

NORTHERN TERRITORY OF AUSTRALIA

COMMUNITY WELFARE ACT

As in force at 14 December 2005

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 14 December 2005

COMMUNITY WELFARE ACT

An Act to provide for the protection and care of children and the promotion of family welfare, and for other purposes

Part I Preliminary

1 Short title

This Act may be cited as the *Community Welfare Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Repeal

The Acts listed in the Schedule are repealed.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

access means the contact of a child with a person, by way of a visit by or to that person, including attendance for a period at a place other than the child's habitual residence, or by way of a letter, telephone or other means.

authorized person means a person authorized in writing by the Minister to exercise powers and perform functions under this Act.

child means a person who has not attained the age of 18 years.

Clerk means a Clerk of the Family Matters Court.

Court means the Family Matters Court established by section 24.

custody, in relation to a child, means the responsibility for the daily care and control of the child, including decisions concerning accommodation, attendance at school, clothing, feeding, transportation, behaviour and urgent or routine health needs of the child.

guardianship, in relation to a child, means the custody of the child and the responsibility for the long-term welfare of the child, including decisions concerning the education, changes in place of residence, religion, employment and the general health of the child and other rights, powers and duties before the commencement of this Act vested by law or custom in the guardian of a child.

hospital means a hospital within the meaning of the *Medical Services Act* or a private hospital within the meaning of the *Private Hospitals and Nursing Homes Act*.

Juvenile Court means the Court established by section 14 of the *Juvenile Justice Act*.

place of safety means an institution, hospital or other place the occupier of which is willing to receive and have temporary custody of a child.

- (2) For the purposes of this Act, a child is in need of care, where:
- (a) the parents, guardians or the person having the custody of the child have abandoned him or her and cannot, after reasonable inquiry, be found;
 - (b) the parents, guardians or the person having the custody of the child are or is unwilling or unable to maintain the child;
 - (c) he or she has suffered maltreatment;
 - (d) he or she is not subject to effective control and is engaging in conduct which constitutes a serious danger to his or her health or safety; or
 - (e) being excused from criminal responsibility under section 38 of the Criminal Code he or she has persistently engaged in conduct which is so harmful or potentially harmful to the general welfare of the community measured by commonly accepted community standards as to warrant appropriate action under this Act for the maintenance of those standards.

- (3) For the purposes of this Act, a child shall be taken to have suffered maltreatment where:
- (a) he or she has suffered a physical injury causing temporary or permanent disfigurement or serious pain or has suffered impairment of a bodily function or the normal reserve or flexibility of a bodily function, inflicted or allowed to be inflicted by a parent, guardian or person having the custody of him or her or where there is substantial risk of his suffering such an injury or impairment;
 - (b) he or she has suffered serious emotional or intellectual impairment evidenced by severe psychological or social malfunctioning measured by the commonly accepted standards of the community to which he or she belongs, because of his or her physical surroundings, nutritional or other deprivation, or the emotional or social environment in which he or she is living or where there is a substantial risk that such surroundings, deprivation or environment will cause such emotional or intellectual impairment;
 - (c) he or she has suffered serious physical impairment evidenced by severe bodily malfunctioning, because of his or her physical surroundings, nutritional or other deprivation, or the emotional or social environment in which he or she is living or where there is substantial risk that such surroundings, deprivation or environment will cause such impairment;
 - (d) he or she has been sexually abused or exploited, or where there is substantial risk of such abuse or exploitation occurring, and his or her parents, guardians or persons having the custody of him or her are unable or unwilling to protect him or her from such abuse or exploitation; or
 - (e) being a female, she:
 - (i) has been subjected, or there is substantial risk that she will be subjected, to female genital mutilation, as defined in section 186A of the Criminal Code; or
 - (ii) has been taken, or there is a substantial risk that she will be taken, from the Territory with the intention of having female genital mutilation performed on her.

5 Jurisdiction of Supreme Court preserved

Nothing in this Act limits the jurisdiction of the Supreme Court in relation to the custody or guardianship of children.

Part II Administration

6 Delegation

- (1) The Minister may, by instrument in writing, delegate to a person any of his or her powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister.

7 Reports

The Minister shall, as soon as practicable after 31 December in each year, cause a report on the administration of this Act and on the operation of community welfare services in the Territory during the year ending on that date to be prepared and cause a copy of the report to be laid before the Legislative Assembly within 3 sitting days of the Legislative Assembly after the preparation of the report.

Part III Community welfare assistance

8 Assistance in certain circumstances

- (1) A person, family or group claiming to be in need of assistance under this Act may apply to the Minister for such assistance.
- (2) Where, in the opinion of the Minister, a person, family or group is in need of assistance as a result of problems related to social, personal or economic reasons, he or she may provide such assistance as he or she thinks fit to promote the welfare of the person, family or group.
- (3) Assistance provided under subsection (2) may be in the form of financial assistance, the provision of community welfare services or welfare programmes or otherwise as the Minister thinks fit.
- (4) Without limiting the generality of subsections (2) and (3), the Minister may enter into such arrangements as he or she thinks fit with charitable or other community organizations or groups for them to act as agents for the Minister for the provision of assistance under this section to persons, families or groups.

- (5) The Minister shall prepare guidelines for establishing the criteria and procedures to be followed in relation to the provision of financial assistance under this section.

Part IV Welfare of children

Division 1 Children in need of care

Subdivision A Preliminary

9 Duty of Minister

In exercising his or her powers under this Part, the Minister shall, at all times, have as his or her main consideration the welfare of the child in relation to whom those powers are exercised and particularly for:

- (a) securing for the child such care and guidance as will promote that welfare; and
- (b) the maintenance and development of those family relationships that are, in his or her opinion, in the best interests of the child.

Subdivision B Custody of children in need of care

10 Responsibility in respect of children in need of care

Where the Minister is of the opinion that a child is in need of care, he or she may:

- (a) give to the child or its parents, guardians or persons having the custody of the child, such assistance and guidance as he or she thinks fit for ensuring the adequate care of the child within the child's family;
- (b) on the application of a parent, guardian or person having the custody of the child, enter into an agreement under section 62 to receive the child into care and to provide for the child; or
- (c) take such other action under this Act, as he or she thinks fit, to ensure the adequate care of the child.

11 Taking child in need of care into custody

- (1) The Minister, an authorized person or a member of the Police Force may, where he or she believes on reasonable grounds that a child is in need of care and that no other action would ensure the adequate care of the child, take the child into custody.
- (2) For the purposes of subsection (1), the Minister, an authorized person or member of the Police Force may, without warrant, enter a place where a child is or is reasonably believed to be located and, unless he or she is satisfied that adequate steps will be taken to ensure that the child will cease to be in need of care should the child remain at that place, remove the child, and may use such force as is reasonably necessary for those purposes.
- (3) A person taking a child into custody under subsection (1):
 - (a) subject to this Part, may have the child held in a place of safety for the period he or she considers appropriate; and
 - (b) must, not later than 48 hours after taking the child into custody, apply for a holding order under section 11A.
- (5) A person taking a child into custody under subsection (1) or in charge of a hospital acting under section 15 shall, within 48 hours after so taking the child into custody or taking action under section 15, in writing, notify the Minister of the action taken.

11A Holding order

- (1) An application for a holding order under section 11 or 15 is to be made to a magistrate or Registrar, as defined in section 3 of the *Local Court Act*:
 - (a) in person; or
 - (b) if it is impracticable to make the application in person – by telephone, radio, facsimile or other facility.
- (2) If the magistrate or Registrar is satisfied on the oath of the person making the application that there are reasonable grounds for believing that the child to whom the application relates is in need of care, the magistrate or Registrar must make an order authorising the holding of the child in a place of safety.
- (3) An order under subsection (2) is to have effect for the period commencing on the day on which the child was taken into custody under section 11 or detained under section 15 until:
 - (a) the day specified in the order; or

- (b) 14 days after the day the child was taken into custody or the action was taken,

whichever first occurs.

- (4) If the application for the holding order is made by telephone, radio, facsimile or other facility, the magistrate or Registrar who makes the holding order must ensure a written record is kept of the making of the application and the information in relation to the application he or she obtains from the applicant.

12 Medical treatment for child taken into custody

Where a person taking a child into custody under section 11(1) believes, on reasonable grounds, that the child is urgently in need of medical treatment, the person shall take such steps as are reasonably necessary to ensure that the child receives the medical treatment and, for that purpose, may give his or her consent for the carrying out of a medical procedure on the child, and that consent shall, for all purposes, be sufficient consent for the carrying out of the medical procedure or treatment.

Division 2 Children who have suffered maltreatment

13 Investigation of maltreatment

- (1) Where a member of the Police Force believes on reasonable grounds that a child has suffered or is suffering maltreatment, he or she:
 - (a) shall, as soon as practicable, notify the Minister of the circumstances and the knowledge that constitutes the reasonable grounds for his or she so believing; and
 - (b) may investigate the circumstances to ascertain if the child has suffered or is suffering maltreatment.
- (2) Where a member of the Police Force carries out an investigation under subsection (1)(b), he or she shall, within 24 hours after completing the investigation, furnish to the Minister a report on his or her investigations and, if he or she is satisfied on reasonable grounds that the child has suffered maltreatment, all material facts on which the knowledge that constitutes the reasonable grounds for his or her belief is based.

14 Maltreatment to be reported

- (1) A person, not being a member of the Police Force, who believes, on reasonable grounds, that a child has suffered or is suffering

maltreatment shall, as soon as practicable after obtaining the knowledge that constitutes the reasonable grounds for his or her so believing, report the fact, and all material facts on which that knowledge is based, to the Minister or a member of the Police Force.

Penalty: 200 penalty units.

- (2) Where a person, acting in good faith, makes a report under or in purported compliance with subsection (1):
- (a) the report shall not be held to be a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct; and
 - (b) no civil or criminal liability is incurred by reason only of the making of the report.

15 Child in hospital

A person in charge of a hospital who believes, on reasonable grounds, that a child has suffered or is suffering maltreatment:

- (a) may detain the child in hospital, for the purposes of securing medical examination or treatment for the child, for the period that is reasonably necessary to enable the examination or treatment to be carried out; and
- (b) if after the medical examination has been carried out the person is still of that belief – must, not later than 48 hours after detaining the child, apply for a holding order under section 11A.

16 Investigation where child has suffered maltreatment

- (1) Where the Minister receives a report under section 13 or 14 that a child has suffered or is suffering maltreatment, he or she shall, as soon as practicable, cause the circumstances of the child to be further investigated or investigated, as the case may be, and shall take such other action under this Act as he or she thinks fit.
- (2) For the purposes of carrying out an investigation under subsection (1), the Minister may cause a child to be medically examined and his or her request that a child be so examined shall, for all purposes, be sufficient consent for the carrying out of the examination.

