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Authorised Version No. 148

Children, Youth and Families Act 2005

No. 96 of 2005

Authorised Version incorporating amendments as at
12 May 2026

The Parliament of Victoria enacts as follows:

Chapter 1—Preliminary

Part 1.1—Introduction

1 Purposes

The main purposes of this Act are—

(a) to provide for community services to support children and families; and

(b) to provide for the protection of children; and

(c) to make provision in relation to children who have been charged with, or who have been found guilty of, offences; and

(d) to continue The Children's Court of Victoria as a specialist court dealing with matters relating to children.

2 Commencement

(1) Sections 1, 603 and this section come into operation on the day after the day on which this Act receives the Royal Assent.

* * * * * **S. 2(2) repealed by No. 25/2009 s. 38(1).**

S. 2(3) amended by No. 24/2007 s. 12, repealed by No. 25/2009 s. 38(2).

* * * * *

(4) Subject to subsection (5), the remaining provisions of this Act come into operation on a day or days to be proclaimed.

(5) If a provision of this Act referred to in subsection (4) does not come into operation before 1 October 2007, it comes into operation on that day.

3 Definitions

(1) In this Act—

Aboriginal agency means an organisation declared to be an Aboriginal agency under section 6;

Aboriginal elder or respected person means a person who holds office as an Aboriginal elder or respected person under section 536;

S. 3(1) def. of *Aboriginal person* amended by No. 17/2023 s. 3(2).

Aboriginal person means a person who—

(a) is of Aboriginal or Torres Strait Islander descent; and

(b) identifies as an Aboriginal or Torres Strait Islander person; and

(c) is accepted as an Aboriginal or Torres Strait Islander person by an Aboriginal or Torres Strait Island community;

S. 3(1) def. of *access* repealed by No. 52/2013 s. 4(a).

* * * * *

accountable undertaking means an order referred to in section 360(1)(c);

S. 3(1) def. of *accountable undertaking* amended by No. 68/2009 s. 59(a).

Adult Parole Board means the Adult Parole Board established by section 61 of the **Corrections Act 1986**;

age means, in the absence of positive evidence as to age, apparent age;

appeal, in Part 5.4, includes application for leave to appeal;

S. 3(1) def. of *appeal* inserted by No. 68/2009 s. 59(d).

appeal period, in Part 5.4, means the period permitted by or under this Act or any other Act for commencing an appeal under Part 5.4 or, if a notice of appeal or notice of application for leave to appeal under Part 5.4 is filed within that period, the determination of the appeal;

S. 3(1) def. of *appeal period* inserted by No. 68/2009 s. 59(d).

appellant, in Part 5.4, includes an applicant for leave to appeal;

S. 3(1) def. of *appellant* inserted by No. 68/2009 s. 59(d).

appellate court, in Part 5.4 means, as the case requires—

(a) the County Court; or

(b) if the court from which the appeal is made was constituted by the President, the Trial Division of the Supreme Court; or

(c) if the court from which the appeal is made was constituted by the Chief Magistrate who is a dual commission holder, the Court of Appeal;

S. 3(1) def. of *appellate court* inserted by No. 68/2009 s. 59(d), substituted by No. 1/2022 s. 40.

appropriate registrar means the registrar at the proper venue of the Court;

authorised officer means a person authorised under section 194;

S. 3(1) def. of *authorised person* inserted by No. 7/2009 s. 428(1) (as amended by No. 68/2009 s. 54(n)).

authorised person means a person referred to in Schedule 3 to the **Criminal Procedure Act 2009**;

S. 3(1) def. of *care* amended by No. 61/2014 s. 4(3)(a).

care, in relation to a child, means the daily care and control of the child, whether or not involving parental responsibility for the child;

S. 3(1) def. of *care by Secretary order* inserted by No. 61/2014 s. 4(2).

care by Secretary order means an order referred to in section 275(1)(d);

S. 3(1) def. of *case plan* amended by No. 6/2024 s. 64(1).

case plan means—

(a) in relation to the Secretary, a case plan as defined in section 166;

(b) in relation to a community service provider, a statement of any decision concerning a child to whom the community service is, or is to be, provided;

S. 3(1) def. of *Category A serious youth offence* inserted by No. 43/2017 s. 22, amended by Nos 32/2018 s. 112, 16/2020 s. 11.

Category A serious youth offence means any of the following offences—

(a) murder;

(b) attempted murder;

(c) manslaughter;

(d) child homicide;

(da) homicide by firearm;

(e) an offence against any of the following sections of the **Crimes Act 1958**—

(i) section 15A (intentionally causing serious injury in circumstances of gross violence);

(ii) section 77B (aggravated home invasion);

(iii) section 79A (aggravated carjacking);

(iv) section 197A (arson causing death);

(v) section 318 (culpable driving causing death);

(f) an offence against any one of the following—

(i) section 4B of the **Terrorism (Community Protection) Act 2003**;

(ii) a provision of Subdivision A of Division 72 of Chapter 4 of the Criminal Code of the Commonwealth;

(iii) a provision of Part 5.3 or 5.5 of the Criminal Code of the Commonwealth;

(iv) a provision of the Crimes (Foreign Incursions and Recruitment) Act 1978 of the Commonwealth as in force before its repeal;

S. 3(1) def. of *Category B serious youth offence* inserted by No. 43/2017 s. 22, amended by Nos 32/2018 s. 111, 8/2019 s. 90(1).

