

**NORTHERN TERRITORY OF AUSTRALIA**

**CARE AND PROTECTION OF CHILDREN ACT**

As in force at 8 December 2008

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 8 December 2008. Any amendments that commence after that date are not included.

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## CARE AND PROTECTION OF CHILDREN ACT

**An Act about the care and protection of children, and for related purposes**

### **Chapter 1      Introduction**

#### **Part 1.1      Preliminary matters**

##### **1      Short title**

This Act may be cited as the *Care and Protection of Children Act*.

##### **2      Commencement**

This Act commences on the date fixed by the Administrator by *Gazette* notice.

##### **3      Act binds Crown**

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

#### **Part 1.2      What this Act is about**

##### **4      Objects of Act**

The objects of this Act are:

- (a) to promote the wellbeing of children, including:
  - (i) to protect children from harm and exploitation; and
  - (ii) to maximise the opportunities for children to realise their full potential; and
- (b) to assist families to achieve the object in paragraph (a); and

- (c) to ensure anyone having responsibilities for children have regard to the objects in paragraphs (a) and (b) in fulfilling those responsibilities.

## **5 Overview**

To achieve those objects, this Act provides for the following:

- (a) measures for safeguarding the wellbeing of children (see Chapter 2), in particular:
  - (i) mandatory reporting requirements for children at risk of harm or exploitation (see Part 2.1, Division 3); and
  - (ii) the powers of the Minister, the CEO and other officers to take actions for the wellbeing of children (see Parts 2.1 and 2.2); and
  - (iii) the powers of the Court to make orders for the wellbeing of children (see Parts 2.3 and 2.4);
- (b) measures for the prevention of harm and exploitation of children (see Chapter 3), in particular:
  - (i) screening for child-related employment (see Part 3.1); and
  - (ii) restriction of child employment (see Part 3.2); and
  - (iii) prevention of child deaths (see Part 3.3);
- (c) the regulation of children's services (see Chapter 4);
- (d) the establishment of the office of Children's Commissioner, the review teams and other administrative measures (see Chapter 5).

## **Part 1.3 Principles underlying this Act**

### **6 Principles**

- (1) The underlying principles of this Act are set out in sections 7 to 12.
- (2) Anyone exercising a power or performing a function under this Act must, as far as practicable, uphold those principles.
- (3) However, those principles do not affect the operation of any law in force in the Territory.

## **7 Responsibility of Territory Government**

The Northern Territory Government has responsibility for promoting and safeguarding the wellbeing of children and supporting families in fulfilling their role in relation to children.

## **8 Role of family**

- (1) The family of a child has the primary responsibility for the care, upbringing and development of the child.
- (2) In fulfilling that responsibility, the family should be able to bring up the child in any language or tradition and foster in the child any cultural, ethnic or religious values.
- (3) A child may be removed from the child's family only if there is no other reasonable way to safeguard the wellbeing of the child.
- (4) As far as practicable, and consistent with section 10, if a child is removed from the child's family:
  - (a) contact between the child and the family should be encouraged and supported; and
  - (b) the child should eventually be returned to the family.

## **9 Treating child with respect**

- (1) Each child is a valued member of society and is entitled to be treated in a way that respects the child's dignity and privacy.
- (2) Decisions involving a child should be made:
  - (a) promptly having regard to the child's circumstances; and
  - (b) in a way that is consistent with the cultural, ethnic and religious values and traditions relevant to the child; and
  - (c) with the informed participation of the child, the child's family and other people who are significant in the child's life.

## **10 Best interests of child**

- (1) When a decision involving a child is made, the best interests of the child are the paramount concern.
- (2) Without limiting subsection (1), consideration should be given to the following matters in determining the best interests of a child:
  - (a) the need to protect the child from harm and exploitation;

- (b) the capacity and willingness of the child's parents or other family members to care for the child;
- (c) the nature of the child's relationship with the child's family and other persons who are significant in the child's life;
- (d) the wishes and views of the child, having regard to the maturity and understanding of the child;
- (e) the child's need for permanency in the child's living arrangements;
- (f) the child's need for stable and nurturing relationships;
- (g) the child's physical, emotional, intellectual, spiritual, developmental and educational needs;
- (h) the child's age, maturity, gender, sexuality and cultural, ethnic and religious backgrounds;
- (i) other special characteristics of the child;
- (j) the likely effect on the child of any changes in the child's circumstances.

## **11 Child participation**

When a decision involving a child is made:

- (a) the child:
  - (i) should be given adequate information and explanation in a way that the child can understand; and
  - (ii) should be given the opportunity to respond to the proposed decision; and
  - (iii) should be given the opportunity to express the child's wishes and views freely; and
  - (iv) should be given assistance in expressing those wishes and views; and
- (b) those wishes and views should be taken into account, having regard to the child's maturity and understanding.

## **12 Aboriginal children**

- (1) Kinship groups, representative organisations and communities of Aboriginal people have a major role, through self determination, in promoting the wellbeing of Aboriginal children.



- (2) In particular, a kinship group, representative organisation or community of Aboriginal people nominated by an Aboriginal child's family should be able to participate in the making of a decision involving the child.
- (3) An Aboriginal child should, as far as practicable, be placed with a person in the following order of priority:
  - (a) a member of the child's family;
  - (b) an Aboriginal person in the child's community in accordance with local community practice;
  - (c) any other Aboriginal person;
  - (d) a person who:
    - (i) is not an Aboriginal person; but
    - (ii) in the CEO's opinion, is sensitive to the child's needs and capable of promoting the child's ongoing affiliation with the culture of the child's community (and, if possible, ongoing contact with the child's family).
- (4) In addition, an Aboriginal child should, as far as practicable, be placed in close proximity to the child's family and community.

## Part 1.4 Interpretation

### 13 Definitions

In this Act:

**Aboriginal** means:

- (a) a descendant of the Aboriginal people of Australia; or
- (b) a descendant of the indigenous inhabitants of the Torres Strait Islands.

**Aboriginal customary law** means:

- (a) customary law of the Aboriginal people of Australia; or
- (b) customary law of the indigenous inhabitants of the Torres Strait Islands.

**Aboriginal tradition** means:

- (a) tradition of the Aboriginal people of Australia; or

(b) tradition of the indigenous inhabitants of the Torres Strait Islands.

**action plan agreement**, see section 242(1).

**administrative guidelines**, means administrative guidelines made under section 191(1).

**adult** means:

- (a) a person at least 18 years of age; or
- (b) a person apparently at least 18 years of age if the person's age cannot be proved.

**advisor** means an advisor to the Committee mentioned in section 215.

**approved form** means a form approved by the CEO under section 302.

**assessment order** means an assessment order made under section 115(a) or (b).

**authorised officer**, see section 304(1).

**Authority** means the Screening Authority established by section 196(1).

**candidate**, see section 188(1).

**care plan**, see section 70(2).

**carer**, see section 78(1).

**caretaker** means a caretaker mentioned in section 240.

**CEO** means the Chief Executive Officer of the Department.

**child** means:

- (a) a person less than 18 years of age; or
- (b) a person apparently less than 18 years of age if the person's age cannot be proved.

**child**, for a Court order, see section 88(2)(e).

**child**, for Court proceedings, see section 88(2)(d).

**Child Deaths Register** means the Child Deaths Register established by section 212(1).

**child deaths**, see section 208.

**child is in the CEO's care**, see section 67(1).

**child is in need of protection**, see section 20.

**child leaves the CEO's care**, see section 67(2).

**child protection order**, for Part 2.4, see section 153.

**child protection proceeding**, for Part 2.4, see section 153.

**child-related authority**, see section 37(1).

**child-related employment**, see section 185.

**child-related services** means services that:

- (a) are provided to one or more of the following:
  - (i) a child (whether or not in need of protection) or young person who has left the CEO's care;
  - (ii) someone who is related to or is a family member of the child or person;
  - (iii) an organisation representing the interests of the child or person;
  - (iv) an organisation representing a community of which the child or person is a member; and
- (b) are in the nature of social services that relate to one or more of the following:
  - (i) the prevention of harm to, or exploitation of, a child;
  - (ii) the protection of a child;
  - (iii) services for the care or support of a child and the child's family (including children's services and other domestic support services);
  - (iv) a placement arrangement;
  - (v) medical or other health related services;
  - (vi) information and advisory services;

- (vii) counselling services;
- (viii) advocacy services;
- (ix) mediation services.

**child-related work**, see section 185(2).

**child welfare law**, for Part 2.4, see section 153.

**Children's Court**, for Part 2.4, see section 153.

**children's services**, see section 224.

**clearance notice** means a clearance notice issued under section 189(3)(a).

**Commissioner** means the person holding or occupying the office of Children's Commissioner established by section 259.

**Commissioner's staff** means the staff of the Commissioner as defined in section 293.

**Committee** means the Child Deaths Review and Prevention Committee established by section 209(1).

**complainant** means a person who makes a complaint.

**complaint** means a complaint, or a Part of a complaint, made under section 263.

**contact** includes:

- (a) any form of physical contact; and
- (b) any form of oral communication, whether face to face or by other means; and
- (c) any form of written communication.

**Convenor** means the person holding or occupying the office of Convenor of the Committee mentioned in section 209(4).

**coordinator**, of home-based services, see section 225(2)(b).

**Court**, see section 88(2)(a).

**Court order**, see section 88(2)(c).

**Court proceedings**, see section 88(2)(b).

**criminal history** means a criminal record as defined in section 3(1) of the *Criminal Records (Spent Convictions) Act*.

**customary** law or tradition includes:

- (a) Aboriginal customary law; and
- (b) Aboriginal tradition.

**daily care and control**, of a child, see section 21.

**daily care and control direction**, see section 123(1)(b).

**decision maker**, see section 254(5).

**Department** means the Agency administering this Act.

**educational institution**, see section 61 of the *Education Act*.

**engage**, for child-related employment, see sections 185 and 186.

**exploitation**, see section 16.

**family**, see section 19.

**family matters jurisdiction**, see section 88.

**harm**, see section 15.

**health practitioner**, see section 4 of the *Health Practitioners Act*.

**health services**, see section 4(1) of the *Health and Community Services Complaints Act*.

**holder** means:

- (a) for a clearance certificate – the person to whom the certificate is issued; or
- (b) for a licence – the person to whom the licence is granted.

**home-based services**, see section 225(1).

**home-based services provided for a home-based services scheme**, see section 225(2).

**home-based services not provided for a home-based services scheme**, see section 225(3).

**home order**, for Part 2.4, see section 153.

**home proceeding**, for Part 2.4, see section 153.

**hospital** includes:

- (a) a hospital as defined in section 5 of the *Medical Services Act*; and
- (b) a private hospital as defined in section 4 of the *Private Hospitals and Nursing Homes Act*.

**identity card** means an identity card issued under section 305.

**interim care plan**, see section 76(2).

**interim order**, for Part 2.4, see section 153.

**interstate law**, for Part 2.4, see section 153.

**interstate officer**, for Part 2.4, see section 153.

**investigation** means an investigation of a complaint by the Commissioner under Part 5 1.

**licence** means a licence granted under section 231.

**licence conditions**, see section 232(1).

**local government council** means a council constituted under the *Local Government Act*.

**long-term parental responsibility direction**, see section 123(1)(d).

**matter to which a complaint relates**, see section 264(3).

**mediation conference** means:

- (a) for a conference arranged by the CEO – see section 49;
- (b) for a conference ordered by the Court – see section 127 or 139(1)(e).

**member** means a member of the Committee mentioned in section 209.

**misleading information** includes information that is misleading because the information:

- (a) does not contain relevant information; or
- (b) contains misinformation.

**obstruct** includes resist and hinder.

**operator of child-related services** means a person who controls an operation for the provision of child-related services.

**operator of children's services** means:

- (a) a person providing services requiring a licence; or
- (b) a person providing services requiring registration; or
- (c) anyone else who controls an operation for the provision of children's services.

**operator providing home-based services** means:

- (a) if the services are provided for a home-based services scheme – the operator mentioned in section 225(2); or
- (b) otherwise – the operator mentioned in section 225(3).

**panel** means a review panel established under section 255.

**parent:**

- (a) for Part 2.4, see section 153; or
- (b) otherwise – see section 17.

**parental responsibility**, see section 22.

**participating State**, for Part 2.4, see section 153.

**placement arrangement**, see section 78.

**protected child**, see section 260(2)(a).

**protection order** means an order made under section 128(1).

**provisional protection**, see section 51.

**public authority** means any of the following:

- (a) an Agency;
- (b) the Police Force;
- (c) a local government council;
- (d) an office or body (whether incorporated or not) established for a public purpose by or under a law of the Territory;

(e) any other entity established for a public purpose (including a non-government organisation) that is prescribed by regulation.

**registration** means the registration of a person under section 247.

**regulation** means a regulation made under this Act.

**relative**, see section 18.

**required services**, for a complaint, see section 264(1).

**responsible Agency**, for a complaint, see section 267(3).

**responsible Minister**, for a complaint, see section 267(3).

**responsible service provider**, for a complaint, see section 264(1).

**reviewable decision**, see section 254.

**school**, see section 4(1) of the *Education Act*.

**sending State**, for Part 2.4, see section 153.

**service provider**, see section 260(2)(b) and (3).

**services requiring a licence**, see section 226.

**services requiring registration**, see section 227.

**sexual offence**, see section 3 of the *Sexual Offences (Evidence and Procedure) Act*.

**short-term parental responsibility direction**, see section 123(1)(c).

**State**, for Part 2.4, see section 153.

**supervision direction**, see section 123(1)(a).

**team** means a review team established under section 295.

**temporary placement arrangement** means an arrangement mentioned in section 46.

**temporary protection order** means a temporary protection order made under section 105.

**underlying principles of this Act**, see section 6.

**wellbeing of a child**, see section 14.



***working day:***

- (a) for Part 2.4, see section 153; or
- (b) otherwise – means a day that is not a Saturday, Sunday or public holiday as defined in the *Public Holidays Act*.

***young person who has left the CEO's care***, see section 68.

**14 Wellbeing of child**

The wellbeing of a child includes the child's physical, psychological and emotional wellbeing.

**15 Harm to child**

- (1) Harm to a child is any significant detrimental effect caused by any act, omission or circumstance on:
  - (a) the physical, psychological or emotional wellbeing of the child; or
  - (b) the physical, psychological or emotional development of the child.
- (2) Without limiting subsection (1), harm can be caused by the following:
  - (a) physical, psychological or emotional abuse or neglect of the child;
  - (b) sexual abuse or other exploitation of the child;
  - (c) exposure of the child to physical violence.

*Example*

*A child witnessing violence between the child's parents at home.*

**16 Exploitation of child**

- (1) Exploitation of a child includes sexual and any other forms of exploitation of the child.
- (2) Without limiting subsection (1), sexual exploitation of a child includes:
  - (a) sexual abuse of the child; and

- (b) involving the child as a participant or spectator in any of the following:
  - (i) an act of a sexual nature;
  - (ii) prostitution;
  - (iii) a pornographic performance.

## **17 Parent of child**

- (1) A parent of a child is the child's father, mother or any other person who has parental responsibility for the child.
- (2) A parent of an Aboriginal child includes a person who is regarded as a parent of the child under Aboriginal customary law or Aboriginal tradition.
- (3) However, any of the following must not be regarded as a parent of a child:
  - (a) the CEO;
  - (b) a person who has responsibility for the care of the child only on a temporary basis;
  - (c) a person, such as a teacher or childcare worker, who has responsibility in relation to the child because of a professional relationship.
- (4) To avoid doubt, a reference in this Act to the parents of a child includes a reference to the parent of a child who has only one parent.

## **18 Relatives of child**

- (1) A relative of a child is any of the following:
  - (a) a parent, grandparent or any other ancestor of the child;
  - (b) a step parent of the child;
  - (c) a sibling of the child;
  - (d) an uncle or aunt of the child;
  - (e) a cousin of the child;
  - (f) a person who is related to the child in accordance with:
    - (i) any customary law or tradition applicable to the child; or

- (ii) any contemporary custom or practice.
- (2) To avoid doubt, a relationship covered by subsection (1) may include a relationship that arises through common ancestry, adoption, marriage, de facto relationship or any customary law or tradition.

## **19 Family of child**

The family of a child includes:

- (a) the relatives of the child; and
- (b) the members of the extended family of the child in accordance with:
  - (i) any customary law or tradition applicable to the child; or
  - (ii) any contemporary custom or practice; and
- (c) anyone who is closely associated with the child or another family member of the child.

## **20 When child is in need of care and protection**

A child is in need of care and protection (child is in need of protection) if:

- (a) the child has suffered or is likely to suffer harm or exploitation because of an act or omission of a parent of the child; or
- (b) the child is abandoned and no family member of the child is willing and able to care for the child; or
- (c) the parents of the child are dead or unable or unwilling to care for the child and no other family member of the child is able and willing to do so; or
- (d) the child is not under the control of any person and is engaged in conduct that causes or is likely to cause harm to the child or other persons.

## **21 Daily care and control of child**

A person has daily care and control of a child if the person is entitled to exercise all the powers and rights, and has all the responsibilities, for the day to day care and control of the child.

## **22      Parental responsibility for child**

- (1) A person has parental responsibility for a child if the person is entitled to exercise all the powers and rights, and has all the responsibilities, for the child that would ordinarily be vested in the parents of the child.
- (2) Without limiting subsection (1), a person who has parental responsibility for a child:
  - (a) has daily care and control of the child; and
  - (b) is entitled to exercise all the powers and rights, and has all the responsibilities, in relation to the long term care and development of the child.

## **23      Declared offences for Criminal Code**

An offence against this Act is an offence to which Part IIAA of the Criminal Code applies.

*Note*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility (including burdens of proof and general defences) and defined terms used for offences.*

# **Chapter 2      Safeguarding wellbeing of children**

## **Part 2.1      General obligations and powers**

### **Division 1      Preliminary matters**

#### **24      Objects of Part**

The objects of this Part are:

- (a) to oblige members of the public to report cases of children at risk of harm or exploitation; and
- (b) to ensure the Minister, the CEO and authorised officers have the power to take appropriate actions to:
  - (i) protect children who are in need of protection; and
  - (ii) promote the wellbeing of children generally; and
  - (iii) promote the wellbeing of young persons who have left the CEO's care.

*Note*

*A child who is the subject of the exercise of a power under this Chapter may make a complaint to the Children's Commissioner about certain matters, see section 260.*

## **Division 2      Minister's powers**

### **25      Minister's powers**

- (1) The Minister may do anything for the adoption of a cooperative approach between the following in relation to the care and protection of children:
  - (a) families;
  - (b) Agencies and any other public authorities;
  - (c) any other individuals or organisations (including, for example, community groups, business entities and any other bodies).
- (2) The Minister may make policy guidelines for the exercise of a power or performance of a function by the CEO under this Act.
- (3) The Minister must, by *Gazette* notice, give notice about the making of the guidelines as soon as practicable after they are made.
- (4) The CEO must have regard to the guidelines in the exercise of the power or performance of the function.
- (5) The Minister may give direction to the CEO in relation to the exercise of a power or performance of a function by the CEO under this Act.
- (6) The CEO must comply with the direction.
- (7) An exercise of the Minister's power under this section must be consistent with this Act.

## **Division 3      General obligations about reporting**

### **26      Reporting obligations**

- (1) A person is guilty of an offence if the person:
  - (a) believes, on reasonable grounds, that a child:
    - (i) has been or is likely to be a victim of a sexual offence; or
    - (ii) otherwise has suffered or is likely to suffer harm or exploitation; and

- (b) does not, as soon as possible after forming that belief, report (orally or in writing) to the CEO or a police officer:
  - (i) that belief; and
  - (ii) any knowledge of the person forming the grounds for that belief; and
  - (iii) any factual circumstances on which that knowledge is based.

Maximum penalty:      200 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.
- (3) This section has effect despite any other provision in this Act or another law of the Territory.

## **27      Protection of person making report**

- (1) A person acting in good faith in making a report under section 26(1) is not civilly or criminally liable, or in breach of any professional code of conduct:
  - (a) for making the report; or
  - (b) for disclosing any information in the report.
- (2) In any proceedings before a court, except with the court's leave:
  - (a) the report or evidence of its contents is not admissible; and
  - (b) a person cannot be compelled to give evidence, or to produce a record, about the report or the identity of the maker of the report.
- (3) The leave may be granted only if:
  - (a) the report, evidence or record is of critical importance to the proceedings; and
  - (b) failure to grant the leave would prejudice the proper administration of justice.

## **28      What happens when police officer receives report**

- (1) A police officer must, as soon as practicable after receiving a report under section 26(1), notify the CEO about the receipt of the report.
- (2) The notification must include details in the report.

## **29 What happens when CEO receives report or notification**

- (1) The CEO must record the receipt of a report under section 26(1) or a notification about a report under section 28(1) in relation to a child.
- (2) The CEO may inform the following persons about actions that the CEO has taken or proposes to take for the child:
  - (a) the person who made the report;
  - (b) the police officer who gave the notification.

## **30 Duties of other persons**

- (1) Each of the following persons must ensure everyone providing services for a child under the person's control or direction is aware of the obligations under section 26(1):
  - (a) an operator of child-related services;
  - (b) an operator of children's services;
  - (c) the person in charge of a hospital or any other facility for health services;
  - (d) the person in charge of a school or any other educational institution.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Each person who engages another person in child-related employment must ensure the other person is aware of the obligations under section 26(1).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.

## **Division 4 Powers to inquire or investigate**

### **31 Object of Division**

The Object of this Division is to ensure the CEO and police officers have the power to take steps to determine whether the wellbeing of a child is at risk.

### **32      CEO may make inquiries**

- (1) The CEO may make inquiries about a child if the CEO receives information that raises concerns about the child's wellbeing.

*Note*

*The CEO may therefore exercise this power whether or not as a result of a report under section 26(1) or a notification under section 28(1).*

- (2) On completing the inquiries, the CEO must decide whether any further action should be taken for the child under this Part or Part 2. 3.

### **33      Police may make inquiries**

- (1) A police officer may make inquiries about a child if the officer receives information that raises concerns about the child's wellbeing.
- (2) Within 24 hours after completing the inquiries, the officer must give a report of the inquiries to the CEO.

### **34      Giving information for inquiries**

- (1) This section applies if inquiries about a child are being made under section 32 or 33 by the CEO or a police officer (the inquiring officer).
- (2) The inquiring officer may, for the inquiries, request any of the following persons to give the officer specified information about the child:
  - (a) a parent or another family member of the child;
  - (b) a police officer;
  - (c) a person employed or engaged by an Agency;
  - (d) an operator of child-related services;
  - (e) an operator of children's services;
  - (f) a health practitioner;
  - (g) the person in charge of a hospital or any other facility for health services;
  - (h) the person in charge of a school or any other educational institution;
  - (i) a service provider for a protected child;



- (j) any other person prescribed by regulation.
- (3) The person must comply with the request.  
Maximum penalty: 200 penalty units.
- (4) It is a defence to a prosecution for an offence against subsection (3) if:
  - (a) the defendant has a reasonable excuse; or
  - (b) the Commissioner of Police certifies in writing that compliance with the request would:
    - (i) prejudice the investigation of any unlawful conduct; or
    - (ii) disclose a confidential source of information in relation to the administration of law; or
    - (iii) prejudice the effectiveness of a method or procedure in relation to the administration of law; or
    - (iv) facilitate a person's escape from lawful custody; or
    - (v) endanger the safety of a person.