Division 3 Responsibility of Minister

17 Responsibility of Minister when notified of action under section 11(5)

- (1) If the Minister is notified under section 11(5) of the removal of a child in need of care or of the detaining of a child in a hospital under section 15, the Minister must:
- (a) assume responsibility for the care, protection and maintenance of the child;
 - (b) cause the child to remain in or be removed to a place of safety that is, in the opinion of the Minister, suitable to ensure that the welfare of the child is provided for;
 - (ba) subject to subsections (2) and (3) – if a holding order is made under section 11A in respect of the child, before the holding order expires:
 - (i) advise the Court in writing of his or her decision and that he or she will not be making an application under Part VI for an order that the child be found to be in need of care; or
 - (ii) make an application under Part VI to the Court for an order that the child be found to be in need of care;
 - (c) as soon as practicable, cause the parents, guardians or persons who had the custody of the child at the time of the removal or detention to be notified of the removal or detention of the child and of any subsequent action taken or intended to be taken in respect of the child; and
 - (d) take such other action under this Act, including securing medical examination and treatment, if required, for the child, as the Minister thinks fit.
- (2) The Minister must assess and decide whether:
- (a) the welfare of the child would be provided for if returned to one or both of his or her parents or a guardian or other person having the custody of the child; or
 - (b) another arrangement may be made with the consent of the parents, guardian or person as to the placement of and provision of adequate care to the child,

before complying with subsection (1)(ba).

- (3) The Minister must not make an application to the Court under subsection (1)(ba)(ii) if the Minister decides to return the child to one or both of his or her parents or the guardian or person having custody of the child or that an arrangement may be made with the consent of the parents, guardian or person that ensures the provision of care to the child.

Part V Child protection teams

18 Establishment of child protection teams

For each location where the Minister considers it necessary or desirable, the Minister may establish a Child Protection Team, the members of which shall be:

- (a) the Minister or his or her nominee, who shall be the Chairman of the Team;
- (b) the Chief Executive Officer, as defined in the *Public Sector Employment and Management Act*, of the department of the Public Service primarily responsible through the relevant minister for the administration of health matters in the Territory, or his or her nominee;
- (c) the Commissioner of Police or his or her nominee; and
- (d) such other persons as the Minister thinks fit and, in writing, appoints.

19 Resignation of members

A member appointed under section 18(d) may resign his or her office by writing signed by him or her and delivered to the Minister.

20 Meetings of committee

- (1) The Chairman of a Child Protection Team shall call such meetings of the Team as are necessary for the exercise of its powers and the performance of its functions.
- (2) The Minister may, if he or she is not the Chairman of a Child Protection Team, at any time, direct the Chairman to convene a meeting of the Team and the Chairman shall convene a meeting accordingly.
- (3) The Chairman shall preside at all meetings of the team at which he or she is present and, in the Chairman's absence, the members present shall elect one of their number to act as the Chairman.

- (4) At a meeting of a Child Protection Team:
 - (a) 3 members constitute a quorum; and
 - (b) subject to this Act, the Team shall determine the procedure to be followed at or in connection with the meeting.
- (5) The Team shall take and keep records of its meetings.

21 Functions of child protection teams

The functions of a Child Protection Team are, subject to the directions of the Minister, to:

- (a) co-operate and consult with departments and agencies required by law, or which have the resources, to take action in relation to the maltreatment of children;
- (b) examine every notification under this Act concerning the known or suspected maltreatment of children in the location for which the Team is established and, as soon as practicable, recommend the action, if any, that should be taken in relation to that maltreatment;
- (c) review the action taken as a result of recommendations referred to in paragraph (b);
- (d) obtain from the departments responsible for the action referred to in paragraph (b) undertakings in respect of any additional action to be taken; and
- (e) maintain a regular review of all cases related to children in its location who have suffered maltreatment.

22 Powers of child protection teams

- (1) A Child Protection Team has such powers as are necessary to carry out its functions.
- (2) Where a person, acting in good faith, furnishes information to a Child Protection Team at its request:
 - (a) the furnishing of information shall not be held to be a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct; and
 - (b) no civil or criminal liability is incurred by the person by reason only of the furnishing of the information.

23 Minister to consult with child protection team

- (1) In determining a course of action, including the taking of proceedings in the Court, relating to a child who has suffered maltreatment, the Minister shall consult with the relevant Child Protection Team and seek its recommendation in connection with the matter.
- (2) No action by the Minister under this Act shall be invalid or illegal by reason only of the Minister failing to consult with, or act on the recommendation of, a Child Protection Team.

Part VI Family Matters Court

Division 1 Family Matters Court

24 Family Matters Court

- (1) There is hereby established a court to be known as the Family Matters Court.
- (2) Each magistrate is a magistrate of the Court.

25 Exercise of jurisdiction

The jurisdiction of the Court shall be exercised by a magistrate sitting alone.

26 Clerk of Family Matters Court

A Registrar of the Local Court is a Clerk of the Family Matters Court.

28 Application of *Justices Act*

Subject to this Act, the *Justices Act* applies to the proceedings and orders of the Court as if the Court were the Court of Summary Jurisdiction established by that Act.

29 Powers of Court

Subject to this Act, the Court shall hear and determine all applications under this Act.

30 Jurisdiction of Court of Summary Jurisdiction to cease

- (1) Subject to subsection (2), the jurisdiction of the Court of Summary Jurisdiction under the *Justices Act* ceases to exist in relation to a matter in which the Court has jurisdiction.

- (2) Nothing in subsection (1) derogates from the powers of a Justice of the Peace to:
- (a) take an information or complaint;
 - (b) issue a summons;
 - (c) grant, issue or endorse a warrant; or
 - (d) grant bail.

31 Where courts may sit

- (1) Subject to this section, the Court shall sit in such places as the Minister directs and in a building approved or appointed by the Minister for the holding of the Court.
- (2) In making a direction under subsection (1) the Minister shall ensure as far as practicable that the facilities available to, and the proceedings in, the Court can and will be adequately separated from the facilities of a magistrate's office or the facilities of, and proceedings in, other courts operating at the place or in the building approved by him or her for the holding of the Court.
- (3) Where in a place or building appointed under subsection (1) for the holding of the Court it is not practicable to ensure the adequate separation referred to in subsection (2), the Court shall not sit while any other proceeding in or in the vicinity of the office, place or building is being conducted.

32 Restriction on attendance

- (1) The Court shall, unless the person gives a sufficient reason why he or she should attend, order a person not directly interested in proceedings before the Court not to remain in or enter a room or place in which they are taking place or remain within the hearing of the Court.
- (2) A person shall not remain in or enter a room or place, or remain within the hearing of the Court, in contravention of an order under subsection (1).

Penalty: 100 penalty units or imprisonment for 6 months.

33 Restriction of publication of proceedings or identifying material

Except with the leave of the Court, a person shall not publish a report of proceedings or the result of proceedings before the Court, unless the publishing is done by the person in the performance of his official duties under an Act.

Penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

 If the offender is a body corporate – 2 000 penalty units.

Division 2 Application to Court

34 Application of Division

This Division has effect in relation to an application made by the Minister or in pursuance of leave granted under section 35(3) and, where such leave is granted, a reference to the Minister shall be read as a reference to the person to whom it was granted.

35 Minister to make application

- (1) Subject to subsection (2), the Minister has the sole authority to make an application to the Court that a child be found to be in need of care.
- (2) Where the Minister has not made an application under this Part in relation to a child, a person may, after consultation with the Minister, seek the leave of the Court to make such an application.
- (3) The Court shall hear the person referred to in subsection (2) and the Minister and may make an order granting leave to the person to make the application.

36 Applications, &c.

- (1) Before making an application under this Part in relation to a child, the Minister shall satisfy himself or herself that the welfare of the child would not be adequately provided for by some other means.
- (2) Where the Minister intends to make an application under this Part, he or she shall give notice in writing:
 - (a) to the parents, guardians or persons having the custody of the child in relation to whom the application is intended to be made; and

- (b) where the child has attained the age of 10 years, to the child, which shall include:
 - (c) a copy of the application endorsed with particulars of the time, date and place of the hearing of the application; and
 - (d) a statement of the requirements of this Act, including requirements as to the attendance of the parents, guardians or persons having the custody of the child at the hearing of the application.
- (3) Where, for the purposes of subsection (2), the parents, guardians or persons having the custody of the child in relation to whom an application is intended to be made cannot, after reasonable enquiry, be found, the Minister shall state to the Court the means by which their whereabouts was investigated.
- (4) In an application under this Part in relation to a child, the Minister, the child and the parents, guardians or persons having the custody of the child are, or shall be deemed to be, parties to the application.

37 Attendance of parents, &c.

- (1) The parents, guardians or persons having the custody of a child in relation to whom an application is made under this Part shall attend the Court, and remain in attendance, during the hearing of the application, unless the Court is satisfied that it would be unreasonable to require that attendance or continued attendance.
- (2) Where the parents, guardians or persons having the custody of a child referred to in subsection (1) fail, without reasonable excuse, to attend the hearing of the application under this Part or remain in attendance, the Court may direct that a warrant be issued to bring them before the Court at the hearing or a further hearing.
- (3) The Court may proceed with the hearing of an application referred to in this section notwithstanding that the parents, guardians or persons having the custody of the child are absent.

38 Offence to remove child

A person who has knowledge that proceedings under this Part are pending and who removes the child in relation to whom the proceedings are being taken from the jurisdiction of the Court is guilty of an offence.

Penalty: 200 penalty units or imprisonment for 2 years.

39 Powers of court at hearing of application

- (1) At the hearing of an application under this Part, the Court may, in addition to any other powers it has:
 - (a) require the person having the custody of the child at the time to account for the cause of an injury which is a ground for the application; and
 - (b) admit as evidence the finding that any other child in the care of the person having the custody of the child in relation to whom the application is made has suffered maltreatment.
- (2) In hearing an application under this Part the Court is not bound by the rules of evidence but may inform itself on any matters it thinks fit.
- (3) At the hearing of an application under this Part, where the Court is of the opinion that the child the subject of the proceedings needs legal representation and that such representation has not been arranged by or on behalf of the child, it may, by order, make such provision for the legal representation of the child as it thinks fit.

40 Procedure

In proceedings under this Part, the Court shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted.

41 Attendance of child before Court

- (1) The child the subject of an application under this Part must attend the Court in person and remain in attendance during the hearing of the application unless the Court makes an order that the child is not required to attend the hearing or a part of the hearing.
- (2) The Court may make the order under subsection (1) in any proceedings relating to the application.
- (3) The Court must not make the order unless it is satisfied on reasonable grounds that the child is not required to attend the hearing or a part of it.
- (4) In subsection (3), **reasonable grounds** includes any of the following grounds:
 - (a) that the child does not understand the nature of the hearing;

- (b) that the child is unlikely to be able to give evidence that will assist the Court whether on account of his or her age, mental state or any other circumstance of the child;
 - (c) that the attendance of the child could be injurious or dangerous to the health or welfare of the child;
 - (d) that the evidence of the child is not essential to the hearing and determining of the application.
- (5) If the Court makes an order that the child is not required to attend the Court, the Court may proceed to hear and determine the application during the absence of the child and, in doing so, may give the directions or make the orders it considers appropriate, including a direction or order for:
 - (a) taking a written deposition or statement from the child; or
 - (b) receiving an oral or written report in relation to the care of the child made by an authorised person or a person appointed by the Court to make the report.
- (6) Notwithstanding the age or intelligence of the child or that the child may have acted under the influence of another person or not understood the duty to speak the truth, the Court may receive the written deposition or statement of the child referred to in subsection (5)(a) as evidence and give it the weight it considers appropriate.

42 Proof of need of care

The burden of proving that a child is in need of care in an application under this Part lies on the Minister and the standard of proof is on the balance of probabilities.

