

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

Full-time President entitled to reappointment to former employment in certain cases

- 5 7. (1) A person who—
- (a) ceases to be a full-time President because of the expiration of the period for which the person was appointed or by reason of resignation;
 - (b) was, immediately before being appointed as full-time President—
 - 10 (i) an officer of the Public Service or a Teaching Service; or
 - (ii) an officer or employee of a statutory body; and
 - (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

15 shall be entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as full-time President.

- (2) Where subclause (1) does not apply to a person who—
 - (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
 - 20 (b) is after that appointment appointed as full-time President,
 the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be full-time President, as are specified in the instrument of appointment as full-time President or as are agreed upon by the person and by or on behalf of the Government.

- 25 (3) In this clause—

“statutory body” means any body declared under clause 8 to be a statutory body for the purposes of this Schedule.

Declaration of statutory bodies

- 30 8. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.
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Children (Care and Protection) 1987

SCHEDULE 3

(Sec. 103)

CONSTITUTION OF THE COMMUNITY WELFARE APPEALS TRIBUNAL

Age of members

- 5 1. A person of or above the age of 65 years is not eligible to be appointed as a member.

Term and vacation of office, etc.

- 10 2. (1) A member shall hold office for the period of 3 years commencing with the day from which the member is declared to be appointed in the instrument of the member's appointment or such shorter period as is specified in that instrument and is, if otherwise qualified, eligible for reappointment.

(2) The Governor may remove a member from office for inability, misbehaviour or failure to comply with the conditions of the member's appointment.

(3) A member shall be deemed to have vacated office—

- 15 (a) if the member dies;
- (b) if the member resigns office by instrument in writing addressed to the Minister;
- (c) if the member becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- 20 (d) upon the member's reaching the age of 65 years; or
- (e) if the member is removed from office by the Governor.

Remuneration, etc.

- 25 3. (1) A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

(2) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

President and Deputy President

- 30 4. (1) The President or Deputy President holds office until ceasing to be a member and is eligible, if reappointed as a member, to be appointed or reappointed, as the case may be, as President or Deputy President.

(2) The Deputy President may exercise the President's functions—

- (a) if the President—
- 35 (i) delegates those functions to the Deputy President under clause 5;
- (ii) is absent from New South Wales; or
- (iii) is prevented by illness or other incapacity from exercising those functions;
- or

*Children (Care and Protection) 1987*SCHEDULE 3—*continued*CONSTITUTION OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

(b) if there is no person holding the office of President.

(3) While the Deputy President is entitled to exercise the President's functions, a reference in Part 8 and this Schedule to the President shall be construed as a reference to the Deputy President.

5 (4) While the Deputy President exercises the President's functions, the Deputy President shall be deemed to be the President.

(5) No person shall be concerned to inquire whether or not any occasion has arisen authorising the Deputy President to exercise the President's functions, and all acts or things done or omitted to be done by the Deputy President when exercising those
10 functions shall be as valid and shall have the same consequences as if they had been done or omitted to be done by the President.

Delegation

5. (1) The President may delegate to the Deputy President the exercise of any of the President's functions.

15 (2) A delegation—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the President.

(3) The Deputy President is, in the exercise of a function delegated under this clause,
20 subject to such conditions as are specified in the instrument of delegation.

(4) A delegation under this clause does not prevent the exercise of a function by the President.

SCHEDULE 4

(Sec. 103)

25 PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL

Composition of the Tribunal for the purpose of hearing proceedings

1. (1) The Tribunal shall, for the purpose of hearing proceedings, be constituted by not less than 3 and not more than 5 members nominated by the President.

(2) A nomination may be made generally or for a particular case or class of cases.

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

(3) The President shall notify a nominated member of the member's nomination as soon as practicable after the nomination is made.

(4) If the nominated members do not include the President or the Deputy President, the President shall nominate one of the members so nominated as Chairperson of the Tribunal and shall, when notifying the member so nominated of the member's nomination, notify the member also of the member's nomination as Chairperson.

Sittings of the Tribunal

2. If the Governor has appointed 6 or more members, more than one sitting of the Tribunal may be held at the same time.

10 Procedure at sittings of the Tribunal

3. The procedure for the arranging of, and for the conduct of business at, any sitting of the Tribunal shall, subject to this Schedule and any rules of the Tribunal made under clause 21, be as determined by the Tribunal.

Chairperson and votes of members

15 4. (1) At a sitting of the Tribunal—

(a) if the President has nominated himself or herself as a member of the Tribunal—the President;

(b) if the President has not nominated himself or herself, but has nominated the Deputy President, as a member of the Tribunal—the Deputy President; or

20 (c) if the President has nominated a member as Chairperson as referred to in clause 1 (4)—the member,

shall preside as Chairperson of the Tribunal.

(2) Questions arising at a sitting of the Tribunal shall be determined by a majority of votes of the members present and voting.

25 (3) The member presiding as Chairperson at a sitting of the Tribunal shall have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

Preliminary conference

30 5. The Tribunal or, if the Tribunal so directs, a member may, before formally commencing to hear any proceedings with respect to any decision of the Minister or the Director-General, confer informally with the parties to the proceedings and make any determination with respect to the decision that is agreed to by the parties to the proceedings.

Adjournment

35 6. (1) The Tribunal may from time to time adjourn its proceedings to such times, dates and places, and for such reasons, as it thinks fit.

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

(2) In the absence from a sitting of the Tribunal of one or more, but not all, of the members nominated to constitute the Tribunal at that sitting, the remaining member or members may exercise the Tribunal's function under subclause (1).

Evidence

5 7. (1) The Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

(2) Proceedings before the Tribunal shall be by way of a new hearing and no weight shall be given to the decision of the Minister or the Director-General that is the subject of the proceedings.

10 **Exclusion of the public**

8. (1) Proceedings before the Tribunal shall be open to the public unless the Tribunal, in any particular case, determines that the proceedings shall be conducted wholly or partly in camera.

15 (2) The provisions of section 68 apply to proceedings before the Tribunal with respect to a child in the same way as they apply to proceedings referred to in those provisions.

Right of appearance

9. (1) In any proceedings before the Tribunal, the parties to the proceedings may appear in person or be represented by a barrister or solicitor or, by leave of the Tribunal, by an agent.

20 (2) The Tribunal, in proceedings before it with respect to a child, may appoint a person to act as guardian ad litem for the child.

(3) The Tribunal, in proceedings before it relating to a child, may, if it appears to the Tribunal that the child ought to be separately represented—

- (a) order that the child be separately represented; and
25 (b) make such other orders as it thinks necessary for the purpose of securing separate representation for the child.

(4) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the Tribunal has made an order under subclause (3) (b).

Presentation of cases

30 10. A party to proceedings before the Tribunal may—

- (a) call and examine any witness;
(b) cross-examine any witness called by another party;
(c) examine any copy of any document or part of a document lodged with the Tribunal under section 106;

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

- (d) give evidence on oath;
- (e) produce documents and exhibits to the Tribunal; and
- (f) otherwise adduce, orally or in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the proceedings.

5 Powers of the Chairperson of the Tribunal

11. (1) The member presiding as Chairperson at a sitting of the Tribunal may—

- (a) by instrument in writing require any person on whom the instrument is served personally or by post—

- (i) to appear before the Tribunal for the purpose of giving evidence; or

10 (ii) to produce to the Tribunal any document (including a document in the possession of or belonging to the Crown) that is relevant to the proceedings before the Tribunal,

at a time, date and place specified in the instrument;

15 (b) require a person who appears before the Tribunal to be sworn for the purpose of giving evidence on oath; and

- (c) administer an oath referred to in paragraph (b).

(2) When a document is produced to the Tribunal pursuant to a requirement made under subclause (1), the Tribunal may take possession of the document for such period as it considers necessary for the purpose of hearing the proceedings before it.

20 Questions of a member

12. (1) A member may require a person (including an officer or employee of the Crown) who appears before the Tribunal to answer a question that is reasonably related to the proceedings before the Tribunal.

25 (2) A person is not excused from answering a question put to the person by a member on the ground that the answer might tend to incriminate the person but, where the person claims, before answering the question, that the answer might tend to incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings, other than proceedings under clause 13 (c) or proceedings in relation to a charge of perjury in respect of the answer.

30 Offences

13. A person shall not—

- (a) refuse, fail or neglect to comply with a requirement made of the person under clause 11 or 12 by a member to the extent to which the person is lawfully able to comply with the requirement;

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

- (b) in purported compliance with a requirement made of the person under clause 11 (1) (a) (ii) by a member, produce any document knowing it to be false or misleading in a material particular; or
- 5 (c) not having been sworn, make a statement that is false or misleading in a material particular when the person is appearing before the Tribunal.

Penalty: \$100.

Witnesses' expenses

14. A person, other than an officer, who is required to appear or to give evidence before the Tribunal is entitled to be paid such allowances and expenses as the Minister
10 may determine in respect of the person.

Form of decisions of the Tribunal

15. (1) A decision of the Tribunal with respect to proceedings before it shall be in the form of an instrument in writing setting out the reasons for the decision and shall be signed by the member who presided as Chairperson at the sitting of the Tribunal at
15 which the decision was made.

(2) No decision of the Tribunal shall be vitiated merely because of any informality or want of form.

Costs

- 20 16. (1) The costs of any proceedings before the Tribunal shall be in the discretion of the Tribunal which may direct to and by whom, and in what manner, those costs or any part of those costs shall be paid.

(2) Any such costs may be recovered as a debt in any court of competent jurisdiction.

- (3) A certificate purporting to be signed by the President and containing a statement as to any matters relating to the award of costs under this clause is admissible in evidence
25 and is prima facie evidence of those matters.

Records of proceedings

17. (1) The member presiding as Chairperson at a sitting of the Tribunal shall cause a record of the proceedings at the sitting to be made.

- 30 (2) Records made for the purposes of subclause (1) may be destroyed after the expiration of such period as may be prescribed by the regulations.

Authentication of documents, etc.

18. (1) Any document requiring authentication by the Tribunal is sufficiently authenticated if it is signed by the President or the Deputy President.

- 35 (2) Judicial notice shall be taken of the signature of the President or the Deputy President when appearing on a document issued by the Tribunal.

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
*continued***Certain proceedings prohibited**

19. No proceedings lie against the Tribunal or a member for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal or member and purporting to be done, ordered, omitted or suffered, for the purpose of carrying out the provisions of this Act, if the Tribunal or member has acted in good faith and with reasonable care.

Application of the Defamation Act 1974

20. For the purposes of section 18 of the Defamation Act 1974, the proceedings of the Tribunal shall be deemed to be an inquiry within the meaning of that section.

10 Rules

21. (1) Five members nominated by the President (who shall include the President or the Deputy President, or both) may together make rules, not inconsistent with this Act or the regulations, for or with respect to the practice and procedure of the Tribunal.

(2) A provision of a rule may—

- 15 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- 20 or may do any combination of those things.

(3) If there is an inconsistency between the rules and the regulations, the regulations shall prevail to the extent of the inconsistency.

(4) A rule shall—

- (a) be published in the Gazette;
- 25 (b) take effect on and from the date of publication or a later date specified in the rule; and
- (c) be laid before each House of Parliament within 14 sitting days of that House after the date of publication.

30 (5) If either House of Parliament passes a resolution, of which notice has been given within 15 sitting days of that House after a rule has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.

(6) For the purposes of subclauses (4) and (5), sitting days shall be counted, whether or not they occur during the same session.

Children (Care and Protection) 1987

SCHEDULE 4—*continued*

PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

- (7) Judicial notice shall be taken—
- (a) of a rule made or purporting to have been made under this Act and published in the Gazette; and
 - (b) of the date of its publication.
- 5 (8) It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule have been complied with and performed.

CHILDREN (CARE AND PROTECTION) ACT 1987 No. 54

NEW SOUTH WALES



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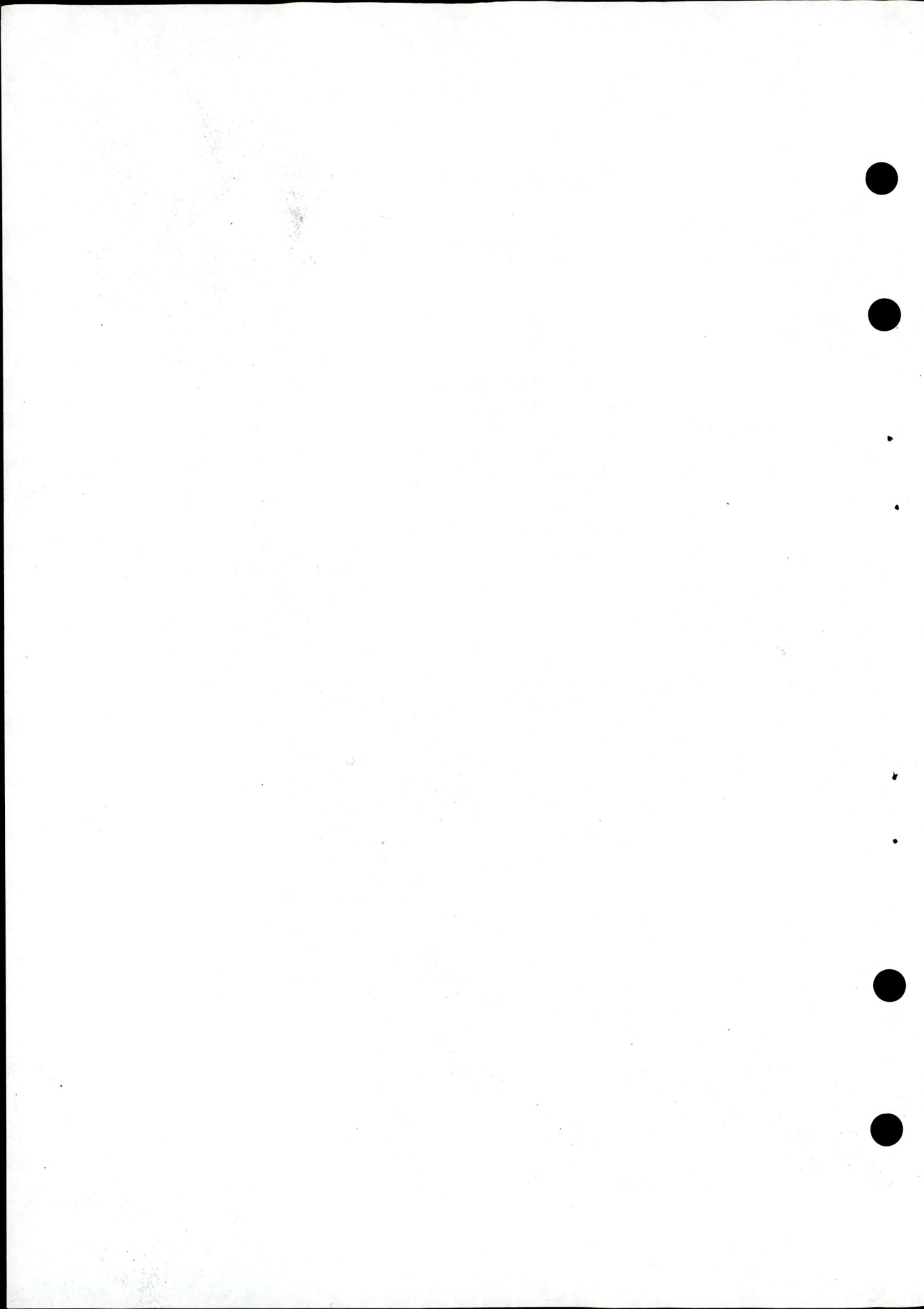
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CHILDREN (CARE AND PROTECTION) ACT 1987 No. 54

NEW SOUTH WALES



Act No. 54, 1987

An Act with respect to the care and protection of children. [Assented to 29
May 1987]

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Children (Care and Protection) Act 1987".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Aboriginal" has the same meaning as it has in the Aboriginal Land Rights Act 1983;

"abuse", in relation to a child, means assault (including sexually assault) or ill-treat the child or expose or subject the child to behaviour that psychologically harms the child, whether or not, in any case, with the consent of the child;

"adult" means a person who is of or above the age of 18 years;

"authorised justice" means—

(a) a Magistrate; or

(b) a justice employed in the Local Courts Administration, Attorney General's Department;

"authorised officer", in relation to any provision of this Act, means—

(a) an officer who is declared to be an authorised officer for the purposes of that provision; or

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- (b) an officer who belongs to a class of officers who are declared to be authorised officers for the purposes of that provision,
by an order in force under subsection (3);
- “authorised private fostering agency” means the holder of a private fostering agency authority;
- “authorised supervisor”, in relation to a licence for a child care service or the holder of such a licence, means the person for the time being specified under section 32 (1) (c) in the licence for that service;
- “child” means a person who is under the age of 18 years;
- “child care service” means—
- (a) any service that is provided by a person for the purpose of educating, minding or caring for (but without providing residential care for) one or more children (disregarding any children who are related to the person providing the service) and that is provided for fee, gain or reward;
 - (b) any service that is declared to be a child care service by an order in force under subsection (4); or
 - (c) the organising or arranging of the provision of any such service, but does not include any such service, or the organising or arranging of the provision of any such service, if the service is or is to be—
 - (d) provided by a person at the premises at which the children for whom that person provides the service reside;
 - (e) provided at a licensed residential child care centre;
 - (f) provided at exempt premises; or
 - (g) provided by the holder of a fostering authority in accordance with the authority;
- “Children’s Court” means the Children’s Court of New South Wales constituted by the Children’s Court Act 1987;
- “children’s employment licence” means a licence in force under section 53;
- “Community Welfare Appeals Tribunal” means the Community Welfare Appeals Tribunal established by section 103;

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“control order” means an order in force under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 whereby the Children’s Court, or some other court exercising the functions of the Children’s Court under Division 4 of Part 3 of that Act, has committed a person to the control of the Minister administering the Children (Detention Centres) Act 1987;

“custody”, in relation to a child, means custody of the child to which a person is entitled by law;

“Department” means the Department of Youth and Community Services;

“Director-General” means the person for the time being holding office or acting as the Director-General of the Department;

“exempt premises” means—

(a) the premises of—

(i) a State school, a certified school, a special school or a certified special school, within the meaning of the Public Instruction (Amendment) Act 1916;

(ii) a private hospital or nursing home licensed under the Private Hospitals Act 1908;

(iii) an admission centre or a mental hospital within the meaning of the Mental Health Act 1958 or an authorised hospital within the meaning of the Mental Health Act 1958;

(iv) an incorporated hospital or a separate institution within the meaning of the Public Hospitals Act 1929, premises controlled by an associated organisation within the meaning of that Act or a hospital specified in the Fifth Schedule to that Act; or

(v) a hospital or other institution under the control of an area health service constituted under the Area Health Services Act 1986;

(b) any premises belonging to a class of premises prescribed by the regulations; or

(c) in relation to any provision of this Act, any premises declared to be exempt premises for the purposes of that provision by an order in force under subsection (5);