### **35 CEO's power to investigate**

- (1) The CEO may initiate an investigation to determine whether a child is in need of protection.
- (2) The CEO may do so only if the CEO believes on reasonable grounds the child might be in need of protection (whether or not inquiries about the child have been made under section 32 or 33).
- (3) The investigation must be conducted by an authorised officer.
- (4) On completing the investigation, the CEO must decide whether any further action should be taken for the child under this Part or Part 2.3.

### **36 Police officer's power to investigate**

- (1) A police officer may initiate an investigation to determine whether a child is in need of protection.
- (2) The police officer may do so only if the officer believes on reasonable grounds the child might be in need of protection (whether or not inquiries about the child have been made under section 32 or 33).



### **38      Access to information**

- (1) For an investigation about a child under section 35 or 36, the officer conducting the investigation may request a child-related authority to allow the officer:
  - (a) to have access to specified information about the child; and
  - (b) to do so without informing the parents of the child.
- (2) The officer may do so only if the officer reasonably believes:
  - (a) not to inform the parents is in the best interests of the child; or
  - (b) to inform the parents might compromise the investigation.
- (3) The person must comply with the request.

Maximum penalty:      200 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

### **39      Protection of persons providing access or information**

A person acting in good faith in complying with a request under section 34(2), 37(1) or 38(1) is not civilly or criminally liable, or in breach of any professional code of conduct, for complying with the request.

### **40      CEO may take action during inquiries or investigation**

This Division does not prevent the CEO from taking another action for a child under this Part, Part 2.2 or Part 2.3 while an action is being taken for the child under this Division.

## **Division 5      General powers of CEO**

### **41      Object of Division**

The object of this Division is to ensure the CEO has sufficient power:

- (a) to perform the CEO's functions under this Act; and
- (b) to take actions for the wellbeing of children generally (including actions with the voluntary participation of parents and for children who are not necessarily in need of protection).

## **42      What CEO may do generally**

- (1) The CEO may take any action that is consistent with this Act:
  - (a) to promote the wellbeing of children generally; or
  - (b) to promote the wellbeing of young persons who have left the CEO's care; or
  - (c) to provide proper facilities for this Act (including the acquisition and management of land and other property for this Act); or
  - (d) to undertake research, publication and collection of information for the objects of this Act; or
  - (e) to cooperate with other Agencies, non-government organisations or other persons or bodies for an action mentioned in paragraph (a), (b), (c) or (d); or
  - (f) to facilitate that cooperation (including the creation of procedures for that cooperation and the review of those procedures).
- (2) The CEO must have regard to the objects and underlying principles of this Act when acting under subsection (1).

## **43      CEO may request assistance**

- (1) The CEO may request a public authority to provide the CEO with specified assistance for the exercise of a power or the performance of a function under this Act.
- (2) The public authority must comply with the request if doing so:
  - (a) is consistent with its functions; and
  - (b) does not unduly prejudice the performance of its functions.

## **44      Child-related services**

- (1) The CEO may enter into an arrangement for:
  - (a) the provision of child-related services; and
  - (b) research and development to be carried out for child-related services; and
  - (c) the funding (in whole or part) of the services or the research and development.

- (2) However, the CEO must not do so unless the CEO is satisfied:
- (a) if the arrangement relates to the provision of children's services – the services are provided in accordance with Chapter 4; and
  - (b) the arrangement:
    - (i) is consistent with the underlying principles of this Act; and
    - (ii) furthers the objects of this Act.
- (3) This section does not limit section 42.

#### **45      Coordination assistance**

- (1) The CEO may provide assistance to persons or bodies in coordinating their effort to provide services (including child-related services) for a child or young person who has left the CEO's care, including assistance in:
- (a) convening a meeting of the persons or bodies; and
  - (b) drawing up a plan for the provision of the services.
- (2) This section does not limit section 42.

#### **46      Temporary placement arrangement**

- (1) The CEO may arrange for the temporary placement of a child who is residing with the parents of the child.
- (2) The arrangement is for the child:
- (a) to be taken into the CEO's care for a period not exceeding 2 months specified by the CEO; and
  - (b) to be placed under a placement arrangement subject to the conditions specified by the CEO.
- (3) The CEO may enter into the arrangement only if:
- (a) having regard to the wishes of the child, the CEO reasonably believes the arrangement will safeguard the wellbeing of the child; and
  - (b) the parents agree to enter into the arrangement; and
  - (c) if the child is at least 15 years of age – the child has consented to the arrangement.

- (4) The CEO has daily care and control of the child while the arrangement is in force.
- (5) The arrangement may be extended for further periods.
- (6) However:
  - (a) each extended period must not exceed 2 months; and
  - (b) in any case – the arrangement must cease to be in force 6 months after it was made.
- (7) The CEO may require the parents to make contributions towards the maintenance of the child while the arrangement is in force.
- (8) One or both of the parents may, at any time:
  - (a) terminate the arrangement; and
  - (b) request the CEO to return the child to them.
- (9) Subject to the operation of any other provisions in this Act and any other law of the Territory, the CEO must comply with the request within 48 hours after receiving the request.
- (10) This section does not limit section 42.

*Note*

*Unlike a placement arrangement resulting from other circumstances, the arrangement under this section is basically voluntary in nature.*

#### **47      Multiple arrangements**

This Division does not prevent the CEO from:

- (a) applying any provisions in this Division more than once for a person; or
- (b) applying more than one provision in this Division for a person (whether at the same time or at different times).

### **Division 6      Mediation conference**

#### **48      Object of Division**

The object of this Division is to ensure that, as far as possible, the wellbeing of a child is safeguarded through agreements between the parents of the child and other interested parties.

## **49      Mediation conference**

- (1) The CEO may arrange for a mediation conference to be convened for a child if:
  - (a) concerns have been raised about the wellbeing of the child; and
  - (b) the CEO reasonably believes the conference may address those concerns; and
  - (c) the parents of the child are willing to participate in the conference.
- (2) The CEO may do so whether or not the CEO has already taken any other action for the child under this Part, Part 2.2 or Part 2.3.
- (3) The conference may be convened for any purposes relating to those concerns as specified by the CEO.
- (4) Without limiting subsection (3), the conference may be convened for one or more of the following purposes:
  - (a) establishing the circumstances giving rise to those concerns;
  - (b) reviewing an arrangement that has been made for the care of the child;
  - (c) making recommendations about the care of the child;
  - (d) arriving at an agreement on the best means of safeguarding the wellbeing of the child.
- (5) The CEO must appoint a person (the convenor) who is approved by the parents of the child and has the qualifications or experience prescribed by regulation to convene the conference.
- (6) The convenor may invite the parents and other persons to attend the conference as the convenor considers appropriate.
- (7) The regulations may make any provision for the conference, including the following:
  - (a) any procedural and reporting requirements for the conference;
  - (b) the appointment of a person to represent the interests of the child in the conference;
  - (c) the making of any agreement arising from the conference;
  - (d) the powers and functions of the convenor.

## **Division 7      Provisional protection of child**

### **50      Object of Division**

The object of this Division is to ensure the CEO has the power to take urgent action for children who might be in need of protection.

### **51      When CEO may take child into provisional protection**

- (1) The CEO may take a child into provisional protection if:
- (a) the CEO reasonably believes:
    - (i) the child is in need of protection; and
    - (ii) the provisional protection is urgently needed to safeguard the wellbeing of the child; and
  - (b) no protection order or temporary protection order is in force for the child.

*Examples of urgency for subsection (1)(a)(ii)*

*1 The child is likely to suffer from harm or exploitation if the child is left at the place where the child is found.*

*2 A parent of the child is likely to remove the child from the child's usual place of residence to prevent access to the child by authorised officers after becoming aware of a proposed application for a protection order for the child.*

- (2) The CEO may take the child into provisional protection whether or not an assessment order for the child is in force.

### **52      Effect of provisional protection**

- (1) For the purposes of taking the child into provisional protection, an authorised officer may:
- (a) at any time, enter a place where the officer reasonably believes the child may be found; and
  - (b) search the place in order to find the child; and
  - (c) stay at the place for as long as the officer considers reasonably necessary to find the child; and
  - (d) remove the child from the place; and
  - (e) arrange for a medical examination of the child; and
  - (f) arrange for the provision of other medical services for the child; and



- (g) make other arrangements for the care and protection of the child; and
  - (h) if the officer is a staff member of a hospital in which the child is found – keep the child in the hospital for any of the purposes mentioned in paragraphs (e) to (g).
- (2) However, the child may refuse to submit to any of the examination mentioned in subsection (1)(e) if the child is of sufficient maturity and understanding to make the decision.
- (3) The officer may use any reasonable force or assistance in acting under subsection (1).
- (4) The officer must give a report to the CEO about any action taken by the officer under subsection (1) as soon as practicable after taking the action.
- (5) The CEO has daily care and control of the child while the child is in provisional protection.

### **53      Duration of protection**

- (1) The child must be in the CEO's care for a period determined by the CEO that does not exceed 72 hours from the time the CEO takes the child into provisional protection.
- (2) Subject to the operation of any other provisions in this Act and any other law of the Territory, the CEO must return the child to a parent of the child by the end of the period.

### **54      CEO may take other action**

This Division does not prevent the CEO from taking any other action under this Part or Part 2.3 for the child while the child is in provisional protection.

*Note*

*Part 2.2 applies to the child while the child is in provisional protection, see section 67.*

## **Division 8 Powers of authorised officers**

### **Subdivision 1 Moving child to safe place**

#### **55 Object of Subdivision**

The object of this Subdivision is to empower an authorised officer to take action, on a temporary basis and only in limited circumstances, to remove a child from a place where the wellbeing of the child is at risk.

#### **56 Application**

This Subdivision applies to a child if:

- (a) the child is found at a place other than the child's usual place of residence; and
- (b) the child is not under the direct supervision of:
  - (i) a parent of the child; or
  - (ii) a family member of the child; or
  - (iii) an adult capable of adequately supervising the child; and
- (c) an authorised officer:
  - (i) does not believe the child is in need of protection; but
  - (ii) having regard to the circumstances in which the child is found – reasonably believes there is a risk to the wellbeing of the child if the child is not removed from the place.

#### **57 Authorised officer may move child**

- (1) The officer may:
  - (a) enter the place to apprehend the child; and
  - (b) either return the child to the child's usual place of residence or, if it is not practicable or appropriate to do so:
    - (i) move the child to a safe place; and
    - (ii) keep the child at the safe place; and
    - (iii) make any arrangement for the care and protection of the child at the safe place.

- (2) The officer may use any reasonable force or assistance in acting under subsection (1).
- (3) The child may be cared for at the safe place until the resumption of the care of the child by a person (a responsible person) who has daily care and control of the child.
- (4) The officer must, as soon as practicable after moving the child:
  - (a) take all necessary steps to inform a responsible person about moving the child; and
  - (b) if the officer is a police officer – inform the CEO about moving the child.
- (5) The exercise of the officer's powers under subsection (1) does not:
  - (a) affect any power, right or responsibility of a responsible person in relation to the child; or
  - (b) prevent the officer or any other person from holding, at a later time, the belief that the child is in need of protection.
- (6) In this section:

safe place:

  - (a) includes:
    - (i) a place where the child may be temporarily kept for the child's safety (including a Part of a police station not normally used to detain a person); and
    - (ii) a place specified by regulation; but
  - (b) does not include a prison, lockup or any other place that a person may be remanded in custody.

## **Subdivision 2 Powers of restraint, search and seizure**

### **58 Application**

This Subdivision applies to a child if:

- (a) an authorised officer or police officer is exercising the officer's powers under section 35, 36 or 57 in relation to the child; or
- (b) the child is in the CEO's care.

## **59 Restraint**

- (1) An authorised officer may restrain the child if the officer reasonably believes it is necessary to do so to prevent the child from:
  - (a) being harmed; or
  - (b) harming others.
- (2) The officer may do so by using any reasonable force or assistance.

## **60 Search**

- (1) An authorised officer may search the child (including anything found on or with the child) if the officer reasonably believes it is necessary to do so to prevent the child from:
  - (a) being harmed; or
  - (b) harming others.
- (2) Without limiting subsection (1), the officer may search for any of the following:
  - (a) a firearm as defined in section 3 of the *Firearms Act*;
  - (b) a controlled weapon, offensive weapon or prohibited weapon as defined in section 3 of the *Weapons Control Act*;
  - (c) a dangerous drug as defined in section 3 of the *Misuse of Drugs Act*;
  - (d) alcohol;
  - (e) any other drug or substance capable of intoxicating a person.
- (3) If the officer reasonably believes it is necessary to do so in the circumstances, the officer may designate another person:
  - (a) to conduct the search; or
  - (b) to assist the officer in conducting the search.
- (4) The designated person must conduct the search or provide the assistance in accordance with any reasonable directions of the officer.
- (5) The officer or designated person conducting the search:
  - (a) must be someone who is of the same gender as the child; and

- (b) must conduct the search in the presence of an adult who:
  - (i) is of the same gender as the child; and
  - (ii) is nominated by the child or, if the child fails to do so, by the officer.
- (6) The adult nominated by the officer:
  - (a) must hold a clearance certificate that is in force; and
  - (b) must not be an authorised officer or police officer.
- (7) The officer or designated person may use any reasonable force or assistance in acting under this section.
- (8) However, this section does not authorise a search that involves the removal of the child's clothing or an examination of the child's body cavities.

## **61 Seizure**

- (1) An authorised officer may seize anything found on or with the child if the officer reasonably believes it is necessary to do so to prevent the child from:
  - (a) being harmed; or
  - (b) harming others.
- (2) The officer may do so by using any reasonable force or assistance.
- (3) An authorised officer (other than a police officer) who seizes a thing mentioned in section 60(2)(a), (b) or (c) must, as soon as practicable after seizing the thing, deliver it to a police officer.
- (4) An authorised officer may, in accordance with the regulations, destroy or otherwise dispose of anything seized under this section to prevent the child from:
  - (a) being harmed; or
  - (b) harming others.

## **62 Recording and reporting**

An authorised officer must, as soon as practicable after exercising a power under this Subdivision :

- (a) record the exercise of the power; and

- (b) if the officer is a police officer – give the CEO a report about the exercise of the power.

### **Subdivision 3   Warrants**

#### **63      Warrant for access to child**

- (1) A magistrate may, on the application of an authorised officer, grant a warrant under this section if the magistrate is satisfied it is reasonably necessary:
  - (a) for exercising a power under section 35 or 36 in relation to a child; or
  - (b) for monitoring the wellbeing of a child for whom a placement arrangement is in force.
- (2) The warrant authorises an authorised officer:
  - (a) to enter, at any time, a place where the officer reasonably believes the child may be found; and
  - (b) to search the place in order to find the child; and
  - (c) to stay at the place for as long as the officer considers reasonably necessary to find the child; and
  - (d) if the child is found – to stay at the place and have contact with the child for as long as the officer considers reasonably necessary for specified purposes (whether or not in the presence of someone else).

#### **64      Execution of warrant**

- (1) In executing the warrant, an authorised officer:
  - (a) may use any reasonable force or assistance; and
  - (b) must produce the warrant (or a copy of it) if asked to do so by a person at the place where the warrant is executed.
- (2) Without limiting subsection (1)(a), the officer may be assisted by another authorised officer in executing the warrant.
- (3) The other authorised officer may use any reasonable force in providing the assistance.



## **Division 2      Care plans**

### **69      Application**

This Division applies to a child who is in the CEO's care if:

- (a) a protection order for the child is in force; or
- (b) the CEO has daily care and control of the child under a court order prescribed by regulation.

### **70      CEO must prepare care plan**

- (1) As soon as practicable after the child is taken into the CEO's care, the CEO must prepare and implement a care plan for the child.
- (2) The care plan is a written plan that:
  - (a) identifies the needs of the child; and
  - (b) outlines measures that must be taken to address those needs; and
  - (c) sets out decisions about daily care and control of the child, including, for example:
    - (i) decisions about the placement arrangement for the child; and
    - (ii) decisions about contact between the child and other persons.

### **71      Modification of care plan**

- (1) The CEO may modify the care plan at any time if the CEO considers it appropriate to do so.
- (2) Without limiting subsection (1), the CEO must modify the plan if the child is about to leave the CEO's care.
- (3) The modified plan must:
  - (a) identify the needs of the child in:
    - (i) preparing to leave the CEO's care; and
    - (ii) the child's transition to other living arrangements after leaving the CEO's care; and
  - (b) outline measures that must be taken to assist the child in meeting those needs.



**72      Child's wishes to be taken into account**

In preparing or modifying the plan, the CEO must have regard to the wishes of the child as the CEO considers reasonable and appropriate in the circumstances.

**73      Provision of care plan to interested parties**

- (1) As soon as practicable after the CEO has prepared or modified the plan, the CEO must ensure a copy of it is given to the following persons:
  - (a) the child;
  - (b) each parent of the child;
  - (c) the carer of the child;
  - (d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.
- (2) However, the CEO is not required to do so for a person if the CEO considers it inappropriate or impracticable in the circumstances, having regard to:
  - (a) the wishes of the child; and
  - (b) any risk of harm to the child; and
  - (c) any other matters the CEO considers relevant.

**74      Review of care plan**

- (1) The CEO must conduct regular reviews of the plan as follows:
  - (a) the first review must be conducted within 2 months after the child is first taken into the CEO's care;
  - (b) a review must be conducted again every 6 months afterwards.
- (2) In addition, the CEO must conduct a review of the plan immediately after any of the following:
  - (a) the death of a parent of the child;
  - (b) the death of the carer of the child;
  - (c) a change of the placement arrangement for the child;
  - (d) an extension or variation of a court order mentioned in section 69(b) that relates to the child.

- (3) This section does not prevent a review of the plan at other times.
- (4) In conducting a review, the CEO must have regard to the views expressed by any of the following persons:
  - (a) the child;
  - (b) a parent of the child;
  - (c) the carer of the child;
  - (d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.
- (5) The CEO must:
  - (a) prepare a report of the review, and if the CEO considers it appropriate to do so – give a copy of the report to any of those persons; and
  - (b) keep a record of the review and a copy of the report.
- (6) For this section, a review of a care plan includes a review of the operation and effectiveness of the plan.

### **Division 3      Interim care plans**

#### **75      Application**

This Division applies to a child if:

- (a) the child is in the CEO's care; but
- (b) Division 2 does not apply to the child.

#### **76      CEO must prepare interim care plan**

- (1) As soon as practicable after the child is taken into the CEO's care, the CEO must prepare and implement an interim care plan for the child.
- (2) The interim care plan is a written plan that:
  - (a) identifies the immediate needs of the child; and
  - (b) outlines measures that must be taken to address those needs; and

- (c) sets out decisions about daily care and control of the child, including, for example:
  - (i) decisions about the placement arrangement for the child; and
  - (ii) decisions about contact between the child and other persons.

## **Division 4 Placement arrangement**

### **77 CEO must enter into placement arrangement**

- (1) The CEO must enter into a placement arrangement with other persons or bodies for a child who is in the CEO's care.

*Note*

*Section 12 sets out the principles that should be upheld in the placement of Aboriginal children.*

- (2) The CEO may cancel the arrangement and replace it by another placement arrangement at any time.

### **78 Placement arrangement**

- (1) A placement arrangement is:
  - (a) an arrangement for placing a child who is in the CEO's care with any of the following persons (the carer):
    - (i) a parent of the child;
    - (ii) a family member of the child;
    - (iii) an individual approved by the CEO; or
  - (b) any other arrangement for placing the child that the CEO considers appropriate in the circumstances.
- (2) Without limiting subsection (1)(b), the arrangement can be one under which the child is not directly supervised by an adult.
- (3) The regulations may:
  - (a) provide for the nomination and approval of an individual as a carer; and
  - (b) provide for the responsibilities of a carer; and



**82 Payment to carer**

The CEO may make payments to the carer in accordance with the arrangement.

**83 Property of child**

- (1) The Court may, on the CEO's application:
  - (a) order the Public Trustee to take control of the property of the child; and
  - (b) make any other orders to give effect to the order.
- (2) The CEO must:
  - (a) give the child, the parents of the child and other persons specified by the Court:
    - (i) a copy of each of the orders; and
    - (ii) a written notice explaining the terms and effect of the orders; and
  - (b) give the child any additional explanation of the effect of the orders if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

**84 Inspection of place where child resides**

- (1) An authorised officer may, at any reasonable time, enter the place where the child ordinarily resides under the arrangement to monitor the wellbeing of the child.
- (2) The officer may make any reasonable request to a person having the control of the place for the purposes of:
  - (a) inspecting the place; or
  - (b) having contact with the child.
- (3) The person must comply with the request.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

*Note*

*A warrant may be granted for monitoring the wellbeing of the child, see section 63.*

**85 Authorised officer's power to apprehend child**

- (1) If the child is absent from the place, an authorised officer may apprehend the child in order to return the child to the place.
- (2) The officer may, without a warrant:
- (a) at any time, enter a place where the officer reasonably believes the child may be found; and
  - (b) search the place in order to find the child; and
  - (c) stay at the place for as long as the officer considers reasonably necessary to find and apprehend the child; and
  - (d) apprehend the child; and
  - (e) arrange for the return of the child.
- (3) The officer may use any reasonable force or assistance in acting under this section.

*Note*

*An authorised officer may exercise various powers in relation to the child (see sections 58 to 62).*

**Division 5 Young persons who have left CEO's care**

**86 Assistance for young person who has left CEO's care**

- (1) A young person who has left the CEO's care is entitled, free of any charges, to the possession of any of the person's personal items held by:
- (a) the Department; or
  - (b) anyone who was a carer of the person; or
  - (c) a party to a placement arrangement for the person.
- (2) The CEO must ensure the person is provided with child-related services and other services the CEO considers appropriate.

- (3) Without limiting subsection (2), the CEO may assist the person in obtaining any of the following:
- (a) accommodation;
  - (b) education or training;
  - (c) employment;
  - (d) legal services;
  - (e) health services;
  - (f) counselling services.
- (4) In addition, the CEO may give financial assistance to the person for any of the following purposes:
- (a) the person's education or training;
  - (b) obtaining and furnishing the person's accommodation;
  - (c) living in close proximity to the place where the person is or will be:
    - (i) undertaking education or training; or
    - (ii) employed or seeking employment.
- (5) The financial assistance must be given on terms and conditions the CEO considers appropriate in the circumstances.
- (6) In this section:
- personal items***, of a person, includes the following:
- (a) the person's birth certificate;
  - (b) school reports or other reports relating to the person's education or training;
  - (c) photographs belonging to the person;
  - (d) anything else prescribed by regulation.