43 Findings of Court

- (1) In proceedings in relation to a child in relation to whom an application under this Part is made, the Court shall consider:
 - (a) the need to safeguard the welfare and development of the child;
 - (b) having regard to the age and comprehension of the child, the reactions of the child to the proceedings and the child's wishes in relation to the outcome of the proceedings;

- (c) the importance of maintaining and promoting the relationship between the parents, guardians or persons having the custody of the child (and, where appropriate, the extended family of the child) and the child;
 - (d) the desirability of maintaining the continuity of living in the child's usual ethnic and social environment; and
 - (e) where the child is an Aboriginal – the person or persons to whom, in its opinion, custody of the child should be given should the child be found to be in need of care, having regard to the criteria imposed on the Minister by section 69.
- (2) Subject to subsections (1) and (3), the Court shall only declare a child to be in need of care where it is satisfied that an order declaring the child to be in need of care would ensure that the standard of care of the child as a result of that order would be significantly higher than the standard presently maintained in respect of the child.
- (3) For the purpose of subsection (2), the Court shall, in assessing the standard of care of the child, consider the social and cultural standards of the community in which the parents, guardians or persons having the custody of the child (and, where appropriate, the extended family of the child) reside or with which they maintain social and cultural ties.
- (4) Subject to this section, the Court may, on the hearing of an application under this Part, make an order:
 - (a) declaring the child in relation to whom the application is made to be in need of care; or
 - (b) dismissing the application.
- (5) Where the Court makes a declaration under subsection (4)(a), the order may include one of the following:
 - (a) a direction to the parents, guardians or persons having the custody of the child to take the necessary steps to secure the proper care and welfare of the child (including a direction that they comply with the direction, if any, of the Minister in relation to the child's care and welfare), as it thinks fit, subject to review by the Court at the end of a period not exceeding 12 months after the date of the making of the order;
 - (b) a direction that the child reside with a person whom it considers suitable, for such period, subject to subsection (6), not exceeding 12 months, as it thinks fit;

- (c) a direction that the child be under the guardianship of the Minister and the parents, guardians or persons having the custody of the child (including a direction relating to the custody of and access to the child while under that guardianship) for such period, subject to subsection (6), not exceeding 12 months, as it thinks fit;
 - (d) subject to subsection (7), a direction to transfer the sole rights in relation to the guardianship of the child to the Minister or such other person, for such period, not extending beyond the eighteenth birthday of the child, as it thinks fit (including a direction relating to access of the parents, and such other persons as the court thinks fit, to the child).
- (6) A period specified in an order under subsection (5)(b) or (c) may be extended from time to time, as the Court thinks fit, for further periods, each not exceeding 12 months, and not extending beyond the eighteenth birthday of the child.
- (7) An order shall not be made under subsection (5) (d) unless the Court is satisfied that:
 - (a) no other order that it may make will adequately provide for the welfare of the child; or
 - (b) the parents of the child have, without reasonable excuse, failed to maintain substantial contact with the child during the period of 12 months before the application as a result of which the order is made.
- (8) Where the Court makes a declaration under subsection (4)(a), the Minister shall, as soon as practicable after the order containing the declaration is made, take out the order and serve a copy, together with a statement drawing attention to the rights of persons referred to in section 48 to seek under that section a variation of the order, on each party to the application and such other person, if any, as the Court directs.

44 Adjournment of proceedings, &c.

- (1) The Court may adjourn the hearing of an application under this Part for such periods, not exceeding 14 days, as it thinks fit.
- (2) During a period of adjournment under subsection (1), the Court shall, having received the recommendation of the Minister, direct that the child in relation to whom the application is made:
 - (a) live, or continue to live at home;

- (b) be placed, or remain in, the custody of a person specified in the direction;
 - (c) live, or continue to live, in a place of safety specified in the direction; or
 - (d) be detained in a hospital specified in the direction.
- (3) The person in charge of the place of safety or hospital specified in a direction under subsection (2) shall accept the child into his custody for the period of the adjournment.
- (4) The Court may make such order as to costs of the care and maintenance of a child in relation to whom a direction under subsection (2) is made as it thinks fit.

45. Powers of court in respect of reports

- (1) The Court hearing an application under this Part may require a person to furnish to it a report on the child in relation to whom the application is made and that person shall comply with the requirement accordingly.

Penalty: If the offender is a natural person – 200 penalty units or imprisonment for 12 months.

If the offender is a body corporate – 1 000 penalty units..

- (2) Notwithstanding anything in this Act, for the purpose of giving effect to a requirement under subsection (1), the person referred to in that subsection may:
- (a) make such inquiries as he or she is required to make or as he or she thinks fit; and
 - (b) request the child to submit to being interviewed and medically examined by a medical practitioner or interviewed or examined by another specified person.
- (3) Without limiting the generality of subsection (2), a requirement under subsection (1) to furnish a report may include an order that the child to whom it relates be interviewed and medically examined by a medical practitioner or interviewed or examined by another specified person and, when it so orders, the report shall contain details of the results of that interview or examination.

- (4) Where a report required under subsection (1) to be furnished is furnished in good faith to the Court:
 - (a) the report shall not, in relation to information obtained as a result of an interview or examination conducted in pursuance of the order referred to in subsection (3), be held to constitute a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct; and
 - (b) liability for defamation is not incurred by any person as a result of the furnishing of the report.
- (5) Subsection (4) has effect both within and outside the Territory.

46 Reports to be made available

- (1) Unless the Court otherwise directs, a copy of a report furnished under section 45 shall, as soon as practicable after it is prepared, be made available to the Minister, the child to whom it relates and the parents, guardians or persons having the custody of the child and the legal practitioners, if any, representing them.
- (2) The Court may, if it thinks fit, direct that a copy of a report furnished under section 45 or a specified part of it shall not be made available to the child to whom it relates if in its opinion the report or that part would be likely to cause him distress.
- (3) A person furnishing a report under section 45 may be called as a witness and examined by way of cross-examination and re-examination by a person entitled under subsection (1) to receive a copy of it.
- (4) A child or a parent, guardian or person having the care and custody of the child may give evidence, or call witnesses, to rebut the contents of a report furnished under section 45.

47 Interim orders

Where the Court thinks fit, it may make an interim order in accordance with this Part which shall include particulars of the date, time and place fixed by the Court for a further hearing of the application to which it relates and it shall remain in force:

- (a) subject to paragraph (b), for such period not exceeding 2 months, as the Court thinks fit; or
- (b) where the Court thinks fit, for a further period not exceeding 4 months from the making of the first interim order.

Division 3 Review, &c.

48 Application for variation of order

- (1) The Minister or the parents, or the persons who were, immediately before the order, the guardians or persons having the custody of a child, or any other person who has an interest in the welfare of, or acting on behalf of and at the request of, the child in relation to whom the application under this Part was made, may apply to the Court for the variation or further variation of an order made under section 43.
- (2) An application under subsection (1) shall not be made unless it states that the circumstances that resulted in the making of the order, in some respect specified in the application, have changed significantly since the order sought to be varied was made.
- (3) On an application under subsection (1), the Court may vary or revoke the order, or make any other order it could have made under section 43 on the original application.

49 Review by Court

- (1) The Court shall review the circumstances of a child in relation to whom an order under section 43(4) is made containing a direction referred to in section 43(5)(d):
 - (a) where the sole rights in relation to the custody of the child are vested in the Minister – at intervals not exceeding 2 years; or
 - (b) in any other case – at such times as it thinks fit,and may make such further orders in relation to the child as it could have made on the original application.
- (2) In carrying out a review under subsection (1), the Court may require such reports under section 45 to be furnished to it as it thinks fit as if the review were the hearing of an application under this Part, and copies of those reports shall be made available under section 46(1) accordingly.
- (3) The Court may, at such times as it thinks fit, vary or revoke an order made under this section.
- (4) The Court shall not carry out a review under subsection (1) or vary or revoke an order made as a result of a review unless it has first given to each party to the application resulting in the relevant order, and to such other persons as it thinks fit, not less than 7 days written notice of the proposed action.

- (5) Notice under subsection (4) may be given by posting it to the party or other person at his or her address for service in the application or last known residential address.

50 Appeal to Supreme Court

- (1) The Minister or the parents, or the persons who were, immediately before the order, the guardians or persons having the custody of a child, or any other person who has an interest in the welfare of, or acting on behalf of and at the request of, the child in relation to whom an order under section 43(4) or 49 was made, may appeal to the Supreme Court against the order made or as varied under this Part.
- (2) The provisions of the *Justices Act* relating to appeals from a Court of Summary Jurisdiction shall apply, so far as they are applicable, to an appeal under subsection (1).

Division 4 Warrant for return of child to Territory

50A Definition

In this Division:

child protection order means:

- (a) an order made by the Court under section 43 other than an order transferring the sole rights in relation to the guardianship of a child declared to be in need of care to a person other than the Minister; or
- (b) an order made by the Court under section 47.

50B Child subject to order not to be out of Territory without Minister's consent

- (1) If a child protection order is in force in respect of a child, the child must not be taken out of or leave the Territory except in accordance with this section.
- (2) Subject to subsection (3), a person must not take a child to whom a child protection order applies out of the Territory unless the person has applied to the Minister for consent to do so and the Minister has given his or her consent in writing to the person.
- (3) A child to whom a child protection order applies must not of his or her own volition leave the Territory unless the child has applied to the Minister for consent to do so and the Minister has given his or her consent in writing to the child.

- (4) The Minister may give his or her consent under subsection (2) or (3) subject to conditions.
- (5) The person or child to whom the consent is given must comply with the conditions of the consent.

50C Warrant to apprehend and return child who is out of Territory without Minister's consent

- (1) If:
 - (a) a child is outside the Territory without the written consent of the Minister under section 50B; or
 - (b) where the Minister consents under section 50B to a child being taken out of or leaving the Territory – the person or child to whom the consent is given fails to comply with the conditions of the Minister's consent,

the Minister may apply to the Court for a warrant to apprehend the child and bring the child back to the Territory.

- (2) If, on an application made under subsection (1), the Court is satisfied that:
 - (a) the Minister did not consent to the child being outside the Territory; or
 - (b) the Minister gave his or her consent to the child being taken out of or leaving the Territory but the person or child to whom the consent was given is not complying or has failed to comply with the conditions of the consent,

the Court must issue to the Minister a warrant to apprehend the child and bring the child back to the Territory.

50D Warrant enforceable under *Service and Execution of Process Act 1992* of Commonwealth

A warrant issued under section 50C may be enforced under the *Service and Execution of Process Act 1992* of the Commonwealth.

Part VII Child in care of Minister

51 Definition

For the purposes of this Part, ***a child to whom this Part applies*** means a child the sole rights in relation to the guardianship of whom are placed in the Minister pursuant to section 43(5)(d) or in the Minister and another person pursuant to section 43(5)(c).

52 Care of child by Minister

- (1) In relation to a child to whom this Part applies the Minister shall, subject to such limitations on the Minister or the parent as the Court imposes, have the same rights, powers, duties, obligations and liabilities as a parent of the child.
- (2) Without limiting the generality of subsection (1), the rights, powers, duties, obligations and liabilities of the Minister in relation to a child to whom this Part applies include:
 - (a) the right to the custody of the child;
 - (b) the obligation to provide for the child the necessities of life, including accommodation, maintenance, education and recreation;
 - (c) the right to exercise discipline over the child; and
 - (d) the obligation to provide medical and dental health care for the child.
- (3) The Minister may, in the exercise of his duties under this section in relation to a child to whom this Part applies:
 - (a) permit the child to remain in the custody of a parent or guardian;
 - (b) place the child, in accordance with this Act, under the foster care of such persons as the Minister thinks fit;
 - (c) place the child in a licensed children's home; or
 - (d) provide such accommodation or assistance for, and care in respect of, the child as the Minister thinks fit.