“facility” means any premises the subject of an order in force under section 5 (1);

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- “fostering authority” means an authority that has been granted as a fostering authority under clause 3 of Schedule 1 and that is in force;
- “licence” means a licence for a child care service or a residential child care centre that has been granted under clause 3 of Schedule 1 and that is in force;
- “licensed manager”, in relation to a licensed residential child care centre, means the person for the time being specified under section 36 (1) (c) in the licence for that centre;
- “licensed residential child care centre” means premises specified under section 36 (1) (b) in a licence for a residential child care centre;
- “maintenance” includes clothing, support, training and education;
- “non-Government children’s home” means a home for the accommodation of children that is conducted by a non-Government organisation;
- “non-Government organisation” means a corporation, society, association or other body of persons, not being the Crown, declared to be a non-Government organisation by an order in force under subsection (6);
- “officer” means an officer or temporary employee, within the meaning of the Public Service Act 1979, employed in the Department;
- “parent”, in relation to a child, includes—
- (a) a guardian of the child; and
 - (b) a person who has the custody of the child,
- but does not include the Minister or the Director-General, or the father or mother of the child if the father or mother, as the case may be, has neither guardianship nor custody of the child;
- “person responsible”, in relation to a child, means—
- (a) a parent of the child;
 - (b) a person (other than the Minister or the Director-General) who has the care of the child; or
 - (c) in the case of a child who is in the care of the Minister or the Director-General—a person who had the care of the child immediately before the child came to be in the care of the Minister or the Director-General, as the case may be;
- “premises” includes any land, building, vehicle and vessel;

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“principal officer”, in relation to an authorised private fostering agency, means the person for the time being specified under section 41 (1) (b) in the private fostering agency authority held by that agency;

“private fostering agency” means a person who performs (whether or not for fee, gain or reward) private fostering services with respect to children (disregarding any children who are related to the person);

“private fostering agency authority” means an authority that has been granted as a private fostering agency authority under clause 3 of Schedule 1 and that is in force;

“private fostering service” means the activity of conducting negotiations or making arrangements with a view to the placement of children for fostering;

“proprietor”, in relation to premises, means—

- (a) if the premises are not leased—the owner or any joint owner of the premises; or
- (b) if the premises are leased—the lessee or any joint lessee who is entitled to immediate possession of the premises;

“protected person” means—

- (a) a child who is a ward of the Supreme Court and of whom the Minister or the Director-General has the custody or care pursuant to an order of the Supreme Court;
- (b) a child of whom the Minister or the Director-General has the custody or guardianship pursuant to an order in force under the Family Law Act 1975 of the Commonwealth;
- (c) a non-citizen child in respect of whom the Director-General exercises the functions of a guardian pursuant to the Immigration (Guardianship of Children) Act 1946 of the Commonwealth; or
- (d) a child who, having been a child referred to in paragraph (a), (b) or (c), is in the custody of a person referred to in section 91 (1) (d) (i) or (ii);

“regulation” means a regulation made under this Act;

“residential child care centre” means any premises—

- (a) at which 6 or more children (disregarding any children who are related to the person in charge of the premises) reside and are cared for for fee, gain or reward; or

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- (b) that are declared to be a residential child care centre by an order in force under subsection (7),

but does not include any premises that are exempt premises;

“Visitor” means a person appointed as a Visitor for a facility under section 6;

“ward” means—

- (a) a child declared to be a ward under this Act by an order in force under section 72 (1) (c) (iii);
- (b) a child declared to be a ward under this Act by a declaration under section 95 (4); or
- (c) a child declared to be a ward under this Act by an order in force under the Adoption of Children Act 1965.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) For the purposes of the definition of “authorised officer” in subsection (1), the Minister may, by order published in the Gazette—

- (a) declare any officer to be an authorised officer; or
- (b) declare any class of officers to be authorised officers,

for the purposes of any provision of this Act.

(4) The Minister may, by order in writing served on a person by whom any service that would (but for the fact that it is being provided otherwise than for fee, gain or reward) be a child care service under paragraph (a) of the definition of “child care service” in subsection (1), declare the service to be a child care service.

(5) For the purposes of paragraph (c) of the definition of “exempt premises” in subsection (1), the Minister may, by order published in the Gazette, declare any premises to be exempt premises for the purposes of any provision of this Act.

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(6) For the purposes of the definition of "non-Government organisation" in subsection (1), the Minister may, by order published in the Gazette, declare any corporation, society, association or other body of persons, not being the Crown, to be a non-Government organisation for the purposes of this Act.

(7) The Minister may, by order in writing served on the proprietor or occupier of premises (other than exempt premises) that would (but for the fact that any one or more of the children, disregarding any children who are related to the person in charge of the premises, residing at those premises are cared for otherwise than for fee, gain or reward) be a residential child care centre under paragraph (a) of the definition of "residential child care centre" in subsection (1), declare those premises to be a residential child care centre.

(8) In this Act—

- (a) a reference to a person who has the care of a child is a reference to a person who has the care of the child, whether or not the person has the custody of the child; and
- (b) a reference to a child who is or has been placed in the care of a person includes a reference to a child who is or has been placed in the custody of the person.

(9) In this Act, a reference to a child's having been sexually assaulted is a reference to any of the following offences having been committed with or upon the child:

- (a) an offence under section 61B, 61C, 61D, 61E, 61F, 66A, 66B, 66C or 66D of the Crimes Act 1900;
- (b) an offence under section 67, 68, 71, 72, 73, 74, 78A or 78B of that Act, as in force before the commencement of Schedule 2 to the Crimes (Child Assault) Amendment Act 1985;
- (c) an offence under section 63, 65, 76 or 76A of that Act, as in force before the commencement of Schedule 1 to the Crimes (Sexual Assault) Amendment Act 1981.

(10) Except in so far as the context or subject-matter otherwise indicates or requires, a word or expression used in a Schedule has the same meaning as it has in the relevant provisions of this Act relating to the subject-matter of that Schedule.

Related persons

4. For the purposes of this Act, a child is related to another person—
- (a) if the child is the child, step-child, grandchild, brother, sister, step-brother, step-sister, uncle, aunt, niece or nephew (whether by consanguinity or affinity) of the other person;
 - (b) if the other person is the guardian of the child; or
 - (c) if the child has been placed in the care or custody of the other person in accordance with the provisions of the Adoption of Children Act 1965.

Facilities

5. (1) The Minister may, by order published in the Gazette, declare any premises specified or described in the order to be a facility for the purposes of this Act.

(2) The Minister may, by the order by which any premises are declared to be a facility or by any subsequent order published in the Gazette, give a name to the facility.

(3) An order under subsection (1) may declare any premises specified or described in the order to be one or more kinds of facility.

(4) An order under subsection (1) shall not be made in relation to premises under the control of a person, other than the Crown or a person acting on behalf of the Crown, except with the consent in writing of the firstmentioned person.

(5) An order under subsection (1) shall not be made in relation to premises under the control of a Minister other than the Minister administering this Act except with the consent in writing of that other Minister.

(6) The Minister may establish and maintain, on any facility that comprises premises that are under the control of the Crown or a person acting on behalf of the Crown, such establishments as the Minister considers necessary for the purpose of carrying out or giving effect to this Act or any other Act administered by the Minister.

Visitors

6. (1) The Minister may appoint eligible persons to be Visitors for each facility.

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(2) A person is an eligible person for the purposes of subsection (1) if, in the opinion of the Minister, the person—

- (a) is expert in some branch of community welfare; and
- (b) demonstrates concern for persons in need of community welfare services,

but not if the person is an officer.

(3) A Visitor shall, unless sooner removed from office, hold office for 2 years and is, if otherwise qualified, eligible for reappointment.

(4) A Visitor may, in respect of the facility for which the Visitor is appointed—

- (a) enter and inspect the facility at any reasonable time;
- (b) confer privately with any person who is resident, employed or detained in the facility;
- (c) furnish to the Minister advice or reports on any matters relating to the conduct of the facility; and
- (d) exercise such other functions as may be prescribed by the regulations.

(5) A copy of any advice or report furnished to the Minister under subsection (4) (c) shall be forwarded to the Minister for Education if the advice or report relates to any part of an educational establishment that is under the control or direction of the Minister for Education.

Granting of care does not imply granting of custody

7. A power conferred by this Act to place a child in the care of a person does not, except in so far as the context or subject-matter otherwise indicates or requires, include the power to grant custody of the child to the person.

Care or custody does not imply guardianship

8. A person in whose care or custody a child is placed under this Act is not, merely because of that placement, the guardian of the child.

Duties of care equivalent to duties of custody

9. A person in whose care a child is placed under this Act has, until the person ceases under this or any other Act or law to have the care of the child, the same duties in respect of the child as if the person had the custody of the child.

Children in need of care

- 10. (1)** For the purposes of this Act, a child is in need of care if—
- (a) adequate provision is not being made, or is likely not to be made, for the child's care;
 - (b) the child is being, or is likely to be, abused; or
 - (c) there is a substantial and presently irretrievable breakdown in the relationship between the child and one or more of the child's parents.
- (2)** Without limiting the generality of subsection (1), a child who is residing in a non-Government children's home is in need of care—
- (a) if the child has been residing in the home for a period of 12 months or more; and
 - (b) if there has been no substantial contact during that period between the child and—
 - (i) any of the child's parents; or
 - (ii) any person in whose care the child was immediately before the child began residing in the home.

Delegation

- 11. (1)** In the exercise of the Minister's powers of delegation under section 5 of the Community Welfare Act 1987, the Minister may delegate to the Director-General, or to any other person, the exercise of—
- (a) any of the Minister's functions arising by virtue of the Minister's having the care or custody of a person; and
 - (b) any of the Minister's functions (other than such functions as may be prescribed by the regulations) arising by virtue of the Minister's being the guardian of a ward or protected person.
- (2)** In the exercise of the Director-General's powers of delegation under section 5 of the Community Welfare Act 1987, the Director-General may delegate to any person the exercise of any of the Director-General's functions arising by virtue of the Director-General's having the care or custody of a person.
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PART 2

CHILDREN'S WELFARE

DIVISION 1—*Provision of care***Objects of Part**

12. (1) The objects of this Part are—

- (a) to identify the special needs of children, whether or not under parental care, with respect to services necessary to promote their optimum development; and
- (b) to ensure the provision of any necessary services for, and assistance to, families so that, where necessary, the care available to children in the family environment can be enhanced to such a degree as to enable them to remain in or return to family care.

(2) With the object of ensuring the provision of any necessary welfare services aimed at complementing the care given to children by persons responsible for them, the Minister may—

- (a) disseminate information to the community with respect to welfare services for children and their families;
- (b) provide assistance and support for non-Government organisations and persons concerned in the establishment or development of welfare services for children and their families; and
- (c) furnish advice to non-Government organisations and persons concerned in the provision of welfare services for children and their families with respect to the quality of any such services and the equipment needed to provide them.

Provision of services for children in need of care

13. (1) The Director-General may provide any one or more of the following facilities or services for or with respect to a child who is, in the opinion of the Director-General, in need of care:

- (a) accommodation;
- (b) maintenance;
- (c) care;
- (d) advisory services;

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- (e) any other facility or service prescribed by the regulations or any other facility or service belonging to a class of facilities or services so prescribed.
- (2) Facilities or services shall not be provided under subsection (1) for or with respect to a particular child except on the application of—
- (a) in the case of a child who is under the age of 14 years—a person responsible for the child;
 - (b) in the case of a child who is 14 or 15 years of age—either a person responsible for the child or the child; or
 - (c) in the case of a child who is of or above the age of 16 years—the child.

Temporary care arrangements

14. (1) The Director-General may, on the application of—

- (a) in the case of a child who is under the age of 14 years—a person responsible for the child; or
- (b) in the case of a child who is of or above the age of 14 years—the child,

make a temporary care arrangement in respect of the child if the child is, in the opinion of the Director-General, in need of care.

(2) In deciding whether or not to make a temporary care arrangement in respect of a child, the Director-General shall have regard to—

- (a) the views of the persons responsible for the child;
- (b) in the case of a child who is of or above the age of 12 years—the views of the child; and
- (c) the question of whether or not it would be more appropriate for provision to be made with respect to the child under section 13.

(3) A temporary care arrangement shall not be made in respect of a child on an application made by a person other than a parent of the child unless the Director-General has, not less than 21 days before making the arrangement, informed such of the parents of the child as can reasonably be located that an application for such an arrangement has been made.

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(4) If the Director-General has made a temporary care arrangement in respect of a child on an application made by a person other than a parent of the child, the Director-General shall inform such of the parents of the child as can reasonably be located that the Director-General has made a temporary care arrangement in respect of the child.

(5) A temporary care arrangement ceases to be in force—

(a) upon the receipt by an officer of a request for the termination of the arrangement made by the person by whom the application for the making of the arrangement was made;

(b) upon the child the subject of the arrangement attaining the age of 18 years;

(c) upon the expiration of the period of—

(i) except as provided by subparagraph (ii)—3 months; or

(ii) if the Director-General has renewed the arrangement pursuant to subsection (6)—6 months,

after the making of the arrangement; or

(d) upon its termination by the Director-General under subsection (8), whichever first occurs.

(6) At the expiration of 3 months after the making of a temporary care arrangement in respect of a child, the Director-General may, if of the opinion that the child is still in need of care, renew the arrangement for a further period of 3 months.

(7) A temporary care arrangement shall not be made or renewed in respect of a child if the child has, during the previous 12 months, been the subject of a temporary care arrangement or a temporary custody order for a period, or for periods in the aggregate, exceeding 6 months.

(8) The Director-General may, whether on the application of the child or a person responsible for the child or on the Director-General's own motion, at any time terminate a temporary care arrangement in respect of a child if, after consultation with the person by whom the application for the making of the order was made, the Director-General is of the opinion that the child is no longer in need of care.

(9) An application for the review of a temporary care arrangement may, in accordance with the regulations, be made to the Children's Court—

(a) by or on behalf of the child the subject of the arrangement; or

(b) by a person responsible for the child.

(10) The decision of the Children's Court in respect of an application for a review shall be given effect to as if it were the decision of the Director-General with respect to the making of a temporary care arrangement under subsection (1).

(11) The provisions of Division 3 of Part 5 apply to and in respect of the hearing of an application for a review in the same way as they apply to and in respect of the hearing of a care application under that Division.

Temporary custody orders

15. (1) The Director-General may make a temporary custody order in respect of a child the subject of a control order if—

(a) the child is under the age of 16 years; and

(b) the child would, upon ceasing to be subject to the control order by virtue of the making of the temporary custody order, be, in the opinion of the Director-General, in need of care.

(2) In deciding whether or not to make a temporary custody order in respect of a child, the Director-General shall have regard to—

(a) the views of the persons responsible for the child; and

(b) in the case of a child who is of or above the age of 12 years—the views of the child.

(3) A temporary custody order shall not be made in respect of a child unless the Director-General has, not less than 21 days before making the order, informed such of the persons responsible for the child as can reasonably be located that the Director-General proposes to make such an order.

(4) Upon the making of a temporary custody order in respect of a child, the control order to which the child was subject immediately before the making of the temporary custody order shall cease to have effect.

(5) A temporary custody order ceases to be in force—

(a) upon the expiration of the period for which the relevant control order would have been in force had the temporary custody order not been made;

(b) upon the expiration of the period of—

(i) except as provided by subparagraph (ii)—3 months; or

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(ii) where the Director-General has renewed the order pursuant to subsection (6)—6 months,

after the making of the order; or

(c) upon its termination by the Director-General under subsection (8),

whichever first occurs.

(6) At the expiration of 3 months after the making of a temporary custody order in respect of a child, the Director-General may, if of the opinion that the child is still in need of care, renew the order for a further period of 3 months.

(7) A temporary custody order shall not be made or renewed in respect of a child if the child has, during the previous 12 months, been the subject of a temporary care arrangement or a temporary custody order for a period, or for periods in the aggregate, exceeding 6 months.

(8) The Director-General may at any time terminate a temporary custody order in respect of a child if the Director-General is of the opinion that the child is no longer in need of care.

(9) An application for the review of a temporary custody order may, in accordance with the regulations, be made to the Children's Court—

(a) by or on behalf of the child the subject of the order; or

(b) by a person responsible for the child.

(10) The decision of the Children's Court in respect of an application for a review shall be given effect to as if it were the decision of the Director-General with respect to the making of a temporary custody order under subsection (1).

(11) The provisions of Division 3 of Part 5 apply to and in respect of the hearing of an application for a review in the same way as they apply to and in respect of the hearing of a care application under that Division.

Effect of temporary care arrangements and temporary custody orders

16. (1) The Director-General shall have the custody of a child in respect of whom there is in force a temporary care arrangement or temporary custody order.

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(2) In providing for the care of a child the subject of a temporary care arrangement or temporary custody order, the Director-General—

(a) shall have regard to—

- (i) the views of the child's parents; and
- (ii) such other matters as may be prescribed by the regulations, in relation to all matters concerning the welfare of the child; and

(b) shall ensure that—

- (i) the child's parents are kept informed as to all matters concerning the welfare of the child; and
- (ii) all efforts are made to encourage continuing contact between the child and the child's parents.

Temporary refuge

17. (1) A child seeking refuge may place himself or herself in the care of the Director-General.

(2) The Director-General shall discharge a child who is in the Director-General's care under subsection (1)—

- (a) upon the expiration of the period of 72 hours after the child has placed himself or herself in the care of the Director-General;
- (b) if, before the expiration of that period, the Minister authorises the Director-General to keep the child in the Director-General's care for a further period not exceeding 72 hours—upon the expiration of the further period; or
- (c) if, before the expiration of the period or further period referred to in paragraph (a) or (b), the child makes a request to an officer that the child be discharged from the Director-General's care—upon the request being made.

Separation of children from offenders

18. A child who is in the Director-General's care pursuant to this Act shall, so far as is reasonably practicable, be accommodated in premises other than—

- (a) premises for the accommodation of persons who have committed offences; or

- (b) premises for the accommodation of persons who are on remand awaiting proceedings in respect of offences alleged to have been committed by them.

Children in alternative care

19. (1) The Director-General shall maintain a register in which shall be entered particulars of every child who has been a child in alternative care for a continuous period of 14 days or more.

(2) The Director-General may, in respect of any child in alternative care other than a ward or protected person, grant an allowance to any person having the care of the child for any period during which the child is in that person's care.

(3) If an allowance under subsection (2) was being paid in respect of a person immediately before the person attained the age of 18 years, the Director-General may—

- (a) for the purpose of securing education or vocational training on a full-time basis for the person; and
- (b) subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Director-General may determine,

from time to time, and for periods not exceeding 6 months at any one time, continue to pay an allowance in respect of the person for any period during which the person is residing in the home of the person to whom the allowance is granted.