## **Part 2.3      Court's powers for children**

### **Division 1      Preliminary matters**

#### **87      Object of Part**

- (1) The object of this Part is to create an appropriate judicial process for safeguarding the wellbeing of children, particularly children who are or might be in need of protection.
- (2) The object is to be achieved by:
  - (a) establishing the family matters jurisdiction of the Local Court (see Division 2); and
  - (b) making provision for the jurisdiction, including:
    - (i) the power of the Court to make various orders for children (see Division 4); and
    - (ii) other procedural matters (see Divisions 3 and 5 to 7).

### **Division 2      Family matters jurisdiction**

#### **88      Establishment**

- (1) The Local Court is invested with a jurisdiction (the family matters jurisdiction) to hear and determine an application for any of the following:
  - (a) a temporary protection order;
  - (b) an assessment order;
  - (c) a protection order;
  - (d) an order or decision under Part 2.4;
  - (e) any other order or decision the Court may make for a child under this Act (other than sections 194 and 206);
  - (f) any order or decision relating to an order or decision mentioned in paragraph (a), (b), (c), (d) or (e).
- (2) In this Act:
  - (a) the Court is the Local Court exercising its family matters jurisdiction; and
  - (b) Court proceedings are proceedings in the Court; and



- (c) a Court order is an order of the Court; and
- (d) the child to whom Court proceedings relate is the child for whom the proceedings are instituted; and
- (e) the child to whom a Court order relates is the child for whom the order is made.

**89      Exercise of jurisdiction**

- (1) The family matters jurisdiction may be exercised only by magistrates directed by the Chief Magistrate to do so.
- (2) In making the direction, the Chief Magistrate must take into account the expertise of particular magistrates relating to matters arising under this Act.
- (3) The jurisdiction must be exercised by a magistrate sitting alone.

**90      Paramount consideration**

- (1) The Court must regard the best interests of a child as paramount in exercising the family matters jurisdiction for the child.
- (2) Without limiting subsection (1), the Court must give priority to the child if the rights of the child conflict with the rights of an adult.

**91      Jurisdiction not affected by other proceedings**

- (1) The exercise of the family matters jurisdiction in any Court proceedings is not affected by any criminal proceedings against:
  - (a) the child to whom the Court proceedings relate; or
  - (b) any other party to the Court proceedings.
- (2) Subsection (1) has effect whether or not the criminal proceedings arose out of the same facts as the Court proceedings.

**92      Sittings of Court**

- (1) The Court may hold several sittings at the same time.
- (2) The Court must:
  - (a) ensure Court proceedings are separate from other proceedings of the Local Court or proceedings of another court; and

- (b) conduct Court proceedings at a place approved by the Minister administering the *Local Court Act* (the relevant Minister).
- (3) The relevant Minister must ensure the approved place:
  - (a) provides adequate and appropriate facilities for Court proceedings; and
  - (b) is separated from places in which other proceedings of the Local Court or proceedings of another court are being conducted.

### **Division 3 Court proceedings**

#### **93 Nature of proceedings**

- (1) Court proceedings must be conducted with as little formality and legal technicality as the circumstances permit.
- (2) Subject to any directions of the Court, the Court is not bound by the rules of evidence.

#### **94 Parties to proceedings**

- (1) The following are parties to the proceedings:
  - (a) the child to whom the proceedings relate;
  - (b) each parent of the child;
  - (c) the CEO;
  - (d) each person proposed to be given daily care and control of, or parental responsibility for, the child under a Court order;
  - (e) any other person considered by the Court to have a direct and significant interest in the wellbeing of the child.
- (2) This section has effect subject to section 125 (which is about the parties to proceedings for a protection order).

#### **95 Standard of proof**

If the Court is required to be satisfied of a matter in the proceedings, the matter must be established on the balance of probabilities.

**96            Expedition**

- (1) The proceedings must be conducted as expeditiously as possible to minimise their effect on the child.
- (2) For subsection (1), the Court:
  - (a) may set a timetable for each matter to which the proceedings relate, having regard to the age and developmental needs of the child; and
  - (b) may give such directions the Court considers appropriate to ensure the timetable is kept.

**97            Restrictions on publication**

A person is guilty of an offence if the person:

- (a) publishes a report of:
  - (i) any of the proceedings; or
  - (ii) the results of any of the proceedings; and
- (b) is not authorised to do so by the Court or a law in force in the Territory.

Maximum penalty:     400 penalty units or imprisonment for  
   2 years.

**98            Understanding proceedings**

- (1) The Court must, as far as practicable, ensure each party to the proceedings understands the nature and purposes of the proceedings.
- (2) For subsection (1), the Court may direct that the services of a person (such as an interpreter) be provided to a party to the proceedings.

**99            Restrictions on attendance**

Except as otherwise directed by the Court, a person must not attend any of the proceedings if:

- (a) the person is not a party to the proceedings; or

- (b) the Court has ordered the person not to attend the proceedings.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

### **100 Appearance of parents**

- (1) Except as otherwise directed by the Court, the parents of the child must attend the proceedings.
- (2) The Court may order the parents to attend the proceedings.
- (3) This section has effect subject to sections 105 and 126 (which relate to the making of a temporary protection order or protection order in the absence of the parents).

### **101 Right of representation**

- (1) A party to the proceedings may be represented by a legal practitioner or any other person.
- (2) The Court may adjourn the proceedings until a party has a reasonable opportunity to obtain the representation.

### **102 Hearing of applications together**

- (1) The Court may hear 2 or more applications together if:
  - (a) a party to any of the applications asks the Court to do so; and
  - (b) the Court considers it in the interests of justice to do so.
- (2) The Court may do so even if the applications have different parties.

## **Division 4 Orders for children**

### **Subdivision 1 Temporary protection order**

#### **103 Applying for temporary protection order**

- (1) The CEO may apply to the Court for a temporary protection order for a child if:
  - (a) the CEO reasonably believes:
    - (i) the child is in need of protection; and
    - (ii) the proposed order is urgently needed to safeguard the wellbeing of the child; and

- (b) no protection order is in force for the child.
- (2) The CEO may make the application:
- (a) whether or not an assessment order is in force for the child;  
and
  - (b) whether or not the child is in provisional protection.

#### **104      How application is made**

- (1) The application may be made to the Court in any way the Court considers reasonable in the circumstances (including, for example, telephone, fax or other electronic means).
- (2) The CEO must specify in the application:
- (a) why the CEO considers the proposed order is necessary; and
  - (b) the proposed arrangement for the care and protection of the child under the order.
- (3) Any information in support of the application must be in the form of a sworn statement.
- (4) However, if the application is made by telephone, fax or other electronic means:
- (a) the Court may allow the application to be made before the statement is sworn; but
  - (b) the CEO must send the sworn statement to the Court not later than the day after the day of the application.
- (5) For subsection (4), the Court may give any directions about the application as the Court considers appropriate in the circumstances.

#### **105      Making of order**

- (1) The Court must, immediately after the application is made:
- (a) make the temporary protection order if the Court is satisfied there are reasonable grounds for believing:
    - (i) the child is in need of protection; and
    - (ii) the proposed order is urgently needed to safeguard the wellbeing of the child; or
  - (b) dismiss the application if the Court is not so satisfied.

- (2) As soon as practicable after making the decision, the Court must give the CEO a copy of:
  - (a) the order if the Court decides to make the order; or
  - (b) otherwise – a statement of the reasons for not making the order.
- (3) Without limiting subsection (2), the Court may give the copy by sending it to the CEO by fax or other electronic means.
- (4) The Court must keep a record of:
  - (a) the application (whether or not a written application is given to the Court); and
  - (b) any information given to the Court for the application; and
  - (c) the decision on the application; and
  - (d) the reasons for the decision.
- (5) To avoid doubt, the Court may decide the application in the absence of the parents of the child.

**106      Notice of order**

- (1) As soon as practicable after the order is made, the CEO must:
  - (a) give a copy of the order to each parent of the child; and
  - (b) inform the child about the order; and
  - (c) explain the effect of the order to the child.
- (2) The CEO may give the copy to a parent of the child:
  - (a) by personally serving the copy on the parent; or
  - (b) if the CEO considers it impracticable to do so, by:
    - (i) leaving it at the parent's last known address; or
    - (ii) sending it by post to that address.
- (3) In addition, the CEO may give a copy of the order to the child if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

**107      Effect of order**

The order:

- (a) gives daily care and control of the child to the CEO while the order is in force; and
- (b) except as provided by section 109(2) and (3) – is in force for 14 days from the time it is made.

**108      Authorised officer's powers**

- (1) To give effect to the order, an authorised officer may:
  - (a) at any time, enter a place where the officer reasonably believes the child may be found; and
  - (b) search the place in order to find the child; and
  - (c) stay at the place for as long as the officer considers reasonably necessary to find and apprehend the child; and
  - (d) apprehend the child; and
  - (e) remove the child from the place; and
  - (f) arrange for a medical examination of the child; and
  - (g) arrange for the provision of other medical services for the child; and
  - (h) make other arrangements for the care and protection of the child.
- (2) However, the child may refuse to submit to any of the examination mentioned in subsection (1)(f) if the child is of sufficient maturity and understanding to make the decision.
- (3) The officer may use any reasonable force or assistance in acting under subsection (1).
- (4) The officer must give a report to the CEO about any action taken by the officer under subsection (1) as soon as practicable after taking the action.

**109      What happens when order ceases to be in force**

- (1) Subject to the operation of any other provisions in this Act, the CEO must return the child to a parent of the child when the order ceases to be in force.

- (2) The CEO may return the child to a parent of the child before the order ceases to be in force:
  - (a) under an agreement arising from a mediation conference under section 49; or
  - (b) if the CEO considers it appropriate to do so in the circumstances.
- (3) If the CEO returns the child under subsection (2):
  - (a) the CEO must notify the Court about returning the child; and
  - (b) the order ceases to be in force when the Court is so notified.

**110      Other action for child while order in force**

- (1) This Subdivision does not prevent any of the following from happening while the temporary protection order is in force:
  - (a) an inquiry or investigation under Part 2.1 in relation to the child;
  - (b) an application for an assessment order for the child;
  - (c) an assessment order being in force for the child;
  - (d) an application for another temporary protection order for the child;
  - (e) an application for a protection order for the child.
- (2) However, the CEO must not apply for another temporary protection order for the child while an existing temporary protection order (the **existing order**) for the child is in force if:
  - (a) the existing order was made when a previous temporary protection order (the **previous order**) was in force; and
  - (b) the existing order took effect immediately after the previous order ceased to be in force; and
  - (c) the CEO did not return the child to a parent of the child before or when the existing order took effect.
- (3) Subsection (2) does not prevent an application for a temporary protection order for the child after:
  - (a) a temporary protection order for the child has ceased to be in force; and



- (b) the CEO has returned the child to a parent of the child.

## **Subdivision 2   Assessment order**

### **111      Applying for assessment order**

- (1) The CEO may apply to the Court for an assessment order for a child to authorise the carrying out of an assessment if:
- (a) a protection order is not in force for the child; and
  - (b) the CEO reasonably believes the proposed assessment is necessary for determining whether the child is in need of protection; and
  - (c) the proposed assessment cannot be carried out without the order.
- (2) For subsection (1), an assessment includes:
- (a) any assessment of the child for determining whether the child is in need of protection; and
  - (b) any assessment of a parent of the child for determining whether the parent is capable of exercising parental responsibility for the child.
- (3) Without limiting subsection (2), an assessment may involve:
- (a) a medical or psychological examination of the child or a parent of the child; and
  - (b) the taking and examination of samples from the child or a parent of the child.
- (4) The CEO may make the application:
- (a) whether or not the child is in the CEO's care; and
  - (b) whether or not the CEO has applied for a temporary protection order or protection order for the child.

### **112      How application is made**

The CEO must specify in the application:

- (a) why the CEO considers the proposed assessment is necessary; and
- (b) details of the proposed assessment; and

- (c) any of the following directions that the CEO seeks from the Court:
  - (i) a direction restricting a specified person's contact with the child while the assessment order is in force;
  - (ii) a direction requiring a child-related authority to give the CEO specified information about the child.

### **113 When Court may hear application**

The Court must not hear the application unless the Court is satisfied:

- (a) the CEO is entitled to make the application under section 111; and
- (b) either:
  - (i) the CEO has taken reasonable steps to obtain the consent of at least one of the parents of the child for the proposed assessment; or
  - (ii) it is not practicable for the CEO to do so.

### **114 Court to consider certain matters**

In deciding the application, the Court must consider:

- (a) whether the proposed assessment is necessary; and
- (b) whether the assessment is likely to provide information needed to determine whether the child is in need of protection; and
- (c) whether any distress caused by the assessment to the child will be outweighed by the value of the information to be obtained from the assessment; and
- (d) any distress caused to the child by a previous assessment of the same or a similar nature; and
- (e) any other matters the Court considers relevant.

### **115 Order of Court**

The Court may:

- (a) make an assessment order authorising the carrying out of the proposed assessment or any other specified assessment for determining whether the child is in need of protection; or

- (b) make an assessment order covered by paragraph (a) that includes one or more of the following directions (whether or not they were sought by the CEO):
  - (i) a direction restricting a specified person's contact with the child while the order is in force;
  - (ii) a direction requiring a child-related authority to give the CEO specified information about the child; or
- (c) dismiss the application.

#### **116      Notice of order**

- (1) As soon as practicable after the order is made, the CEO must give each party to the proceedings (except the child):
  - (a) a copy of the order; and
  - (b) a written notice:
    - (i) explaining the effect of the order; and
    - (ii) stating the party may appeal against the order under Division 6 within 28 days after it is made; and
    - (iii) stating how the appeal may be instituted.
- (2) The CEO may give the copy and notice:
  - (a) by personally serving them on the party; or
  - (b) if the CEO considers it impracticable to do so:
    - (i) by leaving them at the party's last known address; or
    - (ii) by sending them by post to that address.
- (3) The CEO:
  - (a) must explain the effect of the order and notice to the child; and
  - (b) may give a copy of the order and notice to the child if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

#### **117      Effect of order**

- (1) The order has effect for 28 days.

- (2) On the CEO's application, the Court may extend the order for a further period that does not exceed 28 days.
- (3) However, the order cannot be extended again.
- (4) The order authorises:
  - (a) the making of an assessment specified in the order; and
  - (b) if the order includes a direction mentioned in section 115(b) – the actions specified in the direction; and
  - (c) the giving of information obtained from the assessment to the CEO and other specified persons.
- (5) Despite any law of the Territory, a person acting in good faith in giving information under the order is not civilly or criminally liable, or in breach of any professional code of conduct, for giving the information.

#### **118 Refusal to submit to assessment**

- (1) The child may refuse to submit to any assessment that relates to the child if the child is of sufficient maturity and understanding to make the decision.
- (2) A parent of the child may refuse to submit to any assessment that relates to the parent.

#### **119 What happens after assessment**

- (1) The CEO must give the Court the result of the assessment in a report in the approved form.
- (2) Without limiting subsection (1), the report must state whether or not the CEO believes the child is in need of protection on the basis of the result.

#### **120 CEO may take other action**

This Subdivision does not prevent the CEO from doing any of the following while the assessment order is in force:

- (a) taking another action under this Part for the child;
- (b) taking an action under Part 2.1 for the child.

### **Subdivision 3 Protection order**

#### **121 Applying for protection order**

- (1) The CEO may apply to the Court for a protection order for a child if the CEO reasonably believes:
  - (a) the child
    - (i) is in need of protection; or
    - (ii) would be in need of protection but for the fact that the child is currently in the CEO's care; and
  - (b) the proposed order is the best means to safeguard the wellbeing of the child.
- (2) The CEO may make the application:
  - (a) whether or not the child is in the CEO's care; and
  - (b) whether or not an application for a temporary protection order or assessment order for the child has been made; and
  - (c) whether or not a temporary protection order or assessment order for the child is in force.

*Note*

*The provisions about a protection order in this Part are Part of a system for the transfer of such orders and related proceedings between jurisdictions, see Part 2.4.*

#### **122 How application is made**

The CEO must specify in the application:

- (a) the proposed order; and
- (b) when the order is proposed to have effect; and
- (c) why the CEO considers the order is necessary; and
- (d) the proposed arrangement for the care and protection of the child under the order.

### **123 Directions in protection order**

- (1) The proposed order must specify one or more of the following directions:
  - (a) a direction (a supervision direction) requiring one or more of the following:
    - (i) that a person must do, or refrain from doing, a specified thing directly related to the protection of the child;
    - (ii) that the CEO must supervise the protection of the child in relation to specified matters;
  - (b) a direction (a daily care and control direction) giving daily care and control of the child to a specified person;
  - (c) a direction (a short term parental responsibility direction) giving parental responsibility for the child to a specified person for a specified period not exceeding 2 years;
  - (d) a direction (a long term parental responsibility direction) giving parental responsibility for the child to a specified person for a specified period that:
    - (i) exceeds 2 years; and
    - (ii) ends before the child turns 18 years of age.
- (2) Without limiting subsection (1)(a)(i), a supervision direction may:
  - (a) require a person not to have any direct or indirect contact with the child; or
  - (b) require a person not to have any direct or indirect contact with the child except when a specified person or a person belonging to a specified group is present.

### **124 Notice of application**

- (1) As soon as practicable after applying for the order, the CEO must:
  - (a) give a copy of the application to each parent of the child; and
  - (b) a written notice stating:
    - (i) when and where the application is to be heard; and
    - (ii) that the application may be heard and decided in the absence of the parent.

- (2) The CEO may give the copy and notice:
  - (a) by personally serving them on the parent; or
  - (b) if the CEO considers it impracticable to do so:
    - (i) by leaving them at the parent's last known address; or
    - (ii) by sending them by post to that address.
- (3) The CEO:
  - (a) must explain the effect of the application and notice to the child; and
  - (b) may give a copy of the application and notice to the child if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

## **125      Parties to proceedings**

- (1) The parents of the child are the respondents in the proceedings for the application.
- (2) The other parties to the proceedings are:
  - (a) the child; and
  - (b) the CEO; and
  - (c) a person proposed to be given daily care and control of, or parental responsibility for, the child under the order; and
  - (d) any other person who:
    - (i) has applied to the Court to be a party to the proceedings; and
    - (ii) is considered by the Court to have a direct and significant interest in the wellbeing of the child.

## **126      Hearing in absence of parents**

- (1) The Court may hear the application in the absence of a parent of the child if the Court is satisfied the CEO has given the parent a notice that complies with section 124(1).
- (2) However, this section does not limit the Court's power to exclude the parent or anyone else from Court proceedings.

**127 Court ordered mediation conference**

- (1) Before deciding the application, the Court may order a mediation conference to be convened for the purposes specified by the Court.
- (2) Without limiting subsection (1), the conference may be convened for one or more of the following purposes:
  - (a) establishing the circumstances giving rise to the application;
  - (b) reviewing an arrangement that has been made for the care of the child;
  - (c) making recommendations about the arrangement for the care of the child;
  - (d) arriving at an agreement on the best means of safeguarding the wellbeing of the child.
- (3) The Court:
  - (a) must appoint someone (the convenor) who has the qualifications or experience prescribed by regulation to convene the conference; and
  - (b) may direct that:
    - (i) the conference be convened at a specified time and place; and
    - (ii) specified persons (including parties to the proceedings and any other persons) are to attend the conference.
- (4) A person required to attend the conference may be represented by someone appointed by the person.
- (5) The regulations may make any provision for the conference, including the following:
  - (a) any procedural and reporting requirements for the conference;
  - (b) the appointment of a person to represent the interests of the child in the conference;
  - (c) the making of any agreement arising from the conference;
  - (d) the powers and functions of the convenor.



## **128      Order of Court**

- (1) The Court may:
  - (a) make a protection order for the child:
    - (i) as proposed by the CEO; or
    - (ii) specifying other directions mentioned in section 123 as the Court considers appropriate; or
  - (b) dismiss the application.
- (2) The Court may make any order for an agreement arising from a mediation conference for the child.

## **129      When Court must make order**

The Court must make the protection order if the Court is satisfied:

- (a) the child:
  - (i) is in need of protection; or
  - (ii) would be in need of protection but for the fact that the child is currently in the CEO's care, and
- (b) the order is the best means of safeguarding the wellbeing of the child.

## **130      Court to consider certain matters**

- (1) In making the decision, the Court must consider:
  - (a) any matters arising from a mediation conference for the child; and
  - (b) the wishes of the following:
    - (i) the child;
    - (ii) a parent of the child;
    - (iii) a person proposed to be given daily care and control of, or parental responsibility for, the child under the order;
    - (iv) any other person considered by the Court to have a direct and significant interest in the wellbeing of the child; and

- (c) if the CEO proposes that daily care and control of, or parental responsibility for, the child be given to a person (including, for example, the CEO):
    - (i) any report or recommendation given to the Court by the CEO about the proposal; and
    - (ii) whether there is another person who is better suited to be given daily care and control of, or parental responsibility for, the child; and
    - (iii) the needs of the child for long term stability and security; and
  - (d) any other matters the Court considers relevant.
- (2) Without limiting subsection (1)(c), the Court must not give a person who is not a parent of the child parental responsibility for the child under a long term parental responsibility direction unless the Court is satisfied:
- (a) giving the responsibility to the person is the best means of safeguarding the child's wellbeing; and
  - (b) there is no one else who is better suited to be given the responsibility.

### **131 Extraterritoriality**

To avoid doubt, the Court may make a protection order for the child even if the circumstances causing the child to be in need of protection occurred:

- (a) outside the Territory or Australia; or
- (b) partly in the Territory and partly outside the Territory or Australia.

### **132 Duration of order**

- (1) The order has effect as specified by the Court unless the Court extends, varies or revokes the order under section 136 or 137.
- (2) In any case, the order must cease to have effect when the child turns 18 years of age.

### **133 Notice of order**

- (1) As soon as practicable after the order is made, the CEO must give each party to the proceedings (except the child):
  - (a) a copy of the order; and
  - (b) a written notice:
    - (i) explaining the effect of the order; and
    - (ii) stating the party may appeal against the order under Division 6 within 28 days after it is made; and
    - (iii) stating how the appeal may be instituted.
- (2) The CEO may give the copy and notice:
  - (a) by personally serving them on the party; or
  - (b) if the CEO considers it impracticable to do so:
    - (i) by leaving them at the party's last known address; or
    - (ii) by sending them by post to that address.
- (3) The CEO:
  - (a) must explain the effect of the order and notice to the child; and
  - (b) may give a copy of the order and notice to the child if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

### **134 Obligations to supervise protection of child**

- (1) If the order includes a supervision direction requiring the CEO to supervise the protection of the child in relation to specified matters, the CEO must, while the order is in force, maintain reasonable contact with:
  - (a) the child; and
  - (b) the parents of the child; and
  - (c) any other person who is residing with the child.