53 Authorized person to visit child

- (1) The Minister shall cause an authorized person to visit a child to whom this Part applies and who is residing in the Territory at least once in every 2 months.

- (2) A person who has the custody of a child referred to in subsection (1) shall, at all reasonable times, permit an authorized person to enter a place at which the child is located for the purpose of visiting the child.
- (3) As soon as practicable after a visit under this section, the authorized person shall furnish to the Minister a report in writing concerning the child and his or her welfare.

54 Authority may be required

A person who has the custody of a child to whom this Part applies may require the production of an authority in writing by the Minister before permitting the removal of the child out of his or her custody, or a visit under section 53 by an authorized person.

55 Change of address to be notified

A person who has the custody of a child to whom this Part applies shall furnish to the Minister, in writing, prior notice of an intended change of his residence, including the address of the proposed residence.

56 Review by Minister

The Minister shall, while an order under section 43(4) placing a child under his guardianship or joint guardianship remains in force, at least once in every 3 months, review the circumstances of the child and the arrangements made for the child's care and welfare for the purpose of:

- (a) ensuring that the continuance of the arrangements is suitable and desirable; or
- (b) considering change to the arrangements.

59 Agreement with parent, &c.

The Minister may, in relation to a child to whom this Part applies, enter into an agreement with a parent or person from whose custody the child is placed under the guardianship of the Minister for the parent or person to make a financial contribution towards the maintenance of the child whilst the child is under the guardianship of the Minister.

60 Directions to Minister

- (1) The Court may, on its own motion or on an application by a parent, a joint guardian or another person with an interest in the welfare of a child to whom this Part applies or a person acting on behalf of and at the request of the child, direct the Minister in relation to the exercise of the duties of the Minister under an order made under section 43(4).
- (2) The Minister shall comply with the directions, if any, under subsection (1).

61 Property of child under guardianship of Minister

- (1) Subject to subsection (3), the Court may, on the application of the Minister, make an order empowering the Public Trustee to manage, control or deal with the property of a child to whom this Part applies.
- (2) An order under subsection (1) may make such incidental or supplementary provisions as are necessary to give effect to the order.
- (3) The Court shall not make an order under subsection (1) in relation to property if there is some other person, not being a child to whom this Part applies, empowered to manage, control or deal with the property.
- (4) A copy of an application under this section shall be served on such persons as the Court directs, and the procedure upon the hearing of the application shall be as the Court directs.
- (5) An order under subsection (1) is binding on all persons affected by the order and each such person shall take steps to give effect to the order so far as it is binding on him or her.

62 Temporary custody

- (1) Subject to subsection (5), the Minister may, on the application of a person having the custody of a child, enter into an agreement to admit the child into the temporary custody of the Minister for a period, subject to subsection (3), not exceeding 2 months.
- (2) An agreement under subsection (1) shall set out the rights and responsibilities of the Minister in relation to the child.
- (3) A period specified in an agreement under subsection (1) may be extended from time to time by the parties to the agreement by mutual consent for further periods, each not exceeding 2 months, but not extending beyond 6 months after the date the agreement was first entered into.

- (4) The Minister may, as a condition of an agreement under subsection (1), receive contributions towards the maintenance of the child from the person making the application.
- (5) An agreement under subsection (1) shall not be entered into in relation to a child who has attained the age of 15 years, unless the child has consented in writing to the Minister to be received into the temporary custody of the Minister.
- (6) If at any time during which a child is in the temporary custody of the Minister in pursuance of an agreement under this section the person giving custody of the child to the Minister requests the Minister to return the child to his or her custody the Minister shall, within 48 hours after the request:
 - (a) return the child to the custody of the person; or
 - (b) where the Minister is of the opinion that it would not be in the best interest of the child to return the child to the custody of the person - make an application under Division 2 of Part VI in relation to the child.
- (7) The Court may give such directions in relation to an application referred to in subsection (6), and make such orders for the temporary custody of a child to whom the application relates, as it thinks fit.

Part VIIA Interstate transfer of child protection orders and child protection proceedings

Division 1 Preliminary

62A Definitions

In this Part, unless the contrary intention appears:

child protection order means an order (other than an interim transfer order) that:

- (a) is made under a child welfare law; and
- (b) gives a minister, government department, statutory authority or other organisation, or the chief executive officer or other officer of a government department, statutory authority or other organisation, responsibility in relation to the guardianship or custody (however described) of the child.

child protection proceeding means a proceeding commenced in a Court under a child welfare law for:

- (a) a finding that the child is in need of care or protection or any other finding that is, under the child welfare law, a prerequisite to the exercise by the Court of a power to make a child protection order; or
- (b) a child protection order or an interim transfer order, a variation or revocation of the child protection order or interim transfer order or an extension of the period for which a child protection order or an interim transfer order is in force.

child welfare law means:

- (a) the law of a State that substantially corresponds to Part VI; or
- (b) a law of a State prescribed under section 62B(a) to be a child welfare law.

Court means a court of a State with jurisdiction to hear and determine a child protection proceeding at first instance.

home order means an order made by the Family Matters Court under Part VI.

home proceeding means a proceeding commenced in the Family Matters Court under Part VI.

interim transfer order means:

- (a) an order made under section 62R;
- (b) an order made by the Supreme Court under section 62T that has the same effect as an order that may be made under section 62R; or
- (c) an order by a Court under an interstate law that has the same effect as an order that may be made under section 62R.

interstate law means:

- (a) the law of a State that substantially corresponds to this Part; or
- (b) a law of a State prescribed under section 62B(b) to be an interstate law.

interstate officer means:

- (a) the person holding, acting in or performing the duties of an office or position held or established by or under a child welfare law of a State that has principal responsibility for the supervision and protection of children in the State who are in need of care (however described); or
- (b) the person holding, acting in or performing the duties of an office or position prescribed under section 62B(c) to be an interstate office.

interstate order means:

- (a) a decision under an interstate law that substantially corresponds with Division 2, Subdivision 1 to transfer a child protection order to the Territory;
- (b) an order of a Court under an interstate law for the transfer of a child protection order or a child protection proceeding to the Territory; or
- (c) an interim transfer order made by a Court under an interstate law.

parent, in relation to a child to whom a home order or home proceeding relates, means a parent, guardian or other person having the custody of the child but does not include a person who is the child's foster parent.

receiving State means a State in which an interstate law is in force to which the Minister transfers or proposes to transfer a home order or a home proceeding under this Part.

sending State means a State in which an interstate law is in force from which an interstate officer transfers or proposes to transfer a child protection order or child protection proceeding to the Territory under the interstate law.

State means a State or another Territory of the Commonwealth or New Zealand.

working day means a day on which the registry of the Supreme Court is open for business.

62B Minister to prescribe child welfare laws, interstate laws and interstate officers

The Minister may, by notice in the *Gazette*, prescribe:

- (a) a law of a State to be a child welfare law;
- (b) a law of a State to be an interstate law; or
- (c) an office or position held or established under a child welfare law to be an interstate office.

Division 2 Transfer of child protection orders

Subdivision 1 Transfer by Minister

62C Minister may transfer home order

- (1) If a child to which a home order relates is residing or is about to reside in a State in which an interstate law is in force, the Minister may transfer the home order to the State.
- (2) The Minister must not transfer the home order:
 - (a) if the home order is subject to an appeal in the Supreme Court;
 - (b) if an application has been made to the Family Matters Court for the transfer of the home order under Subdivision 2;
 - (c) if the Minister is satisfied that the welfare of the child will be adversely affected by the transfer, taking into account the wishes of the child, each of the child's parents and any other person who has access to the child under the home order;
 - (d) unless in the opinion of the Minister a child protection order that has the same or a similar effect as the home order may be made under the child welfare law of the receiving State and it is desirable that a child protection order that has the same or a similar effect as the home order be registered in that State;
 - (e) unless the Minister considers that an interstate officer in the receiving State is or will be in a better position to exercise powers and functions under a child protection order relating to the child than he or she is or will be under the home order;
 - (f) subject to section 62D, unless the Minister has proposed the terms of the child protection order that, on the transfer, will apply in the receiving State and the relevant interstate officer

has consented in writing to the transfer and to the terms of the child protection order; and

- (g) unless each person whose consent to the transfer is required under section 62E has consented to the transfer.

62D Terms of proposed child protection order to be transferred

- (1) The Minister must determine and specify the period for which a proposed child protection order referred to in section 62C(2)(f) is to be in force.
- (2) The period is to be:
 - (a) if it is possible under the child welfare law of the receiving State for the proposed child protection order to be in force until the expiry of the period that the home order would, but for the transfer, be in force – the period that ends on the expiry of the home order; or
 - (b) if that is not possible – the period expiring as close as possible to, but not later than, the day that the period for which the home order would, but for the transfer, be in force expires.
- (3) In determining the other terms of the proposed child protection order, the Minister may include any terms and conditions that may, under the child welfare law in force in the receiving State, be included in a child protection order having the same or similar effect as the home order to be transferred.

62E Certain persons required to consent to transfer of order

- (1) If the Minister proposes to transfer a home order that includes a direction referred to in section 43(5)(a) or (b), the Minister may not transfer the home order unless each parent of the child to whom the home order relates consents to the transfer of the home order.
- (2) If the Minister proposes to transfer a home order that includes a direction referred to in section 43(5)(c) or (d), the Minister may not transfer the home order unless each parent of the child to whom the home order relates and any other person who has access to the child under the home order consents to the transfer of the home order.
- (3) The Minister must ensure that, before a parent or other person consents or refuses to consent to a proposed transfer of a home order, the parent or other person is informed of the effect of consenting to the transfer and of refusing or failing to consent to the transfer (including being informed about the Minister's right to apply to the Court for an order for the transfer of the home order, the right

of review under section 62G and the right of appeal to the Supreme Court under section 62S).

- (4) The Minister is not required to obtain the consent of a person referred to in this section to the transfer of a home order, or to inform such a person of the effect of consenting or refusing or failing to consent to the transfer of the home order, if the person cannot be found after reasonable inquiry.

62F Notification to child and his or her parents

- (1) If the Minister decides to transfer a home order to a State under section 62C, the Minister must give notice in writing of his or her decision to:
 - (a) each parent of the child to whom the home order relates;
 - (b) each person (other than a parent of the child) who has access to the child under the home order; and
 - (c) if the child is 10 or more years of age – the child.
- (2) The Minister must give the notice to the persons referred to in subsection (1), if any, within 3 days after making his or her decision.
- (3) The notice is to include:
 - (a) details of the child protection order that will apply in relation to the child in the receiving State;
 - (b) sufficient details to inform each person to whom the notice is given about his or her right of review under section 62G and how to apply for review of the Minister's decision; and
 - (c) sufficient details to inform each person to whom the notice is given about the right of appeal to the Supreme Court under section 62S.
- (4) The Minister is not required to give notice to a person under this section if the person cannot be found after reasonable inquiry.

62G Review of decision

- (1) A person to whom the Minister gives notice under section 62F may, within 10 working days after the date of the notice, apply to the Family Matters Court for review of the Minister's decision to transfer the home order.
- (2) The application for review may be for review of the decision on the merits or on particular grounds specified in the application.

- (3) The operation of the Minister's decision is stayed until the review is concluded or is, for any reason, discontinued.
- (4) In reviewing a decision under this section, the Family Matters Court may confirm, vary or reverse the decision.