Category B serious youth offence means an offence against any of the following sections of the **Crimes Act 1958**—

(a) section 15B (recklessly causing serious injury in circumstances of gross violence);

(b) section 38 (rape);

(c) section 39 (rape by compelling sexual penetration);

(d) section 77A (home invasion);

(e) section 79 (carjacking);

S. 3(1) def. of *central register* amended by No. 48/2006 s. 3(a), repealed by No. 61/2014 s. 143.

* * * * *

S. 3(1) def. of *Chief Magistrate* repealed by No. 16/2016 s. 186.

* * * * *

S. 3(1) def. of *child* amended by Nos 52/2008 s. 234, 68/2008 s. 64, 68/2009 s. 59(b), 53/2010 s. 221(Sch. item 2.1(a)), 53/2016 s. 88(a), 33/2018 s. 3(b), 32/2024 s. 781.

child means—

(a) in the case of a person who is alleged to have committed an offence, has the same meaning as in the **Youth Justice Act 2024**; and

(aa) in the case of a proceeding under the **Family Violence Protection Act 2008**, a person who is under the age of 18 years when an application is made under that Act; and

(ab) in the case of a proceeding under the **Personal Safety Intervention Orders Act 2010**, a person who is under the age of 18 years when an application is made under that Act; and

(ac) in the case of an application for a declaration under Division 4 of Part 7 of the **National Domestic Violence Order Scheme Act 2016**, a person who is under the age of 18 years when the application is made; and

(ad) in the case of a person in respect of whom a therapeutic treatment order or therapeutic treatment (placement) order may be made, a person who is of or above the age of 10 years and under the age of 18 years when the order is made; and

(ae) in the case of section 354A, a person who is of or above the age of 12 years and under the age of 18 years when the person appears as an accused in a criminal proceeding; and

(b) in any other case, a person who is under the age of 17 years or, if a protection order, a child protection order within the meaning of Schedule 1 or an interim order within the meaning of that Schedule continues in force in respect of him or her, a person who is under the age of 18 years;

Children's Koori Court officer means a person who—

(a) is employed under Part 3 of the **Public Administration Act 2004**; and

(b) exercises powers or performs functions in relation to the Koori Court (Criminal Division) of the Court;

S. 3(1) def. of *Children's Neighbourhood Justice officer* inserted by No. 51/2006 s. 11(1).

Children's Neighbourhood Justice officer means a person who—

(a) is employed under Part 3 of the **Public Administration Act 2004**; and

(b) exercises powers or performs functions in relation to the Neighbourhood Justice Division of the Court;

S. 3(1) def. of *community-based child and family service* substituted by Nos 6/2024 s. 64(2), 58/2025 s. 445(1).

community-based child and family service means a service or activity that is—

(a) provided or funded by the Secretary specifically for—

(i) children (including unborn children) who are at risk of harm or in need of protection and their families; or

(ii) care leavers and their families; and

(b) provided by a person who is registered under Part 3 of the **Social Services Regulation Act 2021** to provide that service;

S. 3(1) def. of *community service* amended by No. 29/2014 s. 4(a), substituted by No. 6/2024 s. 64(3).

community service means any of the following—

(a) a community service established under section 44(1)(a)(i) that is provided by a person who is registered under Part 3 of the **Social Services Regulation Act 2021** to provide that community service;

(b) a community-based child and family service;

(c) an out of home care service;

(d) a secure welfare service;

contact (unless the context otherwise requires) means the contact of a child with a person who does not have care of the child by way of—

S. 3(1) def. of *contact* inserted by No. 52/2013 s. 4(c), amended by No. 61/2014 s. 4(3)(b).

(a) a visit by or to that person, including attendance for a period of time at a place other than the child's usual place of residence; or

(b) communication with that person by letter, telephone or other means—

and includes overnight contact;

conviction, in Part 5.4, includes a finding of guilt by the Court, whether or not a conviction is recorded;

S. 3(1) def. of *conviction* inserted by No. 68/2009 s. 59(d).

Court means The Children's Court of Victoria;

court liaison officer means a court liaison officer appointed under section 545;

court official means—

S. 3(1) def. of *court official* amended by No. 34/2010 s. 36(2)(a).

(a) the principal registrar of the Court; or

(b) a registrar or deputy registrar of the Court; or

(c) a court liaison officer; or

(ca) a judicial registrar; or

(d) any person employed in any of the offices of the Court;

court register means the register kept under section 537;

cultural plan means a cultural plan prepared under section 176;

* * * * *

S. 3(1) defs of *custody*, *custody to Secretary order*, *custody to third party order* repealed by No. 61/2014 s. 4(1).

decision-making process means—

(a) in relation to the Secretary, means the process of decision-making by the Secretary concerning a child beginning when the Secretary receives a report under section 28, 33(2), 183, 184 or 185;

(b) in relation to a community based child and family service, means the process of decision-making by the service concerning a child beginning when the service receives a referral under section 31;

Department means the Department of Human Services;

S. 3(1) def. of *designated place* inserted by No. 45/2017 s. 3.

designated place has the same meaning as in the **Victoria Police Act 2013**;

development means physical, social, emotional, intellectual, cultural and spiritual development;

disposition report means a report referred to in section 557;

Division means Division of the Court;

domestic partner of a person means—

(a) a person who is in a registered domestic relationship with the person; or

(b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of *domestic partner* substituted by No. 12/2008 s. 73(1)(Sch. 1 item 6.1), amended by No. 4/2009 s. 37(Sch. 1 item 4.1).