- (2) For subsection (1):
- (a) the parents of the child or any other person who has daily care and control of the child must:
    - (i) keep the CEO informed about where the child is residing; and
    - (ii) allow an authorised officer to have reasonable contact with the child; and
  - (b) an authorised officer may, at any reasonable time, enter a place where the child is located to have contact with the child; and
  - (c) an authorised officer may, at any reasonable time, enter the place where the child ordinarily resides to inquire about the specified matters; and
  - (d) the CEO may, by written notice, require a parent of the child or a person residing with the child to do or refrain from doing a specified thing for the supervision direction.
- (3) The notice must state the reasons for the requirement.
- (4) An authorised officer may use any reasonable force or assistance in acting under this section.

### **135 Obligations of CEO for order**

- (1) If the protection order gives daily care and control of, or parental responsibility for, the child to a person who was not a parent of the child, the CEO:
- (a) must give the parents of the child information about:
    - (i) where the child is residing; and
    - (ii) any arrangement that has been made for the care of the child; and
  - (b) must provide opportunity for the child to have contact with the parents and other family members of the child as often as is reasonable and appropriate in the circumstances.
- (2) Subsection (1) has effect subject to any contrary direction of the Court.

**136 Extension of order**

- (1) The CEO may, before the order ceases to be in force, apply to the Court for the order to be extended for a further specified period.
- (2) The order may be extended more than once.
- (3) This Subdivision applies to an application for an extension of the order in the same way as it applies to the application for the order.
- (4) However, in considering the application, the Court may take into account:
  - (a) any contravention of the order by a person; and
  - (b) any contravention of this Act in relation to the child by a person.

**137 Variation and revocation of order**

- (1) Before the order ceases to be in force, a party to the proceedings for the making of the order may apply to the Court for the order to be:
  - (a) varied; or
  - (b) revoked; or
  - (c) revoked and replaced by a new protection order.
- (2) However, a parent of the child must not:
  - (a) apply for the order to be replaced if the proposed new order will give parental responsibility for the child to a different person; or
  - (b) without the leave of the Court – apply for the order to be varied or revoked if a similar application has been decided by the Court.
- (3) The Court may only grant the leave if the Court is satisfied the parent has new evidence to present to the Court.
- (4) An application under subsection (1) must be made as if it were an application for a protection order.

- (5) This Subdivision applies to the application with the following changes:
- (a) as soon as practicable after making the application, the applicant must give a copy of the application to the CEO and each parent of the child (except a parent who is the applicant);
  - (b) section 124(1) and (2) does not apply to the CEO, but the CEO must comply with 124(3) as soon as practicable after receiving the copy of the application;
  - (c) in considering the application, the Court may take into account:
    - (i) any contravention of the order by a person; or
    - (ii) any contravention of this Act in relation to the child by a person.
- (6) The Court may revoke the order only if the Court is satisfied the order is no longer necessary.

## **Division 5      Adjournment**

### **138      Court may adjourn proceeding**

- (1) The Court may only adjourn proceedings for an application of an assessment order or protection order (including an application under section 136 or 137).
- (2) The Court must:
- (a) to the greatest extent possible, avoid granting adjournments; and
  - (b) may grant adjournments only if the Court considers:
    - (i) doing so is in the best interests of the child to whom the proceedings relate; or
    - (ii) there are other strong reasons for doing so.
- (3) In deciding the period of adjournment, the Court must have regard to the principle that it is in the best interests of the child for the application to be decided as soon as possible.
- (4) The Court:
- (a) must state its reasons for the adjournment; and

- (b) may give directions to the parties to the proceedings about what they must do or refrain from doing during the adjournment.

**139      Order on adjournment**

- (1) On granting the adjournment, the Court may make one or more of the following orders:
  - (a) an order giving daily care and control of the child:
    - (i) to the CEO if the proceedings relate to an assessment order; or
    - (ii) to the CEO or a family member of the child if the proceedings relate to a protection order;
  - (b) an order that a report about the child and the child's family be prepared and filed in the Court;
  - (c) an order authorising a medical examination of the child and the filing of a report of the examination in the Court;
  - (d) an order restricting the contact between the child and specified persons;
  - (e) an order that a mediation conference be convened for the child.
- (2) Each of the orders has effect during the adjournment.
- (3) The Court may, without limiting what may be addressed by a report prepared for subsection (1), specify matters that must be addressed by the report.
- (4) The child may refuse to submit to any of the examination mentioned in subsection (1)(c) if the child is of sufficient maturity and understanding to make the decision.
- (5) Without limiting subsection (1)(d), an order mentioned in that subsection may:
  - (a) direct a person not to have any direct or indirect contact with the child; or
  - (b) direct a person not to have any direct or indirect contact with the child except when a specified person or a person belonging to a specified group is present; or

- (c) require the CEO to supervise any contact between the child and a specified person.
- (6) The Court must not require the CEO to supervise any contact between the child and a specified person unless the CEO agrees to do so.
- (7) Section 127 (which is about mediation conference) applies for subsection (1)(e) in relation to proceedings for an assessment order with any necessary changes.

## **Division 6      Appeal**

### **140      Appeal to Supreme Court**

- (1) A party to any Court proceedings may appeal to the Supreme Court against any order or decision of the Court (the original decision), other than a temporary protection order.
- (2) The appellant must do so by filing a notice of appeal with the Registrar of the Supreme Court within 28 days after the original decision is made.
- (3) The notice must specify:
  - (a) the grounds for the appeal; and
  - (b) the facts on which the appeal is based.
- (4) The appellant must serve a copy of the notice on each of the other parties to the proceedings.

### **141      Stay of decision**

- (1) The Supreme Court may stay the original decision to secure the effectiveness of the appeal.
- (2) A stay:
  - (a) may be given on any conditions specified by the Supreme Court; and
  - (b) operates for the period specified by the Supreme Court; and
  - (c) may be revoked or amended by the Supreme Court.
- (3) However, the period of the stay must not extend beyond the time when the Supreme Court decides the appeal.



## **142      Hearing appeal**

- (1) An appeal against an assessment order:
  - (a) must be conducted as a new hearing; and
  - (b) is not limited by the evidence before the Court when the order was made.
- (2) Except as the Supreme Court otherwise directs, an appeal against any other order or decision must be decided on the evidence before the Court when the order or decision was made.

## **143      Power of Supreme Court**

The Supreme Court may:

- (a) confirm the original decision; or
- (b) vary the original decision; or
- (c) set aside the original decision; or
- (d) set aside the original decision and replace it with a new order or decision.

## **Division 7      Other procedural matters**

### **144      Application**

This Division applies to any Court proceedings other than proceedings for a temporary protection order.

### **145      Medical practitioner may disclose information**

Section 12(2) of the *Evidence Act* does not apply to the proceedings.

*Note*

*Section 12(2) of the Evidence Act prohibits the disclosure by a medical practitioner of certain information.*

### **146      Legal representative of child**

- (1) The Court may order the child to whom the proceedings relate be separately represented by a legal practitioner if the Court considers doing so is in the best interests of the child.

- (2) Without limiting subsection (1), the Court may do so if:
  - (a) the application relating to the proceedings is opposed by a parent of the child; or
  - (b) the child opposes the application.
- (3) The Court may make any orders it considers necessary for subsection (1).
- (4) A legal practitioner may represent more than one child in the same proceedings.
- (5) However, if the Court considers the legal practitioner should not do so because of any actual or potential conflict of interests, the Court may order a child be separately represented.
- (6) The legal representative of a child must:
  - (a) act in the best interests of the child regardless of any instructions from the child; and
  - (b) present the views and wishes of the child to the Court.
- (7) For subsection (6), the legal representative may:
  - (a) interview the child; and
  - (b) explain to the child the role of the legal representative; and
  - (c) present evidence to the Court about the best interests, and the views and wishes, of the child; and
  - (d) cross examine other parties to the proceedings and their witnesses; and
  - (e) make applications and submissions to the Court for the child; and
  - (f) lodge an appeal against a decision of the Court for the child.
- (8) The Court may make any orders it considers necessary to ensure the legal representative is appropriately qualified for the representation.

#### **147      Attendance of child**

- (1) The Court may:
  - (a) order a child to attend the proceedings (whether or not the proceedings relate to the child); or

- (b) make any other order in relation to the attendance of the child in the proceedings.
- (2) In addition, the Court may make orders in relation to the following:
  - (a) taking a written statement from the child;
  - (b) presenting to the Court the statement and a report prepared under section 149 for the child.
- (3) The Court may:
  - (a) receive the statement and report as evidence; and
  - (b) give them the weight the Court considers appropriate.
- (4) However, the Court must have regard to the following when acting under subsection (3):
  - (a) the age of the child;
  - (b) the intellectual capacity of the child;
  - (c) the capacity of the child to understand the duty to speak the truth;
  - (d) the extent to which the child may have been influenced by another person in making the statement or giving information for the report.
- (5) The Court must take into account the wishes of the child when making an order under this section.
- (6) Apart from this section, the child is not required to give evidence in any Court proceedings.

**148      Submissions from other persons**

- (1) The Court may hear submissions from a person:
  - (a) who is a family member of the child; or
  - (b) whom the Court considers is able to inform the Court on matters relevant to the proceedings.
- (2) A legal practitioner may make the submissions for the person.

**149      Report required by Court**

- (1) The Court may order a report to be prepared about the wellbeing of the child.

- (2) Without limiting subsection (1), the Court may specify in the order one or more of the following:
- (a) the person who must prepare the report;
  - (b) the matters that must be addressed in the report;
  - (c) the persons who must give information for the report;
  - (d) that the child, a parent of the child or another person be interviewed for the report.
- (3) A person must not contravene the order.
- Maximum penalty:      50 penalty units or imprisonment for 6 months.
- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.
- (5) A person is not civilly or criminally liable, or in breach of any professional code of conduct, for:
- (a) giving information for the report; or
  - (b) preparing the report; or
  - (c) giving the report to the Court.
- (6) The Court must, as soon as possible after receiving the report:
- (a) take all reasonable steps to ensure each party to the proceedings is given a copy of the report; and
  - (b) give such other directions about the report as the Court considers appropriate.
- (7) However, the Court may decide not to give a copy of the report to a party to the proceedings if the Court considers it inappropriate to do so in the circumstances.

## **150      Confidentiality**

- (1) A person who has a copy of the report must not disclose any information in it to another person.

Maximum penalty:      200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply if the information is disclosed:
- (a) with the leave of the Court; or
  - (b) to the person's legal representative; or
  - (c) otherwise for the purposes of this Act.

**151      Examination and cross examination of witnesses**

- (1) A witness may be examined and cross examined in any Court proceedings as the Court considers appropriate.
- (2) If the Court regards a question directed at a witness as offensive, the Court may:
- (a) disallow the question; or
  - (b) excuse the witness from answering the question.
- (3) If the Court regards an examination or cross examination of a witness as oppressive or repetitive, the Court may:
- (a) disallow the examination or cross examination; or
  - (b) excuse the witness from the examination or cross examination.

**Part 2.4      Transfer of orders and proceedings**

**Division 1      Preliminary matters**

**152      Object of Part**

The object of this Part is to enable orders in the nature of protection orders and related proceedings to be transferred between different jurisdictions, so that:

- (a) children may be protected under the orders when moving from one jurisdiction to another; and
- (b) the proceedings may be determined expeditiously.

## 153      **Definitions**

In this Part:

**child protection order**, for a child, means a final court order made under a child welfare law, or in force under an interstate law, that:

- (a) is of the same or a similar nature as a protection order; and
- (b) gives responsibility (however described) in relation to the child to:
  - (i) a Minister of the Crown in right of the Territory or a State; or
  - (ii) a government department or statutory authority, or the chief executive officer (however described) of, or someone employed or engaged in, the department or authority; or
  - (iii) an organisation or the chief executive officer (however described) of the organisation.

**child protection proceeding** means a proceeding in a court under a child welfare law for:

- (a) a finding (however described, and includes a finding that a child is in need of protection) that is a prerequisite to the making of a child protection order; or
- (b) the making of a child protection order or interim order; or
- (c) the extension, variation or revocation of a child protection order.

**child welfare law** means:

- (a) a law of a State that substantially corresponds to the provisions in Part 2.3 that relate to a protection order; or
- (b) a child welfare law specified by regulation under section 154(1).

**Children's Court**, for a State, means a court that has the jurisdiction to hear and determine a child protection proceeding at first instance in the State.

**home order** means a protection order.

**home proceeding** means any proceeding in the Court for the making of, or relating to, a protection order.

***interim order*** means:

- (a) an order made under section 170; or
- (b) an equivalent order made under an interstate law.

***interstate law*** means:

- (a) a law of a State that substantially corresponds to the provisions in this Part; or
- (b) an interstate law specified by regulation under section 154(2).

***interstate officer***, for a State, means:

- (a) the person holding or occupying the office or position that has the principal responsibility for the protection of children in the State under the child welfare law of the State; or
- (b) the person holding or occupying the office or position specified in the regulations under section 154(3) for the State.

***parent***, for a child to whom a home order or child protection order relates, includes anyone who would have parental responsibility for the child if the order had not been made.

***participating State*** means a State in which an interstate law is in force.

***sending State*** means the State from which a child protection order or child protection proceeding is transferred under an interstate law.

***State*** means:

- (a) a State or another Territory of the Commonwealth; or
- (b) New Zealand.

***working day*** means:

- (a) for a court – a day on which the court's offices are open; or
- (b) for the CEO – a day on which the Department's principal office is open.

## **154 Child welfare law, interstate law and interstate officer**

- (1) A regulation may specify a law of a State that substantially corresponds to the provisions in Part 2.3 that relate to a protection order to be a child welfare law.

- (2) A regulation may specify a law of a State that substantially corresponds to the provisions in this Part to be an interstate law.
- (3) A regulation may specify an office or position in a State to be an office or position the holder or occupier of which is the interstate officer of the State.

## **Division 2      Transfer of child protections orders**

### **Subdivision 1      Transfer of CEO**

#### **155      When CEO may transfer order**

The CEO may transfer a home order to a participating State if:

- (a) the child to whom the order relates is residing, or is about to reside, in the State; and
- (b) no application has been made for the transfer under Subdivision 2; and
- (c) the order is not subject to an appeal and the time for instituting an appeal has expired; and
- (d) the CEO considers the wellbeing of the child will not be adversely affected by the transfer, having regard to the wishes of:
  - (i) the child; and
  - (ii) each parent of the child; and
  - (iii) each person who has access to the child under the order; and
  - (iv) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child; and
- (e) the CEO considers a child protection order having the same or a similar effect as the home order can be made under the child welfare law of the State; and
- (f) the CEO considers it appropriate for the interstate officer of the State to exercise powers and responsibilities under a child protection order for the child; and
- (g) the interstate officer has consented in writing to the transfer and the matters specified by the CEO under section 156 for the transfer; and



- (h) each person whose consent to the transfer is required under section 157 has consented to the transfer.

**156 Terms of transfer**

- (1) The CEO must specify in the decision the period for which the transferred order is to be in force.
- (2) The period must be the lesser of:
- (a) the period for which the home order would remain in force if it is not transferred; and
  - (b) the maximum period for which a child protection order of the participating State that has the same or a similar effect as the home order can be in force in the State.
- (3) The CEO may also specify in the decision provisions to be included in the transferred order to the extent to which they can be included in a child protection order mentioned in subsection (2)(b).

**157 Persons whose consent is required**

- (1) Consent of each of the following persons to the transfer is required:
- (a) if the CEO considers the child has sufficient maturity and understanding to give the consent – the child;
  - (b) each parent of the child;
  - (c) each person who has access to the child under the order.
- (2) However, consent from a person mentioned in subsection (1)(b) or (c) is not required if:
- (a) the person cannot be found after a reasonable attempt has been made to find the person; or
  - (b) the person is residing, or is about to reside, in the participating State.
- (3) In obtaining the consent of a person, the CEO must ensure the person is informed of:
- (a) the person's right to apply under section 159 for a review of the CEO's decision and the time within which the application may be made; and
  - (b) the CEO's right to apply to the Court for an order for the transfer of the home order under section 160.

**158      Notice of decision**

- (1) The CEO must give a notice of the decision to transfer the home order to each of the following persons:
  - (a) if the child is at least 10 years of age and the CEO considers the child has sufficient maturity and understanding to comprehend the transfer and its consequences – the child;
  - (b) each parent of the child;
  - (c) each person who has access to the child under the order;
  - (d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.
- (2) The CEO must give the notice:
  - (a) as soon as practicable; and
  - (b) in any case not later than 3 working days after the decision is made.
- (3) The notice must state:
  - (a) the date of the decision; and
  - (b) details of the order that will apply to the child in the participating State; and
  - (c) that the person is entitled to apply for a review of the decision under section 159 and the time within which the application may be made.

**159      Review of decision**

- (1) A person to whom the CEO has given a notice of the decision may apply to the Court for a review of the decision.
- (2) The application must be made within 20 working days after the person receives the notice.
- (3) The review is a review:
  - (a) of the merits of the decision; and
  - (b) on the grounds specified in the application.
- (4) The application stays the decision until the application is decided.

- (5) The Court may:
- (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision; or
  - (d) set aside the decision and replace it by the Court's decision.

## **Subdivision 2    Transfer by Court**

### **160      When CEO may apply to Court for transfer**

The CEO may apply to the Court for an order transferring a home order to a participating State if:

- (a) the child to whom the order relates is residing, or is about to reside, in the State; and
- (b) the order is not subject to an appeal and the time for instituting an appeal has expired; and
- (c) the CEO considers the wellbeing of the child will not be adversely affected by the transfer, having regard to the wishes of:
  - (i) the child; and
  - (ii) each parent of the child; and
  - (iii) any other person who has access to the child under the order; and
  - (iv) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child; and
- (d) the CEO considers a child protection order having the same or a similar effect as the home order can be made under the child welfare law of the State; and
- (e) the CEO considers it appropriate for the interstate officer of the State to exercise powers and responsibilities under a child protection order for the child; and

- (f) the interstate officer has consented in writing to the transfer and any of the following matters proposed by the CEO for the transfer:
  - (i) the period for which the transferred order is to be in force;
  - (ii) provisions to be included in the transferred order; and
- (g) one or more of the following apply:
  - (i) a person whose consent to the transfer is required under section 157 has refused or failed to do so;
  - (ii) the CEO considers the transferred order should include provisions different from those that are included in the home order;
  - (iii) the CEO considers that, if the CEO were to make a decision to transfer the order, a person is likely to apply for a review of the decision under section 159;
  - (iv) the CEO otherwise considers it appropriate for the Court to decide whether or not to transfer the order.

### **161      Service of application**

The CEO must, as soon as practicable after making the application, give a copy of the application to:

- (a) if the child is at least 10 years of age and the CEO considers the child has sufficient maturity and understanding to comprehend the transfer and its consequences – the child; and
- (b) each parent of the child; and
- (c) anyone else who was a party to the proceedings relating to the home order (other than the CEO); and
- (d) each person who has access to the child under the order; and
- (e) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

### **162      When Court may hear application**

The Court must not hear the application unless:

- (a) the Court is satisfied the CEO is entitled to make the application; and

- (b) the CEO has given the Court a report that includes:
  - (i) a history of the care of the child by the CEO; and
  - (ii) any criminal history of the child; and
  - (iii) details of any sentencing order imposed on the child that is in force; and
  - (iv) any recommendations by the CEO concerning the proposed transfer; and
- (v) any other information prescribed by regulation.

**163 Court must consider certain matters**

The Court must not decide the application unless it has considered:

- (a) the report mentioned in section 162(b); and
- (b) all of the following matters:
  - (i) the place or likely place of residence for the child and other persons mentioned in section 161;
  - (ii) how the wellbeing and interests of the child might be affected by the transfer;
  - (iii) the matters mentioned in section 160(f)(i) and (ii) that are proposed by the CEO;
  - (iv) whether a child protection order having the same or a similar effect as the home order can be made under the child welfare law of the participating State;
  - (v) whether it is appropriate for a child protection order for the child to be in force under the child welfare law of the State;
  - (vi) whether it is appropriate for the interstate officer of the State to exercise powers and responsibilities under the child protection order;
  - (vii) wishes expressed by the child;
  - (viii) wishes expressed by other persons mentioned in section 161.

## **164      Order of Court**

- (1) The Court may, by order:
  - (a) transfer the home order to the participating State; or
  - (b) dismiss the application.
- (2) If the Court transfers the order to the State, the Court must specify in the transferred order the period for which it is to be in force.
- (3) The period must not be longer than the maximum period for which a child protection order of the State that has the same or a similar effect as the transferred order can be in force in the State.
- (4) The Court may also specify provisions to be included in the transferred order to the extent to which they can be included in a child protection order mentioned in subsection (3).
- (5) However, in specifying the matters mentioned in subsections (2) to (4), the Court must be satisfied:
  - (a) the transferred order will have the same or a similar effect as the home order; and
  - (b) the interstate officer of the State has consented in writing to the matters; and
  - (c) the transferred order is in the best interests of the child.

## **Division 3      Transfer of child protection proceedings**

### **165      When CEO may apply to Court for transfer**

The CEO may apply to the Court for an order transferring a home proceeding to a participating State if:

- (a) the child to whom the proceeding relates is residing, or is about to reside, in the State; and
- (b) the interstate officer of the State has consented in writing to the transfer.

**166      Service of application**

The CEO must, as soon as practicable after making the application, give a copy of the application to:

- (a) if the child is at least 10 years of age and the CEO considers the child has sufficient maturity and understanding to comprehend the transfer and its consequences – the child; and
- (b) each parent of the child; and
- (c) anyone else who was a party to the home proceeding (other than the CEO); and
- (d) each person who has access to the child under an order of the Court; and
- (e) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

**167      When Court may hear application**

The Court must not hear the application unless:

- (a) the Court is satisfied the CEO is entitled to make the application; and
- (b) the CEO has given the Court a report that includes:
  - (i) a history of the care of the child by the CEO; and
  - (ii) any criminal history of the child; and
  - (iii) details of any sentencing order imposed on the child that is in force; and
  - (iv) any recommendations by the CEO concerning the proposed transfer; and
- (v) any other information prescribed by regulation.

**168      Court must consider certain matters**

The Court must not decide the application unless the Court has considered:

- (a) the report mentioned in section 167(b); and

- (b) all of the following matters:
- (i) the place of residence or likely place of residence for the child and other persons mentioned in section 166;
  - (ii) the place where any of the matters giving rise to the proceeding arose;
  - (iii) how the wellbeing and interests of the child might be affected by the transfer;
  - (iv) whether any other proceedings relating to the child are pending, or have previously been heard and determined, under the child welfare law of the participating State;
  - (v) whether it is appropriate for a child protection order for the child to be in force under the child welfare law of the State;
  - (vi) whether it is appropriate for the interstate officer of the State to exercise powers and responsibilities under the child protection order;
  - (vii) wishes expressed by the child;
  - (viii) wishes expressed by other persons mentioned in section 166.