Subdivision 2 Transfers by Court

62H Family Matters Court may hear application for order to transfer home order

- (1) The Minister may apply to the Family Matters Court for an order for the transfer of the home order to the other State if:
 - (a) a child to which a home order relates is residing or is about to reside in a State in which an interstate law is in force;
 - (b) the home order is not subject to an appeal in the Supreme Court;
 - (c) the Minister is satisfied that the welfare of the child will not be adversely affected by the transfer, taking into account the wishes of the child, each of the child's parents and any other person who has access to the child under the home order;
 - (d) the Minister considers that an interstate officer in the receiving State is or will be in a better position to exercise powers and functions under a child protection order relating to the child than he or she is or will be under the home order;
 - (e) the Minister has proposed the terms of the child protection order that, on the transfer, will apply in the receiving State and the relevant interstate officer has consented in writing to the transfer and to the terms of the child protection order; and
 - (f) any one or more of the following apply:
 - (i) a person required under section 62E to consent to the transfer of the home order by the Minister has refused or failed to do so;
 - (ii) in the opinion of the Minister it is desirable that the child protection order that would, on the transfer, be registered in that State contains terms (being terms that may be made under the child welfare law of the receiving State) that are not the same or do not have a similar effect as the terms of the home order;

- (iii) in the opinion of the Minister it is likely that, if he or she were to decide to transfer the home order to that State, the child (if entitled to seek review of the Minister's decision under section 62G) would seek review of the decision;
 - (iv) other circumstances relating to the transfer of the home order cause the Minister to consider that it is appropriate that the Family Matters Court hears and determines whether the home order be transferred to that State.
- (2) The Family Matters Court must not hear an application for an order for the transfer of a home order unless:
 - (a) it is satisfied that the Minister is entitled to make the application under subsection (1); and
 - (b) the Minister has prepared and given to the Court a report in relation to the application that includes:
 - (i) a history of the care of the child by the Minister;
 - (ii) details of any offences committed by the child and any sentence imposed on the child for committing those offences;
 - (iii) details of any offences the child has been charged with committing and any criminal proceedings pending against the child;
 - (iv) details of any sentencing order under this Act that is in force in respect of the child at the time of making the application;
 - (v) the recommendations of the Minister concerning the order for the transfer of the home order; and
 - (vi) the prescribed information, if any.

62J Procedure

Sections 36(2), (3) and (4), 37, 38, 39(2) and (3), 40, 41, 44(1) and (4), 45, 46 and 47 apply, to the extent necessary and with the necessary changes, to and in relation to an application to the Family Matters Court under section 62H(1) for the transfer of a home order as if the application were an application to the Court that a child be found to be in need of care.

62K Court to have regard to certain matters in determining application

- (1) In determining whether to make an order for the transfer of a home order, the Family Matters Court must have regard to the following matters:
 - (a) the place of residence or likely place of residence of the child, each parent of the child and any other person who is significant to the child;
 - (b) whether the welfare and interests of the child will be promoted or adversely affected by the transfer of the home order;
 - (c) whether it is desirable that a child protection order relating to the child be registered in the receiving State;
 - (d) any wishes expressed by the child, each parent of the child and any other person who has access to the child under the home order;
 - (e) whether the child protection order proposed by the Minister for transfer and registration in the receiving State may be made under a child welfare law of the other State;
 - (f) the terms to be included in the child protection order that will be in force in the receiving State;
 - (g) whether an interstate officer in the receiving State is or will be in a better position to exercise powers and functions in relation to the guardianship and custody of the child under a child protection order relating to the child than the Minister is or will be under the home order.
- (2) The Family Matters Court must consider and have regard to the report from the Minister referred to in section 62H(2)(b).

62L Order of Court

- (1) On determining the application, the Family Matters Court may make an order:
 - (a) for the transfer of the home order to the receiving State; or
 - (b) dismissing the application.
- (2) If the Court makes an order under subsection (1)(a), the order must specify the terms of the proposed child protection order, including the period that the order is to be in force in the receiving State.

- (3) The period the proposed child protection order is to be in force in the receiving State is to be any period, commencing on the date of its registration in the receiving State and expiring not later than the date on which the home order would (but for the transfer) have expired, for which the order may be in force under the child welfare law of that State.
- (4) In determining the other terms of the proposed child protection order, the Court may include any terms that:
 - (a) may, under the child welfare law of the receiving State, be included in a child protection order relating to the child (whether or not having the same or similar effect as the home order to be transferred); and
 - (b) the Court considers promote the welfare and interests of the child.

Division 3 Transfer of child protection proceedings

62M Family Matters Court may hear application for order to transfer child protection proceeding

- (1) If a child to which a home proceeding relates is residing or is about to reside in a State in which an interstate law is in force, the Minister may apply to the Family Matters Court for an order for the transfer of the proceeding to the Court of the State.
- (2) The Family Matters Court must not hear an application for the transfer of a home proceeding unless:
 - (a) the relevant interstate officer in the receiving State has consented in writing to the transfer of the home proceeding; and
 - (b) the Minister has prepared and given to the Court a report in relation to the application that includes:
 - (i) details of any offences committed by the child and any sentence imposed on the child for committing those offences;
 - (ii) details of any offences the child has been charged with committing and any criminal proceedings pending against the child;
 - (iii) details of any sentencing order under this Act that is in force in respect of the child at the time of making the application;

- (iv) the recommendations of the Minister concerning the order for the transfer of the home proceeding; and
- (v) the prescribed information, if any.

62N Procedure

Sections 36(2), (3) and (4), 37, 38, 39(2) and (3), 40, 41, 44(1) and (4), 45, 46 and 47 apply, to the extent necessary and with the necessary changes, to and in relation to an application to the Family Matters Court for the transfer of a home proceeding as if the application were an application to the Court that a child be found to be in need of care.

62P Court to have regard to certain matters in determining application

- (1) In determining whether to make an order for the transfer of a home proceeding, the Family Matters Court must have regard to the following matters:
 - (a) the place of residence or likely place of residence of the child, each parent of the child and any other person who is significant to the child;
 - (b) whether the welfare and interests of the child will be promoted or adversely affected by the transfer of the home proceeding;
 - (c) whether any other proceedings relating to the child have been commenced, are pending or have been heard and determined under this Act or the child welfare law of the receiving State;
 - (d) whether it is desirable that a child protection order relating to the child be made under the child welfare law of the receiving State and registered in that State;
 - (e) any wishes of the child and each parent of the child;
 - (f) the place where any of the matters giving rise to the home proceeding arose;
 - (g) whether the Minister or an interstate officer in the receiving State is or will be in the better position to exercise powers and functions in relation to the guardianship and custody of the child.
- (2) The Court must consider and have regard to the report from the Minister referred to in section 62M(2)(b).

62Q Order of Court

- (1) On determining the application, the Family Matters Court may make an order:
 - (a) for the transfer of the home proceeding to the receiving State;
or
 - (b) dismissing the application.
- (2) If the Family Matters Court makes an order under subsection (1)(a), the proceeding commenced in the Family Matters Court is discontinued on the filing of a copy of the order in the Court of the receiving State for registration.

62R Interim transfer order

- (1) If the Family Matters Court makes an order under section 62Q(1)(a), the Court may also make an order:
 - (a) releasing the child from or placing the child into the care of a person; and
 - (b) giving the control and supervision of the care of the child to an interstate officer in the receiving State or another person in that State to whom responsibility for the control and supervision of the care of the child may be given under the child welfare law of that State.
- (2) An order under subsection (1):
 - (a) remains in force for the period not exceeding 30 days specified in the order; and
 - (b) may be subject to any conditions the Family Matters Court considers just and specifies in the order.

Division 4 Appeals to Supreme Court

62S Right of appeal

The following persons may appeal to the Supreme Court against the decision on a review under section 62G or an order of the Family Matters Court under section 62L, 62Q or 62R:

- (a) the Minister;
- (b) a parent of the child to whom the decision or order relates;

(c) a person (other than a parent of the child to whom the decision or order relates) who has or, before the decision or order was made, had access to the child under the home order the subject of the decision or order;

(d) if the child is 10 or more years of age – the child.

62T Procedure

(1) An appeal under section 62S is to be filed in the Supreme Court within 10 working days after the date the decision or order to which the appeal relates is made.

(2) The operation of the decision or order is stayed until the appeal is concluded or is, for any reason, discontinued.

(3) The Supreme Court:

(a) may not extend the time fixed for making the appeal;

(b) in determining the appeal has all the powers of the Family Matters Court; and

(c) may, in the manner it considers appropriate:

(i) affirm, vary or reverse the decision or order appealed against;

(ii) if the appeal is against an order of the Family Matters Court – remit the matter to the Family Matters Court for further hearing or re-hearing; and

(iii) make any other orders, including an interim transfer order and orders as to costs, that it considers just.

62U Control of persons present at hearing and publications about appeal

(1) The Supreme Court must order a person who is not directly interested in an appeal under section 62S and who does not have sufficient reason why he or she should be present at the hearing of the appeal not to remain in or enter a room or place in which the appeal is being heard or not to remain within the hearing of the Court.

(2) A person must not remain in or enter a room or place, or remain within the hearing of the Court, in contravention of an order under subsection (1).

Penalty: 100 penalty units or imprisonment for 6 months.

- (3) A person must not publish a report of an appeal under section 62S or the result of the appeal unless he or she does so:

- (a) with the leave of the Supreme Court; or
- (b) in good faith under or for the purposes of the administration of this Act.

Penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

If the offender is a body corporate – 500 penalty units.

Division 5 Registration etc. of orders and proceedings

Subdivision 1 Orders and proceedings transferred to Territory

62W Filing and registration of interstate orders

- (1) If:
- (a) an interstate order is made to transfer a child protection order or a child protection proceeding to the Territory;
 - (b) both the time for seeking review of the interstate order, if any, and the time for commencing an appeal against the interstate order under the interstate law have expired; and
 - (c) the decision by the interstate officer or the order of the Court to transfer the interstate order to the Territory is not subject to a review or appeal or otherwise stayed because of a review of or appeal,

the Minister must file a copy of the interstate order in the Family Matters Court for registration as soon as possible.

- (2) The Clerk receiving the copy of the interstate order must register the interstate order in the Family Matters Court.

62X Effect of registration of interstate orders

- (1) On the registration in the Family Matters Court of an interstate order:
- (a) if the interstate order is for the transfer of a child protection order to the Territory – subject to subsection (2), the child protection order is taken for all purposes to be a home order of the same type made by the Family Matters Court on the day on which it is registered and it may be dealt with under this Act or any other law of the Territory as if it were a home order; or

- (b) if the interstate order is for the transfer of a child protection proceeding to the Territory – the child protection proceeding is taken to be a proceeding under Part VI that is commenced in the Family Matters Court on the day on which the order is registered.
- (2) No proceedings may be brought under section 62G or 62S in respect of an interstate order referred to in subsection (1)(a).

62Y Revocation of registration

- (1) Any of the following persons may apply to the Family Matters Court for the revocation of the registration of an interstate order:
 - (a) the Minister;
 - (b) if the child to whom the interstate order relates is 10 or more years of age – the child;
 - (c) a parent of the child;
 - (d) any other party to the proceeding in the Court that resulted in the making of the interstate order.
- (2) On the making of an application for revocation under subsection (1), a Clerk must send a copy of the application to the relevant interstate officer and each party referred to in that subsection (other than the applicant).
- (3) The Family Matters Court may only revoke the registration of an interstate order if it is satisfied that at the time it was registered:
 - (a) the time under the interstate law for seeking review or commencing an appeal against the interstate order had not expired; or
 - (b) the interstate order was subject to review or appeal or was otherwise stayed because of a review or appeal.
- (4) The revocation of the registration of an interstate order under this section does not prevent the registration of the order at a later time.