(4) In this section, a reference to a child in alternative care is a reference to—

- (a) a child who resides in a facility, otherwise than as a member of the household of any other person who resides there;
- (b) a child who has been placed in the care or custody of a person under Part 5 or 6;
- (c) a child who is in the care of the Director-General under Part 5;
- (d) a child who resides in a licensed residential child care centre, otherwise than as a member of the household of any other person who resides there;
- (e) a child who is in the care of a person in whose care the child has been placed by an authorised private fostering agency; or

- (f) a child (other than a child referred to in paragraph (a), (b), (c), (d) or (e)) who—
 - (i) is in the care of a person (other than a person to whom the child is related) belonging to such class of persons as may be prescribed by the regulations; or
 - (ii) is residing at such premises, or at premises belonging to such class of premises, as may be prescribed by the regulations, otherwise than as a member of the household of any other person who resides there.

Ordinary medical and dental treatment

20. (1) This section applies to a child who is under the age of 16 years, being—

- (a) a child who resides in a facility, otherwise than as a member of the household of any other person who resides there;
- (b) a child who has been placed in the care or custody of a person under Part 5 or 6;
- (c) a child who is in the care of the Director-General under Part 5;
- (d) a child who resides in a licensed residential child care centre, otherwise than as a member of the household of any other person who resides there;
- (e) a child who is in the care of a person in whose care the child has been placed by an authorised private fostering agency; or
- (f) a child (other than a child referred to in paragraph (a), (b), (c), (d) or (e)) who is in the care of a person (other than the parent or guardian of the person of the child, as referred to in section 49 (1) of the Minors (Property and Contracts) Act 1970) pursuant to any law, whether or not of New South Wales.

(2) If an authorised person has consented to medical or dental treatment of a child to whom this section applies being carried out, it shall be deemed, for the purposes of section 49 of the Minors (Property and Contracts) Act 1970, that a parent or guardian of the person of the child consented to the treatment being carried out.

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(3) This section does not affect—

- (a) such operation as a consent (whether or not a consent referred to in subsection (2) or in section 49 of the Minors (Property and Contracts) Act 1970) may have otherwise than as provided by this section; or
- (b) the circumstances in which medical or dental treatment may be justified in the absence of consent.

(4) In this section—

“authorised person” means—

- (a) in relation to a child referred to in subsection (1) (a)—the Minister;
- (b) in relation to a child referred to in subsection (1) (b)—
 - (i) in respect of medical or dental treatment not involving surgery—either the Minister or the person in whose care or custody the child has been placed; or
 - (ii) in respect of medical or dental treatment involving surgery—the Minister;
- (c) in relation to a child referred to in subsection (1) (c)—
 - (i) in respect of medical or dental treatment not involving surgery—either the Director-General or any person in whose care the child has been placed by the Director-General; or
 - (ii) in respect of medical or dental treatment involving surgery—the Director-General;
- (d) in relation to a child referred to in subsection (1) (d)—
 - (i) in respect of medical or dental treatment not involving surgery—the person in charge of the licensed residential child care centre in which the child resides; or
 - (ii) in respect of medical or dental treatment involving surgery—either the parent or guardian of the person of the child (as referred to in section 49 (1) of the Minors (Property and Contracts) Act 1970) or (where no such parent or guardian can reasonably be located or it is impracticable to obtain the consent of such a parent or guardian) the person in charge of the licensed residential child care centre in which the child resides;

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- (e) in relation to a child referred to in subsection (1) (e)—
- (i) in respect of medical or dental treatment not involving surgery—the person in whose care the child has been placed; or
 - (ii) in respect of medical or dental treatment involving surgery—either the parent or guardian of the person of the child (as referred to in section 49 (1) of the Minors (Property and Contracts) Act 1970) or (where no such parent or guardian can reasonably be located or it is impracticable to obtain the consent of such a parent or guardian)—
 - (A) if the child was placed in the care of a person by an authorised private fostering agency—the principal officer of that agency; or
 - (B) if the child was placed in the care of a person otherwise than by an authorised private fostering agency—the Director-General; or
- (f) in relation to a child referred to in subsection (1) (f)—
- (i) in respect of medical or dental treatment not involving surgery—the person in whose care the child has been placed; or
 - (ii) in respect of medical or dental treatment involving surgery—the Director-General;

“dental treatment” has the same meaning as it has in section 49 of the Minors (Property and Contracts) Act 1970;

“medical treatment” has the same meaning as it has in section 49 of the Minors (Property and Contracts) Act 1970, but does not include a special medical examination within the meaning of section 21 of this Act.

Special medical examinations

21. (1) This section applies to—

- (a) a child who resides in a facility, otherwise than as a member of the household of any other person who resides there; and
- (b) a child who resides in a licensed residential child care centre, otherwise than as a member of the household of any other person who resides there.

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(2) A special medical examination of a child to whom this section applies shall not be carried out—

- (a) in the case of a child who is under the age of 16 years—unless the Minister has informed such of the parents of the child as can reasonably be located of the rights of a parent under this section; and
- (b) in the case of a child who is of or above the age of 14 years—unless the Minister has informed the child of the rights of a child under this section.

(3) If a medical practitioner has advised the Minister that the medical practitioner considers that it is medically necessary to carry out a special medical examination of a child to whom this section applies, a second independent medical opinion as to whether the examination is medically necessary shall be obtained on the request of—

- (a) in the case of a child who is under the age of 14 years—a parent of the child;
- (b) in the case of a child who is 14 or 15 years of age—either a parent of the child or the child; or
- (c) in the case of a child who is of or above the age of 16 years—the child.

(4) A special medical examination of a child to whom this section applies shall not be carried out—

- (a) unless the Minister (after considering the advice of the medical practitioner referred to in subsection (3) and, if a second independent medical opinion was obtained under that subsection, that second opinion) is satisfied that the examination is medically necessary; and
- (b) unless—
 - (i) in the case of a child who is under the age of 14 years—a parent of the child has consented in writing to the examination being carried out;
 - (ii) in the case of a child who is 14 or 15 years of age—both a parent of the child and the child have consented in writing to the examination being carried out;

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- (iii) in the case of a child who is of or above the age of 16 years—the child has consented in writing to the examination being carried out; or
- (iv) the Children's Court has, under subsection (6), ordered that the examination be carried out.

(5) A consent is void if—

- (a) subsection (2) has not been complied with in relation to the child or parent by whom the consent was given; or
- (b) the child has not been counselled as referred to in subsection (8).

(6) The Children's Court may, on the application of the Minister and on its being satisfied that any consent to a special medical examination is unreasonably refused or cannot reasonably be obtained, order that the examination be carried out.

(7) If the Minister is satisfied that it is medically necessary to carry out a special medical examination of a child to whom this section applies and the consent or consents referred to in subsection (4) has or have been obtained or the Children's Court has, under subsection (6), ordered that the examination be carried out—

- (a) in the case of a child who is under the age of 14 years—a parent of the child;
- (b) in the case of a child who is 14 or 15 years of age—either a parent of the child or the child; or
- (c) in the case of a child who is of or above the age of 16 years—the child,

may nominate a medical practitioner to carry out the examination or may state a preference as to whether the examination shall be carried out by a male or female medical practitioner.

(8) Before a special medical examination of a child to whom this section applies is carried out, the child shall be counselled in relation to—

- (a) the nature of the examination and its effects; and
- (b) such other matters as may be prescribed by the regulations,

by a suitable person other than the medical practitioner who is to carry out the examination.

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(9) A special medical examination of a child to whom this section applies shall not be carried out otherwise than—

- (a) by the medical practitioner nominated under subsection (7);
- (b) if no medical practitioner has been so nominated but a preference has been stated under subsection (7)—by a medical practitioner nominated by the Minister in accordance with the preference so stated;
- (c) if no medical practitioner has been so nominated and a preference has not been so stated—by a medical practitioner nominated by the Minister; or
- (d) if the Minister is of the opinion that it is impracticable for the examination to be carried out by the medical practitioner so nominated or in accordance with the preference so stated—by a medical practitioner nominated by the Minister.

(10) If a special medical examination of a child to whom this section applies is carried out—

- (a) pursuant to a consent referred to in subsection (4) (b) given by a parent of the child; or
- (b) pursuant to an order of the Children's Court under subsection (6),

and the special medical examination is carried out in accordance with the provisions of this section, it shall be deemed, for the purposes of section 49 of the Minors (Property and Contracts) Act 1970, that a parent or guardian of the person of the child consented to the examination being carried out.

(11) The provisions of Division 3 of Part 5 apply to and in respect of the hearing of an application under subsection (6) in the same way as they apply to and in respect of the hearing of a care application under that Division.

(12) In this section—

“parent”, in relation to a child to whom this section applies, includes the person in whose care the child was immediately before the child became a child to whom this section applies;

“special medical examination” means a vaginal or anal examination or a penile examination involving the insertion of any thing into the penis.

Notification of child abuse

22. (1) Any person who forms the belief upon reasonable grounds that a child—

- (a) has been, or is in danger of being, abused; or
- (b) is a child in need of care,

may cause the Director-General to be notified of that belief and the grounds therefor, either orally or in writing.

(2) A person who, in the course of—

- (a) practising as a medical practitioner;
- (b) following another profession, calling or vocation prescribed by the regulations for the purposes of this subsection (other than the profession of a barrister or solicitor); or
- (c) exercising the functions of an office so prescribed,

has reasonable grounds to suspect that a child has been abused (whether the abuse consisted of sexual assault or any other form of abuse) is required to comply with subsection (4) in respect of those grounds unless the person is a minister of religion or a person who is declared by the regulations to be exempt from the provisions of this subsection.

(3) A person who, in the course of—

- (a) following a profession, calling or vocation prescribed by the regulations for the purposes of this subsection (other than the profession of a barrister or solicitor); or
- (b) exercising the functions of an office so prescribed,

has reasonable grounds to suspect that a child has been sexually assaulted is required to comply with subsection (4) in respect of those grounds unless the person is a minister of religion or a person who is declared by the regulations to be exempt from the provisions of this subsection.

(4) A person who is required to comply with this subsection in respect of having any grounds to suspect that a child has been abused (whether the abuse consisted of sexual assault or any other form of abuse) shall—

- (a) notify the Director-General of the name or a description of the child and those grounds; or
- (b) cause the Director-General to be so notified,

promptly after those grounds arise.

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(5) Regulations may be made with respect to the form of a notification under subsection (4) or with respect to the manner of making such a notification.

(6) A person who fails to comply with subsection (4) is guilty of an offence.

(7) Where the Director-General has been notified under subsection (1) or (4), the Director-General shall—

- (a) promptly cause an investigation to be made into the matters notified to the Director-General; and
- (b) if the Director-General is satisfied that the child in respect of whom the Director-General was notified may have been, or is in danger of being, abused or is a child in need of care, take such action as the Director-General considers appropriate, which may include reporting those matters to a member of the police force.

(8) Where a person notifies the Director-General pursuant to subsection (1) or (4)—

- (a) the notification shall not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- (b) no liability for defamation is incurred because of the making of the notification;
- (c) the notification shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;
- (d) the notification shall not be admissible in evidence in any proceedings before a court, tribunal or committee and no evidence of its contents shall be admissible; and
- (e) a person shall not be compelled in any proceedings before a court, tribunal or committee to produce the notification, or any copy of or extract from the notification, or to disclose, or give any evidence of, any of the contents of the notification.

(9) The provisions of subsection (8) (d) and (e) do not apply in relation to—

- (a) the admissibility in, or of, evidence of a notification under subsection (1) or (4);

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- (b) the production of such a notification, a copy thereof or an extract therefrom; or
- (c) the disclosure or giving of evidence of the contents of such a notification,

either—

- (d) in any proceedings before the Children's Court under Part 5, or a court hearing or determining an appeal from a decision of the Children's Court under Part 5, before which the child to whom the notification relates is brought for the purposes of proceedings under Part 5; or
- (e) in support of, or in answer to, a charge or allegation made in proceedings referred to in subsection (8) (d) or (e) against any person in relation to that person's exercising any of that person's functions in pursuance of this Act.

(10) Subsection (8) (d) does not apply if a notification under subsection (1) or (4) is tendered in evidence, or evidence in respect of such a notification is given—

- (a) by the person by whom the notification was caused to be made; and
- (b) in answer to a charge or allegation made against that person in proceedings referred to in subsection (8) (d).

Medical examination of abused children

23. (1) If the Director-General or a member of the police force believes on reasonable grounds (which may consist wholly or partly of information received by that person) that a child who is under the age of 16 years has been abused, the Director-General or the member of the police force, as the case may be, may serve a notice, in such form as may be prescribed by the regulations—

- (a) naming or describing the child; and
- (b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or some other place so specified for the purpose of the child's being medically examined,

on the person (whether or not a parent of the child) who appears to the Director-General or the member of the police force to have the care of the child for the time being.

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(2) A person who fails to comply with the requirement contained in a notice served on the person under subsection (1) is guilty of an offence unless it is proved that the person did not have the care of the child at the time the notice was served.

(3) If a person fails to comply with the requirement contained in a notice served on the person under subsection (1), an authorised officer or a member of the police force may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a hospital or elsewhere for the purpose of the child's being medically examined.

(4) When a child is presented to a medical practitioner under subsection (1) or (3)—

(a) the medical practitioner may carry out or cause to be carried out such medical examination of the child as the medical practitioner thinks fit, including examination at a hospital or place that is not the hospital or place specified in the notice referred to in subsection (1) in respect of the child;

(b) the Director-General shall, from the time at which the child is presented to the medical practitioner until the expiration of—

(i) such period of time as is reasonably necessary for the child to be examined in accordance with paragraph (a); or

(ii) 72 hours,

whichever period first expires, be deemed to be the guardian of the child for the purpose only of enabling the examination to be carried out; and

(c) the medical practitioner or other person by whom any such medical examination has been carried out shall prepare a written report of the examination for transmission to the Director-General.

(5) No proceedings lie against an officer, medical practitioner, member of the police force or person employed at any hospital or other place at which a child is examined for or on account of any act, matter or thing done or ordered to be done by that person, and purporting to be done for the purpose of carrying out or assisting in carrying out the provisions of this section, if that person has acted in good faith and with reasonable care.

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(6) If a medical practitioner or other person transmits a report to the Director-General pursuant to subsection (4) (c)—

- (a) the transmission of the report shall not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct; and
- (b) no liability for defamation is incurred because of the making of the report.

Power of search and removal of abused children

24. (1) An officer or member of the police force may apply to an authorised justice for a search warrant if the officer or member of the police force has reasonable grounds for believing that a person on whom a notice has been served under section 23 (1) has failed to comply with the requirement contained in the notice.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the warrant—

- (a) to enter any premises specified in the warrant;
- (b) to search the premises for the presence of the child the subject of the notice under section 23 (1); and
- (c) to remove the child and to present the child to a medical practitioner under section 23 (3).

(3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force or a medical practitioner, or both—

- (a) may accompany an officer executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

(5) It shall not be necessary in any search warrant issued under this section to name any particular child.

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(6) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a child pursuant to the warrant, use all reasonable force.

DIVISION 2—*Offences***Child abuse**

25. A person who abuses a child, or causes or procures a child to be abused, is guilty of an offence.

Neglect of children

26. A person, whether or not the parent of the child, who, without reasonable excuse, neglects to provide adequate and proper food, nursing, clothing, medical aid or lodging for a child in his or her care, is guilty of an offence.

Unauthorised removal of children, etc.

27. (1) A person who, without lawful excuse—

- (a) removes a child or other person from the care of a person into whose care or custody the child or other person has been placed under this Act; or
- (b) causes or procures a child or other person to be so removed,

is guilty of an offence.

(2) A person who—

- (a) is in charge of any hospital or other premises used for the purpose of receiving (whether or not for fee, gain or reward) more than 1 woman who is at the premises for the purposes of giving birth; and
- (b) permits a child who is not in the charge of the child's mother to be taken from the premises without first obtaining the consent of the Director-General,

is guilty of an offence.

Tattooing of children

28. A person who in any manner tattoos any part of the body of a child is guilty of an offence unless the person has first obtained the written consent of a parent of the child to tattoo the child in that manner and on that part of the child's body.

Leaving children unsupervised in motor vehicles

29. A person who leaves any child in the person's care in a motor vehicle without proper supervision for such period or in such circumstances that—

- (a) the child becomes or is likely to become emotionally distressed; or
- (b) the child's health becomes or is likely to become permanently or temporarily impaired,

is guilty of an offence.

PART 3**LICENSING OF CHILD CARE ARRANGEMENTS****DIVISION 1—*Child care services*****Application of Division**

30. This Division applies to such class of child care services as may be prescribed by the regulations for the purposes of this Division.

Unlicensed persons not to provide child care services

31. (1) A person who provides a child care service to which this Division applies, or who advertises himself or herself or holds himself or herself out as being willing to provide such a child care service, is guilty of an offence unless the person is the licensee under a licence for the child care service.

(2) The licensee under a licence for a child care service is guilty of an offence unless the authorised supervisor under the licence has the overall supervision of the provision of the child care service to which the licence relates.

(3) A person who has the overall supervision of the provision of the child care service to which a licence for a child care service relates is guilty of an offence unless the person is the authorised supervisor under that licence.

(4) A person who is the licensee or authorised supervisor under a licence for a child care service is guilty of an offence if the person contravenes or fails to comply with any condition of the licence that applies to the person.

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(5) A person who wilfully publishes any advertisement with respect to a child care service to which this Division applies, being a child care service that is not licensed, is guilty of an offence.

(6) A person who is the authorised supervisor under a licence for a child care service but is not the licensee under the licence is not guilty of an offence by virtue of subsection (1) in respect of any thing done by the person in the course of supervising the provision of the child care service to which the licence relates.

(7) A person is not guilty of an offence by virtue of subsection (1) in respect of any thing done by the person in accordance with directions given by the licensee under a licence for a child care service or by the authorised supervisor under such a licence if that thing is done by the person in the course of providing or assisting in providing the child care service to which the licence relates.

(8) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

Licences

32. (1) A licence for a child care service shall specify—

- (a) the person or body to whom or to which it is granted;
- (b) the child care service to which it relates; and
- (c) the person who is authorised by the licence to have the overall supervision of the provision of the child care service to which it relates.

(2) If a licence specifies that it is granted to a body, and the body consists of an unincorporated body of persons, then—

- (a) except as provided by paragraph (b)—the applicant for the licence; or
- (b) if a person who has been appointed by the body to be the licensee under the licence gives written notice to the Minister of the appointment and of the person's full name and residential address— the person so appointed,

shall, for the purposes of this Act, be deemed to be the person to whom the licence is granted.

(3) Schedule 1 applies to a licence for a child care service.

Termination of illegal child care services

33. (1) If a child care service is being provided for a child and an offence under section 31 is being committed in relation to the child care service (whether or not a person has been proceeded against for the offence), any person responsible for the child shall, on the request of an officer, forthwith cease to provide the child with the service.

Penalty: \$500.

(2) Subsection (1) does not apply to or in respect of a child who is related to the person by whom the offence under section 31 is being committed.

DIVISION 2—Residential child care centres**Unauthorised persons not to conduct residential child care centres**

34. (1) A person who conducts a residential child care centre, or who advertises himself or herself or holds himself or herself out as being willing to conduct a residential child care centre, is guilty of an offence unless the centre is licensed and the person is the licensed manager of the centre.