**169      Order of Court**

- (1) The Court may, by order:
- (a) transfer the home proceeding to the participating State; or
  - (b) dismiss the application.
- (2) If the Court transfers the proceeding to the State, the proceeding is discontinued in the Court on the registration of the transfer in the Children's Court of the State under the interstate law.

**170      Interim order**

- (1) If the Court transfers the proceeding to the participating State, the Court may also make an interim order providing for one or more of the following:
- (a) giving daily care and control of, or parental responsibility for, the child to a specified person under specified conditions;



- (b) giving the responsibility for the supervision of the wellbeing of the child to:
  - (i) the interstate officer of the State; or
  - (ii) any other specified person in the State to whom the responsibility could be given under the child welfare law of the State.
- (2) The interim order remains in force for a specified period not exceeding 30 days.
- (3) The Children's Court of the State may extend, vary or revoke the interim order under the interstate law of the State.

## **Division 4 Registration**

### **Subdivision 1 Transfer of orders and proceedings to Territory**

#### **171 Filing of documents for transfer of child protection order**

- (1) The CEO must file in the Court:
  - (a) a copy of each child protection order transferred to the Territory under an interstate law; and
  - (b) the decision or order to transfer the order.
- (2) The CEO must do so as soon as practicable after the decision or order is made.
- (3) However, the CEO must not do so if, under the interstate law:
  - (a) the decision or order is subject to a review, appeal or stay; or
  - (b) the time for seeking a review, or instituting an appeal, of the decision or order has not expired.

#### **172 Filing of documents for transfer of child protection proceeding**

- (1) The CEO must file in the Court:
  - (a) a copy of each order made under an interstate law to transfer a child protection proceeding to the Territory; and
  - (b) any interim order relating to the proceeding.
- (2) The CEO must do so as soon as practicable after the order to transfer the proceeding is made.

- (3) However, the CEO must not do so if, under the interstate law:
- (a) the order is subject to a review, appeal or stay; or
  - (b) the time for seeking a review, or instituting an appeal, of the order has not expired.

### **173 Registration of transfer**

- (1) A Registrar of the Court must register the transfer of a child protection order or child protection proceeding if the CEO files documents for the transfer under section 171 or 172.
- (2) The Registrar must do so in a way decided by the Court.

### **174 Effect of registration**

- (1) If the transfer of a child protection order is registered, the transferred order is taken for all purposes to be a home order from the day of the registration.
- (2) If the transfer of a child protection proceeding is registered:
- (a) the proceeding is taken to have commenced in the Court under Part 2.3 on the day of the registration; and
  - (b) any interim order filed under section 172(1)(b) relating to the proceeding is taken for all purposes to be an order made by the Court from the day of the registration.

### **175 Revocation of registration**

- (1) Any of the following may apply to the Court for the revocation of the registration of the transfer of an order or proceeding under section 173:
- (a) the CEO;
  - (b) if the child to whom the order or proceeding relates is at least 10 years of age – the child;
  - (c) a parent of the child;
  - (d) a party to proceedings in the Children's Court of the sending State in relation to the order or proceeding.
- (2) A Registrar of the Court must, as soon as practicable after the Court has received the application, give a copy of the application to:
- (a) the interstate officer of the sending State; and

- (b) each person mentioned in subsection (1)(a) to (d), other than the person making the application.
- (3) The Court may revoke the registration only if the Court is satisfied, at the time of the registration:
  - (a) the decision or order to transfer the order or proceeding was subject to a review, appeal or stay under the interstate law of the State; or
  - (b) the time for seeking such a review, or instituting an appeal, had not expired.
- (4) If the Court revokes the registration, a Registrar of the Court must arrange for the following to be sent to the Children's Court of the State:
  - (a) a copy of the revocation;
  - (b) a copy of each document filed under section 171 or 172 for the transfer.
- (5) The revocation does not prevent the re-registration of the transfer at a later time.

#### **176 Notification by Registrar of Court**

A Registrar of the Court must notify an appropriate officer of the Children's Court of a State and the interstate officer of the State of:

- (a) the registration under section 173 of the transfer from the State of an order or proceeding; and
- (b) any revocation of the registration under section 175.

### **Subdivision 2 Transfer of orders and proceedings from Territory**

#### **177 Effect of registration and revocation of home order in receiving State**

- (1) A home order transferred to a participating State ceases to have effect on the registration of the transfer in the Children's Court of the State.
- (2) However, the home order revives on the revocation of the registration under the interstate law of the State.
- (3) The revived order continues to be in force until it would, apart from this Part, have expired.

**178      Effect of registration and revocation of home proceeding in receiving State**

- (1) A home proceeding transferred to a participating State is discontinued on the registration of the transfer in the Children's Court of the State.
- (2) However, on the revocation of the registration under the interstate law of the State:
  - (a) the proceeding continues before the Court; and
  - (b) the Court may hear the proceeding as if it had not been transferred.

**179      Transfer of Court file**

- (1) On the transfer of a home order or home proceeding to a participating State, a Registrar of the Court must send all documents held by the Court for the order or proceeding to the Children's Court of the State.
- (2) However, the Registrar must not do so if:
  - (a) the decision or order to transfer the order or proceeding is subject to a review, appeal or stay; or
  - (b) the time for seeking a review, or instituting an appeal, of the decision or order has not expired.

**Division 5      Other matters**

**180      Hearing and determination of transferred proceeding**

In hearing and determining a child protection proceeding transferred to the Court, the Court:

- (a) may have regard to the transcript of, or any evidence adduced in, the proceeding in the Children's Court of the sending State that occurred before the transfer (the *previous proceeding*); but
- (b) is not bound by any finding of fact made in the previous proceeding.

**181      Disclosure of information**

- (1) This section applies to any information acquired by the CEO in exercising powers or performing functions under this Act.

- (2) The CEO may disclose the information to an interstate officer if the CEO considers the disclosure is necessary for the officer to exercise a power or to perform a function under a child welfare law or interstate law.

**182      Discretion of CEO to consent to transfer**

- (1) If there is a proposal to transfer a child protection order to the Territory under an interstate law, the CEO may:
- (a) consent or refuse to consent to the transfer; or
  - (b) consent or refuse to consent to:
    - (i) the period for which the order is to be in force; and
    - (ii) the provisions to be included in the order.
- (2) If there is a proposal to transfer a child protection proceeding to the Territory under an interstate law, the CEO may consent or refuse to consent to the transfer.

**183      Interstate officer's decision not reviewable**

An interstate officer's consent or refusal to consent to the transfer of a home order from the Territory does not give rise to any of the following proceedings against the officer:

- (a) proceedings for the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto;
- (b) proceedings for the grant of a declaration or an injunction (whether on the ground of absence of jurisdiction or any other ground).

## **Chapter 3 Prevention of harm and exploitation**

### **Part 3.1 Screening for child-related employment**

#### **184 Object of Part**

- (1) The object of this Part is to ensure individuals who pose an unacceptable risk of harm or exploitation to children are prevented from contacting children through their employment.
- (2) The object is to be achieved by:
  - (a) prohibiting such individuals from being engaged in child-related employment; and
  - (b) imposing related obligations on people:
    - (i) who are engaged in child-related employment; or
    - (ii) who engage others in child-related employment.

#### **185 Child-related employment**

- (1) A person is engaged in child-related employment if the person is engaged to perform child-related work.
- (2) Child-related work is any work that involves or may potentially involve contact with children in connection with any of the following:
  - (a) child protection services provided by or for the Department;
  - (b) children's services provided under Chapter 4;
  - (c) an educational facility for children, including a government school established under the *Education Act* and a school registered under Part VII of that Act, other than a facility prescribed by regulation;
  - (d) juvenile detention centres;
  - (e) refuges or other residential facilities used by children;
  - (f) wards of hospitals or any other facilities for health services in which children are ordinarily patients;
  - (g) clubs, associations or movements (including those that are of a cultural, recreational or sporting nature) with significant child membership or involvement;

- (h) religious organisations;
  - (i) babysitting or childminding services;
  - (j) fostering of children;
  - (k) transportation services for children;
  - (l) private tuition services for children;
  - (m) counselling or other support services for children;
  - (n) overnight camps for children;
  - (o) road crossing services for school children;
  - (p) any of the following services, activities or facilities that are provided or arranged for children:
    - (i) gym or play facilities;
    - (ii) photographic services;
    - (iii) talent or beauty competitions;
    - (iv) entertainment or party services;
  - (q) any other services, activities or facilities prescribed by regulation.
- (3) A person may be engaged in child-related employment under a contract of employment or any other contract or arrangement (whether written or unwritten and whether for a reward or not).
- (4) Anyone who enters into such a contract or arrangement for a person or body to perform child-related work must be regarded as someone who engages the person or body in child-related employment.
- (5) Without limiting subsections (1) to (4), any of the following is a person engaged in child-related employment:
- (a) anyone performing child-related work:
    - (i) as a minister of religion or as Part of a religious vocation;  
or
    - (ii) as a student for the practical training of an educational or vocational course; or
    - (iii) as a voluntary worker;

- (b) if a body is engaged to perform child-related work, any of the following:
  - (i) for a body corporate as defined in the Corporations Act 2001 – an officer of the body corporate as defined in that Act;
  - (ii) for any other body corporate – anyone (however described) who takes Part in the management of the body corporate;
  - (iii) for any unincorporated body or association – a member of the committee of management (however described) of the body or association;
- (c) if a partnership is engaged to perform child-related work – a partner in the partnership.

### **186 Person exempt from operation of Part**

Despite section 185, an individual is not engaged in child-related employment if:

- (a) the individual:
  - (i) is engaged as a voluntary worker in a capacity covered by section 185(2)(b), (c) or (g) (other than for work requiring overnight stay); and
  - (ii) is a parent of at least one of the children with whom the individual may have contact as such a worker; and
  - (iii) performs work as such a worker under the direct supervision of someone who holds a clearance notice that is in force; and
  - (iv) is not required by the person who engages the individual as such a worker to hold a clearance notice; or
- (b) the individual is less than 15 years of age; or
- (c) the individual:
  - (i) is not a resident of the Territory; and
  - (ii) is engaged as a voluntary worker to perform child-related work; and
  - (iii) is so engaged for a total period that does not exceed the limit prescribed by regulation; or



- (d) the individual is exempt under the regulations.

### **187      Obligations for child-related employment**

- (1) An individual engaged in child-related employment must hold a clearance notice that is in force.
- (2) A person must not engage an individual in child-related employment unless the individual holds a clearance notice that is in force.
- (3) A person must not contravene subsection (1) or (2).

Maximum penalty:      500 penalty units.

- (4) An individual and someone (the employer) who engages or proposes to engage the individual in child-related employment are not required to comply with subsections (1) and (2) for the engagement if:
  - (a) an application for a clearance notice for the individual has been made but the Authority has not decided the application; and
  - (b) a period of exemption specified by the CEO for the individual and employer has not expired.
- (5) The CEO may specify the period only if:
  - (a) the employer:
    - (i) has applied to the CEO for the exemption in the approved form; and
    - (ii) has given any additional information for the application requested by the CEO; and
  - (b) the CEO considers it appropriate to grant the exemption having regard to the circumstances of the engagement (including any practice of the employer to safeguard the children concerned).

- (6) The period may be extended by the CEO as the CEO considers appropriate.

### **188      Application for clearance notice**

- (1) Any of the following may apply to the Authority for the issue of a clearance notice to an individual (the candidate):
  - (a) the candidate;

- (b) a person who engages, or proposes to engage, the candidate in child-related employment.
- (2) The application must be:
- (a) in the approved form; and
  - (b) accompanied by any proof of the identity of the candidate required by regulation; and
  - (c) accompanied by a statement of the candidate that:
    - (i) if the applicant is not the candidate – authorises the making of the application; and
    - (ii) authorises the Commissioner of Police and anyone prescribed by regulation to give information about the candidate to the Authority.
- (3) The candidate must give the Authority any additional information for the application requested by the Authority.

### **189 Decisions on application**

- (1) If the candidate has been convicted of an offence, or has a criminal history, that is prescribed by regulation, the Authority:
- (a) must not issue a clearance notice to the candidate; and
  - (b) must, as soon as practicable, give notice of the Authority's decision to the candidate and the applicant for the clearance notice (if the applicant is not the candidate).
- (2) If subsection (1) does not apply, the Authority must, having regard to the administrative guidelines, decide whether the candidate poses an unacceptable risk of harm or exploitation to children.
- (3) If the Authority decides the candidate does not pose such a risk, the Authority:
- (a) must issue a clearance notice to the candidate; and
  - (b) must, as soon as practicable, give notice of the Authority's decision to the candidate and applicant.
- (4) If the Authority decides the candidate poses such a risk, the Authority:
- (a) must not issue a clearance notice to the candidate; and

- (b) must, as soon as practicable, give notice of the Authority's decision to the candidate and applicant.
- (5) A notice of the Authority's decision must:
  - (a) be in the approved form; and
  - (b) be accompanied by the reasons for the decision; and
  - (c) for a decision under subsection (1) or (4), state:
    - (i) that the candidate and applicant are entitled to apply for a review of the decision under section 194; and
    - (ii) the time within which the application may be made.
- (6) Without limiting subsection (1), the regulations may prescribe for the subsection an offence that is a sexual offence.

#### **190 Provision of information**

- (1) Despite any law of the Territory:
  - (a) the Commissioner of Police and anyone else may give the Authority any information about the criminal history of the candidate; and
  - (b) the Authority may collect and maintain the information.
- (2) A person acting in good faith in giving the information is not civilly or criminally liable, or in breach of any professional code of conduct, for giving the information.

#### **191 Administrative guidelines**

- (1) The CEO may make administrative guidelines for the making of a decision by the Authority.
- (2) Without limiting subsection (1), the guidelines may provide for:
  - (a) matters the Authority must take into account in making the decision; and
  - (b) how those matters may be taken into account.
- (3) Without limiting subsection (2), the guidelines may provide for one or more of the following to be taken into account in deciding whether or not to issue a clearance notice to a person:
  - (a) the whole of the person's criminal history;

- (b) in relation to any offence the person has committed:
    - (i) the nature and gravity of the offence; and
    - (ii) the relevance of the offence to any child-related employment; and
    - (iii) the age of the victim when the offence was committed; and
    - (iv) the time that has elapsed since the commission of the offence;
  - (c) in relation to any alleged commission of an offence by the person – the risk of harm or exploitation to children posed by the person in view of the allegation and other related circumstances (including any patterns of the person's behaviour);
  - (d) any other matters the Authority may reasonably take into account in the circumstances.
- (4) The CEO must, by *Gazette* notice, notify the making of the guidelines.

**192 When clearance notice ceases to be in force**

- (1) A clearance notice ceases to be in force:
  - (a) at the end of 2 years, or a longer period specified by regulation, after the notice is issued; or
  - (b) if it is revoked at an earlier time – at that time.
- (2) The Authority may revoke the notice if:
  - (a) the Authority becomes aware of any information that:
    - (i) was not available to the Authority when the notice was issued; and
    - (ii) would have resulted in a decision not to issue the notice if it had been available to the Authority at that time; or
  - (b) the Authority considers the person holding the notice is no longer entitled to be issued the notice because of a change in the person's circumstances.

- (3) If the Authority revokes the notice, the Authority must give notice of the revocation and the reasons for the revocation to:
  - (a) the person; and
  - (b) the applicant for the clearance notice (if the applicant was not the person).
- (4) The notice of the revocation must state:
  - (a) that the person and applicant are entitled to apply for a review of the decision under section 194; and
  - (b) the time within which the application may be made.
- (5) In addition, the Authority may give written notice of the revocation to anyone who engages or proposes to engage the person in child-related employment.

**193 Change of circumstances requiring imposition of conditions**

- (1) A person holding a clearance notice that is in force must, as soon as practicable after a change of circumstances prescribed by regulation has occurred, give written notice of the change to:
  - (a) the Authority; and
  - (b) everyone who engages or proposes to engage the person in child-related employment.

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

- (2) After becoming aware of the change (whether because of subsection (1) or not), the Authority may specify conditions for the clearance notice by notice given to the following:
  - (a) the person;
  - (b) the applicant for the clearance notice (if the applicant was not the person);
  - (c) anyone who engages or proposes to engage the person in child-related employment.
- (3) The Authority must have regard to the administrative guidelines when giving the notice.

- (4) The notice must:
- (a) be accompanied by the Authority's reasons for specifying the conditions; and
  - (b) state that the person and applicant are entitled to apply for a review of the decision under section 194; and
  - (c) the time within which the application may be made.
- (5) Without limiting subsection (2), the Authority may specify any of the following conditions for the clearance notice under that subsection:
- (a) that the person must not be engaged in child-related employment for a specified period;
  - (b) that the person must not be engaged in a specified class of child-related employment for a specified period;
  - (c) that the person may be engaged in child-related employment or a specified class of child-related employment only under specified conditions.
- (6) A person must not contravene any of the specified conditions.
- Maximum penalty: 50 penalty units or imprisonment for 6 months.
- (7) It is a defence to a prosecution for an offence against subsection (6) if the defendant has a reasonable excuse.

#### **194 Local Court may review decision of Authority**

- (1) Any of the following decisions about a clearance notice may be reviewed under this section:
- (a) a decision under section 189(1) or (4) not to issue the notice;
  - (b) a decision under section 192(2) to revoke the notice;
  - (c) a decision under section 193(2) to specify conditions for the notice;
  - (d) any other decision of the Authority about the notice specified by regulation.
- (2) An application for the review may be made by any of the following persons:
- (a) for a decision mentioned in subsection (1)(a) – the candidate or the applicant for the notice;

- (b) for any other decision – the person holding, or the applicant for, the notice.
- (3) The application must be made to the Local Court within 28 working days after the person is notified of the decision.
- (4) The application does not affect the operation or implementation of the decision.
- (5) However, the Local Court may make another decision staying or otherwise affecting the operation or implementation of so much of the decision as it considers appropriate to effectively decide the application.
- (6) A decision made under subsection (5):
  - (a) is subject to the conditions specified by the Local Court; and
  - (b) has effect:
    - (i) for the period specified by the Local Court; and
    - (ii) if no period is specified by the Local Court – until the application is decided.
- (7) The review:
  - (a) must be conducted as a new hearing; and
  - (b) is not limited by the material before the Authority.
- (8) The Local Court may:
  - (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision; or
  - (d) set aside the decision and replace it by the Local Court's decision.
- (9) The Local Court may make any order about costs.

**195      Confidential information**

- (1) A person who has acquired information in exercising a power or performing a function under this Part is guilty of an offence if the person:
  - (a) discloses the information to someone; or

(b) does something that results in disclosing the information to someone and is reckless as to whether doing the thing would result in the disclosure; or

(c) uses the information.

Maximum penalty:      200 penalty units or imprisonment for  
2 years.

(2) Subsection (2) does not apply to:

(a) a disclosure or use of the information by the person in exercising a power or performing a function under this Part; or

(b) a disclosure of the information to a court or tribunal; or

(c) a disclosure or use of the information that is otherwise required or authorised by law.

## **196      Screening Authority**

(1) There is to be a Screening Authority.

(2) The Authority consists of one or more members appointed by the Minister.

## **197      Regulations**

The regulations may make provision, consistent with this Part, about the following:

(a) any matters relating to a clearance notice;

(b) the appointment of the members of the Authority;

(c) the procedure for the making of a decision by the Authority;

(d) any other matters arising from the operation of this Part.

## **Part 3.2      Employment of children**

### **198      Objects of Part**

The objects of this Part are:

(a) to prevent the exploitation of children in their employment; and

(b) to ensure the wellbeing of children who are in employment.



**199      Interaction with *Education Act***

This Part does not affect the operation of section 30 of the *Education Act*.

**200      Definitions**

In this Part:

**employ**, for a child, means to engage the child to perform work under a contract of employment or any other contract or arrangement (whether written or unwritten and whether for a reward or not).

**employer**, of a child, means a person who employs the child.

**201      CEO's power to restrict employment of children**

- (1) This section applies if:
- (a) a child is employed; and
  - (b) the CEO is of the opinion that:
    - (i) the child suffers, or is likely to suffer, exploitation because of the employment; or
    - (ii) the wellbeing of the child is, or is likely to be, jeopardised because of the employment.
- (2) The CEO may, by written notice given to a parent of the child:
- (a) prohibit the child from being so employed; or
  - (b) prohibit the child from employment generally; or
  - (c) prohibit the child from specified types of employment; or
  - (d) impose specified conditions on the employment of the child (whether generally or in relation to specified types of employment).
- (3) A parent of the child must not permit or require the child to be employed in contravention of the notice.

Maximum penalty:      100 penalty units or imprisonment for 12 months.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

- (5) The CEO:
- (a) must give a copy of the notice to the child; and
  - (b) may give a copy of the notice to an employer of the child.
- (6) An employer of the child who is given a copy of the notice must comply with the notice.
- Maximum penalty:      100 penalty units or imprisonment for  
   12 months.
- (7) It is a defence to a prosecution for an offence against subsection (6) if the defendant has a reasonable excuse.
- (8) The notice must:
- (a) be accompanied by the reasons of the CEO's decision; and
  - (b) state that a parent of the child is entitled to apply for a review of the decision under section 206 and the time within which the application may be made.

## **202      Misleading information about child's age**

- (1) This section applies if a person employs, or is considering employing, a child.
- (2) A parent of the child:
- (a) must not give the person any information about the child's age that the parent knows to be misleading in a material particular;  
or
  - (b) must not permit or require the child to give the person any information that the parent knows to be misleading in a material particular.

Maximum penalty:      100 penalty units or imprisonment for  
   12 months.

## **203      Obligation of employers and parents**

- (1) An employer of a child is guilty of an offence if:
- (a) the employer requires the child to perform any work at any time after 10 pm at night and before 6 am in the morning; and
  - (b) the child is less than 15 years of age.

Maximum penalty:      400 penalty units.

- (2) An employer of a child must not require the child to perform any work that is harmful, or likely to be harmful, to the child's physical, mental or emotional wellbeing.

Maximum penalty:      100 penalty units or imprisonment for  
12 months.

- (3) An employer of a child must not require the child to perform any work that involves the exploitation of the child.

Maximum penalty:      800 penalty units or imprisonment for  
4 years.

- (4) A parent of a child is guilty of an offence if:

(a) the parent permits or requires the child to perform any work at any time after 10 pm at night and before 6 am in the morning; and

(b) the child is less than 15 years of age.

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

- (5) A parent of a child must not permit or require the child to perform any work that is harmful, or likely to be harmful, to the child's physical, mental or emotional wellbeing.

Maximum penalty:      100 penalty units or imprisonment for  
12 months.

- (6) A parent of a child must not permit or require the child to perform any work that involves the exploitation of the child.

Maximum penalty:      800 penalty units or imprisonment for  
4 years.