62Z Duties of Clerk of Family Matters Court

- (1) On the registration of an interstate order under section 62W, a Clerk must notify the Court in the sending State of the registration.

- (2) On the revocation of the registration of an interstate order under section 62Y, a Clerk must:
 - (a) notify the Court in the sending State of the revocation; and
 - (b) return to that Court all documents filed in the Family Matters Court in relation to the registration of the interstate order.

Subdivision 2 Orders and proceedings transferred from Territory

62ZA Effect of registration and revocation of registration of home order in receiving State

- (1) On the registration in the Court of the receiving State of a decision by the Minister under section 62C to transfer a home order, the home order ceases to have effect.
- (2) On the registration in the Court of the receiving State of an order of the Family Matters Court under section 62G or 62L, or of the Supreme Court under section 62T, to transfer a home order, the home order ceases to have effect.
- (3) If the registration in the Court of the receiving State of the order to transfer the home order is revoked under the interstate law of that State, the home order revives on that revocation.
- (4) A home order revived under subsection (3) continues in force until the date it would, but for its registration under the interstate law, have expired under this Act.

62ZB Effect of registration and revocation of registration of home proceeding in receiving State

- (1) On the registration in the Court of the receiving State of an order of the Family Matters Court under section 62Q, or the Supreme Court under section 62T, to transfer a home proceeding, the home proceeding is discontinued.
- (2) If the registration in the Court of the receiving State of the order to transfer the home proceeding is revoked under the interstate law of that State, on that revocation, the home proceeding continues before the Family Matters Court, and the Family Matters Court may hear the home proceeding and exercise its powers under Part VI in relation to the child the subject of the home proceeding, as if the order to transfer the home proceeding had not been made.

62ZC Transfer of Court file

- (1) On the transfer of a home order or home proceeding from the Territory, a Clerk must send all documents filed in or otherwise held by or at the Family Matters Court in connection with the home order or home proceeding to the Court of the receiving State.
- (2) The Clerk must not comply with subsection (1):
 - (a) unless the time for seeking review of, and commencing an appeal against, the transfer of the home order or home proceeding has expired; or
 - (b) if the decision by the Minister to transfer the home order or the order of the Family Matters Court for the transfer of the home order or home proceeding is subject to a review or appeal or is otherwise stayed because of a review of or an appeal.

Division 6 Miscellaneous

62ZD Hearing and determination of transferred proceeding

In hearing and determining a child protection proceeding transferred to the Family Matters Court under an interstate law, the Family Matters Court:

- (a) is not bound by any finding of fact made in the proceeding in the Court of the sending State before the proceeding was transferred to the Territory; and
- (b) may have regard to the transcript of and any evidence adduced in the proceeding in the Court of the sending State before it was transferred.

62ZE Disclosure of information

Despite sections 97 and 97A and any other contrary intention in this Act, the Minister may authorise a person to disclose to an interstate officer any information that has come to his or her notice in exercising his or her powers or performing his or her functions under this Act if the Minister considers that it is necessary to do so to enable the interstate officer to exercise powers or perform functions under a child welfare law or an interstate law.

62ZF Minister may consent or refuse to consent to transfer to Territory

If there is a proposal to transfer a child protection order or a child protection proceeding from a State to the Territory, the Minister may:

- (a) where the proposal is to transfer a child protection order – consent or refuse to consent to the transfer and to the terms of the child protection order proposed to apply in the Territory; or
- (b) where the proposal is to transfer a child protection proceeding – consent or refuse to consent to the transfer of the proceeding.

62ZG Interstate officer's decision not reviewable in Territory

No proceedings seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration or an injunction (whether on the ground of absence of jurisdiction or any other ground) may be commenced in a court of the Territory against an interstate officer in respect of consent given or the failure or refusal to consent to the transfer of an interstate order to the Territory.

Part VIII Foster care**63 Registration of foster parents**

- (1) Persons may apply to the Minister for registration as foster parents.
- (2) In considering an application for registration under subsection (1), the Minister shall, as far as practicable, be satisfied that the applicants:
 - (a) will have adequate interest in, and affection and respect for, a child placed in their custody;
 - (b) will provide a stable environment for the child and will treat the child in a manner consistent with establishing a stable and secure environment;
 - (c) are capable of, and will understand the development of, the child, including the provision of opportunities to encourage that development and the abilities of the child;
 - (d) will be capable of providing adequate accommodation and material requirements necessary for the welfare of the child;

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- (e) will understand the need, and provide opportunities, for the child to maintain or recover his or her identity as a member of his or her own family and will allow the child reasonable access to his or her parents; and
 - (f) are qualified to be registered according to such other criteria for registration as the Minister thinks fit.
- (3) Registration of persons as foster parents under this section shall be for 12 months, and may be renewed from time to time for such period, not exceeding 12 months, as the Minister thinks fit.

64 Foster care

- (1) The Minister may, in relation to a child for whose welfare he or she is responsible under this Act, place the child in the custody of foster parents for such period as the Minister thinks fit.
- (2) The placement of a child under subsection (1) is subject to review by the Minister at such periods as he thinks fit.
- (3) Before the placement of a child under this section, the foster parents shall enter into an agreement with the Minister undertaking to care for the child to be placed in their custody in accordance with the agreement and this Act.
- (4) An agreement under subsection (3) shall include a provision for a foster allowance in respect of the child and shall provide for such other supporting measures to the foster parents and the child as the Minister thinks fit.

65 Authorized person may visit foster parents, &c.

- (1) The Minister may cause an authorized person to visit a child placed under this Part with foster parents in order to ascertain whether this Part is being complied with and to provide advice or guidance concerning the welfare of the child.
- (2) Foster parents shall, at all reasonable times, permit an authorized person to enter a place at which a foster child is located for the purpose of visiting the child.
- (3) As soon as practicable after a visit under this section, the authorized person shall furnish to the Minister a report in writing concerning the child and its welfare.
- (4) Where it appears to an authorized person or the Minister that the provisions of an agreement under section 64(3) or this Part are not being complied with or the care of a child by foster parents is not being carried out in the child's best interests, the Minister may

cancel the registration of the foster parents.

66 Support for parents

Notwithstanding the placement of a child in foster care under section 64, the Minister may provide such support as he or she thinks fit to the parents of the child to facilitate access of the parents to the child and the child to his or her parents.

67 Removal of child from foster care

On:

- (a) the cancellation or expiry of the registration of persons as foster parents;
- (b) the cancellation or expiry of the authority by which the Minister arranged for the care under this Part of a child; or
- (c) the Minister being of the opinion that the interests of the child would be better served by the removal,

the Minister may remove the child from a foster placement and cause the child to be placed elsewhere in accordance with this Act.

Part IX Aboriginal child welfare

68 Assistance to Aboriginal communities, &c.

The Minister shall provide such support and assistance to Aboriginal communities and organizations as he or she thinks fit in order to develop their efforts in respect of the welfare of Aboriginal families and children, including the promotion of the training and employment of Aboriginal welfare workers.

69 Aboriginal child in need of care

Where a child in need of care is an Aboriginal, the Minister shall ensure that:

- (a) every effort is made to arrange appropriate custody within the child's extended family;
- (b) where such custody cannot be arranged to the Minister's satisfaction, every effort is made to arrange appropriate custody of the child by Aboriginal people who have the correct relationship with the child in accordance with Aboriginal customary law; and

(c) where the custody referred to in paragraph (a) or (b) cannot be arranged without endangering the welfare of the child – after consultation with:

- (i) the child's parents and other persons with responsibility for the welfare of the child in accordance with Aboriginal customary law; and
- (ii) such Aboriginal welfare organizations as are appropriate in the case of the particular child,

a placement that is consistent with the best interests and the welfare of the child shall be arranged taking into consideration:

- (iii) preference for custody of the child by Aboriginal persons who are suitable in the opinion of the Minister;
- (iv) placement of the child in geographical proximity to the family or other relatives of the child who have an interest in, and responsibility for, the welfare of the child; and
- (v) undertakings by the persons having the custody of the child to encourage and facilitate the maintenance of contact between the child and his or her own kin and with his or her own culture.

70 Agreement with community government council, &c.

(1) A community government council constituted under the *Local Government Act* or an association incorporated under the *Associations Act* may, subject to agreement with the Minister, undertake functions under this Act in relation to the welfare of children and the provision of facilities and trained staff to provide counselling and assistance to, or in relation to the welfare of, children.

(2) An agreement under subsection (1) shall be in accordance with:

- (a) the community government scheme, and shall be effective within the boundaries of the area, of the community government council; or
- (b) the constitution of the association,

as the case may be.

71 Delegation by community government council, &c.

- (1) For the purposes of this Act, a community government council, or the committee of an incorporated association, that enters into an agreement under section 70 may, by instrument in writing, delegate to a person any of its powers and functions under this Act by virtue of that agreement, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised by the delegate, shall, for the purposes of this Act and the agreement under section 70, be deemed to have been exercised or performed by the community government council or the committee of the incorporated association, the party to the agreement.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by a community government council or the committee of an incorporated association, as the case may be.

Part X Licensing of children's homes, &c.

Division 1 Children's homes

72 Definition

In this Part,

children's home means premises in respect of which the occupier holds himself or herself out as being willing to conduct a residential children's home and in which more than 4 children who have not attained the age of 15 years, not being children or relatives of adults resident at the premises, are cared for for periods exceeding 24 consecutive hours duration, but does not include:

- (a) a Juvenile Detention Centre established under the *Juvenile Justice Act*;
- (b) the residence of foster parents registered under Part VIII;
- (c) a residential establishment attached to a school or other educational institution within the meaning of the *Education Act*; or
- (d) a hospital.

73 Licensed children's home

- (1) No person shall have the conduct or control of a children's home unless the person is the holder of a current licence granted under this section in respect of the children's home.
- (2) A person may apply to the Minister, in a form approved by the Minister, for a licence under this section to be granted to him or her in respect of premises specified in the licence.
- (3) In determining whether or not to grant a licence to an applicant under subsection (2), the Minister shall have regard to:
 - (a) the qualifications and experience of the person or persons who will be conducting or managing, and of the persons who will be employed in, the children's home;
 - (b) the system of management proposed;
 - (c) the suitability of the premises proposed to be used as the children's home; and
 - (d) such other matters as the Minister thinks fit.
- (4) The Minister may grant a licence under this section subject to such terms and conditions (which shall include terms and conditions as to the standards to be observed in the management and operation of the children's home) as the Minister thinks fit and specifies in the licence document.
- (5) A licence granted under this section shall, subject to this Division, remain in force for 3 years after the day on which it was granted and may be renewed from time to time for successive periods of 3 years.

74 Licence to be available

A licence document under section 73(4) shall be kept by the licensee at the children's home in relation to which it relates and shall be produced to any person on the request of that person.

Penalty: 20 penalty units.

75 Failure to comply with licence

- (1) A person who contravenes section 73(1), or contravenes or fails to comply with a term or condition to which a licence under section 73 is subject, is guilty of an offence.

Penalty: If the offender is a natural person – 500 penalty units.

 If the offender is a body corporate – 2 500 penalty units.

- (2) In a proceeding for an offence against this section, the court hearing the charge may, on the application of the Minister, and in addition to any other penalty it may impose, cancel a licence granted under section 73 to the person against whom the charge is laid.