(2) A person who is the licensed manager of a licensed residential child care centre is guilty of an offence if the person contravenes or fails to comply with any condition of the licence for the centre that applies to the person.

(3) For the purposes of subsection (1), but without affecting the generality of that subsection, a person who is in charge of a residential child care centre shall be deemed to have the conduct of the centre.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

Unlicensed premises, etc., not to be used as residential child care centres

35. (1) The proprietor of a residential child care centre is guilty of an offence if the centre is not licensed.

(2) The licensee of a licensed residential child care centre is guilty of an offence if—

- (a) the centre does not comply with any condition of the licence for the centre that applies to the centre; or
- (b) the licensee contravenes or fails to comply with any condition of the licence for the centre that applies to the licensee.

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(3) The licensee of a licensed residential child care centre shall produce the licence for the centre to an officer requesting the licensee to do so.

Penalty: \$200.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

Licences

36. (1) A licence for a residential child care centre shall specify—

- (a) the person or body to whom or to which it is granted;
- (b) the premises to which it relates; and
- (c) the person who is authorised by the licence to have the conduct of the centre.

(2) If a licence specifies that it is granted to a body, and the body consists of an unincorporated body of persons, then—

- (a) except as provided by paragraph (b)—the applicant for the licence;
or
- (b) if a person who has been appointed by the body to be the licensee under the licence gives written notice to the Minister of the appointment, and of the person's full name and residential address—
the person so appointed,

shall, for the purposes of this Act, be deemed to be the person to whom the licence is granted.

(3) Schedule 1 applies to a licence for a residential child care centre.

Removal of children from unlicensed residential child care centres

37. (1) If—

- (a) a child resides—
 - (i) at a residential child care centre that is not licensed; or
 - (ii) at a licensed residential child care centre that is conducted otherwise than by the licensed manager of the centre;
- (b) an officer requests a person responsible for the child to remove the child from the residential child care centre; and
- (c) the child is not forthwith so removed,

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the child shall be deemed to be a child in need of care.

(2) Subsection (1) does not apply to or in respect of a child who is related to the person who has the care of the child at that centre.

Notification of deaths at licensed residential child care centres

38. (1) If a child dies at a licensed residential child care centre, the licensed manager of the centre shall forthwith cause notice of the death to be given to—

- (a) such of the parents of the child as can reasonably be located;
- (b) a member of the police force at the police station nearest the centre; and
- (c) the Director-General.

Penalty: \$500.

(2) Subsection (1) does not apply to or in respect of a child who is related to the licensed manager of the licensed residential child care centre.

Entry without warrant into premises of residential child care centres

39. (1) For the purpose of—

- (a) making an inquiry in relation to an application under this Act with respect to the premises of any residential child care centre;
- (b) ensuring that the provisions of this Act and the regulations with respect to the premises of any licensed residential child care centre, and of any conditions imposed on a licence with respect to any such premises, are being complied with; or
- (c) ensuring that the conditions of any exemption relating to the premises of a residential child care centre are being complied with,

any authorised officer may at any time, without any authority other than that conferred by this subsection, enter the premises and inspect them and observe and converse with any person apparently residing there.

(2) In exercising the powers conferred by subsection (1), an authorised officer may be accompanied—

- (a) by a medical practitioner; or
- (b) by a member of the police force,

or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently residing there.

(3) Nothing in subsection (2) authorises—

- (a) the examination of a child in contravention of section 20 or 21; or
- (b) the examination of any other person against that person's will.

DIVISION 3—*Private fostering agencies*

Unauthorised private fostering agencies prohibited

40. (1) A person who carries on private fostering services, or who advertises himself or herself or holds himself or herself out as being willing to carry on private fostering services, is guilty of an offence unless the person is an authorised private fostering agency.

(2) An authorised private fostering agency is guilty of an offence unless the principal officer of the agency has the overall supervision of the private fostering services carried on by it.

(3) A person who has the overall supervision of the private fostering services carried on by an authorised private fostering agency is guilty of an offence unless the person is the principal officer of the agency.

(4) A person who is an authorised private fostering agency or the principal officer of such an agency is guilty of an offence if the person contravenes or fails to comply with any condition of the agency's private fostering agency authority that applies to the person.

(5) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

Private fostering agency authorities

41. (1) A private fostering agency authority may be granted only to a non-Government organisation and shall specify—

- (a) the non-Government organisation to which it is granted; and
- (b) the person who is authorised by the authority to have the overall supervision of the provision of the private fostering services carried on under the authority.

(2) Schedule 1 applies to a private fostering agency authority.

DIVISION 4—*Fostering***Unauthorised fostering prohibited**

42. (1) A person (other than the holder of a fostering authority) who, for a period, or for periods in the aggregate, exceeding 50 days in any period of 12 months, has in his or her care one or more children for the purpose of fostering the children (whether or not for fee, gain or reward) is guilty of an offence.

(2) Subsection (1) does not apply to or in respect of—

- (a) a child who has been placed in the care of the person by an authorised private fostering agency;
- (b) a child who has been placed in the care of the person by, or with the written approval of, the Minister or the Director-General;
- (c) a child who is related to the person; or
- (d) a person who, at any licensed residential child care centre, acts as a foster parent to any children.

(3) The holder of a fostering authority is guilty of an offence—

- (a) if the holder acts as a foster parent—
 - (i) to more children (other than children who are related to the holder) than the maximum number of children specified in the authority;
 - (ii) where the fostering authority specifies the maximum number of children in any age group to whom it applies—to more children (other than children who are related to the holder) in any such age group than the maximum number of children so specified;
 - (iii) where the fostering authority specifies the child or children to whom it applies—to any child (other than a child who is related to the holder) other than the child or children so specified; or
 - (iv) where the fostering authority specifies the maximum period for which the person to whom it is granted may act as a foster parent in respect of any child or children or in respect of any child or children so specified—to any child (other than a child who is related to the holder) for a period exceeding the maximum period so specified; or
- (b) if the holder contravenes or fails to comply with any condition of the fostering authority.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of any person exempted from the operation of that provision under section 48.

Fostering authorities

43.. (1) A fostering authority—

- (a) shall specify the person to whom it is granted;
- (b) shall specify the maximum number (not exceeding 5) of children to whom it applies;
- (c) may specify the maximum number of children in any age group to whom it applies;
- (d) may specify the child or children to whom it applies; and
- (e) may specify the maximum period for which the person to whom it is granted may act as a foster parent in respect of—
 - (i) any child or children; or
 - (ii) where it specifies the child or children to whom it applies—the child or any of the children so specified.

(2) Schedule 1 applies to a fostering authority.

Unauthorised foster placements prohibited

44. (1) If—

- (a) a person places a child in the care of another person (other than the holder of a fostering authority) for the purpose of the child's being fostered by the other person; and
- (b) the other person has the care of the child (whether or not for fee, gain or reward) for a period, or for periods in the aggregate, exceeding 50 days in the period of 12 months after the child was placed in the person's care,

the person who so placed the child is guilty of an offence.

(2) Subsection (1) does not apply to or in respect of—

- (a) the placement of a child by an authorised private fostering agency;
- (b) the placement of a child by, or with the written approval of, the Minister or the Director-General; or

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- (c) the placement of a child in the care of a person to whom the child is related.

Lump sum payments for care of children

45. (1) Except pursuant to an order of a court specifying the terms on which the person may do so, a person shall not, in consideration of the receipt by the person of any sum of money or other valuable consideration, other than periodical payments of money—

- (a) calculated at not more than the rate per week prescribed by the regulations; and
- (b) made for not more than 4 weeks in advance,

act as a foster parent to any child unless the child is being cared for at the place where a guardian of the child resides.

(2) Subsection (1) does not apply to or in respect of—

- (a) the person in charge of a non-Government children's home for the time being approved by order of the Minister for the purposes of this subsection; or
- (b) the person in charge of a facility.

(3) The Director-General shall, if requested to do so by any person wishing to place a child in a non-Government children's home or in the care of the holder of a fostering authority, accept from that person a sum of money from which shall be made such payments, not exceeding periodical payments of money calculated in accordance with subsection (1) (a), as may be agreed upon to the person in charge of that home or to the holder of the fostering authority, as the case may be.

(4) A provision of this section does not, to the extent of the exemption, apply to or in respect of a person exempted from that provision under section 48.

Proceedings for offences

46. Proceedings for an offence under section 42 or 44 shall not be commenced otherwise than by, or with the written approval of, the Director-General.

DIVISION 5—*General***Reports**

47. (1) The Director-General shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the activities of each licensee under a licence for a child care service or a residential child care centre.

(2) A report shall deal with such matters as the Minister directs and with such other matters as the Director-General considers appropriate to include in the report.

Exemptions

48. (1) The Minister may, by notice in writing served on a person, exempt the person, either absolutely or subject to conditions, from the operation of section 31 (1), (2), (3) or (4), 34 (1) or (2), 35 (1) or (2), 40 (1), (2), (3) or (4), 42 (1) or (3) or 45 (1).

(2) A person on whom a notice has been served under this section is exempted from the operation of any provision specified in the notice, but only while the person does not contravene or fail to comply with any condition so specified to which the exemption is subject.

(3) The regulations may make provision for or with respect to the exemption of persons from the operation of the provisions referred to in subsection (1).

Revocation of exemptions

49. (1) If the Minister intends to revoke an exemption given under section 48 (1), the Minister shall cause to be served on the person to whom the exemption was given a notice in writing stating that, when 28 days have expired after service of the notice, the Minister intends to revoke the exemption on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the exemption should not be revoked.

(2) When 28 days have expired after a notice has been served on a person under this section, the Minister may, after considering any submissions made to the Minister during that period by the person on whom the notice was served, revoke the exemption by a further notice served on that person.

PART 4

EMPLOYMENT OF CHILDREN

Children not to be employed in certain cases unless licensed

50. (1) A person shall not—

- (a) employ a child who is not licensed under a children's employment licence;
- (b) cause or procure such a child to be employed; or
- (c) being a person having the care of such a child, consent to the child's being employed or allow the child to be employed,

for the purpose of the child's taking part in an entertainment or exhibition or offering any thing for sale.

Penalty: \$1,000.

(2) Subsection (1) does not apply to or in respect of the employment of a child—

- (a) if the child is of or above the age of 15 years;
- (b) if the child is under the age of 15 years but is the holder of a certificate of exemption (granted in respect of the child by or with the authority of the Minister for Education) exempting the child from attendance at school for the purpose of enabling the child to take employment;
- (c) if the child is employed for the purpose of an occasional entertainment or exhibition the net proceeds of which are to be wholly applied for the benefit of a school or charitable object; or
- (d) if the employment of the child is exempted from the operation of subsection (1) by the regulations.

(3) Subsection (1) does not, to the extent of the exemption, apply to or in respect of any person exempted from the operation of that subsection under subsections (4) and (5).

(4) The Minister may, by notice in writing served on a person, exempt the person, either absolutely or subject to conditions, from the operation of subsection (1).

(5) A person on whom a notice has been served pursuant to subsection (4) is exempted from the operation of subsection (1), but only while the person does not contravene or fail to comply with any condition specified in the notice to which the exemption is subject.

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(6) If the Minister intends to revoke an exemption given under subsection (4), the Minister shall cause to be served on the person to whom the exemption was given a notice in writing stating that, when 28 days have expired after service of the notice, the Minister intends to revoke the exemption on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the exemption should not be revoked.

(7) When 28 days have expired after a notice has been served on a person pursuant to subsection (6), the Minister may, after considering any submissions made to the Minister during that period by the person on whom the notice was served, revoke the exemption by a further notice served on that person.

(8) For the purposes of subsections (1) and (2), a child who takes part in an entertainment or exhibition carried on for profit or who offers any thing for sale shall be deemed to be employed, for the purpose of so taking part or offering the thing for sale, by the person conducting the entertainment or exhibition or owning the thing offered for sale, even though the child is neither an employee of that person nor receives any consideration for the child's so doing.

Children not to be employed for pornographic purposes

51. (1) A person shall not—

- (a) employ a child for pornographic purposes;
- (b) cause or procure a child to be so employed; or
- (c) being a person having the care of such a child, consent to the child's being so employed or allow the child to be so employed.

Penalty: \$5,000 or imprisonment for 3 years, or both.

(2) For the purposes of subsection (1), a child is employed for pornographic purposes if, in the course of his or her employment, the child is engaged in an activity of a sexual nature or is in the presence of another person who is so engaged.

Entertainment and performances by children

52. (1) A person who causes or allows a child to take part in an entertainment or exhibition, or in preparing, training or rehearsing for an entertainment or exhibition, in the course of which the child is in danger of suffering death or injury is guilty of an offence.

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(2) Where a child is employed—

- (a) to take part in an entertainment or exhibition and, by the nature of the entertainment or exhibition, the child is in danger of suffering death or injury; or
- (b) to take part in preparing, training or rehearsing for such an entertainment or exhibition,

and an accident causing actual bodily harm occurs to the child, the employer of the child, whether a parent of the child or not, is guilty of an offence.

(3) Where the employer of a child referred to in subsection (2) is not a parent of the child, the court before which the employer is convicted of the offence referred to in that subsection may award, as compensation for the bodily harm so caused, an amount (not exceeding the amount prescribed by the regulations) to be paid by the employer to the child or to some other person, named by the court, on behalf of the child.

(4) The recovery of compensation awarded under subsection (3) does not affect any other remedy available to the child, but any compensation so awarded shall be taken into account in any other proceedings by or on behalf of the child for or in respect of the same bodily harm.

Licences to employ children for certain purposes

53. (1) In this section, a reference to a child does not include a reference to—

- (a) a child who is of or above the age of 15 years; or
- (b) a child who is under the age of 15 years but is the holder of a certificate of exemption (granted in respect of the child by or with the authority of the Minister for Education) exempting the child from attendance at school for the purpose of enabling the child to take employment.

(2) The Director-General may, on application made by or on behalf of a child, grant a licence authorising the child to be employed for the purpose of taking part in any entertainment or exhibition or offering any thing for sale, being an entertainment, exhibition or thing specified or of a kind specified in the licence.

(3) Subject to subsection (6), a licence shall be in force—

- (a) for such times and during such periods as may be prescribed by the regulations; and

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(b) subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Director-General may, in a particular case, determine.

(4) The times for which a licence is in force, the periods during which it is in force and the conditions to which it is subject shall be endorsed on the licence.

(5) A licence shall not be granted under subsection (2) unless the Director-General is satisfied that the child is fit to be employed and that proper provision has, in the manner specified in the application, been made to safeguard the health, welfare and education of the child.

(6) A licence shall not authorise a child to be employed between the hours of 10 p.m. on any day and 6 a.m. on the following day.

(7) A licence may, at any time, be varied or cancelled by the Director-General.

Occupational health and safety legislation

54. Nothing in this Part limits the effect of the Occupational Health and Safety Act 1983 or the associated occupational health and safety legislation within the meaning of that Act.

PART 5

CHILDREN IN NEED OF CARE

DIVISION 1—*Preliminary*

Objects of Part

55. The objects of this Part are to ensure that children in need of care are provided with assistance and supportive services, the provision of that assistance and those services being based on the premises that—

- (a) the welfare and interests of children are to be given paramount consideration;
- (b) children are entitled to special protection and to opportunities and facilities to enable them to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity;

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- (c) children, for the full and harmonious development of their personalities, need love and understanding and, towards that end, should, wherever possible, grow up in the care and under the responsibility of their parents, but if that is not possible, in an environment of affection and moral and material security and, in the case of children of tender years, should not, except in exceptional circumstances, be separated from their parents;
- (d) continuing contact between children and their parents should be encouraged in situations where, pursuant to legal proceedings, children have been separated from their parents;
- (e) children should be protected against all forms of neglect, cruelty and exploitation;
- (f) responsibility for the welfare of children belongs primarily to their parents, but if not fulfilled devolves upon the community; and
- (g) except in exceptional circumstances or pursuant to legal proceedings, there should be no interruption of relationships between children and their parents contrary to the wishes of children and their parents.

Interpretation

56. In this Part—

“care application” means an application under section 57.

DIVISION 2—*Care applications***Care applications**

57. (1) An application for the making of an order under section 72 in respect of a child may be made—

- (a) by the Director-General; or
- (b) by any parent of the child who has the custody of the child if it is alleged that the child is in need of care on the grounds that there is a substantial and presently irretrievable breakdown in the relationship between the child and that parent.

(2) Such an application shall specify the grounds on which it is alleged that the child is in need of care.

(3) Such an application shall not be made by the Director-General unless the Director-General is satisfied that no adequate alternative means are available to provide for the welfare of the child.

Service of care applications

58. (1) A person who makes a care application shall, as soon as practicable after the application is made, cause a copy of the application (on which is endorsed a notice specifying the time, date and place set down for the hearing of the application) to be served on—

- (a) in the case of a child who is of or above the age of 10 years—the child;
- (b) each person responsible for the child who can reasonably be located;
- (c) in the case of a child who is residing in a non-Government children's home—the person in charge of the home; and
- (d) if the application is made by a parent of the child—the Director-General.

(2) Failure to serve a copy of a care application in accordance with subsection (1) does not vitiate the decision of the Children's Court on the application.

Removal of children pursuant to order of the Children's Court

59. (1) If a care application has been made with respect to a child—

- (a) the Children's Court may make an order for the removal of the child from any premises; and
- (b) an authorised officer, or a member of the police force, may, pursuant to the order, enter the premises, search the premises for the presence of the child and remove the child from the premises.

(2) An authorised officer, or a member of the police force, may, for the purposes of entering and searching premises and removing a child pursuant to an order in force under subsection (1), use all reasonable force.

Removal of children without warrant

60. (1) An authorised officer, or a member of the police force, may, without any authority other than that conferred by this subsection—

- (a) enter any premises in which the officer or member of the police force suspects on reasonable grounds that there is a child in need of care by virtue of the child's being in immediate danger of abuse;
- (b) search the premises for the presence of any such child; and
- (c) remove any such child from the premises.

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(2) An authorised officer, or a member of the police force, may, for the purposes of entering and searching premises and removing a child pursuant to subsection (1), use all reasonable force.

Power of search and removal of children in need of care

61. (1) An officer or member of the police force may apply to an authorised justice for a search warrant if the officer or member of the police force has reasonable grounds for believing that there is in any premises a child in need of care.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the warrant—

- (a) to enter any premises specified in the warrant;
- (b) to search the premises for the presence of the child; and
- (c) to remove the child from the premises.

(3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force or a medical practitioner, or both—

- (a) may accompany an officer executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

(5) It shall not be necessary in any search warrant issued under this section to name any particular child.

(6) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a child pursuant to the warrant, use all reasonable force.

Care of children pending care proceedings

62. (1) If an officer or member of the police force removes a child from any premises under section 59, 60 or 61, the officer or member of the police force shall forthwith place the child in the care of the Director-General to be kept by the Director-General at a place approved by the Minister for the purposes of this section.