## **204      Inspections**

- (1) For the purposes of monitoring compliance with this Part, an authorised officer may, at any reasonable time:

(a) enter a place where the officer reasonably believes a child is employed; and

(b) inspect the place and any facilities at the place; and

(c) require any person at the place to give the officer specified information or produce to the officer specified records; and

- (d) operate any electronic equipment at the place to retrieve the records; and
  - (e) make extracts or copies of the records.
- (2) A person must comply with a requirement given to the person for subsection (1).
- Maximum penalty: 100 penalty units or imprisonment for 12 months.
- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.
- (4) If the officer enters the place without producing the officer's identity card when requested to do so:
- (a) the officer may not stay at the place; and
  - (b) a person is not required to comply with a requirement given to the person for subsection (1).

**205 Authorised officer may require provision of information**

- (1) An authorised officer may, by written notice, require a person who employs a child to give the officer specified information about the employment.
- (2) The person must comply with the requirement within 14 days after receiving the notice.
- Maximum penalty: 100 penalty units or imprisonment for 12 months.
- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

**206 Local Court may review decision**

- (1) A parent of a child in relation to whom a notice is given by the CEO under section 201(2) may apply for a review of the decision in the notice.
- (2) The application must be made to the Local Court within 28 working days after the parent is given the notice.
- (3) The application does not affect the operation or implementation of the decision.

- (4) However, the Local Court may make another decision staying or otherwise affecting the operation or implementation of so much of the decision as it considers appropriate to effectively decide the application.
- (5) A decision under subsection (4):
  - (a) is subject to the conditions specified by the Local Court; and
  - (b) has effect:
    - (i) for the period specified by the Local Court; and
    - (ii) if no period is specified by the Local Court – until the application is decided.
- (6) The review:
  - (a) must be conducted as a new hearing; and
  - (b) is not limited by the material before the CEO.
- (7) The Local Court may:
  - (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision; or
  - (d) set aside the decision and replace it by the Local Court's decision.
- (8) The Local Court may make any order about costs.

### **Part 3.3      Prevention of child deaths**

#### **207      Object of Part**

The object of this Part is to assist in the prevention and reduction of child deaths through:

- (a) maintaining a database on child deaths; and
- (b) conducting research about child deaths, and diseases and accidents involving children; and
- (c) the development of appropriate policy to deal with such deaths, diseases and accidents.

**208      Child deaths**

A child death is:

- (a) the death of a child who usually resided in the Territory (whether the death occurred in the Territory or not); or
- (b) a still birth as defined in the *Births, Deaths and Marriages Registration Act* that occurred in the Territory.

**209      Establishment of Committee**

- (1) There is to be a Child Deaths Review and Prevention Committee.
- (2) The Committee consists of at least 10 but not more than 16 members.
- (3) Each member must be:
  - (a) someone who has qualifications or experience relating to the functions of the Committee; and
  - (b) appointed by the Minister in writing for a term not exceeding 2 years.
- (4) The Minister must:
  - (a) appoint one member to be the Convenor of the Committee; and
  - (b) appoint another member to be the Deputy Convenor of the Committee.
- (5) At least 2 members must be Aboriginal persons.
- (6) One member must be a deputy coroner nominated by the Territory Coroner for this section.
- (7) A member is eligible for re-appointment.
- (8) In this section:

**deputy coroner** means a deputy coroner as defined in the *Coroners Act*.

**Territory Coroner** means the Territory Coroner as defined in the *Coroners Act*.

## **210      Functions of Committee**

The Committee has the following functions:

- (a) to establish and maintain the Child Deaths Register;
- (b) to conduct or sponsor research into child deaths, diseases and accidents involving children, and other related matters (such as childhood morbidity and mortality), whether alone or with others;
- (c) to raise public awareness about a matter mentioned in paragraph (b), including, for example, any of the following:
  - (i) the death rate of children;
  - (ii) the causes and nature of child deaths and of diseases and accidents involving children;
  - (iii) the prevention or reduction of such deaths, diseases and accidents;
- (d) to make recommendations about a matter mentioned in paragraph (b);
- (e) to monitor the implementation of the recommendations;
- (f) to contribute to any national database on child deaths in Australia;
- (g) to enter into an arrangement for the sharing of information with anyone in Australia that has functions similar to those of the Committee;
- (h) to perform any other functions relating to the object of this Part as the Minister directs.

## **211      Provision of information to Committee**

- (1) Any of the following persons must, on the Committee's request, give specified information to the Committee for any of its functions:
  - (a) the Commissioner of Police;
  - (b) the Registrar of Births, Deaths and Marriages;
  - (c) a coroner;
  - (d) a service provider for a protected child;
  - (e) a health practitioner;

- (f) a person in charge of a facility for health services in which children are ordinarily patients;
- (g) an operator of child-related services;
- (h) an operator of children's services.

Maximum penalty:      200 penalty units or imprisonment for 2 years.

- (2) It is a defence to a prosecution for an offence against subsection (1) if:
  - (a) the defendant has a reasonable excuse; or
  - (b) the Commissioner of Police certifies in writing that compliance with the request would:
    - (i) prejudice the investigation of any unlawful conduct; or
    - (ii) disclose a confidential source of information in relation to the administration of law; or
    - (iii) prejudice the effectiveness of a method or procedure in relation to the administration of law; or
    - (iv) facilitate a person's escape from lawful custody; or
    - (v) endanger the safety of a person.
- (3) A person acting in good faith in giving information to the Committee is not civilly or criminally liable, or in breach of any professional code of conduct, for giving the information.

## **212      Child Deaths Register**

- (1) There is to be a Child Deaths Register.
- (2) The Register is a database of information concerning child deaths.
- (3) Without limiting subsection (2), the Register may include information on:
  - (a) incidences of child deaths; and
  - (b) the causes, patterns and trends of child deaths.

## **213      Annual report**

- (1) At the end of each financial year, the Committee must prepare a report about the operation of the Committee during that year.



- (2) The report must contain details about:
  - (a) the Committee's activities during that year, including:
    - (i) the development of the Register during that year; and
    - (ii) any recommendations made by the Committee during that year; and
  - (b) the implementation during that year of any recommendations made by the Committee.
- (3) The Committee must, by 31 October following the end of that year, give the report to the Minister.
- (4) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving the report.

#### **214      Report about research**

- (1) The Committee may prepare reports about research conducted or sponsored by the Committee (whether alone or with others).
- (2) The Committee must give the reports to the Minister.
- (3) The Minister must table a copy of each of the reports in the Legislative Assembly within 6 sitting days after receiving the report.

#### **215      Advisors to Committee**

- (1) The Minister may, on the Convenor's recommendation, appoint persons to be advisors to the Committee.
- (2) The Convenor may only recommend a person who has qualifications or experience relating to:
  - (a) a function of the Committee; or
  - (b) health care, child development or protection, or research methodology.
- (3) An advisor may be appointed for:
  - (a) the duration of a project specified in the appointment; or
  - (b) a term not exceeding 2 years specified in the appointment.
- (4) An advisor is eligible, on the recommendation of the Convenor, for re-appointment.

- (5) An advisor must assist the Committee in performing the Committee's functions as specified in the appointment.
- (6) Without limiting subsection (5), the appointment may specify that the advisor must conduct specified research.

**216      Deputy Convenor**

The Deputy Convenor must act in the office of Convenor if:

- (a) the Convenor is unable to exercise the Convenor's powers or perform the Convenor's functions; or
- (b) the office of Convenor is vacant.

**217      Vacation of office of member or advisor**

A member or advisor vacates his or her office if:

- (a) the term of the appointment of the member or advisor expires; or
- (b) the member or advisor resigns the office in writing given to the Minister; or
- (c) the appointment is terminated under section 218; or
- (d) the member or advisor dies.

**218      Termination of appointment**

- (1) The Minister must terminate a person's appointment as a member or advisor if:
  - (a) the person contravenes section 221; or
  - (b) for a person appointed as a member:
    - (i) the person has been absent (except on leave granted by the Minister) from 3 consecutive meetings of the Committee; or
    - (ii) the person contravenes section 220.
- (2) In addition, the Minister may terminate the appointment:
  - (a) on the ground of misbehaviour; or
  - (b) on the ground the person becomes physically or mentally incapable of satisfactorily performing the duties of the appointment.

- (3) Furthermore, the appointment is terminated if:
- (a) the person:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with creditors or makes an assignment of the person's remuneration for their benefit; or
  - (b) is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more; or
  - (c) is found guilty by a court outside the Territory of an offence which, if committed against a law of the Territory, would be an offence punishable by imprisonment for 12 months or more.
- (4) A termination under subsection (1) or (2) must be by writing given to the person.

#### **219      Meetings of Committee**

- (1) The Committee must meet at least 3 times in each year.
- (2) In a meeting of the Committee, the number of members that is equal to half of the members plus one constitutes a quorum.
- (3) A meeting of the Committee must be presided by:
- (a) the Convenor; or
  - (b) in the absence of the Convenor – the Deputy Convenor; or
  - (c) in the absence of both the Convenor and the Deputy Convenor – a member elected by the members present at the meeting.

#### **220      Disclosure of interest**

- (1) A member who has a direct or indirect interest in a matter to be considered by the Committee must disclose the interest to the Committee.
- (2) The disclosure must be recorded in the Committee's minutes.
- (3) The member:
- (a) must not take Part in any deliberation or decision of the Committee about the matter; and

- (b) must be disregarded for the purposes of constituting the quorum of the Committee for the deliberation or decision.
- (4) The Committee may decide subsection (3) does not apply to the matter.
- (5) However, the decision must be deliberated and voted on in the absence of the member.

## **221 Confidential information**

- (1) A person who has acquired information in exercising a power or performing a function under this Part is guilty of an offence if the person:
  - (a) discloses the information to someone; or
  - (b) does something that results in disclosing the information to someone and is reckless as to whether doing the thing would result in the disclosure; or
  - (c) uses the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply to:
  - (a) a disclosure or use of the information by a person in exercising a power or performing a function under this Part; or
  - (b) a disclosure or use of the information for any of the following purposes authorised by the Minister:
    - (i) research relating to the object of this Part;
    - (ii) an inquiry or investigation conducted by a coroner, the Police Force or another law enforcement agency;
    - (iii) a purpose specified by regulation; or
  - (c) a disclosure of the information to a court or tribunal; or
  - (d) a disclosure or use of the information that is otherwise required or authorised by law.

## **222 Review of operation of Part**

- (1) The Minister must conduct a review of the operation of this Part within 3 years after the commencement of this Part.

- (2) The review must determine:
- (a) the extent to which the operation of this Part has met the object of this Part; and
  - (b) whether or not any amendment to this Part should be made.

## **Chapter 4 Regulation of children's services**

### **Part 4.1 Preliminary matters**

#### **223 Object of Chapter**

The object of this Chapter is to safeguard the wellbeing of children who are under the care of an operator of children's services.

#### **224 Children's services**

- (1) Children's services are services for the care of a child provided in the following circumstances:
  - (a) the child is less than 13 years of age;
  - (b) the care is provided at a place other than the child's usual place of residence;
  - (c) the services are provided by a person who has been given responsibility for the care of the child by someone having daily care and control of the child.
- (2) To avoid doubt, children's services may be provided:
  - (a) for all or Part of a day; and
  - (b) as an on going operation or as a single event; and
  - (c) as a community service or as all or a Part of a commercial operation.
- (3) However, the following are not children's services:
  - (a) care of a child by a family member of the child;
  - (b) a private arrangement for the care of children (such as babysitting) under which children from not more than one family are cared for at the same time;
  - (c) private tutoring;
  - (d) services that are Part of an educational program provided by a school;
  - (e) services that are health services;

- (f) services that are:
  - (i) provided as an on going operation; and
  - (ii) available for each week for not more than 2 hours;
- (g) services provided under a placement arrangement that are prescribed by regulation;
- (h) services that the CEO, having regard to the object of this Chapter and the circumstances in which the services are provided, exempts from the operation of this Chapter by *Gazette* notice.

## **225      Home-based services**

- (1) Home-based services are children's services provided by a person (the operator) for the care of children at residential premises as an on going operation.
- (2) The services are provided by the operator for a home-based services scheme if the operator:
  - (a) controls the provision of the services at the premises; but
  - (b) is subject to the direction of another person (the coordinator of the services) who controls the operation, or the operation together with other similar operations of home-based services.
- (3) The services are provided by the operator otherwise than for a home-based service scheme if the operator:
  - (a) controls the provision of the services at the premises as well as the operation; and
  - (b) subsection (2)(b) does not apply to the operator.

## **226      Services requiring licence**

- (1) The following are services requiring a licence:
  - (a) home-based services provided for a home-based services scheme;
  - (b) children's services that:
    - (i) are provided as an on going operation at non-residential premises; and
    - (ii) are not services requiring registration or services prescribed by regulation;

- (c) children's services that:
  - (i) are provided as an on going operation; and
  - (ii) involve the provision of accommodation for children; and
  - (iii) are not home-based services, services requiring registration or services prescribed by regulation.
- (2) A person provides services requiring a licence if the person is:
  - (a) for services mentioned in subsection (1)(a) – the coordinator of the services; or
  - (b) for services mentioned in subsection (1)(b) or (c) – the person who controls the operation mentioned in the subsection.

*Examples*

1 Ms Jones operates a childcare service at her home under the direction and control of Care At Home Pty Ltd. Care At Home Pty Ltd provides services requiring a licence because of subsections (1)(a) and (2)(a). On the other hand, Ms Jones provides services requiring registration because of section 227(1)(a) and (2)(a).

2 Children's services provided through a childcare centre may be covered by subsection (1)(b).

3 Children's services provided through a residential facility for students from remote communities may be covered by subsection (1)(c).

**227 Services requiring registration**

- (1) The following are services requiring registration:
  - (a) home-based services provided by an operator (whether as an on going operation or single event);
  - (b) children's services provided as an on going operation:
    - (i) at a place in close proximity to the parents of the children; and
    - (ii) as Part of, or in conjunction with, an operation for services provided for the parents;
  - (c) children's services, other than services prescribed by regulation, that are provided as a single event.
- (2) A person provides services requiring registration if the person is:
  - (a) for services mentioned in subsection (1)(a) – the operator providing the home-based services; or



- (b) for services mentioned in subsection (1)(b) or (c) – the person who controls the operation or event.

*Examples*

- 1 For subsections (1)(a) and (2)(a), see example 1 in section 226.
- 2 Children's services provided in a gym for parents using the gym may be covered by subsection (1)(b).
- 3 Children's services provided during a conference for parents attending the conference may be covered by subsection (1)(c).

## **Part 4.2 Key obligations**

### **228 Obligation for providers**

- (1) A person must not provide services requiring a licence unless:
- (a) the person holds a licence under Part 4.3; or
  - (b) the person is appointed as a caretaker for the continuation of the services under section 240; or
  - (c) the person may do so under an action plan agreement in force under Part 4.4.
- (2) A person must not provide services requiring registration unless the person is registered under Part 4.5.
- (3) A person is guilty of an offence if the person contravenes subsection (1) or (2).

Maximum penalty: 500 penalty units.

### **229 Obligation of responsible person and other persons**

- (1) This section applies to a person (a responsible person) who:
- (a) holds a licence under Part 4.3; or
  - (b) is appointed as a caretaker for the provision of services under section 240; or
  - (c) may provide services under an action plan agreement in force under Part 4.4; or
  - (d) is registered under Part 4.5.
- (2) A responsible person must, in providing children's services for a child, ensure:
- (a) the child is appropriately cared for and supervised; and

- (b) the child is cared for in a safe environment; and
- (c) reasonable precaution has been taken to protect the child from any accident.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) Each person employed or engaged by the responsible person to provide the services must comply with a direction of the responsible person for:

- (a) the care or supervision of a child; or
- (b) the maintenance of a safe environment for the child; or
- (c) the protection of the child from any accident.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

## **Part 4.3 Services provided under licence**

### **230 Application for licence**

- (1) A person intending to provide services requiring a licence may apply for the licence if the person has advertised the intention in a newspaper in accordance with the regulations.
- (2) The application must:
  - (a) be made to the CEO in the approved form and in accordance with the regulations; and
  - (b) if the applicant is a body corporate – state the name of an individual who will be the contact person for the licence.
- (3) The applicant must give the CEO:
  - (a) any additional information for the application requested by the CEO; and
  - (b) if the circumstances relating to any information given to the CEO for the application have changed before the applicant is notified of the decision on the application – information about the change.

- (4) The applicant must give the CEO information about the change as soon as possible, and in any case, within 7 days after the change occurred.

### **231 Granting of licence**

- (1) The CEO:
- (a) must grant the licence if the CEO is of the opinion:
    - (i) the applicant is a fit and proper person to provide the services; and
    - (ii) the proposed premises and facilities for the services are adequate and appropriate; and
    - (iii) the applicant will provide the services consistent with the objects of this Act; and
    - (iv) the applicant satisfies any other requirements prescribed by regulation; or
  - (b) otherwise – refuse the application.
- (2) For subsection (1), the CEO must have regard to:
- (a) any report prepared for the Department about the application; and
  - (b) any views expressed by members of any local communities or organisations that may be affected by the application.
- (3) The CEO must specify in the licence the children's services that may be provided under the licence.
- (4) The licence is not transferable.

### **232 Conditions of licence**

- (1) The licence has effect subject to the following conditions (the licence conditions):
- (a) the conditions prescribed by regulation;
  - (b) any other conditions specified in the licence.
- (2) The licence holder must not contravene a licence condition.

Maximum penalty: 500 penalty units.

- (3) The CEO may, in accordance with the regulations, vary any licence condition that is specified in the licence:
  - (a) on the CEO's initiative; or
  - (b) on the application of the licence holder.
- (4) An application under subsection (3)(b) must be made in the approved form and in accordance with the regulations.

### **233 Term of licence**

- (1) The licence has effect for a specified period not exceeding 3 years from the granting of the licence or a later date specified in the licence.
- (2) The licence may be renewed if the licence holder applies for the renewal within 90 days before the licence expires.
- (3) Sections 229(2) to (4) and 230 apply to the application for the renewal in the same way as they apply to the application for the licence.
- (4) Subsections (1) and (2) apply to the renewed licence as if the reference to the granting of the licence in subsection (1) were a reference to the renewal.
- (5) A licence may be renewed more than once.

### **234 Display of licence**

The licence holder must ensure the licence is displayed conspicuously at a place specified in the licence.

Maximum penalty: 20 penalty units.

### **235 Replacement of licence**

The CEO may replace the licence if it is lost or damaged on the application of the licence holder.

### **236 When licence ceases to be in force**

- (1) The licence ceases to be in force:
  - (a) if it expires; or
  - (b) if it is revoked; or
  - (c) if it is surrendered; or

- (d) as provided in section 240(6); or
  - (e) as provided in section 244.
- (2) The licence is not in force while it is suspended.

### **237 Suspension and revocation of licence**

- (1) This section applies if the CEO is satisfied of one or both of the following in relation to the licence:
- (a) the licence holder has contravened one or more licence conditions prescribed by regulation;
  - (b) the licence holder no longer meets the requirements for the granting of the licence.
- (2) The CEO may issue a notice to the holder, stating:
- (a) that the holder must give a statement to the CEO, within a reasonable time specified in the notice, explaining why the licence should not be revoked; and
  - (b) that the notice must be displayed conspicuously at a specified place within a specified time.
- (3) The licence holder must comply with the requirement in subsection (2)(b).

Maximum penalty: 20 penalty units.

- (4) On or after issuing the notice, the CEO may suspend the licence if the CEO considers it necessary to do so to prevent any harm to a child for whom services are provided under the licence.
- (5) The CEO may, having regard to any statement given by the holder under subsection (2)(a):
- (a) if the licence is suspended – reinstate the licence; or
  - (b) revoke the licence.
- (6) The regulations may make provision for a revocation or suspension under this section.

### **238 Surrender of licence**

- (1) The licence holder may surrender the licence at any time before it expires.

- (2) The surrender must be:
  - (a) made in the approved form; and
  - (b) accompanied by the licence.

**239 Report about change of circumstances**

- (1) The licence holder must notify the CEO of any proposed change of circumstances before its occurrence if it is prescribed by regulation for this subsection.

Maximum penalty: 100 penalty units.

- (2) The licence holder must notify the CEO of any unforeseen change of circumstances as soon as practicable after its occurrence if it is prescribed by regulation for this subsection.

Maximum penalty: 100 penalty units.

- (3) A notification under subsection (1) or (2) must be made in the approved form.

**240 Continuation of services by caretaker**

- (1) The CEO may appoint a person as a caretaker to continue to provide the services that were provided under a licence if:

- (a) the licence is revoked; or
- (b) the services cease for any reason (for example, the licence holder has died, absconded or gone into liquidation).

- (2) The CEO:

- (a) may do so:
  - (i) on the CEO's initiative; or
  - (ii) on the application of the person; and
- (b) must do so within 3 months after the revocation or cessation.

- (3) An application under subsection (2)(a)(ii) must be made in the approved form and in accordance with the regulations.

- (4) The CEO must specify in the appointment:

- (a) the conditions for the provision of the services (including, for example, any conditions about the person's remuneration); and

- (b) the term of the appointment.
  - (5) The person must not contravene:
    - (a) any condition specified in the appointment; or
    - (b) any other condition prescribed by regulation.
- Maximum penalty: 500 penalty units.
- (6) If subsection (1)(b) applies to the licence, the licence ceases to be in force at the earliest of the following:
    - (a) the death of the licence holder;
    - (b) if services cease to be provided under the licence for a continuous period of 3 months – the end of that period;
    - (c) the appointment of the person under subsection (1) for the continuation of the services.

## **Part 4.4 Services provided under action plan agreement**

### **241 Entering into agreement**

- (1) The CEO may enter into an agreement with a person intending to provide services requiring a licence if the CEO is satisfied:
  - (a) the services will be provided in an area (a specified area) specified by the CEO in a *Gazette* notice; and
  - (b) the agreement would assist the person to gradually meet the requirements that would be imposed on a licence holder providing the services.
- (2) The CEO may enter into an agreement with a person who is a licence holder if:
  - (a) the services to be provided under the licence are provided in a specified area; and
  - (b) the person has been unable to comply with some or all of the requirements imposed on the person as the licence holder; and
  - (c) the CEO is satisfied the agreement would assist the person to gradually meet the requirements.

## **242 Action plan agreement**

- (1) An agreement mentioned in section 241 is an action plan agreement.
- (2) The agreement must:
  - (a) specify the children's services that may be provided under the agreement; and
  - (b) specify the conditions for the provision of the services; and
  - (c) provide for a plan of action to assist a person to gradually meet the requirements mentioned in section 241(1)(b) or (2)(c); and
  - (d) provide for any other matters relating to the provision of the services.

## **243 Making of agreement**

- (1) The CEO may enter into the agreement:
  - (a) on the CEO's initiative; or
  - (b) on the application of the person.
- (2) The application must be made to the CEO in the approved form and comply with other requirements prescribed by regulation.
- (3) The applicant must give the CEO:
  - (a) any additional information for the application requested by the CEO; and
  - (b) if the circumstances relating to any information given to the CEO for the application have changed before the applicant is notified of the decision on the application – information about the change.
- (4) The applicant must give the CEO the information about the change as soon as possible, and in any case, within 7 days after the change occurred.