DPP has the same meaning as in the **Criminal Procedure Act 2009**;

S. 3(1) def. of *DPP* inserted by No. 7/2009 s. 428(1) (as amended by No. 68/2009 s. 54(n)).

emergency care means placement in accordance with section 242(5) or 247A(4);

S. 3(1) def. of *emergency care* inserted by No. 52/2013 s. 4(d).

employee means a person employed under Part 3 of the **Public Administration Act 2004** in the Department;

extension application means an application under section 293 for an extension or further extension of a protection order;

family preservation order means an order referred to in section 275(1)(b);

S. 3(1) def. of *family preservation order* inserted by No. 61/2014 s. 4(2).

family reunification order means an order referred to in section 275(1)(c);

S. 3(1) def. of *family reunification order* inserted by No. 61/2014 s. 4(2).

fine includes any penalties, forfeitures, sums of money and costs ordered to be paid by the person fined;

Fund means the State Guardianship Fund established under section 177;

group conference means a group conference under section 415;

group conference outcome plan means an outcome plan included in a group conference report;

group conference report means a report referred to in Division 7 of Part 7.8;

S. 3(1) defs of *guardianship*, *guardianship to Secretary order* repealed by No. 61/2014 s. 4(1).

* * * * *

hearing date, in relation to a proceeding, means the date on which the proceeding is listed for hearing;

S. 3(1) def. of *homeless person* inserted by No. 51/2006 s. 11(1).

homeless person means—

(a) a person living in—

(i) crisis accommodation; or

(ii) transitional accommodation; or

(iii) any other accommodation provided under the Supported Accommodation Assistance Act 1994 of the Commonwealth; or

(b) a person who has inadequate access to safe and secure housing within the meaning of section 4 of the Supported Accommodation Assistance Act 1994 of the Commonwealth;

information holder means—

S. 3(1) def. of *information holder* amended by Nos 97/2005 s. 182(Sch. 4 item 10.1(a)), 23/2006 s. 234(1), 24/2006 s. 6.1.2(Sch. 7 item 7.1(a)), 13/2010 s. 51(Sch. item 12.1), 80/2011 s. 79(Sch. item 2.1), 19/2014 s. 89(1), 26/2014 s. 455(Sch. item 2.1), 37/2014 s. 10(Sch. item 18.1(b)), 11/2018 s. 16 (as amended by No. 30/2019 s. 15), 19/2019 s. 254(2), 39/2022 s. 789(1).

(a) a police officer;

(b) an employee of the Department;

(c) an employee of another Department;

(ca) an information sharing entity within the meaning of the **Child Wellbeing and Safety Act 2005** other than a person or body specified in section 41T of that Act (whether or not that person or body is exercising a judicial or quasi-judicial function);

(cb) a restricted information sharing entity within the meaning of the **Child Wellbeing and Safety Act 2005** other than a person or body specified in section 41T of that Act (whether or not that person or body is exercising a judicial or quasi-judicial function);

(d) a person who is registered as a teacher or an early childhood teacher under the **Education and Training Reform Act 2006** or has been granted permission to teach under that Act;

(e) the head teacher or principal of a State school within the meaning of the **Education Act 1958** or of a school registered under Part III of that Act;

(f) a person in charge of a relevant health service within the meaning of section 141 of the **Health Services Act 1988**;

(g) a person in charge of a mental health and wellbeing service provider within the meaning of section 3(1) of the **Mental Health and Wellbeing Act 2022**;

(h) a registered medical practitioner;

(i) a registered psychologist;

(j) a nurse;

(ja) a midwife;

(k) a person in charge of a children's service within the meaning of the **Children's Services Act 1996**;

(ka) a person in charge of an education and care service within the meaning of the Education and Care Services National Law (Victoria);

(l) the person in charge of a body that receives funding from the Secretary under a State contract to provide disability services to a child with a disability within the meaning of the **Disability Act 2006**;

(la) the person in charge of an NDIS provider or registered NDIS provider;

(m) the person in charge of a body that receives funding from the Secretary under a State contract to provide drug or alcohol treatment services;

(n) any person in a prescribed class of persons;

information system has the same meaning as in the **Electronic Transactions (Victoria) Act 2000**;

S. 3(1) def. of *information system* inserted by No. 26/2023 s. 34(1).

interim accommodation order means an order under section 262;

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S. 3(1) def. of *interim protection order* repealed by No. 61/2014 s. 4(1).

interpreter means—

(a) an interpreter accredited with the National Accreditation Authority for Translators and Interpreters Limited A.C.N. 008 596 996; or

(b) a competent interpreter;

irreconcilable difference application means an application under section 259;

judicial registrar means a judicial registrar of the Court appointed under Part 7.6A;

S. 3(1) def. of *judicial registrar* inserted by No. 34/2010 s. 36(1).

judicial resolution conference means a resolution process in the Family Division of the Court presided over by the President or a magistrate or a judicial registrar for the purposes of negotiating a settlement of a dispute—

(a) including, but not limited to—

(i) mediation; or

(ii) early neutral evaluation;

S. 3(1) def. of *judicial resolution conference* inserted by No. 50/2009 s. 16, amended by Nos 34/2010 s. 36(2)(b), 52/2013 s. 4(e).