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(2) If a child has been removed from any premises under section 60 or 61 and placed in the care of the Director-General, the Director-General shall not keep the child in the Director-General's care for more than 3 days unless the Director-General has, before the expiration of that period, made a care application in respect of the child.

(3) If a child has been removed from any premises under section 59, 60 or 61 and placed in the care of the Director-General, the Director-General may, subject to any order of the Children's Court—

(a) discharge the child from the Director-General's care—

- (i) without any undertakings being given;
- (ii) upon the giving by a person responsible for the child of undertakings acceptable to the Director-General with respect to the care of the child;
- (iii) upon the giving by the child of undertakings acceptable to the Director-General with respect to the conduct of the child; or
- (iv) upon the giving of undertakings referred to in both subparagraph (ii) and subparagraph (iii); or

(b) keep the child in the Director-General's care or, where a person approved by the Director-General is willing to have the care of the child, place the child in the care of that person,

pending the hearing of the care application made or to be made in respect of the child.

(4) While a child is in the care of the Director-General, the Director-General may, at any time before the hearing of the care application commences, exercise any of the functions conferred on the Director-General by subsection (3) (a).

(5) In determining whether or not to exercise any function under subsection (3) or (4), the Director-General shall have regard only to the following matters:

- (a) any views expressed by the child as to whether the child wishes that function to be exercised;
- (b) any views expressed by the child as to whether the child intends to return to the care of the person responsible for the child;
- (c) whether the exercise by the Director-General of that function is likely to protect the welfare of the child;

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(d) whether the failure by the Director-General to exercise that function is likely to endanger the welfare of any other person.

(6) An undertaking referred to in subsection (3) shall be in writing signed by the person giving it and shall remain in force until the commencement of the hearing of the care application made or to be made in respect of the child to whom it relates.

(7) A child does not cease to be in the care of the Director-General merely because the child has been placed in the care of some other person under subsection (3) (b).

Duties of Director-General to give information to certain persons

63. (1) If the Director-General does not discharge a child from the Director-General's care, as referred to in section 62 (3) (a), the Director-General shall record the Director-General's reasons for not doing so and cause a copy of that record to be served on—

- (a) in the case of a child who is of or above the age of 10 years—the child; and
- (b) each person responsible for the child who can reasonably be located.

(2) If a child—

- (a) is the subject of a care application; and
- (b) is in the care of the Director-General under this Division,

the Director-General shall cause a document containing brief particulars of the laws under which an application may be made for the discharge of the child from the care of the Director-General to be served on—

- (c) in the case of a child who is of or above the age of 10 years—the child; and
- (d) each person responsible for the child who can reasonably be located.

(3) The Director-General shall cause a copy of any undertaking referred to in section 62 (3) to be served on the person giving it.

(4) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.

DIVISION 3—*Hearings***Attendance of witnesses, etc.**

64. In any proceedings under this Part with respect to a child, the Children's Court may require the attendance, at the place where the proceedings are being or are to be conducted, of the child and of any person responsible for the child.

Right of appearance

65. (1) In any proceedings under this Part with respect to a child—

- (a) the child and each person responsible for the child; and
- (b) the Director-General,

may appear in person in the proceedings, or be represented by a barrister or solicitor or, by leave of the Children's Court, by an agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

(2) In any proceedings under this Part with respect to a child, any other person who, in the opinion of the Children's Court, has a genuine concern for the welfare of the child to whom the proceedings relate may, by leave of the Children's Court, appear in person in the proceedings, or be represented by a barrister, solicitor or agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

Children's Court's powers with respect to representation for children

66. (1) In any proceedings under this Part with respect to a child, the Children's Court may appoint a person to act as guardian ad litem for the child.

(2) In any proceedings under this Part with respect to a child, the Children's Court may, if it appears to it that the child ought to be separately represented—

- (a) order that the child be separately represented; and
- (b) make such other orders as it thinks necessary for the purpose of securing separate representation for the child.

(3) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the Children's Court has made an order under subsection (2) (b).

Exclusion of general public from proceedings

67. (1) While the Children's Court is hearing proceedings under this Part with respect to a child—

- (a) any person (other than a person referred to in paragraph (b)) who is not directly interested in the proceedings shall, unless the Children's Court otherwise directs, be excluded from the place where the proceedings are being heard; and
- (b) any person who is engaged in preparing a report on the proceedings for dissemination through a public news medium shall, unless the Children's Court otherwise directs, be entitled to enter and remain in the place where the proceedings are being heard.

(2) While the Children's Court is hearing proceedings under this Part with respect to a child—

- (a) the Children's Court may direct the child to leave the place where the proceedings are being heard at any time during the proceedings if it is of the opinion that the prejudicial effect of excluding the child is outweighed by the psychological harm that is likely to be occasioned to the child if the child is allowed to remain there; and
- (b) the Children's Court may direct any person (other than the child) to leave the place where the proceedings are being heard at any time during the examination of any witness if it is of the opinion that it is in the interests of the child that such a direction should be given.

(3) The powers exercisable by the Children's Court under subsection (2) (b) may be exercised even if the person to whom a direction under that paragraph is given is directly interested in the proceedings.

(4) If the Children's Court gives a direction under subsection (2) (a) with respect to a child, it shall also give a direction under subsection (2) (b) with respect to all persons who are engaged in preparing reports of the proceedings for dissemination through a public news medium.

Publication of names, etc.

68. (1) The name of any child—

- (a) who appears as a witness before the Children's Court in any proceedings under this Part;
- (b) to whom any proceedings under this Part relate; or
- (c) who is mentioned or otherwise involved in any proceedings under this Part,

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shall not be published or broadcast, whether before or after the proceedings are disposed of.

(2) Any person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence.

(3) Subsection (1) does not prohibit—

(a) the publication or broadcasting of an official report of the proceedings of the Children's Court that includes the name of any child the publication or broadcasting of which would otherwise be prohibited by subsection (1); or

(b) the publication or broadcasting of the name of a child—

(i) in the case of a child who is under the age of 14 years at the time of publication or broadcasting—with the consent of the Minister; or

(ii) in the case of a child who is of or above the age of 14 years at the time of publication or broadcasting—with the consent of the child.

(4) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material that identifies the child or is likely to lead to the identification of the child.

Children's Court to explain proceedings to children

69. (1) In any proceedings under this Part with respect to a child, the Children's Court shall take such measures as are reasonably practicable to ensure that the child understands the proceedings and, in particular, that the child understands—

(a) the nature of any assertions made in the proceedings; and

(b) the legal implications of any such assertion.

(2) Without limiting the generality of subsection (1), the Children's Court shall, if requested by the child or by some other person on behalf of the child, explain to the child—

(a) any aspect of the Children's Court's procedure; and

(b) any decision or ruling made by the Children's Court,

in or in relation to the proceedings.

(3) Without limiting the generality of subsection (1), the Children's Court shall ensure that the child has the fullest opportunity practicable to be heard, and to participate, in the proceedings.

Procedure generally

70. (1) Proceedings under this Part shall be conducted with as little formality and legal technicality and form as the circumstances of the case permit.

(2) Proceedings under this Part are not criminal proceedings, but an order shall not be made under section 72 (1) (b) or (c) in respect of a child unless the Children's Court is satisfied that it is very highly probable that the child is in need of care.

(3) In any proceedings under this Part, the Children's Court is not bound by the rules of evidence but may, subject to section 71, consider any statement, document, information or matter that may, in its opinion, assist it in relation to the proceedings, whether or not the statement, document, information or matter would be admissible in accordance with those rules.

(4) In any proceedings under this Part, a member of the Children's Court may examine and cross-examine any witness to such extent as the member thinks proper for the purpose of eliciting information relevant to the exercise of the Children's Court's powers under this Part.

(5) In subsection (4), a reference to a member of the Children's Court includes a reference to an authorised Magistrate within the meaning of the Children's Court Act 1987.

Admissibility of certain statements

71. (1) Any statement or information made or given to a member of the police force by a child to whom any proceedings under this Part relate shall not be admitted in evidence in the proceedings unless—

(a) there was present at the place where, and throughout the period of time during which, it was made or given an adult (other than a member of the police force)—

(i) nominated by the child; or

(ii) belonging to a class of persons selected by the child,

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and the child was given (before the statement or information was made or given) an opportunity to consult with the adult in private;
or

(b) the Children's Court—

- (i) is satisfied that there was proper and sufficient reason for no such adult to have been present at the place where, or throughout the period of time during which, the statement or information was made or given; and
- (ii) considers that, in the particular circumstances of the case, the statement or information should be admitted in evidence in those proceedings.

(2) Subsection (1) does not apply in any proceedings on a care application that alleges that a child is in need of care—

- (a) because adequate provision is not being made, or is likely not to be made, for the child's care; or
- (b) because the child is being, or is likely to be, abused.

DIVISION 4—*Children's Court orders*

Children's Court's powers with respect to children in need of care

72. (1) If a care application is made with respect to a child, the Children's Court shall inquire into the matter and—

- (a) if it is not satisfied that the child is in need of care, it shall make an order dismissing the application;
- (b) if it is satisfied that the child is in need of care—
 - (i) it may make an order accepting such undertakings (given by a person responsible for the child) as it thinks fit with respect to the care of the child;
 - (ii) it may make an order accepting such undertakings (given by the child) as it thinks fit with respect to the child's conduct; or
 - (iii) it may make an order accepting undertakings referred to in both subparagraph (i) and subparagraph (ii); or

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- (c) if it is satisfied that the child is in need of care and that the making of an order under this paragraph is likely to result in a significant improvement in the standard of care being given to the child—
- (i) it may make an order placing the child under the supervision of an officer (whether or not on the giving of undertakings referred to in paragraph (b) (i) or (ii) or both);
 - (ii) where a suitable person is willing to have the custody of the child—it may make an order placing the child in the custody of that person (whether or not on the giving of undertakings referred to in paragraph (b) (i) or (ii) or both); or
 - (iii) it may make an order declaring the child to be a ward under this Act,

for such period expiring on or before the day on which the child attains the age of 18 years as it thinks fit.

(2) In considering a care application in respect of a child, the Children's Court shall have regard to—

- (a) the need to protect the welfare of the child;
- (b) the views of the child;
- (c) the importance of encouraging continuing contact between the child and the persons responsible for the child;
- (d) the importance of preserving the particular cultural environment of the child;
- (e) the practicability of services and facilities being provided to the child without the need for the making of an order under subsection (1) (b) or (c); and
- (f) the objects of this Part.

(3) The Children's Court may make an order under subsection (1) (b) or (c) in respect of a child even though the child is not then in need of care if the Children's Court is satisfied that—

- (a) the child was in need of care when the circumstances that gave rise to the relevant care application occurred or existed; and
- (b) the child would be in need of care but for the existence of arrangements for the care of the child made under section 62 or 77.

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(4) An undertaking referred to in subsection (1) shall be in writing signed by the person giving it and shall remain in force for such period (expiring on or before the day on which the child attains the age of 18 years) as may be specified in the undertaking.

(5) The Children's Court shall cause a copy of any undertaking referred to in subsection (1) to be served on the person giving it.

(6) If the Children's Court makes an order under subsection (1) (c), it shall cause a copy of the order to be forwarded to the Director-General.

(7) If—

- (a) an order is made with respect to a child under subsection (1) (c) (ii);
- (b) the person in whose custody the child is placed by the order is the principal officer of a private fostering agency; and
- (c) no undertakings of the kind referred to in subsection (1) (b) (i) were given by the principal officer on the making of the order,

the principal officer may place the child in the care of another person.

Restrictions on making orders under sec. 72

73. (1) An order shall not be made under section 72 (1) (c) in respect of a child unless—

- (a) the child is under the age of 16 years; and
- (b) the Children's Court is satisfied that the exercise of its power under section 72 (1) (b) would be wholly insufficient to meet the child's need for care.

(2) An order shall not be made under section 72 (1) (c) (iii) in respect of a child unless the Children's Court is satisfied that the exercise of its power under a preceding subparagraph of that paragraph would be wholly insufficient to meet the child's need for care.

(3) If the Children's Court is of the opinion that a child the subject of a care application has been brought up substantially in accordance with a particular culture or is regarded as belonging to a particular cultural group, the Children's Court shall not, unless the child has expressed a wish to the contrary, make an order under section 72 (1) (c) (i) or (iii) unless it has taken into account the practicability of making an order under section 72 (1) (c) (ii) placing the child in the custody of a person belonging to that cultural group.

(4) The Children's Court shall not make an order under section 72 (1) (c) in respect of a child if the order would be inconsistent with any order in relation to the child made by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children.

Assessment reports

74. (1) The Children's Court shall not make an order under section 72 (1) (c) (ii) or (iii) unless—

- (a) the Director-General has tendered to the Children's Court an assessment report, prepared in accordance with the regulations, with respect to the child;
- (b) the Director-General has caused copies of the report to be given to the child and to any other person appearing in the proceedings; and
- (c) the Children's Court has taken into account the matters contained in the report and any submissions made in relation to those matters by the persons referred to in paragraph (b).

(2) Such a report shall include, in relation to any case in respect of which the Children's Court has determined that a conflict of cultural factors exists, such advice as is appropriate to enable the Children's Court to make an appropriate order in relation to the child.

Variation of orders under sec. 72

75. (1) An application for the rescission or variation of an order under section 72 (1) (b) or (c) may be made—

- (a) by the Director-General;
- (b) by the child the subject of the order;
- (c) by a person responsible for the child; or
- (d) by any person who deems himself or herself to have a sufficient interest in the welfare of the child.

(2) The Children's Court is not required to hear or determine an application made to it with respect to a child by a person referred to in subsection (1) (d) unless it considers the person to have a sufficient interest in the welfare of the child.

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(3) If the Children's Court is satisfied, on an application made to it with respect to a child, that it is appropriate to do so—

- (a) it may, by order, vary or rescind any order under section 72 (1) (b) or (c); and
- (b) if it rescinds such an order—it may, in accordance with this Division, make any one of the orders that it could have made in relation to the child had a care application been made to it with respect to the child.

(4) Upon the making of an order under subsection (3) (a) or (b), the Children's Court shall cause notice of the order to be served on the Director-General.

(5) There is no limit to the number of applications that may be made under subsection (1) for the variation or rescission of an order under section 72.

DIVISION 5—*Adjournments*

Adjournments by the Children's Court

76. (1) The Children's Court shall not adjourn proceedings on a care application for a period exceeding 8 days on any one occasion if, on the adjournment, it makes an order under section 77 (1) with respect to the child to whom the application relates whereby the child is placed or continued in the care of the Director-General.

(2) Without limiting the generality of subsection (1), the Children's Court—

- (a) shall not adjourn proceedings on a care application for a period, or for periods in the aggregate, exceeding 8 days except with the consent of—
 - (i) in the case of a child who is of or above the age of 10 years—the child; and
 - (ii) each person responsible for the child, being a person who is appearing in, or is represented at, the proceedings,

given after they have received advice from a barrister or solicitor instructed to advise them on the question of the adjournment; and

- (b) shall not adjourn any such proceedings for a period, or for periods in the aggregate, exceeding 42 days.

Care of children during adjournments

77. (1) On the adjournment of proceedings on a care application with respect to a child, the Children's Court shall do one of the following things:

- (a) if the child is not in the care of the Director-General—
 - (i) it may refuse to make an order under subparagraph (ii), (iii), (iv) or (v);
 - (ii) it may make an order accepting such undertakings (given by a person responsible for the child) as it thinks fit with respect to the care of the child;
 - (iii) it may make an order accepting such undertakings (given by the child) as it thinks fit with respect to the conduct of the child;
 - (iv) it may make an order accepting undertakings referred to in both subparagraph (ii) and subparagraph (iii);
 - (v) it may make an order placing the child in the care of the Director-General;
- (b) if the child is in the care of the Director-General—
 - (i) it may make an order discharging the child from the care of the Director-General unconditionally;
 - (ii) it may make an order discharging the child from the care of the Director-General on the giving of undertakings referred to in paragraph (a) (ii) or (iii) or both;
 - (iii) it may make an order that the child continue in the care of the Director-General.

(2) In determining which order to make under subsection (1), the Children's Court shall have regard only to the following matters:

- (a) any views expressed by the child as to whether the child wishes the order to be made;
- (b) any views expressed by the child as to whether the child intends to return to the care of the person responsible for the child;
- (c) whether the making of the order is likely to protect the welfare of the child;
- (d) whether the failure by the Children's Court to make the order is likely to endanger the welfare of any other person.

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(3) An undertaking referred to in subsection (1) shall be in writing signed by the person giving it and shall remain in force for the period of the adjournment.

(4) An order shall not be made under a subparagraph of subsection (1) (a) or (b) unless the Children's Court is satisfied that the exercise of its power under a preceding subparagraph of that paragraph would be wholly insufficient to meet the child's need for care.

(5) If a child is placed or continued in the care of the Director-General and an application for the child to be discharged from the Director-General's care is made to the Director-General by the child or by a person responsible for the child, the Director-General shall, as soon as is reasonably practicable, refer the application to the Children's Court.

(6) Upon the making of any such application, the Children's Court may, under subsection (1) (b), make any one of the orders referred to in that paragraph in respect of the child.

(7) There is no limit to the number of applications that may be made under subsection (5) for the discharge of a child from the care of the Director-General.

Duties of the Children's Court to give information to certain persons

78. (1) If the Children's Court makes an order under section 77 (1) (a) (v) or (b) (iii), it shall record its reasons for doing so and cause a copy of the record to be served on—

(a) in the case of a child who is of or above the age of 10 years—the child; and

(b) each person responsible for the child who can reasonably be located.

(2) The Children's Court shall cause a copy of any undertakings referred to in section 77 (1) to be served on—

(a) in the case of a child who is of or above the age of 10 years—the child; and

(b) each person responsible for the child who can reasonably be located.

(3) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.

Enforcement of undertakings

79. (1) If proceedings on a care application with respect to a child are adjourned and—

- (a) the child, having been required by the Children's Court to attend at the time and place to which the proceedings are adjourned, does not so attend; or
- (b) an undertaking referred to in section 77 (1) given by or with respect to the child is not complied with during the period of adjournment,

the Children's Court may require the attendance of the child at a time and place determined by it.

(2) If a child is brought before the Children's Court and it is proved that an undertaking referred to in section 77 (1) given by or with respect to the child has not been complied with, the Children's Court may, under section 77 (1) (a), make any one of the orders referred to in that paragraph in respect of the child.

Adjournments by authorised justices prior to hearings

80. (1) If—

- (a) a care application has been made with respect to a child; and
- (b) the hearing of the application has not commenced,

an authorised justice may, on application made by the Director-General or by a person responsible for the child, exercise the powers of the Children's Court to adjourn the proceedings on the application.

(2) Not more than 2 adjournments may be granted under subsection (1) in respect of any one care application.