## **244 Effect of agreement**

The licence mentioned in section 241(2) ceases to be in force from the commencement of an action plan agreement for the services covered by the licence.



**245 Termination of agreement**

The CEO may terminate an action plan agreement in accordance with:

- (a) the terms of the agreement; and
- (b) the regulations.

**246 Offence**

A person who is a party to an action plan agreement must not contravene:

- (a) a condition specified in the agreement; or
- (b) any other condition prescribed by regulation.

Maximum penalty: 500 penalty units.

**Part 4.5 Services provided under registration**

**247 Application for registration**

- (1) A person intending to provide services requiring registration may apply to the following (the decision maker) for the registration of the person:
  - (a) for home-based services provided for a home-based services scheme – the coordinator of the services;
  - (b) otherwise – the CEO.
- (2) The application must be made in the approved form.
- (3) The applicant must give the decision maker any additional information for the application requested by the decision maker.
- (4) The decision maker must register the applicant if the decision maker is satisfied the applicant is entitled to be registered under the regulations.
- (5) The regulations may provide for the following:
  - (a) the conditions for the registration, including conditions that may be specified by the decision maker;
  - (b) actions that may be taken by the decision maker for the registration and for monitoring the services provided under the registration;

- (c) the obligations of a coordinator of home-based services when acting as a decision maker;
- (d) any other matters in connection with the registration.

#### **248 Conditions of registration**

A person registered under this Part must comply with a condition for the registration.

Maximum penalty: 500 penalty units.

#### **249 Term of registration**

- (1) A registration under this Part has effect for:
  - (a) if the services are to be provided as a single event – the duration of the event or another period determined by the CEO; or
  - (b) otherwise – 12 months from the date of the registration or a later date specified for the registration.
- (2) The registration may be renewed if the registered person applies for the renewal within:
  - (a) if subsection (1)(a) applies – a period determined by the CEO; or
  - (b) if subsection (1)(b) applies – 30 days before the registration expires.
- (3) Section 247(1) to (4) applies to the application for the renewal in the same way as it applies to the application for the registration.
- (4) Subsections (1) and (2) apply to the renewed registration as if a reference to the registration in the subsections were a reference to the renewal.
- (5) A registration may be renewed more than once.
- (6) The regulations may make provision about the renewal of a registration.

#### **250 When registration ceases to be in force**

- (1) A registration ceases to be in force if:
  - (a) it expires; or
  - (b) it is revoked in accordance with the regulations.

- (2) A registration is not in force while it is suspended in accordance with the regulations.
- (3) The regulations may make any provision about the revocation or suspension of a registration.

## **Part 4.6 Compliance**

### **251 Inspections**

- (1) An authorised officer may exercise powers under this section for monitoring one or both of the following:
  - (a) compliance with this Chapter;
  - (b) the wellbeing of children for whom children's services are provided.
- (2) For subsection (1), an authorised officer may, at any reasonable time:
  - (a) enter a place where the officer reasonably believes children's services are provided; and
  - (b) inspect the place and facilities at the place; and
  - (c) require any person at the place to give the officer specified information or produce specified records; and
  - (d) operate any electronic equipment at the place to retrieve the records; and
  - (e) make extracts or copies of the records.
- (3) A person must comply with a requirement given to the person by the officer for subsection (2).

Maximum penalty: 100 penalty units or imprisonment for 12 months.
- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.
- (5) If the officer enters a place without producing the officer's identity card when requested to do so:
  - (a) the officer may not stay at the place; and
  - (b) a person is not required to comply with a requirement given to the person for subsection (2).

**252      Authorised officer may require provision of information**

- (1) An authorised officer may, by written notice, require an operator of children's services to give the officer specified information relating to the services.
- (2) The operator must comply with the requirement within 14 days after receiving the notice.

Maximum penalty:      200 penalty units or imprisonment for  
2 years.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

**253      Arrangements for this Part**

- (1) The CEO may enter into an arrangement with a person or body (whether incorporated or not) for any of the following purposes:
  - (a) the exercise of a power or the performance of a function under this Chapter;
  - (b) a review of the operation of this Chapter.
- (2) The regulations may make provision for the arrangement.
- (3) Without limiting subsection (1), the arrangement may relate to the preparation of a report about a person making an application under this Chapter.

**Part 4.7      Review**

**254      Application for review**

- (1) Each of the following is a reviewable decision:
  - (a) a decision to refuse to grant a licence;
  - (b) a decision to refuse to appoint a person as a caretaker;
  - (c) a decision to refuse to renew a licence;
  - (d) a decision to vary a condition of a licence;
  - (e) a decision to suspend a licence;
  - (f) a decision to revoke a licence;

- (g) a decision to refuse an application to enter into an action plan agreement;
  - (h) a decision to terminate an action plan agreement;
  - (i) a decision to refuse to register a person;
  - (j) a decision to refuse to renew a registration;
  - (k) a decision to vary a condition of a registration;
  - (l) a decision to suspend a registration;
  - (m) a decision to revoke a registration.
- (2) However, a decision made by a panel is not a reviewable decision.
- (3) The following person may apply for a review of a reviewable decision:
- (a) for a decision mentioned in subsection (1)(a), (b), (c), (g), (i) and (j) – the applicant relating to the decision;
  - (b) for a decision mentioned in subsection (1)(d), (e) or (f) – the licence holder;
  - (c) for a decision mentioned in subsection (1)(h) – the operator providing services under the agreement;
  - (d) for a decision mentioned in subsection (1)(k), (l) or (m) – the registered person.
- (4) As soon as practicable after making a reviewable decision, the decision maker must:
- (a) give notice of the decision to the person who may apply for a review of the decision; and
  - (b) state in the notice:
    - (i) the reasons for the decision; and
    - (ii) that the person is entitled to apply for a review of the decision and the time within which the application may be made.
- (5) In this section:
- decision maker** means:
- (a) for a decision made by the CEO – the CEO; or

- (b) for a decision made by a delegate of the CEO – the delegate;  
or
- (c) for a decision made by a licence holder – the licence holder.

**255 Review panel**

- (1) The CEO must establish review panels for reviewable decisions.
- (2) A panel must consist of 3 members appointed by the CEO.
- (3) The CEO must appoint members of the panel on the following basis:
  - (a) one member must be a person employed or engaged by the Department;
  - (b) another member must be a person employed or engaged by another Agency;
  - (c) the third member must have qualifications or experience relating to:
    - (i) children's services; or
    - (ii) matters concerning the wellbeing of children.

**256 Review by panel**

- (1) A person who may apply for a review of a reviewable decision may do so by making an application to the CEO in the approved form.
- (2) The application must be given to the CEO within 28 working days after the person is given notice of the decision.
- (3) The CEO must assign a panel to decide the application.
- (4) The application does not affect the operation or implementation of the reviewable decision.
- (5) However, the panel may make another decision staying or otherwise affecting the operation or implementation of so much of the reviewable decision as it considers appropriate to effectively decide the application.
- (6) A decision under subsection (4):
  - (a) is subject to the conditions specified by the panel; and

- (b) has effect:
  - (i) for the period specified by the panel; and
  - (ii) otherwise – until the application is decided.
- (7) The review:
  - (a) must be conducted by the panel as a new hearing; and
  - (b) is not limited by the matters before the decision maker of the reviewable decision.
- (8) The panel may:
  - (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision; or
  - (d) set aside the decision and replace it by the panel's decision.

## **Part 4.8 Administrative matters**

### **257 Regulations**

- (1) The regulations may make provision, consistent with this Chapter, about the operation of this Chapter.
- (2) Without limiting subsection (1), the regulations may make provision about the following:
  - (a) the qualifications of an operator of children's services;
  - (b) the standard of the services (including, for example, any hygienic and safety standards) required of the operator;
  - (c) the maximum number of children (or children within a specified group) for whom the services may be provided by the operator;
  - (d) the number of people who must be engaged for the provision of the services;
  - (e) the establishment of a mechanism to deal with complaints arising from the provision of the services;
  - (f) the nomination of people who may be appointed as members of a panel;

- (g) the operation of a panel and its procedures;
- (h) the review of the operation of this Chapter and the regulations made for this Chapter.



## **Chapter 5 Administration**

### **Part 5.1 Children's Commissioner**

#### **Division 1 Preliminary matters**

##### **258 Object of Part**

The object of this Part is to ensure:

- (a) the wellbeing of protected children; and
- (b) the monitoring of the implementation of any government decision arising from the Inquiry into the Protection of Aboriginal Children from Sexual Abuse.

##### **259 Commissioner**

- (1) There is to be a Children's Commissioner.
- (2) The Administrator may, by *Gazette* notice, appoint a person to be the Children's Commissioner.
- (3) The Administrator may do so only on the recommendation of the Minister.
- (4) The recommendation must be made on the basis the person:
  - (a) has qualifications or experience relating to the Commissioner's functions; and
  - (b) is committed to the objects and underlying principles of this Act.

##### **260 Commissioner's functions**

- (1) The functions of the Commissioner are:
  - (a) to investigate complaints about services required to be provided to protected children by service providers; and
  - (b) to monitor the ways in which service providers respond to reports made by the Commissioner; and
  - (c) to monitor the administration of this Act in so far as it relates to protected children; and

- (d) to monitor the implementation of any government decision arising from the Inquiry into the Protection of Aboriginal Children from Sexual Abuse; and
  - (e) to report to the Minister on a matter mentioned in paragraphs (a) to (d) as requested by the Minister.
- (2) For this Part:
- (a) a protected child is a child who is the subject of the exercise of a power or the performance of a function under Chapter 2; and
  - (b) a service provider for the child is:
    - (i) a public authority, or anyone acting for a public authority, who has taken or is taking an action under this Act in relation to the child as a protected child; or
    - (ii) an operator of child-related services or children's services who provides, or is required to provide, the services under this Act in relation to the child as a protected child.
- (3) However, the following are not service providers for the child:
- (a) a court;
  - (b) a public authority, person or body prescribed by regulation.

*Examples*

1 A child for whom a protection order is in force is a protected child.

2 An authorised officer conducting an investigation about a child under section 35 is a service provider for the child.

**261 Commissioner's powers**

The Commissioner may do all things necessary or convenient to be done for the performance of the Commissioner's functions.

**262 Commissioner's independence**

Except as otherwise provided by another law of the Territory, the Commissioner is not subject to the direction of anyone in relation to:

- (a) the way in which the functions of the Commissioner are performed; or
- (b) the order of priority the Commissioner gives to investigations.

## **Division 2 Complaints**

### **Subdivision 1 Procedures for making complaints**

#### **263 Making complaint**

- (1) Any of the following persons may make a complaint:
  - (a) someone who is or has been a protected child;
  - (b) an adult acting on behalf of a protected child.
- (2) The complaint:
  - (a) must be made to the Commissioner; and
  - (b) may be made orally or in writing.
- (3) If the complaint is made orally, the Commissioner may arrange for it to be reduced into writing.

#### **264 Grounds for complaint**

- (1) The complaint must be made on one or more of the following grounds:
  - (a) a service provider (a responsible service provider) failed to provide services (required services) for the child, as a protected child, that the provider was reasonably expected to provide;
  - (b) the required services provided by the provider for the child failed to meet the standard that was reasonably expected of the provider.
- (2) Without limiting subsection (1), the required services include any services relating to the care or wellbeing of the child.

*Example*

*A complaint may be made in relation to a child who is housed in sub-standard accommodation while being in the CEO's care.*

- (3) In this Part, a reference to the matter to which the complaint relates is a reference to each failure forming the grounds for the complaint.

#### **265 When complaint must be made**

Except with the permission of the Commissioner, the complaint must be made within one year after the matter to which the complaint relates has arisen.

## **Subdivision 2 Dealing with complaints**

### **266 Initial assessment of complaint**

- (1) On receiving the complaint, the Commissioner must decide which of the following actions should be taken:
  - (a) to investigate and resolve the complaint;
  - (b) one or both of the following:
    - (i) not to deal with the complaint;
    - (ii) refer the complaint to someone else for investigation and resolution.
- (2) The Commissioner may decide not to deal with the complaint only if the Commissioner is satisfied:
  - (a) the complaint lacks substance; or
  - (b) the complaint relates to an act or omission of a police officer; or
  - (c) the complaint should be referred to someone who has an established mechanism to deal with similar complaints; or
  - (d) the matter to which the complaint relates has already been satisfactorily dealt with by the Commissioner or someone else; or
  - (e) the complainant has failed, without reasonable excuse, to comply with a requirement of the Commissioner (for example, giving specified information to the Commissioner); or
  - (f) the complainant does not have a sufficient interest in the matter to which the complaint relates; or
  - (g) the complainant has withdrawn the complaint; or
  - (h) any dealing or further dealing with the complaint is inappropriate, having regard to:
    - (i) a proceeding before a court or tribunal relating to the matter to which the complaint relates; or
    - (ii) the objects and underlying principles of this Act and the resources available to deal with the complaint.
- (3) If subsection (2)(b) applies, the Commissioner must refer the complaint to the Ombudsman for investigation and resolution.

- (4) The Commissioner must make the decision under subsection (1) within:
  - (a) 28 days after receiving the complaint; or
  - (b) if the Commissioner needs other information for the decision – within 28 days after obtaining the information.
- (5) This section does not prevent the Commissioner from taking actions under subsection (1)(b) after deciding to investigate and resolve the complaint.

## **267 Notification of initial assessment**

- (1) As soon as practicable after making a decision under section 266, the Commissioner must notify the complainant of the decision and the reasons for the decision.
- (2) In addition, if the Commissioner decides not to deal with the complaint, the Commissioner:
  - (a) must notify each of the following of the decision:
    - (i) each responsible service provider relating to the complaint; and
    - (ii) the Chief Executive Officer of each responsible Agency; and
  - (b) may notify each responsible Minister of the decision if the Commissioner considers it appropriate to do so; and
  - (c) if the Commissioner decides not to deal with the complaint after starting to investigate the complaint – must give a report about the investigation to each person notified under paragraph (a) or (b).

- (3) In this section:

responsible Minister, for the complaint, means the Minister who has administrative responsibilities for:

- (a) an Agency (a responsible Agency) directly or indirectly responsible for providing, or funding or administering the funding of, any required services relating to the complaint; or
- (b) a responsible service provider relating to the complaint.

**268 Complaint referred to another person or body**

- (1) This section applies if the Commissioner refers the complaint to someone (the referred authority) for investigation and resolution.
- (2) The referred authority must, as soon as practicable, notify the Commissioner:
  - (a) whether the referred authority accepts the referral; and
  - (b) if the referred authority accepts the referral – the result of the investigation and resolution.

**269 Notice to responsible service provider before investigation**

- (1) This section applies if the Commissioner decides to investigate and resolve the complaint.
- (2) The Commissioner must, before investigating the complaint, notify each responsible service provider, and the Chief Executive Officer of each responsible Agency, of the following:
  - (a) details of the complaint;
  - (b) the Commissioner's decision to investigate and resolve the complaint;
  - (c) that the Agency and service provider may each make a written submission about the complaint within a reasonable time specified in the notice.

**270 Access to child**

- (1) For investigating the complaint, the Commissioner may request a person to allow the Commissioner to have contact with a child who is, or whom the Commissioner reasonably believes to be:
  - (a) the protected child; or
  - (b) a witness in relation to the complaint.
- (2) The notice must specify a reasonable time and place for the contact.
- (3) The person must comply with the notice.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (4) It is a defence to a prosecution for an offence against subsection (3) if:
- (a) the defendant has a reasonable excuse; or
  - (b) the child has indicated that he or she does not wish to have the contact.

## **271 Access to information**

- (1) For investigating the complaint, the Commissioner may request a person:
- (a) to give the Commissioner specified information by a reasonable time specified in the notice; or
  - (b) to attend before the Commissioner at a reasonable time and place specified in the notice:
    - (i) to give information and answer questions about a specified matter; or
    - (ii) to produce a specified thing; or
  - (c) to communicate with the Commissioner in any other way about a specified matter at a reasonable time specified in the notice.
- (2) If a person gives the Commissioner a thing under the notice, the Commissioner:
- (a) may inspect it and make a copy of it; and
  - (b) must return it to the person as soon as practicable.
- (3) For subsection (1), the Commissioner may require a person:
- (a) to make an oath; or
  - (b) to verify a written statement of the person by oath.
- (4) The person must comply with the requirement.
- Maximum penalty: 20 penalty units.
- (5) It is a defence to a prosecution for an offence against subsection (4) if the defendant has a reasonable excuse.
- (6) The Commissioner may administer an oath or make other arrangements for administering an oath for subsection (3).

## **272 Notification at end of investigation**

- (1) The Commissioner must notify the complainant of:
  - (a) the result of the investigation; and
  - (b) any action taken or proposed to be taken for resolving the complaint.
- (2) The Commissioner:
  - (a) must give a report of the investigation to each of the following:
    - (i) each responsible service provider;
    - (ii) the Chief Executive Officer of each responsible Agency; and
  - (b) may give the report to a responsible Minister if the Commissioner considers it appropriate to do so.
- (3) The report may recommend the service provider or Agency to take specified actions within a specified time.
- (4) If the service provider or Agency fails to do so, the Commissioner may give another report about the failure to a responsible Minister.

## **Subdivision 3 Offences about complaints**

### **273 Failure to comply with notice**

- (1) A person who is given a notice under section 271 must comply with a requirement in the notice.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) It is a defence to a prosecution for the offence against subsection (1) if:
  - (a) the defendant has a reasonable excuse; or
  - (b) the requirement is covered by a certificate under subsection (3) or (4); or
  - (c) a Judge has decided the defendant would be able to refuse to comply with the requirement on the ground of a privilege had the requirement been made in a criminal proceeding; or



- (d) a Judge has decided any benefits arising from complying with the requirement will be outweighed by the damage to the defendant's financial interests or privacy as a result of the compliance.
- (3) The Commissioner of Police may certify in writing that compliance with the requirement would:
  - (a) prejudice the investigation of any unlawful conduct; or
  - (b) disclose a confidential source of information in relation to the administration of law; or
  - (c) prejudice the effectiveness of a method or procedure in relation to the administration of law; or
  - (d) facilitate a person's escape from lawful custody; or
  - (e) endanger the safety of a person.
- (4) The Administrator may certify in writing that compliance with the requirement would be contrary to the public interest.
- (5) Without limiting subsection (4), the Administrator may do so if the Administrator is satisfied the compliance would involve:
  - (a) a disclosure of communications between the Administrator and the Executive Council or a member of the Executive Council; or
  - (b) a disclosure of communications between one or more of the following:
    - (i) a Minister of the Territory;
    - (ii) a Minister of the Commonwealth;
    - (iii) a Minister of a State or another Territory; or
  - (c) a disclosure of a deliberation or decision of:
    - (i) the Executive Council or a committee of the Executive Council; or
    - (ii) a committee of the Legislative Assembly formed to advise the Administrator or a Minister; or
    - (iii) the Cabinet of the Territory or of the Commonwealth, a State or another Territory.

- (6) A person who is given the notice may apply to a Judge for a decision about the application of subsection (2)(c) or (d) to the person.
- (7) The person bears the legal burden of proof for the application.
- (8) Subject to the decision of the Judge, the application must be made in accordance with the Supreme Court Rules.
- (9) The Judge may make any orders necessary for the practical operation of this Division including, for example, amending the notice.

#### **274 Misleading document**

- (1) A person must not, for the purposes of this Part, give the Commissioner any document that contains information the person knows to be misleading in a material particular.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) However, subsection (1) does not apply if the person, when giving the document:
  - (a) draws the misleading aspect of the document to the Commissioner's attention; and
  - (b) to the extent the person can reasonably do so – gives the Commissioner the information necessary to correct the document.

#### **275 Preventing or obstructing complaint**

A person must not:

- (a) prevent someone from making a complaint; or
- (b) obstruct someone in making a complaint.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

#### **276 False complaint**

A person must not, in making a complaint, make a representation that the person knows to be false.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

**277 Obstructing or improperly influencing investigation**

A person must not obstruct or improperly influence the conduct of an investigation.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

**Division 3 Commissioner's reports**

**278 Annual report and other reports**

- (1) The Commissioner must:
  - (a) by 31 October following the end of each financial year, prepare and give the Minister a report on the operation of this Part during that year; and
  - (b) as required by the Minister, prepare and give the Minister a report mentioned in section 260(1)(e).
- (2) If the Commissioner considers it appropriate to do so, the Commissioner may also prepare and give the Minister a report about a matter relating to the performance of a function of the Commissioner.
- (3) Without limiting subsection (1) or (2), a report mentioned in the subsection may contain particulars about anyone's failure to comply with this Act.
- (4) The Minister must table each report mentioned in subsection (1) or (2) in the Legislative Assembly within 6 sitting days after receiving it.
- (5) The Commissioner may, for a report (the first report) mentioned in subsection (1) or (2), prepare and give the Minister a second report, on a confidential basis, about a matter to which the first report relates.
- (6) However, the Commissioner may do so only if the Commissioner considers aspects of the matter should not be publicly disclosed, having regard to:
  - (a) the underlying principles of this Act; and
  - (b) any action being taken by the Commissioner or anyone else.

**279 Report authorised by Speaker**

- (1) The Speaker may, at the Commissioner's request, authorise the Commissioner to publish, in the public interest or in the interests of a person:
  - (a) a report relating to the performance of a function of the Commissioner; or
  - (b) a report relating to a particular complaint.
- (2) Subsection (1) applies regardless of whether the matters dealt with in the report have been the subject of another report tabled in the Legislative Assembly.

**Division 4 Disclosure of confidential information**

**280 Disclosure of information to Commissioner generally**

- (1) An officer of a public authority may disclose information to the Commissioner for an investigation despite any restriction on the disclosure under a law of the Territory.
- (2) For subsection (1), an officer of a public authority includes any of the following:
  - (a) the authority's principal officer;
  - (b) a member of the authority;
  - (c) a member of the staff of the authority;
  - (d) a person employed or engaged by the authority.
- (3) This section has effect subject to section 273(2) to (9).

**281 Direction by Commissioner not to disclose information**

- (1) This section applies if a person is given a document by the Commissioner in relation to an investigation.
- (2) The Commissioner may direct the person not to disclose any information in the document except as specified in the direction.
- (3) The person must comply with the direction.

Maximum penalty: 100 penalty units or imprisonment for 2 years.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

## **282 Confidentiality**

- (1) A person who has acquired information in exercising a power or performing a function under this Part is guilty of an offence if the person:

- (a) discloses the information to someone; or
- (b) does something that results in disclosing the information to someone and is reckless as to whether doing the thing would result in the disclosure; or
- (c) uses the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply to:

- (a) anything done by a person in exercising a power or performing a function under this Part; or
- (b) anything done by a person for investigating a complaint about the care or protection of children under a law of the Territory, or a law of the Commonwealth, a State or another Territory; or
- (c) a disclosure of the information to a court or tribunal.