(iii) settlement conference;

(iv) conciliation;

(b) other than a conciliation conference under section 217;

S. 3(1) def of *legal practitioner* amended by No. 17/2014 s. 160(Sch. 2 item 14.1).

legal practitioner means an Australian legal practitioner;

legal representation means representation by a legal practitioner;

S. 3(1) def. of *long-term care order* inserted by No. 61/2014 s. 4(2).

long-term care order means an order referred to in section 275(1)(e);

S. 3(1) def. of *long-term guardianship to Secretary order* repealed by No. 61/2014 s. 4(1).

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S. 3(1) def. of *magistrate* amended by Nos 5/2013 s. 48(2), 63/2013 s. 52.

magistrate means a magistrate for the Court and includes a reserve magistrate engaged under section 9C of the **Magistrates' Court Act 1989** to undertake the duties of a magistrate and assigned to be a magistrate of the Court under section 507 and a person who was formerly the President who is acting under section 12H of the **County Court Act 1958**;

major long-term issue, in relation to a child, means an issue about the care, wellbeing and development of the child that is of a long-term nature and includes an issue of that nature about—

S. 3(1) def. of *major long-term issue* inserted by No. 61/2014 s. 171, amended by No. 30/2019 s. 3(1)(b).

(a) the child's education (both current or future); and

(b) the child's religious and cultural upbringing; and

(c) the child's health (but does not include routine medical care, for example immunisation on the recommendation of a registered medical practitioner, nurse, midwife or pharmacist in the lawful practice of their profession); and

(d) the child's name;

medical examination includes—

(a) physical examination, psychological examination and psychiatric examination; and

(b) in the course of the examination, the taking of samples for analysis and the use of any machine or device to enable or assist in the examination;

midwife means a person registered under the Health Practitioner Regulation National Law—

S. 3(1) def. of *midwife* inserted by No. 13/2010 s. 51(Sch. item 12.3).

(a) to practise in the nursing and midwifery profession as a midwife (other than as a student); and

(b) in the register of midwives kept for that profession;

S. 3(1) def. of *NDIS provider* inserted by No. 19/2019 s. 254(1).

NDIS provider has the same meaning as in the National Disability Insurance Scheme Act 2013 of the Commonwealth;

S. 3(1) def. of *nurse* inserted by No. 13/2010 s. 51(Sch. item 12.3).

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student);

S. 3(1) def. of *offence involving an assault* inserted by No. 43/2017 s. 41(1).

offence involving an assault means an offence against any of the following sections of the **Crimes Act 1958**—

(a) section 15A (intentionally causing serious injury in circumstances of gross violence);

(b) section 15B (recklessly causing serious injury in circumstances of gross violence);

(c) section 16 (intentionally causing serious injury);

(d) section 17 (recklessly causing serious injury);

(e) section 18 (intentionally or recklessly causing serious injury);

S. 3(1) def. of *offence involving property damage* inserted by No. 43/2017 s. 41(1).

offence involving property damage means—

(a) an offence against section 197 of the **Crimes Act 1958** (criminal damage); or

(b) an offence against section 9(1)(c) of the **Summary Offences Act 1966** (wilful damage);

order, in relation to the Criminal Division, includes judgment and conviction;

out of home care means care of a child by a person other than a parent of the child;

out of home care service has the meaning given in section 3C;

S. 3(1) def. of *out of home care service* substituted by Nos 6/2024 s. 64(4), 58/2025 s. 445(2).

parent, in relation to a child, includes—

S. 3(1) def. of *parent* amended by No. 61/2014 s. 4(4).

(a) the father and mother of the child; and

(b) the spouse of the father or mother of the child; and

(c) the domestic partner of the father or mother of the child; and

(d) any person who has parental responsibility for the child, other than the Secretary; and

(e) a person whose name is entered as the father of the child in the register of births in the Register maintained by the Registrar of Births, Deaths and Marriages under Part 7 of the **Births, Deaths and Marriages Registration Act 1996**; and

(f) a person who acknowledges that he is the father of the child by an instrument of the kind described in section 8(2) of the **Status of Children Act 1974**; and

(g) a person in respect of whom a court has made a declaration or a finding or order that the person is the father of the child;

S. 3(1) def. of *parental responsibility* inserted by No. 61/2014 s. 4(2).

parental responsibility, in relation to a child, means all the duties, powers, responsibilities and authority which, by law or custom, parents have in relation to children;

parole order means an order under Division 4 or 5 of Part 5.5;

parole period means the period from a person's release on parole until the end of the period of his or her detention;

period, in relation to detention, includes the aggregate of two or more periods, whether cumulative or concurrent;

permanent care order means an order under section 321;

S. 3(1) def. of *person in religious ministry* inserted by No. 30/2019 s. 3(2).

person in religious ministry means a person appointed, ordained or otherwise recognised as a religious or spiritual leader in a religious institution;

Examples

Church elder, deacon, granthi, imam, religious minister, monk, nun, pastor, priest, pujari, rabbi, religious brother or sister and Salvation Army officer.