(3) An adjournment under subsection (1) shall not be granted—

- (a) in the case of the first such adjournment—for more than 3 days; or
- (b) in the case of the second such adjournment—for more than 2 days,

if, on the adjournment, the authorised justice makes an order under section 77 (1) whereby the child is placed or continued in the care of the Director-General.

(4) Proceedings adjourned by an authorised justice on a second occasion shall be adjourned to the Children's Court sitting at the place at which it appears to the justice the Children's Court will be sitting when the adjournment expires.

(5) The authorised justice by whom a second adjournment is granted shall, forthwith after the adjournment, transmit to an officer of the Children's Court employed at the place to which the application is adjourned all documents and depositions that are in the possession of the justice and that relate to the application.

(6) Sections 77-79 apply to an adjournment granted by an authorised justice in the same way as those sections apply to an adjournment granted by the Children's Court.

DIVISION 6—*Appeals*

Appeals

81. (1) Any person who is dissatisfied with a decision of the Children's Court under this Part may, in accordance with the rules of the District Court, appeal to the District Court against the decision.

(2) An appeal may not be taken by the Director-General except on a question of law.

(3) An appeal shall be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision was made, may be given on the appeal.

(4) In addition to any functions and discretions that the District Court has apart from this section, the District Court shall, for the purposes of hearing and disposing of an appeal, have all the functions and discretions that the Children's Court has under this Part.

(5) The decision of the District Court in respect of an appeal shall be deemed to be the decision of the Children's Court and shall be given effect to accordingly.

(6) Subject to any interlocutory order made by the District Court, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

(7) The provisions of Division 3 apply to and in respect of the hearing of an appeal under this section in the same way as they apply to and in respect of the hearing of a care application under that Division.

DIVISION 7—*Effect of orders under sec. 72***Supervision, etc., of children subject to orders under sec. 72**

82. (1) While a child is subject to an order in force under section 72 (1) (c) (i)—

- (a) the child and the premises in which the child resides shall be subject to inspection by an authorised officer; and
- (b) the child shall—
 - (i) accept the supervision of an authorised officer; and
 - (ii) obey all reasonable directions of the officer.

(2) While a child is subject to an order in force under section 72 (1) (c) (ii), the child and the premises in which the child resides shall be subject to inspection by an authorised officer.

Entry without warrant into certain premises

83. (1) For the purpose of inspecting any premises subject to inspection under section 82, an authorised officer may at any time, without any authority other than that conferred by this subsection, enter the premises and inspect them and observe and converse with any person apparently residing there.

(2) In exercising the powers conferred by subsection (1), an authorised officer may be accompanied—

- (a) by a medical practitioner; or
- (b) by a member of the police force,

or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently residing there.

(3) Nothing in subsection (2) authorises—

- (a) the examination of a child in contravention of section 20 or 21; or
- (b) the examination of any other person against that person's will.

Enforcement of undertakings

84. (1) If—

- (a) an undertaking referred to in section 72 (1) given by or with respect to a child is not complied with;

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- (b) a child placed in the custody of a person under section 72 (1) (c) (ii) ceases, without lawful authority, to be in that person's care; or
- (c) a direction referred to in section 82 (1) (b) (ii) given to a child is not obeyed,

the Children's Court may require the attendance of the child at a time and place determined by it.

(2) If a child is brought before the Children's Court and it is proved that—

- (a) an undertaking referred to in section 72 (1) given by or with respect to the child has not been complied with; or
- (b) a direction referred to in section 82 (1) (b) (ii) given to the child has not been obeyed,

then—

- (c) the Children's Court may vary or rescind any order under section 72 (1) (b) or (c); and
- (d) if the Children's Court rescinds such an order—it may, in accordance with Division 4, make any one of the orders that it could have made in relation to the child had a care application been made to it with respect to the child.

DIVISION 8—*General*

Application of Justices Act 1902 to secure attendance of witnesses, etc.

85. The provisions of the Justices Act 1902 relating to warrants and summonses for the attendance of witnesses in proceedings before justices for offences punishable on summary conviction apply to—

- (a) the attendance of witnesses in proceedings under this Part; and
- (b) the attendance of any person required under section 64, 79 or 84 to attend at a place at which proceedings under this Part are being or are to be conducted,

in the same way as those provisions apply to the attendance of witnesses in proceedings for such offences.

Care of children arrested under sec. 85

86. (1) If an officer or member of the police force arrests a child under a warrant referred to in section 85, the officer or member of the police force shall forthwith place the child in the care of the Director-General to be kept at a place approved by the Minister for the purposes of this section.

(2) If a child has been placed in the care of the Director-General in accordance with subsection (1), the Director-General shall, subject to any action taken by a justice under any of the provisions of the Justices Act 1902 referred to in section 85, cause the child to be brought before the Children's Court as soon as practicable.

Care of Aboriginal children

87. An Aboriginal child shall not be placed in the custody or care of another person under this Part unless—

- (a) the child is placed in the care of a member of the child's extended family, as recognised by the Aboriginal community to which the child belongs;
- (b) if it is not practicable for the child to be placed in accordance with paragraph (a) or it would be detrimental to the welfare of the child to be so placed—the child is placed in the care of a member of the Aboriginal community to which the child belongs;
- (c) if it is not practicable for the child to be placed in accordance with paragraph (a) or (b) or it would be detrimental to the welfare of the child to be so placed—the child is placed in the care of a member of some other Aboriginal family residing in the vicinity of the child's usual place of residence; or
- (d) if it is not practicable for the child to be placed in accordance with paragraph (a), (b) or (c) or it would be detrimental to the welfare of the child to be so placed—the child is placed in the care of a suitable person approved by the Director-General after consultation with—
 - (i) members of the child's extended family, as recognised by the Aboriginal community to which the child belongs; and
 - (ii) such Aboriginal welfare organisations as are appropriate in relation to the child.

Power of Supreme Court

88. (1) The Supreme Court may, at any time, make an order discharging a child who is in the care of the Director-General under this Part from the Director-General's care, whether or not on the giving of undertakings of the kind referred to in section 77 (1).

(2) If the Supreme Court makes an order discharging a child from the Director-General's care subject to the giving of undertakings, the undertakings shall, for the purposes of section 79, be deemed to be undertakings referred to in section 77 (1).

(3) There is no limit to the number of applications that may be made for the purposes of subsection (1) for the discharge of a child from the care of the Director-General.

(4) Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the custody and guardianship of children.

PART 6**WARDS AND PROTECTED PERSONS****Administration**

89. (1) In the administration of this Part, the welfare and interests of wards and protected persons shall be given paramount consideration.

(2) In determining any matter relevant to the welfare or interests of a ward or protected person, regard shall be had to the wishes of the ward or protected person.

Guardianship of wards

90. (1) The Minister is the guardian of a ward, and, subject to this Act, has the custody of a ward to the exclusion of any other person, until—

- (a) the ward attains the age of 18 years;
- (b) the guardianship of the Minister—
 - (i) is terminated by the Minister under subsection (2); or
 - (ii) is terminated by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children; or

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- (c) the ward ceases to be a ward by virtue of any other provision of this Act,

whichever first occurs.

- (2) The Minister may terminate the Minister's guardianship of a ward.

(3) Where the Minister terminates the Minister's guardianship of a child who is a ward, the child ceases to be a ward.

(4) The guardianship of a child who has ceased to be a ward shall be determined as if the child had never been a ward.

Functions of the Minister in relation to wards and protected persons

91. (1) The Minister—

- (a) shall provide for the accommodation, care and maintenance of wards and protected persons;
- (b) may make payments, at such rates as may be prescribed by the regulations, to persons having the care of wards or protected persons;
- (c) may direct the removal of any ward or protected person from one place to another;
- (d) may, subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Minister may determine, place any ward or protected person—
- (i) in the custody of a person in charge of a non-Government organisation; or
- (ii) for the purpose of the ward or protected person being fostered, in the custody of any person approved by the Minister,
- being a person who is willing to undertake the custody of the ward or protected person;
- (e) may terminate the custody of a ward or protected person who has been placed in the custody of a person referred to in paragraph (d) (i) or (ii); and
- (f) may direct that a ward be restored to the custody of a parent of the ward or be placed in the custody of any other person.

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(2) Payment to a person in respect of a ward or protected person shall not continue after the ward or protected person has attained the age of 15 years unless—

- (a) the payment is made for the purpose of securing education or vocational training on a full-time basis for the ward or protected person;
- (b) the ward or protected person is an invalid or is otherwise incapacitated; or
- (c) the case possesses unusual features which, in the opinion of the Minister, call for special consideration,

and the Minister authorises the making of the payment.

(3) This section is subject, in relation to a ward or protected person, to the requirements imposed by the provisions of this or any other Act or of any declaration, order or other thing under which the person became a ward or protected person.

Functions of the Minister in relation to former wards and protected persons

92. (1) The Minister may give to, or provide for, any person who has ceased to be a ward or protected person—

- (a) such assistance as the Minister was empowered to give to, or provide for, the person while the person was a ward or protected person; and
- (b) such other assistance (whether financial or other),

as, in the Minister's opinion, is reasonable having regard to the circumstances of the case.

(2) For the purpose of securing education or vocational training on a full-time basis for any person who has ceased to be a ward or protected person, the Minister may, subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Minister may determine, from time to time and for periods not exceeding 6 months at any one time, authorise the making of payments for that purpose as if the person were a ward or protected person.

(3) Any payment continued under the provisions of subsection (2) may, at the discretion of the Minister, be discontinued or varied at any time.

Wards or protected persons leaving custody, etc.

93. If a ward or protected person has, without lawful excuse, left, or been removed from, proper custody and the Minister is of the opinion that the ward or protected person should be returned to that custody, or be placed in the custody of some other person, the Minister may, by order in writing, direct that the ward or protected person be returned to proper custody, or be placed in the custody of that other person, as the Minister may specify in the order.

Search warrants

94. (1) An officer may apply to an authorised justice for a search warrant if the officer has reasonable grounds for believing that a ward or protected person the subject of an order in force under section 93 may be found in any premises.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or officers named in the warrant—

- (a) to enter any premises specified in the warrant;
- (b) to search the premises for the presence of the ward or protected person;
- (c) to remove the ward or protected person from the premises; and
- (d) to return the ward or protected person to, or to place the ward or protected person in, the custody of the person specified in the order in force under section 93 in respect of the ward or protected person.

(3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force—

- (a) may accompany an officer executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

(5) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a ward or protected person pursuant to the warrant, use all reasonable force.

Reciprocity between States and Territories

95. (1) In this section—

“appropriate authority” means a person who, under—

(a) the law of a State of the Commonwealth other than New South Wales; or

(b) the law of a Territory,

corresponding to this Act, is competent to take action equivalent to the undertaking of guardianship of wards under this Act;

“interstate ward” means a child who is in New South Wales and who, immediately before entering New South Wales, was under the guardianship of an appropriate authority;

“Territory” means Territory of the Commonwealth, including a Territory under the trusteeship of the Commonwealth.

(2) The Minister—

(a) may make financial and other arrangements with an appropriate authority for the care of an interstate ward or a ward under this Act;

(b) may, at the Minister’s discretion, or in accordance with any such arrangements, return an interstate ward to the care of the appropriate authority for the interstate ward; and

(c) shall, where the appropriate authority for an interstate ward requests the Minister to do so, return the interstate ward to the care of that appropriate authority.

(3) The Minister shall provide for the accommodation, care and maintenance of an interstate ward to whom an arrangement referred to in subsection (2) applies as if the interstate ward were a ward under this Act.

(4) The Minister may, at the request of an appropriate authority, declare an interstate ward to be a ward under this Act.

(5) If an interstate ward who was made a ward for a specified period is declared to be a ward under this Act pursuant to subsection (4), then, notwithstanding any other provision of this Part, that person shall, if, upon the expiration of that period, that person is a ward under this Act, cease to be a ward under this Act by virtue of that declaration.

(6) If, in the opinion of the Minister—

(a) the law of a State of the Commonwealth other than New South Wales; or

(b) the law of a Territory,

contains a provision corresponding to subsection (4) and, upon the request of the Minister, a ward under this Act is declared, under that provision, to be a ward for the purposes of the law of that other State or that Territory, the functions conferred or imposed by or under this Act upon the Minister and any other person shall be deemed to have been suspended in relation to that ward while the ward remains under guardianship by virtue of the declaration under that provision, except in so far as those functions may be exercised in accordance with arrangements made under subsection (2) (a).

Jurisdiction of Supreme Court not affected

96. Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the custody and guardianship of children.

PART 7

CHILDREN'S BOARDS OF REVIEW

Interpretation

97. In this Part—

“Board of Review” means a Board of Review established under section 99;

“child in care” means—

- (a) a child who is in the custody of the Director-General pursuant to a temporary care arrangement or a temporary custody order;
- (b) a child who is residing in a residential child care centre, otherwise than as a member of the household of any other person who resides there;
- (c) a child who is being fostered by a person into whose care the child has been placed—
 - (i) by an authorised private fostering agency; or
 - (ii) by or with the written approval of the Minister or the Director-General;
- (d) a child who is in the custody of a person pursuant to an order in force under section 72 (1) (c) (ii); or

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- (e) a child who is a ward or protected person;
- “Deputy President” means the Deputy President of the Boards of Review;
- “full-time President” means a person who is required, by an instrument referred to in section 98 (4), to devote the whole of his or her time to the duties of his or her office as President;
- “member” means a member of the Panel;
- “Panel” means the Children’s Review Panel established by section 98;
- “President” means the President of the Boards of Review.

Children’s Review Panel

- 98. (1) There shall be a Children’s Review Panel.
- (2) The Panel shall consist of persons, appointed by the Governor—
 - (a) at least one of whom is an officer who, in the opinion of the Minister, has knowledge of or experience in administration, education, psychology or social work;
 - (b) at least one of whom is an Aboriginal who, in the opinion of the Minister, has knowledge of or experience in matters relating to the welfare of Aboriginal children; and
 - (c) the remainder of whom are persons who, in the opinion of the Minister, have suitable qualifications or experience warranting their appointment as members of the Panel.
- (3) Of the members of the Panel—
 - (a) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as the President of the Boards of Review; and
 - (b) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as the Deputy President of the Boards of Review.
- (4) The President shall, if required to do so by his or her instrument of appointment as President or by a subsequent instrument executed by the Governor, devote the whole of his or her time to the duties of his or her office as President.
- (5) Schedule 2 applies to the Panel.

Boards of Review

99. (1) The President may establish Boards of Review.

(2) Each Board of Review shall consist of 2 members of the Panel of whom not more than one is an officer.

(3) The President may establish Boards of Review generally for the purpose of carrying out reviews of children under this Part or may establish a Board of Review for the purpose of carrying out a particular review under this Part.

(4) In respect of any review concerning an Aboriginal child, a Board of Review shall include at least one member of the Panel who is an Aboriginal.

(5) The procedure of a Board of Review shall, subject to the regulations, be as directed by the President.

Functions of a Board of Review

100. (1) An application may be made to the President for the review of a child who has been a child in care for a period of 3 months or more.

(2) The Director-General shall ensure that such an application is made—

(a) in relation to—

(i) any child who is in the custody of the Director-General pursuant to a temporary care arrangement or temporary custody order;

(ii) any child who is being fostered by a person into whose care the child has been placed by or with the written approval of the Minister or the Director-General; and

(iii) any child who is a ward or protected person,

within 28 days after the expiration of 6 months from when the child became a child in care; and

(b) in relation to any child in care whose need for care is, in the opinion of the Director-General, not being met by the person in whose care or custody the child is placed.

(3) Without limiting the generality of subsection (2), such an application may be made—

(a) in any case—

(i) by the child;

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-
- (ii) by a person responsible for the child;
 - (iii) by a foster parent of the child;
 - (iv) by any person who deems himself or herself to have a sufficient interest in the welfare of the child; or
 - (v) by the Minister or the Director-General;
- (b) in the case of a child who is residing in a licensed residential child care centre—by the licensed manager of the centre;
 - (c) in the case of a child who is being fostered by a person into whose care the child has been placed—
 - (i) by an authorised private fostering agency—by the principal officer of the agency; or
 - (ii) by or with the written approval of the Minister or the Director-General—by the Minister or the Director-General;
 - (d) in the case of a child who is in the custody of a person pursuant to an order in force under section 72 (1) (c) (ii)—by a person responsible for the child; or
 - (e) in the case of a child who is residing in a facility—by a Visitor for the facility.
- (4) The President—**
- (a) shall, upon receipt of an application under this section in respect of a child who has been a child in care for a period of 3 months or more, request a Board of Review to carry out a review of the child; and
 - (b) may, at any time and for any reason, request a Board of Review to carry out a review of any child in care.
- (5) The President is not required to make a request with respect to a child in respect of whom an application has been made by a person referred to in subsection (3) (a) (iv) unless the President considers the person to have a sufficient interest in the welfare of the child.**
- (6) A Board of Review, when requested by the President to carry out a review of a child in care, shall—**
- (a) review such aspects of the welfare, status, progress and circumstances of the child as are referred to in the request, having particular regard to any arrangements that exist to encourage continuing contact between the child and the child's parents; and

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- (b) make a written report that—
 - (i) informs the Minister as to the results of the review; and
 - (ii) advises the Minister as to whether any change (and if so, what change) in the circumstances or status of the child would, in its opinion, promote the welfare and interests of the child.

(7) In the exercise of its functions under subsection (6) in relation to a review of a child in care, a Board of Review may—

- (a) inspect files, records or papers in respect of the child that are kept in the offices of the Department, any residential child care centre or any authorised private fostering agency; and
- (b) hear or receive submissions from any person, including the child.

Copies of report

101. When a Board of Review has made a report to the Minister in relation to a child in care, the Board—

- (a) shall give a copy of the report—
 - (i) to the person, if any, who applied for the review of the child; and
 - (ii) if the child is of or above the age of 10 years and if the Board considers it in the best interests of the child to do so—to the child; and
- (b) may give a copy of the report to any other person who it considers has a sufficient interest in the welfare of the child.

PART 8**COMMUNITY WELFARE APPEALS TRIBUNAL****Interpretation**

102. In this Part—

“Deputy President” means the Deputy President of the Tribunal;

“member” means a member of the Tribunal;

“President” means the President of the Tribunal;

“Tribunal” means the Community Welfare Appeals Tribunal established by section 103.

Constitution of Tribunal

103. (1) There shall be a Community Welfare Appeals Tribunal.

(2) The Tribunal shall consist of persons, appointed by the Governor, from one or more of the following classes of persons:

- (a) persons who, in the opinion of the Minister, have knowledge of and experience in administration, education, psychology, social work or child care;
- (b) medical practitioners;
- (c) barristers;
- (d) solicitors;
- (e) other persons who, in the opinion of the Minister, have suitable qualifications or experience warranting their appointment as members of the Tribunal.

(3) Of the members—

- (a) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as President of the Tribunal; and
- (b) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as Deputy President of the Tribunal.

(4) Schedule 3 applies to the constitution of the Tribunal.

(5) Schedule 4 applies to the procedure of the Tribunal.