76 Cancellation of licence

- (1) Subject to subsection (2), where the Minister is satisfied that proper cause for the cancellation of a licence granted under section 73 exists, the Minister may, by notice in writing served personally or by post on the licensee, cancel the licence.
- (2) The Minister shall not under subsection (1) cancel a licence unless the Minister has given notice in writing to the licensee of his or her intention to cancel the licence, and his or her reasons for intending to do so, at least 28 days before he or she does so, and has given the licensee an opportunity to submit to the Minister reasons why the licence should not be cancelled and he or she has considered those reasons.

77 Register

A licensee of a licensed children's home shall keep a register in which the licensee shall record, in relation to every child received by him or her into the children's home, so far as those particulars are reasonably ascertainable by him or her:

- (a) the name, age, place of birth and religion, if any, of the child;
- (b) the names and addresses of the parents, guardians or persons having custody of the child;
- (c) the names and addresses of the person, other than a person referred to in paragraph (b), from whom the child was received and his or her relationship to the child;
- (d) the date on which the child was received into, and the date on which the child left, the children's home;

- (e) the race or ethnic origin of the child; and
- (f) such other particulars as are prescribed.

78 Inspection of children's home

- (1) The Minister or an authorized person may, at any reasonable time, enter and inspect a licensed children's home.
- (2) The licensee of a licensed children's home shall, if so required by the Minister or an authorized person, produce for inspection the register that the licensee is required under section 77 to keep, and shall furnish the Minister or the authorized person with such information in relation to a child in, or who has at any time been in, the children's home as the Minister or authorized person requires.

79 Agreement

- (1) The licensee of a licensed children's home shall not receive a child to be cared for in the home unless a parent, guardian or person having the custody of the child has signed an agreement, in the prescribed form, relating to the period for which the child will remain in the home and to the care and control of the child while he or she remains in the home.

Penalty: 100 penalty units or imprisonment for 6 months.

- (2) A licensee of a licensed children's home shall, at the request of the Minister or an authorized person, produce an agreement referred to in subsection (1) for inspection by the Minister or authorized person.

Penalty: 20 penalty units.

80 Duty of minister to hear complaints

A child being cared for in a licensed children's home, or a parent, guardian or person having the custody of that child, may request the Minister to investigate a complaint that the child or the parent, guardian or person, as the case may be, has in relation to the care the child is receiving in the home or the control being imposed on him or her, and the Minister shall investigate the complaint.

81 Notification of acceptance of child, &c.

- (1) The licensee of a licensed children's home shall, within 24 hours after a child is received into the home, by notice in writing, advise the Minister of the licensee's acceptance of the custody of the child.

- (2) Where a child has been cared for in a licensed children's home for a period of 12 months or more, and during that period there has been no substantial contact between the child and his parents, guardians or persons in whose custody the child was before his admission to the children's home, the child shall be deemed, for the purposes of this Act, to be abandoned.

Division 2 Licensed child care centres

82 Definition

In this Division, unless the contrary intention appears:

child care centre means premises in which more than 5 children (including children of persons providing child care on the premises) who have not attained the age of 6 years and who are not enrolled for primary education at a school, some or all of whom are being cared for apart or away from their parents, guardians, foster parents or other persons having the custody of such children, are cared for:

- (a) for reward or gain, whether monetary or otherwise;
- (b) as a community service; or
- (c) incidental to a community service or commercial enterprise,

but does not include:

- (d) a children's home licensed under Division 1; or
- (e) a pre-school, school or other educational institution within the meaning of the *Education Act*.

83 Licensing of child care centre

- (1) No person shall have the conduct or control of a child care centre unless that person is the holder of a current licence granted under this section in respect of the child care centre.
- (2) A person may apply to the Minister, in a form approved by the Minister, for a licence under this section to be granted to him or her in respect of premises specified in the licence.
- (3) The Minister may grant a licence under this section subject to such terms and conditions as are prescribed and additional terms and conditions, if any, as the Minister thinks fit and specifies in the licence document.

- (4) A licence granted under this section shall, subject to this Division, remain in force for 3 years after the day on which it was granted and may be renewed from time to time for successive periods of 3 years.

84 Licence to be displayed

A licence document under section 83(3) shall be displayed conspicuously at the child care centre in relation to which the licence was granted.

85 Failure to comply with licence, &c.

A person who contravenes section 83(1), or contravenes or fails to comply with a term or condition to which a licence under section 83 is subject, is guilty of an offence.

Penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

 If the offender is a body corporate – 500 penalty units.

86 Cancellation of licence

Where the Minister is satisfied that prescribed grounds for the cancellation of a licence granted under this Division exist, he may, in the prescribed manner, cancel the licence.

87 Register

A licensee of a licensed child care centre shall keep a register containing the prescribed particulars in relation to every child received by the licensee into the centre.

88 Inspection of child care centre

- (1) The Minister or an authorized person may, at any reasonable time, enter and inspect a licensed child care centre.
- (2) The licensee of a licensed child care centre shall, if so required by the Minister or an authorized person, produce for inspection the register that the licensee is required under section 87 to keep, and shall furnish the Minister or the authorized person with such information in relation to a child in, or who has at any time been in, the child care centre as the Minister or authorized person requires.

89 Maximum period in child care centre

- (1) No person shall permit a child in his or her custody to remain in a child care centre for a period in excess of the prescribed period.

Penalty: If the offender is a natural person – 100 penalty units.

 If the offender is a body corporate – 500 penalty units.

- (2) Where a child remains in a child care centre for a period in excess of the prescribed period, the licensee of the child care centre shall notify the Minister.

Penalty: If the offender is a natural person – 100 penalty units.

 If the offender is a body corporate – 500 penalty units.

90 Drugs not to be administered

- (1) Subject to the Regulations and to subsection (2), no licensee of a licensed child care centre shall cause or permit medicines or drugs of any description to be administered to a child who is cared for at the child care centre.

Penalty: If the offender is a natural person – 20 penalty units.

 If the offender is a body corporate – 100 penalty units.

- (2) A parent, guardian or person having the custody of a child may authorize the licensee of a licensed child care centre to administer drugs to the child at that centre.

91 Inspection of other premises

The Minister or an authorized person may, where he or she believes on reasonable grounds that premises in respect of which a licence under this Part is not in force are being conducted as a child care centre, enter those premises for the purpose of ascertaining the state of the welfare of the children in those premises.

Part XI Employment of children**92 Employment of children**

No person shall, except with and in accordance with the consent in writing of the Minister, employ or cause or permit to be employed between the hours of 10 o'clock at night and 6 o'clock in the following morning a child who has not attained the age of 15 years.

Penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

 If the offender is a body corporate – 500 penalty units.

93 Dangerous employment

No person shall, except with and in accordance with the consent in writing of the Minister, employ or cause or permit to be employed, a child where the employment involves the child engaging in activity dangerous to the health or safety of the child.

Penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

 If the offender is a body corporate – 500 penalty units.

Part XII Miscellaneous**94 Obstruction, &c.**

No person shall:

(a) fail to comply with a requirement of; or

(b) hinder, obstruct, assault or threaten violence to,

the Minister or an authorized person in the exercise of his or her powers or performance of his or her functions under this Act.

Penalty: 100 penalty units or imprisonment for 6 months.

95 Personation

A person who falsely represents himself or herself to be an authorized person is guilty of an offence.

Penalty: 400 penalty units or imprisonment for 2 years.

96 Offence to remove child

- (1) A person who, without lawful excuse, removes or causes to be removed a child from the custody of a person with whom, or from a place at which, the child has been placed under this Act, is guilty of an offence.

Penalty: 200 penalty units or imprisonment for 12 months.

- (2) For the purposes of subsection (1), a person shall not be taken to have had a lawful excuse for removing or causing to be removed a child to whom Part VII applies unless he or she had the prior permission of the Minister to remove the child or cause it to be removed.

97 Secrecy to be observed

- (1) An authorized person shall, if the Minister directs, before assuming his or her duties, or exercising a power or performing a function under this Act, make a declaration in accordance with the prescribed form.
- (2) A person shall not, directly or indirectly, except in the performance of his or her duties, or in the exercise of his or her powers or the performance of his or her functions under this Act, and while he or she is, or after he or she ceases to be, an authorized person, make a record of, or disclose or communicate to any person, information, in respect of the affairs of another person, acquired by him or her in the performance of his or her duties or in the exercise of his or her powers or the performance of his or her functions under this Act.

Penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

If the offender is a body corporate – 2 000 penalty units.

- (3) A person who is, or has been, an authorized person shall not, except for the purposes of this Act, be required to:
- (a) produce in a court a document that has come into his or her possession or under his or her control; or
- (b) disclose or communicate to a court any matter or thing that has come under his or her notice,

in the performance of his or her duties or functions under this Act.

-
- (4) Notwithstanding subsections (1), (2) and (3), an authorized person may disclose information or records that have come to his or her notice or into his or her possession in the performance of his or her duties or functions under this Act:
- (a) to the person to whom the information or records relate;
 - (b) in connection with the administration of this Act;
 - (c) if the Minister certifies that it is necessary in the public interest that information should be disclosed – to such person as the Minister directs;
 - (d) to a prescribed authority or person;
 - (e) to a person who, in the opinion of the Minister, is expressly or impliedly authorized by the person to whom the information relates to obtain it; or
 - (f) subject to the approval of the Minister – to a person engaged in a bona fide research programme where the person has given an undertaking in writing to the Minister to preserve the identity of and confidentiality relating to individual persons to whom the information and records relate.
- (5) An authority or person to whom information is disclosed under subsection (4), and any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) as if it, he or she were an authorized person and had acquired the information and records in the performance of the duties of an authorized person.

97A Disclosing information from which child can be identified

Subject to sections 33 and 97, a person shall not, except for the purposes and in the course of carrying out the person's duties, if any, under this or any other Act, publish any material which may identify a child in respect of whom an action under Part IV or Part V has been or is intended to be taken or, under Part VI, a notice has been given or an application, declaration or order has been made.

Penalty: If the offender is a natural person – 400 penalty units or imprisonment for 2 years.

 If the offender is a body corporate – 2 000 penalty units.

98 Offences and penalties

- (1) A person shall not contravene or fail to comply with this Act or the Regulations or an order under this Act or the Regulations.
- (2) A person who contravenes or fails to comply with this Act or the Regulations or an order under this Act or the Regulations for which a penalty is not provided by this Act or the Regulations other than by this section, is punishable on a finding of guilt by a fine of 100 penalty units or imprisonment for 6 months.

99 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular in relation to:

- (a) the licensing of child care centres and the cancellation of such licences;
- (b) the standard of construction, facilities (including provision for the storage and preparation of food), cleanliness, sanitation, lighting, heating, ventilation and safety of child care centres;
- (c) the maintenance of child care centres in a proper state of repair;
- (d) the play space in and around child care centres and the facilities and equipment for play to be provided;
- (e) the maximum number of children who may be received into a child care centre or into a child care centre of a particular class, having regard to the available facilities, space and staff of the centre;
- (f) the operation of child care centres;
- (g) the suitability of persons operating child care centres and of the staff employed in such centres and the numbers of such staff;
- (h) the proper management of child care centres and the health and safety of the children therein;
- (i) the display of the name of proprietors, and details of the registration, of child care centres;
- (k) the form of licences and other documents; and

- (m) penalties, not exceeding 100 penalty units or imprisonment for 6 months, for offences against the Regulations.