S. 3(1) def. of *pharmacist* inserted by No. 30/2019 s. 3(1)(a).

pharmacist means a person registered under the Health Practitioner Regulation National Law to practice in the pharmacy profession as a pharmacist (other than as a student);

police gaol has the same meaning as in the **Corrections Act 1986**;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 18.1(a)).

police officer has the same meaning as in the **Victoria Police Act 2013**;

post-secondary qualification means a qualification from an institution, person or body providing or offering to provide (whether in or outside Victoria) post-secondary education as defined in the **Education and Training Reform Act 2006** (whether or not that institution, person or body has since ceased to exist) and includes a qualification from a post-secondary education provider as defined in that Act;

S. 3(1) def. of *post-secondary qualification* amended by No. 24/2006 s. 6.1.2(Sch. 7 item 7.1(b)).

pre-sentence report means a report referred to in Division 6 of Part 7.8;

President means the President appointed under section 508 and includes the Acting President appointed under section 509;

S. 3(1) def. of *President* inserted by No. 68/2009 s. 59(d).

principal officer, in relation to an Aboriginal agency, means the chief executive officer (by whatever name called) of the Aboriginal agency;

S. 3(1) def. of *principal officer* inserted by No. 57/2015 s. 4.

prison has the same meaning as in the **Corrections Act 1986**;

proceeding means any matter in the Court, including a committal proceeding, but does not include the exercise by a registrar of any jurisdiction, power or authority vested in the registrar as registrar under Schedule 3;

process includes witness summons, charge-sheet, summons to answer to a charge, warrant to arrest, remand warrant, search warrant, warrant to seize property, warrant to imprison, warrant to detain in a youth residential centre or a youth justice centre, warrant of delivery and any process by

which a proceeding in the Court is commenced;

progress report means a report prepared under section 385, 391, 404 or 409(5)(a);

S. 3(1) def. of *proper venue* amended by Nos 51/2006 s. 11(2), 52/2008 s. 235, 53/2010 s. 221(Sch. item 2.1 (b)–(d)), 53/2016 s. 88(b)(c), 47/2021 s. 25(1), 26/2023 s. 34(2).

proper venue—

(a) in relation to a proceeding in the Family Division (other than a proceeding under the **Family Violence Protection Act 2008**, the **National Domestic Violence Order Scheme Act 2016**, the **Personal Safety Intervention Orders Act 2010** or Part 4A of the **Terrorism (Community Protection) Act 2003**), means the venue of the Court that is nearest to—

(i) the place of residence of the child; or

(ii) the place where the subject-matter of the application arose; and

(b) in relation to a proceeding in the Criminal Division (other than a proceeding under the **Family Violence Protection Act 2008** or the **Personal Safety Intervention Orders Act 2010**), means the venue of the Court that is nearest to—

(i) the place of residence of the child; or

(ii) the place where the offence is alleged to have been committed; and

(c) in relation to a proceeding in respect of which the Neighbourhood Justice Division has jurisdiction, means—

(i) a venue of the Court determined in accordance with paragraph (a) or (b); or

(ii) a venue of the Court at which the Neighbourhood Justice Division may sit and act; and

(d) in relation to a proceeding brought under the **Family Violence Protection Act 2008** or the **National Domestic Violence Order Scheme Act 2016** means—

(i) the venue of the Court determined in accordance with paragraph (c); or

(ii) the venue of the Court which the Court determines is the most appropriate venue for the matter, having regard to the following—

(A) the safety of the parties;

(B) the need to prevent disclosure of a party's whereabouts;

(C) the ability of the parties to attend a particular venue of the Court, taking into account their places of work, residence or any childcare requirements;

(D) the availability of family violence support services at particular venues of the Court;

(E) the need to manage case flow;

(F) any other considerations the Court thinks relevant;

(e) in relation to a proceeding brought under the **Personal Safety Intervention Orders Act 2010** means—

(i) the venue of the Court determined in accordance with paragraph (c); or

(ii) the venue of the Court which the Court determines is the most appropriate venue for the matter, having regard to the following—

(A) the safety of the parties;

(B) the need to prevent disclosure of a party's whereabouts;

(C) the ability of the parties to attend a particular venue of the Court, taking into account their places of work, residence or any childcare requirements;

(D) the availability of mediation assessment services at particular venues of the Court;

(E) the need to manage case flow;

(F) any other considerations the Court thinks relevant;

(f) in relation to a proceeding brought under Part 4A of the **Terrorism (Community Protection) Act 2003**, means the venue of the Court as determined by or under a practice note issued under section 592, or, if no such practice note is in force—

(i) the venue of the Court that is nearest to the place of residence of the child; or

(ii) the venue of the Court which the Court determines is the most appropriate venue for the matter, having regard to the following—

(A) the administrative and other facilities available at particular venues of the Court;

(B) the ability of the parties to attend a particular venue of the Court, taking into account the respondent's (or supported person's) place of work, residence and any childcare requirements;