Appeals

104. (1) An appeal may be made to the Tribunal against any of the following decisions:

- (a) a decision of the Minister or the Director-General, as the case may be—
 - (i) to grant a licence or authority;
 - (ii) to grant a consent;
 - (iii) to impose a condition on a licence or authority;

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- (iv) to revoke or vary any condition of, or to impose a further condition on, a licence or authority;
 - (v) to grant an application to vary a fostering authority; or
 - (vi) to suspend or revoke a licence or authority,
- as referred to in Schedule 1;
- (b) a decision of the Minister to make an order under section 3 (4) or (7);
 - (c) a decision of the Minister to grant an exemption under section 48 (1) or 50, to limit the extent of any such exemption or to impose conditions on any such exemption;
 - (d) a decision of the Minister or the Director-General to give an approval referred to in section 42 (2) or 44 (2);
 - (e) a decision of the Minister to delegate any of the Minister's functions referred to in section 11 (1) (b) or to revoke a delegation of any such function;
 - (f) a decision of the Minister or the Director-General, as the case may be, to refuse to make a decision referred to in paragraph (a), (b), (c), (d) or (e) that the Minister or Director-General, as the case may be, is empowered and has been requested to make;
 - (g) a decision of the Minister to refuse to terminate the Minister's guardianship of a ward under section 90 (2);
 - (h) a decision of the Minister to terminate the custody of a ward or protected person under section 91 (1) (e);
 - (i) a decision of the Minister or the Director-General belonging to such class of decisions as may be prescribed by the regulations.

(2) If, under subsection (1), an appeal may be made against a decision to refuse to do any thing, an appeal may, in such circumstances as may be prescribed by the regulations, be made against the failure to make the decision by the person empowered to make it as if that person had refused to make the decision.

Parties to appeals

105. (1) An appeal against a decision referred to in section 104 (1) may be made by any person who deems himself or herself to have a genuine concern in the subject-matter of the decision.

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(2) Without limiting the generality of subsection (1), an appeal against a decision concerning a child may be made by any person responsible for the child the subject of the decision.

(3) An appeal shall be made within a period of 28 days after the making of the decision appealed against or within such longer period as the Tribunal may (whether before or after the expiration of that period) determine.

(4) The parties to an appeal to the Tribunal with respect to a decision of the Minister or the Director-General are—

- (a) the Minister or the Director-General, as the case may require;
- (b) the person who appeals against the decision;
- (c) any person who was entitled to, but did not, appeal against the decision, but only if that person applies to the Tribunal to be made such a party and the application is approved by the Tribunal; and
- (d) any person who would, if the decision of the Minister or the Director-General were reversed or varied, be entitled to appeal against the decision as so reversed or varied, but only if that person applies to the Tribunal to be made such a party and the application is approved by the Tribunal.

(5) The Tribunal is not required to hear or determine an appeal made by a person referred to in subsection (1) unless it considers the person to have a genuine concern in the subject-matter of the decision to which the appeal relates.

Lodging of material documents with the Tribunal

106. (1) A person who has made a decision that is the subject of an appeal to the Tribunal shall, within a period of 28 days after receiving notice of the appeal, lodge with the Tribunal such number of copies as the Tribunal directs of every document or part of a document that is in that person's possession or under that person's control and is considered by that person to be relevant to the determination of the appeal.

(2) If it appears to the Tribunal that a party to an appeal would or might suffer hardship if the period prescribed by subsection (1) for lodging with it the copies of the documents referred to in that subsection is not shortened, the Tribunal may, upon request being made by that party, make an order directing that those copies be lodged with the Tribunal within such period (being a period of less than 28 days) after the person who made the decision receives or received notice of the appeal as is specified in the order.

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(3) If the Tribunal is of the opinion that particular other documents or that other documents included in a particular class of documents may be relevant to the determination of the appeal, it may cause to be served on the person who made the decision a notice in writing—

(a) stating that the Tribunal is of that opinion; and

(b) requiring the person to lodge with the Tribunal, within a time specified in the notice, such number of copies as it may specify of each of those other documents that is in that person's possession or under that person's control,

and a person on whom such a notice is served shall comply with the notice.

Operation and implementation of a decision pending appeal

107. (1) Subject to this section, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

(2) The Tribunal or the President may, on request being made by a party to an appeal and if the Tribunal or President is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the determination of the appeal, make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the appeal relates, or a part of that decision, as the Tribunal or President considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

(3) While an order is in force under subsection (2) (including an order that has previously been varied on one or more occasions under this subsection), the Tribunal or President may, on request being made by a party to the appeal, make an order varying or revoking the firstmentioned order.

(4) Subject to subsection (5), neither the Tribunal nor the President shall—

(a) make an order under subsection (2) unless the person who made the decision to which the appeal relates has been given a reasonable opportunity to make submissions to the Tribunal or the President, as the case may be, in relation to the matter; or

(b) make an order varying or revoking an order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3)) unless—

(i) the person who made the decision to which the appeal relates;

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- (ii) the person who requested the making of the order under subsection (2); and
- (iii) if the order under subsection (2) has previously been varied by an order or orders under subsection (3)—the person or persons who requested the making of the lastmentioned order or orders, have been given a reasonable opportunity to make submissions to the Tribunal or President, as the case may be, in relation to the matter.

(5) Subsection (4) does not prohibit the Tribunal or the President from making an order without giving to any person referred to in that subsection a reasonable opportunity to make submissions to the Tribunal or President in relation to a matter if the Tribunal or President is satisfied that, because of the urgency of the case or otherwise, it is not practicable to give that person such an opportunity but, where an order is so made without giving such an opportunity to the person who made the decision to which the appeal relates, the order does not come into operation until a notice setting out the terms of the order is served on the lastmentioned person.

(6) An order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3))—

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect—
 - (i) if a period for the operation of the order is specified in the order—until the expiration of that period or, if the appeal is decided by the Tribunal before the expiration of that period, until the decision of the Tribunal on the appeal comes into operation; or
 - (ii) if no period is so specified—until the decision of the Tribunal on the appeal comes into operation.

Powers of the Tribunal in respect of appeals

108. (1) The Tribunal, in determining an appeal, shall have and may exercise the functions of the Minister or the Director-General, as the case may be, with respect to the matter the subject of the appeal.

(2) In addition to its functions under subsection (1), the Tribunal, in relation to an appeal made by or on behalf of any person, may, having regard to—

- (a) the frequency of appeals made by or on behalf of that person; or

(b) any other matter that the Tribunal considers relevant, determine that no further right of appeal may be exercised by or on behalf of that person in respect of the matter the subject of the appeal until the expiration of such period as it may specify in its determination.

Effect of decisions of the Tribunal

109. Subject to section 110, a decision of the Tribunal with respect to proceedings before it shall be final and shall be given effect to as if it were the decision of the person in respect of whose decision the proceedings were brought.

Appeals to Supreme Court from decisions of the Tribunal

110. (1) A party to a proceeding before the Tribunal may appeal to the Supreme Court, on a question of law, from any decision of the Tribunal in that proceeding.

(2) If a person has appealed to the Tribunal against a decision, or has applied to be made a party to a proceeding before the Tribunal, and the Tribunal decides that the person was not entitled so to appeal or has not approved that person's application, the person may appeal to the Supreme Court from the decision of the Tribunal.

(3) An appeal by a person under subsection (1) or (2) shall be instituted—

(a) within the period of 28 days after the day on which a document setting out the terms of the decision of the Tribunal is furnished to the person; or

(b) within such further time as the Supreme Court (whether before or after the expiration of that period) allows.

(4) The Supreme Court shall hear and determine the appeal and may make such order as it thinks appropriate in the light of its decision.

(5) Without affecting the generality of subsection (4), the orders that may be made by the Supreme Court on an appeal include—

(a) an order affirming or setting aside the decision of the Tribunal; and

(b) an order remitting the case to be heard and decided again by the Tribunal, either with or without the hearing of further evidence, in accordance with the directions of the Supreme Court.

Power of entry

111. Section 83 applies to a member of the Tribunal in the same way as it applies to an authorised officer, but as if the powers conferred by that section were conferred on the member for the purpose of the member's functions as such a member instead of for the purposes specified in that section.

Reports

112. (1) The President shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Tribunal.

(2) A report shall deal with such matters as the Minister directs and with such other matters as the President considers appropriate to include in the report.

PART 9**MISCELLANEOUS****Service of notices, etc.**

113. (1) Any notice or other instrument required or authorised by this Act to be served on a person is sufficiently served if the notice or other instrument is—

- (a) delivered personally to the person;
- (b) left with a person who is apparently of or above the age of 16 years at, or sent by prepaid post to, the address last known to the Director-General of the person on whom the notice or other instrument is to be served; or
- (c) where no address of the person is known to the Director-General, published or otherwise dealt with as may be prescribed by the regulations.

(2) If such a notice or instrument is—

- (a) sent by post as referred to in subsection (1) (b), it shall be deemed to have been served at the time it would be delivered in the ordinary course of post; or

- (b) published or otherwise dealt with as referred to in subsection (1) (c), it shall be deemed to have been served at such time as may be prescribed by the regulations.

(3) Subsection (1) does not affect any other provision of this Act relating to the service of notices or other instruments.

Notices, etc., to be written in other languages

114. (1) If—

- (a) the Director-General is required, by or under this Act, to cause a notice or other instrument to be served on any person; and
- (b) it appears to the Director-General that the person is not literate in the English language but is literate in another language,

the Director-General shall, in so far as it is reasonably practicable, cause the notice or other instrument to be written in that other language.

(2) Failure to comply with subsection (1) does not vitiate any thing done under any other provision of this Act.

Disclosure of information

115. A person who discloses any information obtained in connection with the administration or execution of this Act is guilty of an offence unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act;
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Search warrants

116. (1) An officer or member of the police force may apply to an authorised justice for a search warrant if the officer or member of the police force has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened at any premises.

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(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the warrant—

- (a) to enter the premises; and
- (b) to inspect the premises for evidence of a contravention of this Act or the regulations.

(3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force—

- (a) may accompany an officer executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this Act or the regulations.

Obstruction of officers

117. A person who wilfully hinders, obstructs, delays, assaults or threatens with violence any person in the exercise of that person's functions under this Act is guilty of an offence.

Person falsely representing as an officer

118. A person, not being an officer, who—

- (a) assumes or uses the designation of officer or falsely represents himself or herself to be officially associated in any capacity with the Department; or
- (b) uses, for any fraudulent purpose, any designation which that person previously held in the Department,

is guilty of an offence.

False or misleading statements

119. A person shall not, in any application under this Act or in connection with an inquiry made by an officer in relation to any such application—

- (a) make a statement; or
- (b) furnish information,

that the person knows to be false or misleading in a material particular.

Penalty: \$500.

Penalties

120. A person who is guilty of an offence under this Act is, for every such offence, liable to a penalty not exceeding the penalty expressly imposed or, if no penalty is expressly imposed, to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

Proceedings for offences

121. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Evidence of young children

122. (1) If an authorised justice is satisfied by the evidence of a medical practitioner that the attendance before a court of a child to whom an offence against this Act or the regulations relates would be injurious or dangerous to the child's health, the justice may take in writing the statement of the child in pursuance of section 406 of the Crimes Act 1900 as if the child were dangerously ill, whereby the child's evidence would probably be lost if not forthwith taken.

(2) If, in any proceedings for an offence against this Act or the regulations relating to a child, a court is satisfied by the evidence of a medical practitioner that the attendance before the court of the child would be injurious or dangerous to the child's health, any deposition taken under section 406 of the Crimes Act 1900, or any statement of the child taken under subsection (1), may be read in evidence, and shall have effect in the same manner as if it were proved that the child were so ill as not to be able to travel or (in the case of any such statement) that there was no reasonable probability that the child would ever be able to travel or give evidence.

(3) If, in any proceedings for an offence against this Act or the regulations relating to a child, a court is satisfied by the evidence of a medical practitioner that the attendance of the child for the purpose of giving evidence before the court would be injurious or dangerous to the child's health, and it is further satisfied that the evidence of the child is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

Procedural matters

123. (1) In the absence of proof to the contrary, the authority of the Minister, the Director-General or any officer to exercise any function conferred or imposed on the Minister, the Director-General or any such officer by or under this Act, or to take any proceedings for the purposes of this Act, shall be presumed.

(2) In any proceedings under this Act with respect to a child, the Minister, the Director-General or any authorised officer shall be entitled to appear and to be heard.

(3) An averment in any complaint or information made or laid under this Act—

- (a) that any instrument, purporting to have been made under this Act and specified in the averment, was or was not, at a time or during a period so specified, in force under this Act and was or was not made, granted or issued subject to conditions so specified;
 - (b) that any officer has been appointed, authorised or directed, for the purposes of this Act or the regulations, by the Minister as stated in the averment;
 - (c) that any person was, on a date specified in the averment, a ward or protected person; or
 - (d) that any person was, on a date specified in the averment, an officer,
- shall be prima facie evidence of the facts averred.

Regulations

124. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the control and regulation of child care services and authorised supervisors of licensed child care services;
- (b) the control and regulation of residential child care centres and licensed managers of licensed residential child care centres;
- (c) the control and regulation of private fostering agencies and principal officers of authorised private fostering agencies;
- (d) the control and regulation of holders of fostering authorities;

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- (e) the control and regulation of the employment of children;
 - (f) the making of care applications under Part 5;
 - (g) the undertakings that may be given by or with respect to a child for the purposes of Part 5;
 - (h) the control and regulation of wards and protected persons; and
 - (i) registers for the purposes of this Act.
- (2) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.
- (3) A regulation may create an offence punishable by a penalty not exceeding \$500.

SCHEDULE 1

(Secs. 32,36,41,43)

PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES

Interpretation

1. In this Schedule—

“approved person” means—

- (a) in relation to a licence for a child care service—the authorised supervisor under the licence;
- (b) in relation to a licence for a residential child care centre—the licensed manager under the licence; or
- (c) in relation to a private fostering agency authority—the principal officer under the authority;

“authority” means a private fostering agency authority or a fostering authority;

“licence” means a licence for a child care service or a residential child care centre.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
*continued***Eligible applicants**

2. A person is not eligible to make an application for a licence for a residential child care centre unless the person is the proprietor of the premises for which the licence is applied for.

Grant of licences or authorities

3. (1) When a person makes an application to the Minister for a licence or authority, the Minister shall cause an inquiry to be made with respect to the application by officers and a report on the application to be made and furnished to the Minister by an officer.

(2) Upon receipt of the report, the Minister shall—

- (a) grant the licence or authority to the applicant; or
- (b) cause to be served on the applicant a notice stating that, when 28 days have expired after service of the notice, the Minister intends to refuse the licence or authority on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the licence or authority should not be refused.

(3) When 28 days have expired after a notice has been served under subclause (2) (b), the Minister shall, after considering any submissions made during that period by the applicant—

- (a) grant the licence or authority to the applicant; or
- (b) refuse the licence or authority and cause to be served on the applicant a notice stating the grounds on which the licence or authority has been refused.

(4) Without limiting the Minister's power to refuse a licence, the Minister may refuse a licence on the ground that, in the locality in which it is proposed—

- (a) to provide the child care service; or
- (b) to conduct the residential child care centre,

there are already available adequate child care services or residential child care centres, as the case may be, of a similar kind to that in relation to which the licence is applied for.

Change of approved persons under licences or private fostering agency authorities

4. (1) A licensee or holder of a private fostering agency authority may apply for the Minister's consent to the replacement of the approved person under the licence or authority by another person.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(2) When the Minister receives an application under subclause (1), the Minister shall, by notice served on the applicant, the approved person and the other person specified in the application—

(a) if the Minister considers the other person suitable to act as the approved person under the licence or authority—consent to the other person's becoming the approved person under the licence or authority; or

(b) refuse the application.

(3) When the Minister has consented to another person's becoming the approved person under a licence or authority—

(a) any person who was the approved person under the licence or authority immediately before the consent was given ceases to be the approved person under the licence or authority; and

(b) the other person shall be deemed to be the person specified under section 32 (1) (c), 36 (1) (c) or 41 (1) (b), as the case may be, in the licence or authority.

(4) A notice served for the purpose of giving a consent under subclause (2) shall specify any conditions, other than such conditions as may be prescribed by the regulations, which are in force when the notice is served and to which the licence or authority to which it relates is subject.

Duration of licences and authorities

5. (1) Unless sooner revoked, a licence or private fostering agency authority shall remain in force for such period, not exceeding 3 years, as is specified in the licence or authority, commencing on the date on which it is granted, or such later date as is specified in the licence or authority, as the case may be.

(2) If an application for a further licence or private fostering agency authority in relation to the same child care service, residential child care centre or private fostering agency, as the case may be, as that to which the licence or authority relates is made by the licensee under the licence or the holder of the authority while the licence or authority is in force, the licence or authority shall remain in force until the application is finally dealt with.

(3) Subject to any condition specified in the authority under section 43 (1) (e), a fostering authority shall remain in force until it is revoked.

Conditions of licence or authority

6. A licence or authority is subject to—

(a) any condition prescribed by the regulations for licences or authorities or for a class of licences or authorities to which the licence or authority belongs; and

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

- (b) any other condition in force in relation to the licence or authority, being a condition that the Minister thought fit to impose on the licence or authority and that was—
- (i) specified in the licence or authority when it was granted; or
 - (ii) subsequently imposed on the licence or authority under clause 7.

Revocation, variation or addition of conditions on licences and authorities

7. (1) If the Minister intends to revoke or vary any condition of a licence or authority or to impose a further condition on a licence or authority, the Minister shall cause to be served on—

- (a) the licensee under the licence or the holder of the authority; and
- (b) the approved person, if any, under the licence or authority,

a notice stating that, when 28 days have expired after service of the notice, the Minister intends to revoke or vary a condition of the licence or authority specified in the notice or to impose on the licence or authority a further condition specified in the notice, as the case may be, unless it has been established to the Minister's satisfaction that the Minister should not do so.

(2) When 28 days have expired after notices have been served under subclause (1), the Minister may, after considering any submissions made during that period by the person or persons on whom the notices were served—

- (a) revoke or vary the condition specified in the notices; or
- (b) impose the further condition, as specified in the notices, on the licence or authority to which the notices relate,

by a further notice served on that person or those persons.

(3) Notwithstanding subclauses (1) and (2), if the licensee under a licence or the holder of an authority has requested that a condition of the licence or authority be revoked or varied or that a further condition be imposed on the licence or authority, the Minister may, by notice served on the licensee or holder of the authority and the approved person, if any, under the licence or authority—

- (a) revoke or vary the condition; or
- (b) impose the further condition,

as the case may require.