- (3) A person must not be required in a proceeding to give evidence or produce a thing for a matter that came to the person's knowledge in exercising a power or performing a function under this Part.

- (4) A proceeding mentioned in subsection (3):

- (a) includes:
  - (i) a proceeding of a court or tribunal; or
  - (ii) any other proceeding conducted by someone having the power to take evidence on oath; but
- (b) does not include a proceeding for an offence alleged to have been committed by a person in exercising a power or performing a function under this Part.

## **Division 5 Immunity**

### **283 Immunity – complainant and informants**

- (1) A person acting in good faith in making a complaint or giving information for an investigation is not civilly liable for making the complaint or giving the information.
- (2) A civil proceeding may be brought against a person for making a complaint or giving information for an investigation only with the leave of the Supreme Court.
- (3) The Supreme Court may grant the leave only if it is satisfied there is substantial ground for contending the person has not acted in good faith.

### **284 Immunity – Commissioner and staff**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith:
  - (a) in the exercise or purported exercise of a power under this Part; or
  - (b) in the performance or purported performance of a function under this Part.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

## **Division 6 Administrative matters**

### **285 Term of appointment**

The Commissioner holds office for the period (not exceeding 5 years) specified in the appointment and is eligible for re-appointment.

### **286 Conditions of appointment**

The Commissioner holds office on the conditions (including remuneration, expenses and allowances) determined by the Administrator.

### **287 Leave**

The Minister may grant the Commissioner leave of absence on the conditions determined by the Minister.

**288 Resignation**

The Commissioner may resign the office of Commissioner by writing given to the Administrator.

**289 Suspension and termination of appointment**

- (1) The Administrator may, in writing, suspend the Commissioner from duty on the ground of misbehaviour or physical or mental incapacity.
- (2) The Minister must, within 3 sitting days after the suspension, present a statement of the reasons for the suspension to the Legislative Assembly.
- (3) The Administrator must terminate the Commissioner's appointment if, within 7 sitting days after presenting the statement, a resolution is passed by a two thirds majority of the Legislative Assembly requesting the termination.
- (4) The Commissioner must resume duties if:
  - (a) the Minister does not present the statement under subsection (2); or
  - (b) the Legislative Assembly does not pass the resolution under subsection (3).
- (5) The Commissioner is entitled to be paid remuneration and allowances during the suspension.
- (6) The Administrator must terminate the Commissioner's appointment if the Commissioner:
  - (a) becomes bankrupt; or
  - (b) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with creditors or makes an assignment of the Commissioner's remuneration for their benefit.

**290 Acting Commissioner**

- (1) The Minister may appoint a person to act in the office of the Commissioner:
  - (a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or

- (b) during a period or all periods when the Commissioner is unable to perform the functions of the office.
- (2) A person appointed under subsection (1)(a) must not act continuously for more than 3 months in the office of the Commissioner.
- (3) The Minister may determine conditions of the appointment (including remuneration, expenses and allowances).

### **291 Oath of office**

- (1) A person appointed to be the Commissioner must, before taking office as Commissioner, make an oath that he or she:
  - (a) will faithfully and impartially perform the functions of the office; and
  - (b) will not, except for the purposes of this Act, disclose any information obtained by him or her in performing those functions.
- (2) The Speaker or a Judge must administer the oath.

### **292 Delegation**

- (1) The Commissioner may, in writing, delegate to a person any of the Commissioner's powers or functions under this Act.
- (2) The Commissioner may do so only if the Commissioner is satisfied the person has the appropriate qualifications or experience.

### **293 Staff of Commissioner**

- (1) The staff of the Commissioner consists of:
  - (a) public sector employees employed by the Commissioner; and
  - (b) persons employed in an Agency made available by the Chief Executive Officer of the Agency under an arrangement with the Commissioner.
- (2) A member of the Commissioner's staff is subject only to the direction of:
  - (a) the Commissioner; or
  - (b) another member of the Commissioner's staff.



## **Part 5.2 Review teams**

### **294 Object of Part**

The object of this Part is to ensure:

- (a) the operation of Chapter 2 is consistent with the objects and underlying principles of this Act; and
- (b) services provided for Chapter 2 are of a high standard.

### **295 Establishment**

- (1) The CEO may establish review teams by *Gazette* notice.
- (2) A team:
  - (a) consists of members appointed by the CEO; and
  - (b) must have at least 3 members.
- (3) A team member must represent at least one of the following:
  - (a) the Police Force;
  - (b) an Agency having responsibility relating to health, education, housing, family or children;
  - (c) an organisation promoting any of the following:
    - (i) the wellbeing of children;
    - (ii) the interests of people with disabilities;
    - (iii) the interests of Aboriginal people;
    - (iv) multiculturalism.

### **296 Functions of team**

A team has one or more of the following functions as specified in the *Gazette* notice:

- (a) to conduct a review and make recommendations about any of the following (a Chapter 2 matter):
  - (i) the operation of specified provisions of Chapter 2 (whether generally or in relation to a specified locality);

- (ii) the provision of specified services in connection with that operation;
- (b) to conduct a review of the implementation of the recommendations;
- (c) to perform any other specified function in relation to a Chapter 2 matter.

### **297 Reports of team**

- (1) A team must, as soon as practicable after each of its meetings:
  - (a) give the CEO a report of its current operation; and
  - (b) give the Commissioner a copy of the report.
- (2) The CEO must, as soon as practicable after the end of a financial year:
  - (a) give the Minister an annual report about the operation of all the teams during that year; and
  - (b) give the Commissioner a copy of the report.

### **298 Regulations**

The regulations may make provision, consistent with this Part, about the following:

- (a) the nomination of candidates for the appointment of team members;
- (b) the making of operational guidelines for a team;
- (c) functions of a team;
- (d) meetings of a team;
- (e) any other matters relating to a team.

## **Part 5.3 General offences**

### **299 Obstruction**

A person must not obstruct a person:

- (a) in exercising or attempting to exercise a power under this Act;  
or

- (b) in performing or attempting to perform a function under this Act.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

**300 Impersonating officer**

A person must not falsely represent, by words or conduct, that the person or someone else is an authorised officer.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

**301 Disclosure of child's identity**

- (1) A person must not publish any material that may identify someone who is a child:

- (a) in the CEO's care; or

- (b) for whom:

- (i) an application for a temporary protection order, assessment order or protection order has been made; or

- (ii) such an order is in force; or

- (c) involved (whether as a victim or not) in a sexual offence or alleged to have been so involved in a sexual offence.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply if the publication is permitted or authorised under this Act or any other law in force in the Territory.

**Part 5.4 Other administrative matters**

**302 Approved forms**

- (1) The CEO:

- (a) must approve forms for a provision in this Act if the provision requires a document to be made in the approved form; and

- (b) may approve forms for any other document required for this Act.

- (2) If a form is approved for a document under subsection (1)(b), the document must be made in the approved form.
- (3) An approved form for a document must be consistent with any other requirements specified for the document in this Act.

### **303 Delegation**

The CEO may, in writing, delegate any of the CEO's powers and functions to a person who is:

- (a) an authorised officer; or
- (b) a public sector employee.

### **304 Authorised officers**

- (1) An authorised officer is:
  - (a) a person appointed by the CEO as an authorised officer; or
  - (b) a police officer.
- (2) An authorised officer appointed under subsection (1)(a) has the powers and functions of an authorised officer under this Act as specified in the appointment.
- (3) A police officer has the powers and functions of an authorised officer under sections 35(3), 37, 38, 52, 56 to 64 and 108.

*Note*

*A police officer may exercise certain powers under this Act as a police officer and not as an authorised officer, see, for example, sections 33 and 36.*

### **305 Identity cards**

- (1) This section applies to a person who:
  - (a) is an authorised officer; but
  - (b) is not a police officer.
- (2) The CEO must issue an identity card to the officer.
- (3) The card must:
  - (a) specify the officer's name and office; and
  - (b) specify the officer's powers and functions; and

- (c) contain:
  - (i) the signature of the officer; and
  - (ii) a recent photograph of the officer; and
  - (iii) the verification of the signature and photograph by the CEO.
- (4) The card ceases to be in force when the person ceases to be an authorised officer.
- (5) The person must return the card to the CEO within one month after the cessation.

Maximum penalty: 20 penalty units.

### **306 Misleading documents**

- (1) A person must not, for the purposes of this Act, give someone (the recipient) a document that contains information the person knows to be misleading in a material particular.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) However, subsection (1) does not apply if the person, when giving the document:
  - (a) draws the misleading aspect of the document to the recipient's attention; and
  - (b) to the extent the person can reasonably do so – gives the recipient the information necessary to correct the document.

### **307 Misleading information**

A person must not, for the purposes of this Act, give someone any information that the person knows to be misleading in a material particular.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

### **308 Confidential information**

- (1) A person is guilty of an offence if the person:
  - (a) discloses to someone any information acquired by the person in exercising a power or performing a function as an authorised officer; or

- (b) does something that results in disclosing the information to someone and is reckless as to whether doing the thing would result in the disclosure; or
- (c) uses the information; or
- (d) publishes all or Part of a document obtained by the person in exercising a power or performing a function as an authorised officer; or
- (e) produces to a court or tribunal a thing obtained by the person in exercising a power or performing a function as an authorised officer.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply to:

- (a) anything done by a person in exercising a power or performing a function under this Act; or
- (b) anything done by a person for administering this Act; or
- (c) any disclosure or production to:
  - (i) someone who is the subject of the information, document or thing (the relevant party); or
  - (ii) someone with the consent of the relevant party (whether or not the consent has been given expressly); or
  - (iii) someone approved by the CEO on the basis the disclosure or production is made in the public interest; or
  - (iv) someone approved by the CEO for research purposes on the basis the confidentiality regarding the information, document or thing, or the identity of the relevant party, will be preserved; or
- (d) anything done in accordance with the regulations.

### **309 Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith:
  - (a) in the exercise or purported exercise of a power as an authorised officer under this Act; or

- (b) in the performance or purported performance of a function as an authorised officer under this Act.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

### **310 Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may:
  - (a) prescribe fees payable under this Act; and
  - (b) apply, adopt or incorporate (with or without changes) a matter contained in another instrument as in force or existing at a particular time or from time to time; and
  - (c) prescribe a fine not exceeding 200 penalty units for an offence against the regulations; and
  - (d) provide for the enforcement of a code of practice, including by providing that a contravention of the code is an offence against the regulations; and
  - (e) provide for an offence against the regulations to be an offence of strict liability.

## **Part 5.5 Repeals and transitional matters for Care and Protection of Children Act 2007**

### **Division 1 Repeals**

#### **311 Repeals**

The Acts specified in the Schedule are repealed.

### **Division 2 Transitional matters for Chapter 2**

#### **312 Definitions**

In this Division:

***commencement*** means the commencement of section 311.

***Family Matters Court*** means the Family Matters Court established by section 24 of the *Welfare Act*.

**Welfare Act** means the *Community Welfare Act* as in force from time to time before the commencement.

**313 Arrangements for assistance**

An arrangement in force under section 8 of the *Welfare Act* immediately before the commencement has effect for the remainder of its term as if:

- (a) it had been made by the CEO under section 44(1) of this Act; and
- (b) it had complied with section 44(2) of this Act.

**314 Investigations**

- (1) An investigation under section 13 of the *Welfare Act* started before the commencement may continue as if it were an investigation under section 36 of this Act.
- (2) An investigation under section 16 of the *Welfare Act* started before the commencement may continue as if it were an investigation under section 35 of this Act.

**315 Temporary custody**

An agreement in force under section 62 of the *Welfare Act* immediately before the commencement has effect for the remainder of its term as if it were a temporary placement arrangement under section 46 of this Act.

**316 Foster parent**

A person who was a registered foster parent under section 63 of the *Welfare Act* immediately before the commencement is taken to have been approved, for the remainder of the term of the registration, as a carer under section 78(1)(a)(iii) of this Act.

**317 Foster care**

An agreement in force under section 64 of the *Welfare Act* immediately before the commencement has effect for the remainder of its term as if it were a placement arrangement under section 78 of this Act.



### **318 Child in custody or detention**

- (1) This section applies to a child if:
  - (a) a person:
    - (i) had taken the child into custody under section 11 of the *Welfare Act*; or
    - (ii) had detained the child in a hospital under section 15 of the *Welfare Act*; and
  - (b) the child was so in custody or detained immediately before the commencement.
- (2) The person must notify the CEO about the custody or detention as soon as possible after the commencement.
- (3) On and after the commencement, the child is taken to have been taken into provisional protection under section 51 of this Act.
- (4) For subsection (3):
  - (a) the provisional protection is taken to be for a period of 72 hours starting from the start of the custody or detention; and
  - (b) anything done for the child for the custody or detention is taken to have been done for the provisional protection.

#### *Example*

*If the child has been detained for 24 hours immediately before the commencement, the CEO must, subject to any other provisions of this Act, return the child to a parent of the child within 48 hours after the commencement.*

- (5) Compliance with subsection (2) is taken to be compliance with:
  - (a) section 52(4) of this Act; and
  - (b) section 11(5) of the *Welfare Act*.

### **319 Transfer of proceedings and records**

- (1) The following must be transferred to the family matters jurisdiction of the Local Court after the commencement:
  - (a) proceedings and records of the Family Matters Court;
  - (b) proceedings and records of applications under section 11A of the *Welfare Act*.

- (2) The Local Court must deal with the proceedings and records as if:
- (a) the *Welfare Act* had not been repealed; and
  - (b) for proceedings and records of the Family Matters Court:
    - (i) the Local Court were the Family Matters Court; and
    - (ii) an adjournment granted by the Family Matters Court and any related interim order were granted or made by the Local Court in exercising the family matters jurisdiction.
- (3) An appeal to the Supreme Court under the *Welfare Act* that has not been decided before the commencement must be dealt with by the Supreme Court as if the *Welfare Act* had not been repealed.
- (4) However, the application of the *Welfare Act* under subsections (2) and (3) is subject to the following changes:
- (a) if the Minister administering the *Welfare Act* would otherwise have been given custody of a child because of the application – the CEO must be given daily care and control of the child instead;
  - (b) if the Minister administering the *Welfare Act* would otherwise have been given guardianship of a child because of the application – the CEO must be given parental responsibility for the child instead;
  - (c) if an authorised person would otherwise have powers or functions under the *Welfare Act* because of the application – an authorised officer has the powers or functions instead.

### 320 Orders and directions

An order or direction in force immediately before the commencement has effect as specified in the following table:

An order or direction made under this provision of the <i>Welfare Act</i> :	has effect as if it were:
section 11A	a temporary protection order
section 43(5)(a)	a protection order specifying a supervision direction
section 43(5)(b)	a protection order specifying a daily care and control direction

section 43(5)(c)	a protection order specifying a short term parental responsibility direction
section 43(5)(d)	a protection order specifying a long term parental responsibility direction
section 62G	a decision of the Court under section 159 of this Act
section 62L	an order of the Court under section 164 of this Act
section 62Q	an order of the Court under section 169 of this Act
section 62R	an interim order of the Court under section 170 of this Act

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### **321 Ministerial decisions**

A decision in force under section 62C of the *Welfare Act* immediately before the commencement has effect as if it were a decision under section 155 of this Act.

### **322 Interstate orders**

- (1) This section applies to a decision or order that:
  - (a) was an interstate order covered by section 62W(1)(a), (b) and (c) of the *Welfare Act* immediately before the commencement; and
  - (b) had not been filed or registered under that section immediately before the commencement.
- (2) If the interstate order relates to the transfer of a child protection order:
  - (a) a copy of the interstate order and child protection order must be filed as if they were covered by section 171(1) of this Act; and
  - (b) the transfer must be registered under section 173 of this Act.

- (3) If the interstate order relates to the transfer of a child protection proceeding:
  - (a) a copy of the interstate order and each related interim order must be filed under section 172(1) of this Act; and
  - (b) the transfer must be registered under section 173 of this Act.
- (4) A registration for the transfer of a child protection order or proceeding in force under section 62W of the *Welfare Act* immediately before the commencement has effect as if the transfer had been registered under section 173 of this Act.

### **Division 3 Transitional matters for Part 3.2**

#### **323 Consent for child's employment**

- (1) A consent for the employment of a child in force under section 92 or 93 of the *Welfare Act* immediately before the commencement continues until the employment ceases.
- (2) While the consent is in force:
  - (a) the *Welfare Act* has effect for the consent as if:
    - (i) that Act had not been repealed; and
    - (ii) a reference to the Minister in that Act had included a reference to the CEO; and
  - (b) Part 3.2 of this Act does not apply to the employment.
- (3) In this section:

**commencement** means the commencement of section 311.

**Welfare Act** means the *Community Welfare Act* as in force immediately before the commencement.

### **Division 4 Transitional matters for Chapter 4**

#### **324 Definitions**

In this Division:

**Chapter 4 commencement** means the commencement of Chapter 4.

**first commencement** means the commencement of section 311.

**old licence** means:

- (a) a licence in force under section 83 of the *Welfare Act* immediately before the first commencement; or
- (b) a licence granted under section 327 of this Act.

**transitional period** means the period of 6 months immediately after the first commencement.

**Welfare Act** means the *Community Welfare Act* as in force immediately before the first commencement.

### **325 Saving of old licences**

- (1) An old licence continues to be in force for the remainder of its term after the first commencement unless it is revoked.
- (2) The *Welfare Act* continues to have effect for the old licence as if that Act had not been repealed.

### **326 Renewal of old licences**

- (1) Except as provided by subsections (2) and (3), an old licence must not be renewed.
- (2) An old licence that would otherwise have expired during the transitional period may be renewed under the *Welfare Act* as if that Act had not been repealed.
- (3) The *Welfare Act* continues to have effect for the licence as if that Act had not been repealed.
- (4) However, the licence must not have any effect after the Chapter 4 commencement.

### **327 Granting of licences during transitional period**

- (1) A licence may be granted during the transitional period under section 83 of the *Welfare Act* as if that Act had not been repealed.
- (2) However, the licence must not have any effect after the Chapter 4 commencement.

### **328 Authorised persons**

- (1) A person who was an authorised person for the *Welfare Act* immediately before the first commencement continues to be an authorised person for a licence in force under section 325, 326 or 327.

- (2) In addition, an authorised officer is taken to be an authorised person for the licence.

## **Division 5 Other transitional matters**

### **329 Definitions**

In this Division:

**commencement** means the commencement of section 311.

**Welfare Act** means the *Community Welfare Act* as in force from time to time before the commencement.

### **330 Agreement with parent**

An agreement in force under section 59 of the *Welfare Act* immediately before the commencement has effect for the remainder of its term as if that Act had not been repealed.

### **331 References relating to *Community Welfare Act***

- (1) This section applies to a provision in any order or direction of a court or any other instrument:
- (a) made under or for the *Welfare Act*; and
  - (b) was in force immediately before the commencement.
- (2) Except as otherwise provided in this Part, the provision has effect for the remainder of its term as if, in the provision:
- (a) a reference to the Minister had included a reference to the CEO; and
  - (b) a reference to the Family Matters Court had included a reference to the Local Court exercising the family matters jurisdiction; and
  - (c) a reference to an authorised person had included a reference to an authorised officer; and
  - (d) a reference to a child in need of care had included a reference to a child in need of protection; and
  - (e) a reference to a child who is in the care or under the responsibility of the Minister administering the *Welfare Act* had included a reference to a child who is in the CEO's care.

**332 Section 12 of *Interpretation Act***

This Part does not limit the effect of section 12 of the *Interpretation Act* in relation to any matters arising from the repeal of the *Welfare Act*.

**333 Transitional regulations**

- (1) The regulations may make provision about a matter for which:
  - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the *Welfare Act* to this Act; and
  - (b) this Act does not make provision or sufficient provision.
- (2) A regulation under subsection (1) must not have effect before:
  - (a) if the regulation relates to provisions of this Act that commence at different times – the commencement of any of the provisions that first commences; or
  - (b) otherwise – the commencement of the provisions of this Act to which the regulation relates.
- (3) To the extent to which the regulation has retrospective operation, it must not operate to the disadvantage of a person (other than the Territory or a Territory authority) by decreasing the person's rights or imposing liabilities on the person.

**Schedule Repealed Acts**

section 311

<i>Community Welfare Act 1983</i>	Act No. 76 of 1983
<i>Community Welfare Amendment Act 1989</i>	Act No. 70 of 1989
<i>Community Welfare Amendment Act 1995</i>	Act No. 54 of 1995
<i>Community Welfare Amendment Act 1999</i>	Act No. 6 of 1999
<i>Community Welfare Amendment Act 2002</i>	Act No. 61 of 2002



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**ENDNOTES**
**1****KEY**

Key to abbreviations

**amd = amended**  
**app = appendix**  
**bl = by-law**  
**ch = Chapter**  
**cl = clause**  
**div = Division**  
**exp = expires/expired**  
**f = forms**  
**Gaz = Gazette**  
**hdg = heading**  
**ins = inserted**  
**lt = long title**  
**nc = not commenced**

**od = order**  
**om = omitted**  
**pt = Part**  
**r = regulation/rule**  
**rem = remainder**  
**renum = renumbered**  
**rep = repealed**  
**s = section**  
**sch = Schedule**  
**sdiv = Subdivision**  
**SL = Subordinate Legislation**  
**sub = substituted**

**2****LIST OF LEGISLATION*****Care and Protection of Children Act 2007 (Act No. 37, 2007)***

Assent date	12 December 2007
Commenced	Ch 1 and pts 3.3 and 5.1: 7 May 2008 ( <i>Gaz</i> G18, 7 May 2008, p 4); Ch 2 (exc pt 2.1, div 6 and s 127), Ch 3, pts 3.1 and 3.2 (exc s 187) and Ch 5, pts 5.2 to 5.6: 8 December 2008 ( <i>Gaz</i> G47, 26 November 2008, p 6); Ch 4: 9 June 2009 ( <i>Gaz</i> S27, 1 June 2009); Ch 2, pt 2.1, div 6: 18 August 2010 ( <i>Gaz</i> S43, 18 August 2010); s 187: 1 July 2011 ( <i>Gaz</i> S32, 20 June 2011); s 127: nc

***Local Government (Consequential Amendments) Act 2008 (Act No. 28, 2008)***

Assent date	14 November 2008
Commenced	1 July 2008 (s 2)

**3****LIST OF AMENDMENTS**

s 13	amd No. 28, 2008, s 3
pt 5.6 hdg	exp No. 37, 2007, s 345
pt 5.6	
div 1 hdg	exp No. 37, 2007, s 345
ss 334 – 335	exp No. 37, 2007, s 345
pt 5.6	
div 2 hdg	exp No. 37, 2007, s 345
ss 336 – 344	exp No. 37, 2007, s 345
pt 5.6	
div 3 hdg	exp No. 37, 2007, s 345
s 345	exp No. 37, 2007, s 345