(C) the need to manage case flow;

(D) any other considerations the Court thinks relevant;

protection application means an application made to the Court for a finding that a child is in need of protection;

protection order means an order referred to in section 275(1);

protection report means a report referred to in Division 2 of Part 7.8;

protective intervener means a person referred to in section 181;

S. 3(1) def. of *protective intervention report* amended by No. 37/2014 s. 10(Sch. item 18.1(c)).

protective intervention report means—

(a) a report to a police officer as a protective intervener under section 183; or

(b) a report to the Secretary under section 183 or 184 that the Secretary has determined under section 187 to be a protective intervention report; or

(c) a report to the Secretary under section 28 or 33(2) that the Secretary has determined under section 34 to be a protective intervention report;

S. 3(1) def. of *protective services officer* inserted by No. 37/2014 s. 10(Sch. item 18.1(a)).

protective services officer has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of *publish* substituted by No. 1/2016 s. 19.

publish has the same meaning as in the **Open Courts Act 2013**;

S. 3(1) def. of *recognition principles* inserted by No. 17/2023 s. 3(1).

recognition principles means the principles set out in section 7E;

S. 3(1) def. of *register of community services* repealed by No. 17/2023 s. 40(b).

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S. 3(1) def. of *register of out of home care services* repealed by No. 6/2024 s. 64(6).

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S. 3(1) def. of *registered community service* repealed by No. 17/2023 s. 40(b).

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 3(1) def. of *registered medical practitioner* substituted by Nos 97/2005 s. 182(Sch. 4 item 10.1(b)), 13/2010 s. 51(Sch. item 12.2(a)).

registered NDIS provider has the same meaning as in the National Disability Insurance Scheme Act 2013 of the Commonwealth;

S. 3(1) def. of *registered NDIS provider* inserted by No. 19/2019 s. 254(1).

* * * * *

S. 3(1) def. of *registered out of home care service* repealed by No. 6/2024 s. 64(6).

registered psychologist means a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student);

S. 3(1) def. of *registered psychologist* substituted by Nos 97/2005 s. 182(Sch. 4 item 10.1(c)), 13/2010 s. 51(Sch. item 12.2(b)).

S. 3(1) def. of *registered social service provider* inserted by No. 17/2023 s. 40(a).

registered social service provider has the same meaning as in section 3(1) of the **Social Services Regulation Act 2021**;

relative, in relation to a child, means a grandparent, brother, sister, uncle or aunt of the child, whether of the whole blood or half-blood or by marriage, and whether or not the relationship depends on adoption of the child;

S. 3(1) def. of *religious institution* inserted by No. 30/2019 s. 3(2).

religious institution means an entity that—

(a) operates under the auspices of any faith; and

(b) provides activities, facilities, programs or services of any kind through which adults interact with children;

remand centre means a remand centre established under section 478(a);

S. 3(1) def. of *reserve judge* inserted by No. 5/2013 s. 48(1).

reserve judge has the same meaning as it has in the **County Court Act 1958**;

S. 3(1) def. of *reserve magistrate* inserted by No. 5/2013 s. 48(1).

reserve magistrate has the same meaning as it has in the **Magistrates' Court Act 1989**;

return date, in relation to a proceeding, means any date on which the proceeding is listed before the Court;

S. 3(1) def. of *safe custody* repealed by No. 52/2013 s. 4(b).

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search warrant, means a warrant which authorises the person to whom it is directed—

S. 3(1) def. of *search warrant* amended by No. 52/2013 s. 4(f).

(a) to break, enter and search any place where the person named or described in the warrant is suspected to be; and

(b) except in Division 1 of Part 4.8, to place in emergency care or arrest the person and—

(i) bring the person before a bail justice or the Court as soon as practicable to be dealt with according to law; or

(ii) release the person on an interim accommodation order in accordance with the endorsement on the warrant;

Secretary means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department;

S. 3(1) def. of *Secretary* substituted by No. 29/2010 s. 13.

secure welfare service means a secure welfare service established under section 44(1)(a)(ii) that is provided by a person who is registered under Part 3 of the **Social Services Regulation Act 2021** to provide that secure welfare service;

S. 3(1) def. of *secure welfare service* substituted by Nos 29/2014 s. 4(b), 6/2024 s. 64(5).

S. 3(1) def. of *sentencing order* amended by Nos 93/2005 s. 8, 7/2009 s. 428(2) (as amended by No. 68/2009 s. 54(n)), substituted as *sentence* by No. 68/2009 s. 59(c).

sentence includes—

(a) the recording of a conviction; and

(b) an order made under Part 5.3, other than—

(i) an order incidental to or preparatory to the making of the order; or

(ii) an order granting bail made under section 420; and

(c) an order made under section 11 of the **Sex Offenders Registration Act 2004**; and

(d) an order made under section 84S or 84T of the **Road Safety Act 1986**;

S. 3(1) def. of *service agency* amended by Nos 23/2006 s. 234(2), 26/2014 s. 455(Sch. item 2.2), 39/2022 s. 789(2).

service agency means—

(a) a Department established under the **Public Administration Act 2004**;

(b) a relevant health service within the meaning of section 141 of the **Health Services Act 1988**;

(c) a mental health and wellbeing service provider within the meaning of section 3(1) of the **Mental Health and Wellbeing Act 2022**;

(d) a body that receives funding from the Secretary under a State contract to provide disability services to a child with a disability within the meaning of the **Disability Act 2006**;

(e) a body that receives funding from the Secretary under a State contract to provide drug or alcohol treatment services;

(f) a prescribed body or a body in a prescribed class;

social service has the same meaning as in section 3(1) of the **Social Services Regulation Act 2021**;

S. 3(1) def. of *social service* inserted by No. 17/2023 s. 40(a).

spouse of a person means a person to whom the person is married;

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S. 3(1) def. of *stability plan* repealed by No. 61/2014 s. 94.