Application for variation of matters specified in a fostering authority

8. Any matter specified in a fostering authority pursuant to section 43 (1) (b)–(e) shall, for the purposes of clauses 5 and 7, be deemed to be a condition of the fostering authority.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
*continued***Suspension and revocation of licence or authority**

9. (1) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a licence, are that—

- (a) the licensee under the licence has requested that the licence be suspended or revoked;
- (b) either the licensee or the approved person under the licence is no longer a fit and proper person to be concerned in the provision of the child care service or the conduct of the residential child care centre to which the licence relates;
- (c) either of those persons has contravened or failed to comply with a provision of this Act or the regulations that applies to that person;
- (d) in the case of a licence for a child care service—
 - (i) any premises on which the child care service is provided do not comply with any provision of this Act or the regulations, or of a condition of the licence, that applies to them; or
 - (ii) the authorised supervisor under the licence does not have the overall supervision of the provision of the child care service to which the licence relates; or
- (e) in the case of a licence for a residential child care centre—
 - (i) the premises of the centre do not comply with a provision of this Act or the regulations, or of a condition of the licence, that applies to them;
 - (ii) the premises of the centre are not being used as a residential child care centre;
 - (iii) the licensee (not being a person deemed to have been granted the licence under section 36 (2)) is not the proprietor of the premises of the centre; or
 - (iv) the licensed manager does not conduct the centre.

(2) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a private fostering agency authority, are that—

- (a) the authorised private fostering agency under the authority has requested that the authority be suspended or revoked;
- (b) either the authorised private fostering agency or the principal officer under the authority is no longer a fit and proper person to be concerned in the carrying on of private fostering services; or
- (c) either of those persons has contravened or failed to comply with a provision of this Act or the regulations that applies to that person.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(3) For the purposes of this clause, the prescribed grounds, in relation to the suspension or revocation of a fostering authority, are that—

- (a) the holder of the authority has requested that the authority be suspended or revoked;
- (b) the holder of the authority is no longer a fit and proper person to hold the authority; or
- (c) the holder of the authority has contravened or failed to comply with a provision of this Act or the regulations that applies to that person.

(4) If the Director-General intends to suspend or revoke a licence or authority, the Director-General shall cause to be served on—

- (a) the licensee under the licence or the holder of the authority; and
- (b) the approved person, if any, under the licence or authority,

a notice stating that, when 28 days have expired after service of the notice, the Director-General intends to suspend the licence or authority for a period (not exceeding 6 months) specified in the notice or to revoke the licence or authority, as the case may be, on the prescribed grounds specified in the notice, unless it has been established to the Director-General's satisfaction that the Director-General should not do so.

(5) When 28 days have expired after notices have been served under subclause (4), the Director-General may, after considering any submissions made during that period by the person or persons on whom the notices were served—

- (a) suspend the licence or authority to which the notices relate for the period (not exceeding 6 months) specified in the notices; or
- (b) revoke the licence or authority to which the notices relate,

by a further notice served on that person or those persons, which further notice shall specify the prescribed grounds on which the licence or authority is suspended or revoked, as the case may be.

(6) Notwithstanding subclauses (4) and (5), if the licensee under a licence or the holder of an authority has requested that the licence or authority be suspended or revoked, the Director-General may, by notice served on the licensee or holder of the authority and the approved person, if any, under the licence or authority—

- (a) suspend the licence or authority for the period (not exceeding 6 months) specified in the notice; or
- (b) revoke the licence or authority,

as the case may require.

*Children (Care and Protection) 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES —
continued

(7) A licence or authority shall be deemed not to be in force during any period for which it is suspended.

(8) If a licence or authority has been suspended under this clause for a period, the Director-General may, at any time during that period, restore the licence or authority by serving on both the person who was the licensee under the licence or the holder of the authority, and the person who was the approved person, if any, under the licence or authority, immediately before it was suspended a notice stating that the licence or authority is restored.

Temporary authorised supervisors and licensed managers

10. (1) The Minister may, by an instrument in writing, authorise a person specified in the instrument to act as the approved person under a licence or private fostering agency authority for a period so specified that occurs during an absence (by reason of illness or otherwise) of the approved person under the licence or authority.

(2) While a person is authorised by an instrument referred to in subclause (1) to act as an approved person under a licence or authority—

- (a) that person shall be deemed to be the person specified under section 32 (1) (c), 36 (1) (c) or 41 (1) (b), as the case may be, in the licence or authority; and
- (b) the conditions of the licence or authority that apply to the approved person under the licence or authority shall, for the purposes of section 31 (4), 34 (2) or 40 (4), as the case may require, be deemed to apply to the person so authorised as if that person were the approved person under the licence or authority.

(3) The Minister may, by notice served on the person specified in an instrument referred to in subclause (1) by which that person was authorised to act as the approved person under a licence or authority, revoke the instrument on any ground that the Minister considers sufficient.

SCHEDULE 2

(Sec. 98)

CONSTITUTION OF THE CHILDREN'S REVIEW PANEL

Age of members

1. A person of or above the age of 65 years is not eligible to be appointed as a member.

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued***Term and vacation of office, etc.**

2. (1) A member shall hold office for the period of 3 years commencing with the day from which the member is declared to be appointed in the instrument of the member's appointment or such shorter period as is specified in that instrument and is, if otherwise qualified, eligible for reappointment.

(2) The Governor may, for any cause that seems sufficient, remove a member from office.

(3) A member shall be deemed to have vacated office—

- (a) if the member dies;
- (b) if the member resigns office by instrument in writing addressed to the Minister;
- (c) if the member becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (d) upon the member's reaching the age of 65 years;
- (e) if the member is removed from office by the Governor; or
- (f) if, being an officer when the member was appointed a member, the member ceases to be an officer.

Remuneration, etc.

3. (1) A member (other than a full-time President or a public servant) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

(2) A full-time President is entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the full-time President.

(3) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

President and Deputy President

4. (1) The President or Deputy President holds office until ceasing to be a member and is eligible, if reappointed as a member, to be appointed or reappointed, as the case may be, as President or Deputy President.

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued*

(2) The Deputy President may exercise the President's functions—

(a) if the President—

(i) delegates those functions to the Deputy President under clause 5;

(ii) is absent from New South Wales; or

(iii) is prevented by illness or other incapacity from exercising those functions;
or

(b) if there is no person holding the office of President.

(3) While the Deputy President is entitled to exercise the President's functions, a reference in Part 7 and this Schedule to the President shall be construed as a reference to the Deputy President.

(4) While the Deputy President exercises the President's functions, the Deputy President shall be deemed to be the President.

(5) No person shall be concerned to inquire whether or not any occasion has arisen authorising the Deputy President to exercise the President's functions, and all acts or things done or omitted to be done by the Deputy President when exercising those functions shall be as valid and shall have the same consequences as if they had been done or omitted to be done by the President.

Delegation

5. (1) The President may delegate to the Deputy President the exercise of any of the President's functions.

(2) A delegation—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the President.

(3) The Deputy President is, in the exercise of a function delegated under this clause, subject to such conditions as are specified in the instrument of delegation.

(4) A delegation under this clause does not prevent the exercise of a function by the President.

Preservation of rights of full-time President previously public servant, etc.

6. (1) Subject to subclause (2) and to the terms of appointment, where the full-time President was, immediately before being appointed as full-time President—

(a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

*Children (Care and Protection) 1987*SCHEDULE 2—*continued*CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued*

- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as full-time President; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as full-time President and—

- (h) his or her service as full-time President shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee, and the Government shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(2) If the full-time President would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as full-time President or at any later time while holding office as full-time President) a contributor to any other superannuation scheme, and the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the Government in any case where he or she becomes a contributor to any such other superannuation scheme.

(3) Subclause (2) does not prevent the payment to the full-time President upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(4) The full-time President shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

(5) In this clause—

“statutory body” means any body declared under clause 8 to be a statutory body for the purposes of this Schedule;

Children (Care and Protection) 1987

SCHEDULE 2—*continued*

CONSTITUTION OF THE CHILDREN'S REVIEW PANEL—*continued*

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

Full-time President entitled to reappointment to former employment in certain cases

7. (1) A person who—

- (a) ceases to be a full-time President because of the expiration of the period for which the person was appointed or by reason of resignation;
- (b) was, immediately before being appointed as full-time President—
 - (i) an officer of the Public Service or a Teaching Service; or
 - (ii) an officer or employee of a statutory body; and
- (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

shall be entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as full-time President.

(2) Where subclause (1) does not apply to a person who—

- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
- (b) is after that appointment appointed as full-time President,

the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be full-time President, as are specified in the instrument of appointment as full-time President or as are agreed upon by the person and by or on behalf of the Government.

(3) In this clause—

“statutory body” means any body declared under clause 8 to be a statutory body for the purposes of this Schedule.

Declaration of statutory bodies

8. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

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SCHEDULE 3

(Sec. 103)

CONSTITUTION OF THE COMMUNITY WELFARE APPEALS TRIBUNAL

Age of members

1. A person of or above the age of 65 years is not eligible to be appointed as a member.

Term and vacation of office, etc.

2. (1) A member shall hold office for the period of 3 years commencing with the day from which the member is declared to be appointed in the instrument of the member's appointment or such shorter period as is specified in that instrument and is, if otherwise qualified, eligible for reappointment.

(2) The Governor may remove a member from office for inability, misbehaviour or failure to comply with the conditions of the member's appointment.

(3) A member shall be deemed to have vacated office—

- (a) if the member dies;
- (b) if the member resigns office by instrument in writing addressed to the Minister;
- (c) if the member becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (d) upon the member's reaching the age of 65 years; or
- (e) if the member is removed from office by the Governor.

Remuneration, etc.

3. (1) A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

(2) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

President and Deputy President

4. (1) The President or Deputy President holds office until ceasing to be a member and is eligible, if reappointed as a member, to be appointed or reappointed, as the case may be, as President or Deputy President.

(2) The Deputy President may exercise the President's functions—

- (a) if the President—
 - (i) delegates those functions to the Deputy President under clause 5;
 - (ii) is absent from New South Wales; or
 - (iii) is prevented by illness or other incapacity from exercising those functions;
- or

*Children (Care and Protection) 1987*SCHEDULE 3—*continued*CONSTITUTION OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

(b) if there is no person holding the office of President.

(3) While the Deputy President is entitled to exercise the President's functions, a reference in Part 8 and this Schedule to the President shall be construed as a reference to the Deputy President.

(4) While the Deputy President exercises the President's functions, the Deputy President shall be deemed to be the President.

(5) No person shall be concerned to inquire whether or not any occasion has arisen authorising the Deputy President to exercise the President's functions, and all acts or things done or omitted to be done by the Deputy President when exercising those functions shall be as valid and shall have the same consequences as if they had been done or omitted to be done by the President.

Delegation

5. (1) The President may delegate to the Deputy President the exercise of any of the President's functions.

(2) A delegation—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the President.

(3) The Deputy President is, in the exercise of a function delegated under this clause, subject to such conditions as are specified in the instrument of delegation.

(4) A delegation under this clause does not prevent the exercise of a function by the President.

SCHEDULE 4

(Sec. 103)

PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL

Composition of the Tribunal for the purpose of hearing proceedings

1. (1) The Tribunal shall, for the purpose of hearing proceedings, be constituted by not less than 3 and not more than 5 members nominated by the President.

(2) A nomination may be made generally or for a particular case or class of cases.

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

(3) The President shall notify a nominated member of the member's nomination as soon as practicable after the nomination is made.

(4) If the nominated members do not include the President or the Deputy President, the President shall nominate one of the members so nominated as Chairperson of the Tribunal and shall, when notifying the member so nominated of the member's nomination, notify the member also of the member's nomination as Chairperson.

Sittings of the Tribunal

2. If the Governor has appointed 6 or more members, more than one sitting of the Tribunal may be held at the same time.

Procedure at sittings of the Tribunal

3. The procedure for the arranging of, and for the conduct of business at, any sitting of the Tribunal shall, subject to this Schedule and any rules of the Tribunal made under clause 21, be as determined by the Tribunal.

Chairperson and votes of members

4. (1) At a sitting of the Tribunal—

- (a) if the President has nominated himself or herself as a member of the Tribunal—the President;
- (b) if the President has not nominated himself or herself, but has nominated the Deputy President, as a member of the Tribunal—the Deputy President; or
- (c) if the President has nominated a member as Chairperson as referred to in clause 1 (4)—the member,

shall preside as Chairperson of the Tribunal.

(2) Questions arising at a sitting of the Tribunal shall be determined by a majority of votes of the members present and voting.

(3) The member presiding as Chairperson at a sitting of the Tribunal shall have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

Preliminary conference

5. The Tribunal or, if the Tribunal so directs, a member may, before formally commencing to hear any proceedings with respect to any decision of the Minister or the Director-General, confer informally with the parties to the proceedings and make any determination with respect to the decision that is agreed to by the parties to the proceedings.

Adjournment

6. (1) The Tribunal may from time to time adjourn its proceedings to such times, dates and places, and for such reasons, as it thinks fit.

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

(2) In the absence from a sitting of the Tribunal of one or more, but not all, of the members nominated to constitute the Tribunal at that sitting, the remaining member or members may exercise the Tribunal's function under subclause (1).

Evidence

7. (1) The Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

(2) Proceedings before the Tribunal shall be by way of a new hearing and no weight shall be given to the decision of the Minister or the Director-General that is the subject of the proceedings.

Exclusion of the public

8. (1) Proceedings before the Tribunal shall be open to the public unless the Tribunal, in any particular case, determines that the proceedings shall be conducted wholly or partly in camera.

(2) The provisions of section 68 apply to proceedings before the Tribunal with respect to a child in the same way as they apply to proceedings referred to in those provisions.

Right of appearance

9. (1) In any proceedings before the Tribunal, the parties to the proceedings may appear in person or be represented by a barrister or solicitor or, by leave of the Tribunal, by an agent.

(2) The Tribunal, in proceedings before it with respect to a child, may appoint a person to act as guardian ad litem for the child.

(3) The Tribunal, in proceedings before it relating to a child, may, if it appears to the Tribunal that the child ought to be separately represented—

- (a) order that the child be separately represented; and
- (b) make such other orders as it thinks necessary for the purpose of securing separate representation for the child.

(4) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the Tribunal has made an order under subclause (3) (b).

Presentation of cases

10. A party to proceedings before the Tribunal may—

- (a) call and examine any witness;
- (b) cross-examine any witness called by another party;
- (c) examine any copy of any document or part of a document lodged with the Tribunal under section 106;

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

- (d) give evidence on oath;
- (e) produce documents and exhibits to the Tribunal; and
- (f) otherwise adduce, orally or in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the proceedings.

Powers of the Chairperson of the Tribunal

11. (1) The member presiding as Chairperson at a sitting of the Tribunal may—

- (a) by instrument in writing require any person on whom the instrument is served personally or by post—
 - (i) to appear before the Tribunal for the purpose of giving evidence; or
 - (ii) to produce to the Tribunal any document (including a document in the possession of or belonging to the Crown) that is relevant to the proceedings before the Tribunal,

at a time, date and place specified in the instrument;

- (b) require a person who appears before the Tribunal to be sworn for the purpose of giving evidence on oath; and
- (c) administer an oath referred to in paragraph (b).

(2) When a document is produced to the Tribunal pursuant to a requirement made under subclause (1), the Tribunal may take possession of the document for such period as it considers necessary for the purpose of hearing the proceedings before it.

Questions of a member

12. (1) A member may require a person (including an officer or employee of the Crown) who appears before the Tribunal to answer a question that is reasonably related to the proceedings before the Tribunal.

(2) A person is not excused from answering a question put to the person by a member on the ground that the answer might tend to incriminate the person but, where the person claims, before answering the question, that the answer might tend to incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings, other than proceedings under clause 13 (c) or proceedings in relation to a charge of perjury in respect of the answer.

Offences

13. A person shall not—

- (a) refuse, fail or neglect to comply with a requirement made of the person under clause 11 or 12 by a member to the extent to which the person is lawfully able to comply with the requirement;

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

- (b) in purported compliance with a requirement made of the person under clause 11 (1) (a) (ii) by a member, produce any document knowing it to be false or misleading in a material particular; or
- (c) not having been sworn, make a statement that is false or misleading in a material particular when the person is appearing before the Tribunal.

Penalty: \$100.

Witnesses' expenses

14. A person, other than an officer, who is required to appear or to give evidence before the Tribunal is entitled to be paid such allowances and expenses as the Minister may determine in respect of the person.

Form of decisions of the Tribunal

15. (1) A decision of the Tribunal with respect to proceedings before it shall be in the form of an instrument in writing setting out the reasons for the decision and shall be signed by the member who presided as Chairperson at the sitting of the Tribunal at which the decision was made.

(2) No decision of the Tribunal shall be vitiated merely because of any informality or want of form.

Costs

16. (1) The costs of any proceedings before the Tribunal shall be in the discretion of the Tribunal which may direct to and by whom, and in what manner, those costs or any part of those costs shall be paid.

(2) Any such costs may be recovered as a debt in any court of competent jurisdiction.

(3) A certificate purporting to be signed by the President and containing a statement as to any matters relating to the award of costs under this clause is admissible in evidence and is prima facie evidence of those matters.

Records of proceedings

17. (1) The member presiding as Chairperson at a sitting of the Tribunal shall cause a record of the proceedings at the sitting to be made.

(2) Records made for the purposes of subclause (1) may be destroyed after the expiration of such period as may be prescribed by the regulations.

Authentication of documents, etc.

18. (1) Any document requiring authentication by the Tribunal is sufficiently authenticated if it is signed by the President or the Deputy President.

(2) Judicial notice shall be taken of the signature of the President or the Deputy President when appearing on a document issued by the Tribunal.

*Children (Care and Protection) 1987*SCHEDULE 4—*continued*PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
*continued***Certain proceedings prohibited**

19. No proceedings lie against the Tribunal or a member for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal or member and purporting to be done, ordered, omitted or suffered, for the purpose of carrying out the provisions of this Act, if the Tribunal or member has acted in good faith and with reasonable care.

Application of the Defamation Act 1974

20. For the purposes of section 18 of the Defamation Act 1974, the proceedings of the Tribunal shall be deemed to be an inquiry within the meaning of that section.

Rules

21. (1) Five members nominated by the President (who shall include the President or the Deputy President, or both) may together make rules, not inconsistent with this Act or the regulations, for or with respect to the practice and procedure of the Tribunal.

(2) A provision of a rule may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(3) If there is an inconsistency between the rules and the regulations, the regulations shall prevail to the extent of the inconsistency.

(4) A rule shall—

- (a) be published in the Gazette;
- (b) take effect on and from the date of publication or a later date specified in the rule; and
- (c) be laid before each House of Parliament within 14 sitting days of that House after the date of publication.

(5) If either House of Parliament passes a resolution, of which notice has been given within 15 sitting days of that House after a rule has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.

(6) For the purposes of subclauses (4) and (5), sitting days shall be counted, whether or not they occur during the same session.

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SCHEDULE 4—*continued*

PROCEDURE OF THE COMMUNITY WELFARE APPEALS TRIBUNAL—
continued

- (7) Judicial notice shall be taken—
- (a) of a rule made or purporting to have been made under this Act and published in the Gazette; and
 - (b) of the date of its publication.
- (8) It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule have been complied with and performed.