100 Savings

- (1) Where, immediately before the commencement of this Act, a child was a State child within the meaning of the repealed Act, he or she shall, on and from that commencement, for the remainder of the period during which he or she would have remained a State child had this Act not commenced, be deemed to be a child declared under section 43(4)(a) to be in need of care and ordered under section 43(5)(d) to be placed under the sole guardianship of the Minister.
- (2) Where, immediately before the commencement of this Act, a State child referred to in subsection (1) was in the custody of a person, in an institution or released on probation, he or she shall, on the commencement of this Act, be deemed to be in the custody of that person, in that institution or at large, as the case may be, subject to the same terms and conditions as applied to and in relation to him or her under the repealed Act, as a child to whom Part VII of this Act applies and with the agreement or approval of the Minister, until the Minister makes other arrangements under that Part for his or her custody.
- (3) Where, immediately before the commencement of this Act, a person had, under the repealed Act, the permission of the Director to operate a child minding centre at a house or place and that house or place was registered under the repealed Act as a child minding centre, that person shall, on the commencement of this Act, be deemed to be licensed under section 83 of this Act in respect of that house or place and this Act shall apply subject to the same terms and conditions, not inconsistent with this Act, as then applied to and in relation to that permission and registration as if the licence were issued on that commencement and those terms and conditions were specified under section 83(3) in the licence.
- (4) For the purposes of this section, **repealed Act** means the Acts repealed by section 3 as in force immediately before the commencement of this Act.

Schedule Repealed Acts

section 3

| Short Title | Number and year |
|--|-----------------|
| Child Welfare Ordinance 1958 | No. 20, 1958 |
| Child Welfare Ordinance 1960 | No. 21, 1960 |
| Child Welfare Ordinance 1964 | No. 53, 1964 |
| Child Welfare Ordinance 1965 | No. 27, 1965 |
| Child Welfare Ordinance 1967 | No. 16, 1967 |
| Child Welfare Ordinance (No. 2) 1967 | No. 53, 1967 |
| Child Welfare Ordinance 1969 | No. 5, 1969 |
| Child Welfare Ordinance 1971 | No. 5, 1971 |
| Child Welfare Ordinance (No. 2) 1971 | No. 15, 1971 |
| Child Welfare Ordinance 1973 | No. 72, 1973 |
| Child Welfare Amendment Act 1980 | No. 16, 1981 |
| Statute Law Revision Act 1981 | No. 29, 1981 |
| Child Welfare Amendment Act 1982 | No. 38, 1982 |
| Child Welfare Amendment Act (No. 2) 1982 | No. 58, 1982 |
| Social Welfare Ordinance 1964 | No. 31, 1964 |
| Social Welfare Ordinance 1967 | No. 31, 1967 |
| Social Welfare Ordinance 1969 | No. 51, 1969 |
| Social Welfare Ordinance 1971 | No. 12, 1971 |
| Social Welfare Ordinance 1972 | No. 20, 1972 |
| Social Welfare Ordinance 1974 | No. 70, 1974 |
| Social Welfare Ordinance 1978 | No. 110, 1978 |
| Social Welfare Act 1979 | No. 105, 1979 |

ENDNOTES

1 KEY

Key to abbreviations

| | |
|------------------------------|-------------------------------------|
| amd = amended | od = order |
| app = appendix | om = omitted |
| bl = by-law | pt = Part |
| ch = Chapter | r = regulation/rule |
| cl = clause | rem = remainder |
| div = Division | renum = renumbered |
| exp = expires/expired | rep = repealed |
| f = forms | s = section |
| Gaz = <i>Gazette</i> | sch = Schedule |
| hdg = heading | sdiv = Subdivision |
| ins = inserted | SL = Subordinate Legislation |
| lt = long title | sub = substituted |
| nc = not commenced | |

2 LIST OF LEGISLATION

Community Welfare Act 1983 (Act No. 76, 1983)

| | |
|-------------|--|
| Assent date | 28 November 1983 |
| Commenced | 20 April 1984 (<i>Gaz</i> S14, 30 March 1984) |

Statute Law Revision Act 1984 (Act No. 28, 1984)

| | |
|-------------|--------------|
| Assent date | 20 July 1984 |
| Commenced | 20 July 1984 |

Community Welfare Amendment Act 1989 (Act No. 70, 1989)

| | |
|-------------|------------------|
| Assent date | 12 December 1989 |
| Commenced | 12 December 1989 |

Local Court (Consequential Amendments) Act 1990 (Act No. 31, 1990)

| | |
|-------------|---|
| Assent date | 11 June 1990 |
| Commenced | 1 January 1991 (s 2, s 2 <i>Local Court Act 1989</i> (Act No. 31, 1989) and <i>Gaz</i> G49, 12 December 1990, p. 2) |

Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)

| | |
|-------------|--|
| Assent date | 30 June 1993 |
| Commenced | 1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and <i>Gaz</i> S53, 29 June 1993) |

Community Welfare Amendment Act 1995 (Act No. 54, 1995)

| | |
|-------------|---|
| Assent date | 28 December 1995 |
| Commenced | 1 August 1996 (s 2, s 2 <i>Criminal Code Amendment Act (No. 2) 1995</i> (Act No. 63, 1995) and <i>Gaz</i> G30, 24 July 1996, p 2) |

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and Gaz S15, 13 June 1996)

Statute Law Revision Act 1998 (Act No. 11, 1998)

Assent date 30 March 1998
Commenced 30 March 1998

Community Welfare Amendment Act 1999 (Act No. 6, 1999)

Assent date 9 March 1999
Commenced 22 December 1999 (Gaz G50, 22 December 1999, p 4)

Statute Law Revision Act 2000 (Act No. 19, 2000)

Assent date 6 June 2000
Commenced s 6: 4 December 1999; rem: 12 July 2000 (Gaz G27, 12 July 2000, p 2)

Community Welfare Amendment Act 2002 (Act No. 61, 2002)

Assent date 7 November 2002
Commenced 9 December 2002 (s 2, Gaz S24, 9 December 2002)

Amending Legislation

Statute Law Revision Act 2003 (Act No. 12, 2003)

Assent date 18 March 2003
Commenced 9 December 2002 (s 2)

Statute Law Revision Act (No. 2) 2003 (Act No. 44, 2003)

Assent date 7 July 2003
Commenced 7 July 2003

Statute Law Revision Act 2004 (Act No. 18, 2004)

Assent date 15 March 2004
Commenced 5 May 2004 (s 2, s2 *Associations Act 2003* (Act No. 56, 2003) and Gaz G18, 5 May 2004, p 2)

Statute Law Revision Act 2005 (Act No. 44, 2005)

Assent date 14 December 2005
Commenced 14 December 2005

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 9 *Community Welfare Amendment Act 2002* (Act No. 61, 2002)

4 LIST OF AMENDMENTS

s 4 amd No. 54, 1995, s 3; No. 61, 2002, s 4; No. 44, 2005, s 35
s 6 amd No. 61, 2002, s 10
ss 8 – 9 amd No. 61, 2002, s 10
s 10 amd No. 28, 1984, s 3; No. 61, 2002, s 10
s 11 amd No. 6, 1999, s 4; No. 61, 2002, s 10
s 11A ins No. 6, 1999, s 5
ss 12 – 14 amd No. 61, 2002, s 10
s 15 amd No. 6, 1999, s 6
s 16 amd No. 61, 2002, s 10

| | |
|----------------|---|
| s 17 | amd No. 6, 1999, s 7 |
| s 18 | amd No. 28, 1993, s 3; No. 61, 2002, s 10 |
| ss 19 – 20 | amd No. 61, 2002, s 10 |
| s 22 | amd No. 61, 2002, s 10 |
| s 26 | amd No. 31, 1990, s 7 |
| s 27 | rep No. 31, 1990, s 7 |
| s 31 | amd No. 61, 2002, s 10 |
| s 32 | amd No. 31, 1990, s 7; No. 61, 2002, s 10 |
| s 33 | amd No. 70, 1989, s 2; No. 61, 2002, s 10 |
| s 36 | amd No. 61, 2002, s 10 |
| s 38 | amd No. 61, 2002, s 10 |
| s 41 | sub No. 6, 1999, s 8 |
| s 43 | amd No. 19, 2000, s 4 |
| ss 45 – 46 | amd No. 61, 2002, s 10 |
| s 49 | amd No. 61, 2002, s 10 |
| pt VI | |
| div 4 hdg | ins No. 61, 2002, s 5 |
| ss 50A – 50D | ins No. 61, 2002, s 5 |
| s 53 | amd No. 61, 2002, s 6 |
| s 54 | amd No. 61, 2002, s 10 |
| ss 57 – 58 | rep No. 61, 2002, s 7 |
| ss 61 – 62 | amd No. 61, 2002, s 10 |
| pt VIIA hdg | ins No. 61, 2002, s 8 |
| pt VIIA | |
| div 1 hdg | ins No. 61, 2002, s 8 |
| ss 62A – 62B | ins No. 61, 2002, s 8 |
| pt VIIA | |
| div 2 hdg | ins No. 61, 2002, s 8 |
| pt VIIA | |
| div 2 | |
| sdiv 1 hdg | ins No. 61, 2002, s 8 |
| ss 62C – 62G | ins No. 61, 2002, s 8 |
| pt VIIA | |
| div 2 | |
| sdiv 2 hdg | ins No. 61, 2002, s 8 |
| ss 62H – 62L | ins No. 61, 2002, s 8 |
| pt VIIA | |
| div 3 hdg | ins No. 61, 2002, s 8 |
| ss 62M – 62R | ins No. 61, 2002, s 8 |
| pt VIIA | |
| div 4 hdg | ins No. 61, 2002, s 8 |
| ss 62S – 62U | ins No. 61, 2002, s 8 |
| pt VIIA | |
| div 5 hdg | ins No. 61, 2002, s 8 |
| pt VIIA | |
| div 5 | |
| sdiv 1 hdg | ins No. 61, 2002, s 8 |
| ss 62W – 62Z | ins No. 61, 2002, s 8 |
| pt VIIA | |
| div 5 | |
| sdiv 2 hdg | ins No. 61, 2002, s 8 |
| ss 62ZA – 62ZC | ins No. 61, 2002, s 8 |
| pt VIIA | |
| div 6 hdg | ins No. 61, 2002, s 8 |
| ss 62ZD – 62ZG | ins No. 61, 2002, s 8 |
| ss 63 – 64 | amd No. 61, 2002, s 10 |

| | |
|-------------|--|
| s 66 | amd No. 61, 2002, s 10 |
| ss 68 – 69 | amd No. 61, 2002, s 10 |
| s 70 | amd No. 18, 2004, s 3 |
| ss 72 – 76 | amd No. 61, 2002, s 10 |
| s 77 | amd No. 61, 2002, s 10; No. 44, 2003, s 5; |
| ss 78 – 80 | amd No. 61, 2002, s 10 |
| s 82 | amd No. 11, 1998, s 4 |
| s 83 | amd No. 61, 2002, s 10 |
| s 85 | amd No. 61, 2002, s 10 |
| ss 87 – 96 | amd No. 61, 2002, s 10 |
| s 97 | amd No. 61, 2002, s 10; No. 44, 2003, s 5 |
| s 97A | ins No. 70, 1989, s 3 |
| | amd No. 61, 2002, s 10 |
| s 98 | amd No. 17, 1996, s 6; No. 61, 2002, s 10 |
| ss 99 – 100 | amd No. 61, 2002, s 10 |