State contract means a contract entered into by or on behalf of the State;

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S. 3(1) defs of *supervised custody order, supervision order* repealed by No. 61/2014 s. 4(1).

temporary assessment order means an order referred to in section 231;

terrorism or foreign incursion offence means an offence against—

(a) section 4B of the **Terrorism (Community Protection) Act 2003**; or

(b) a provision of another State or a Territory that corresponds to section 4B of the **Terrorism (Community Protection) Act 2003**; or

(c) a provision of Subdivision A of Division 72 of Chapter 4 of the Criminal Code of the Commonwealth; or

S. 3(1) def. of *terrorism or foreign incursion offence* inserted by No. 32/2018 s. 100.

(d) a provision of Part 5.3 or 5.5 of the Criminal Code of the Commonwealth; or

(e) a provision of the Crimes (Foreign Incursions and Recruitment) Act 1978 of the Commonwealth as in force before its repeal;

S. 3(1) def. of *terrorism record* inserted by No. 32/2018 s. 100.

terrorism record has the meaning given in section 3A;

S. 3(1) def. of *terrorism-related order* inserted by No. 32/2018 s. 100.

terrorism-related order means—

(a) a control order within the meaning of Part 5.3 of the Criminal Code of the Commonwealth; or

(b) a continuing detention order within the meaning of Division 105A of Part 5.3 of the Criminal Code of the Commonwealth; or

(c) an interim detention order within the meaning of Division 105A of Part 5.3 of the Criminal Code of the Commonwealth; or

(d) a preventative detention order within the meaning of Part 2A of the **Terrorism (Community Protection) Act 2003**; or

(e) a prohibited contact order within the meaning of Part 2A of the **Terrorism (Community Protection) Act 2003**; or

(f) an order made under a corresponding preventative detention law within the meaning of Part 2A of the **Terrorism (Community Protection) Act 2003**;

terrorism risk information has the meaning given in section 3B;

S. 3(1) def. of *terrorism risk information* inserted by No. 32/2018 s. 100.

terrorist act has the same meaning as in the **Terrorism (Community Protection) Act 2003**;

S. 3(1) def. of *terrorist act* inserted by No. 32/2018 s. 100.

terrorist organisation has the same meaning as in Division 102 of the Criminal Code of the Commonwealth;

S. 3(1) def. of *terrorist organisation* inserted by No. 32/2018 s. 100.

therapeutic treatment application report means a report referred to in Division 4 of Part 7.8;

Therapeutic Treatment Board means the Therapeutic Treatment Board established under section 339;

therapeutic treatment order means an order referred to in section 249;

therapeutic treatment (placement) order means an order referred to in section 253;

therapeutic treatment (placement) report means a report referred to in Division 5 of Part 7.8;

S. 3(1) def. of *therapeutic treatment (placement) order report* substituted as *therapeutic treatment (placement) report* by No. 61/2014 s. 138.

therapeutic treatment plan has the meaning given in section 169A;

S. 3(1) def. of *therapeutic treatment plan* inserted by No. 33/2018 s. 3(a).

S. 3(1) def. of *victim* amended by No. 18/2010 s. 3.

victim, in relation to an offence, means a person who, or body that, has suffered injury, loss or damage (including grief, distress, trauma or other significant adverse effect) as a direct result of the offence, whether or not that injury, loss or damage was reasonably foreseeable by the child found guilty of the offence;

working day, in relation to the Court, means a day on which the offices of the Court are open;

youth attendance order means an order made under section 397;

S. 3(1) def. of *youth control order* inserted by No. 43/2017 s. 9.

youth control order means an order made under section 409B;

S. 3(1) def. of *youth control order plan* inserted by No. 43/2017 s. 9.

youth control order plan means a plan referred to in section 409C(d);

S. 3(1) def. of *youth control order planning meeting* inserted by No. 43/2017 s. 9.

youth control order planning meeting means a meeting ordered under section 409D;

S. 3(1) def. of *youth control order planning meeting report* inserted by No. 43/2017 s. 9.

youth control order planning meeting report means a report prepared under section 409V;

youth justice centre means a youth justice centre established under section 478(c);

youth justice centre order means an order referred to in section 360(1)(j);

youth justice custodial worker means a person—

S. 3(1) def. of *youth justice custodial worker* inserted by No. 43/2017 s. 41(1).

(a) who is employed or engaged by the Secretary to the Department of Justice and Regulation in a remand centre, a youth residential centre or a youth justice centre; and

(b) whose duties include duties in relation to detainees in the custody of the Secretary;

youth justice officer includes the Secretary, and every honorary youth justice officer;

youth justice unit means—

(a) a youth justice unit established under section 478(d); or

(b) a youth justice unit approved under section 479(1);

Youth Parole Board means the Youth Parole Board referred to in section 442;

S. 3(1) def. of *Youth Parole Board* amended by No. 48/2006 s. 3(b).

youth parole officer includes an honorary youth parole officer;

* * * * *

S. 3(1) def. of *Youth Residential Board* amended by No. 48/2006 s. 3(c), repealed by No. 61/2014 s. 104.

youth residential centre means a youth residential centre established under section 478(b);

youth residential centre order means an order referred to in section 360(1)(i);

youth supervision order means an order referred to in section 360(1)(g).

S. 3(2) substituted by No. 12/2008 s. 73(1)(Sch. 1 item 6.2).

(2) For the purposes of the definition of ***domestic partner*** in subsection (1)—

S. 3(2)(a) amended by No. 4/2009 s. 37(Sch. 1 item 4.2(a)).

(a) ***registered domestic relationship*** has the same meaning as in the **Relationships Act 2008**; and

S. 3(2)(b) amended by No. 4/2009 s. 37(Sch. 1 item 4.2(b)).

(b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

(3) If under the **Public Administration Act 2004** the name of the Department is changed, the reference in the definition of ***Department*** in subsection (1) to the "Department of Human Services" is from the date when the name is changed to be taken to be a reference to the Department by its new name.

S. 3(4) amended by No. 51/2006 s. 11(3).

(4) Unless the context otherwise requires, a reference in this Act to the Criminal Division includes a reference to the Koori Court (Criminal Division) and the Neighbourhood Justice Division.

S. 3(5) inserted by No. 43/2017 s. 41(2).

(5) For the purposes of the definition of ***youth justice custodial worker*** in subsection (1), a youth justice custodial worker is on duty at any time when the youth justice custodial worker is performing a function or exercising a power as a youth justice custodial worker.

3A Meaning of *terrorism record*

S. 3A inserted by No. 32/2018 s. 101.

For the purposes of this Act, a person has a ***terrorism record*** if the person—

(a) has been convicted of a terrorism or foreign incursion offence; or

(b) is or has been subject to a terrorism-related order.

3B Meaning of *terrorism risk information*

S. 3B inserted by No. 32/2018 s. 101.

(1) For the purposes of this Act, ***terrorism risk information*** in respect of a person means—

(a) an assessment made by an entity specified in subsection (2) that there is a risk that the person will commit a terrorism or foreign incursion offence; and

(b) the information relied on in making that assessment.

(2) The specified entities are—

(a) the Australian Crime Commission (by whatever name described) established by the Australian Crime Commission Act 2002 of the Commonwealth; and

(b) Victoria Police; and

(c) the Australian Federal Police; and

(d) the Australian Security and Intelligence Organisation; and

(e) the Department of Justice and Regulation; and

(f) the police force or police service of another State or a Territory; and

(g) the Department of Home Affairs of the Commonwealth; and

(h) each prescribed entity.

(3) Without limiting subsection (1)(b), the information referred to in that provision may include—

(a) information regarding the person having expressed support for—

(i) the doing of a terrorist act; or

(ii) a terrorist organisation; or

(iii) the provision of resources to a terrorist organisation; or

(b) information regarding the person having, or having had, an association with—

(i) another person or a group that has expressed support of the kind referred to in paragraph (a); or

(ii) another person or a group that is directly or indirectly engaged in, preparing for, planning, assisting in or fostering the doing of a terrorist act; or

(iii) a terrorist organisation.

Note to s. 3B(3) amended by No. 32/2018 s. 104.

Note

Sections 457A and 461A prevent the Youth Parole Board from having regard to information referred to in paragraph (b) for certain purposes unless satisfied that the person knew certain matters about the person or group that the association is with.

S. 3C inserted by No. 58/2025 s. 446.

3C Meaning of *out of home care service*

(1) In this Act, an ***out of home care service*** means a social service that—

(a) is either—

(i) a service (other than a secure welfare service) that is provided or funded by the Secretary specifically for, and that involves contact with, children in need

of protection, or who are in, or are to be placed in, out of home care; or

(ii) an out of home care service established under section 44(1)(a)(ia); and

(b) is provided by a person who is registered under Part 3 of the **Social Services Regulation Act 2021** to provide that service.

(2) Without limiting this section, an out of home care service includes an out of home care service established under section 44.

* * * * * **Ss 4, 5 repealed by No. 61/2014 s. 5.**

6 Aboriginal agency

(1) The Governor in Council may, by Order published in the Government Gazette, declare an organisation to be an Aboriginal agency.

(2) An organisation may only be declared to be an Aboriginal agency if—

(a) it is a community service provider; and **S. 6(2)(a) amended by Nos 17/2023 s. 41, 6/2024 s. 65.**

(b) the Secretary is satisfied—

(i) that it is managed by Aboriginal persons; and

(ii) that its activities are carried on for the benefit of Aboriginal persons.

(3) An Order in Council made under subsection (1) with respect to an organisation must state that the Secretary is satisfied as to the matters referred to in subsection (2).

7 References to Parts

Unless the context otherwise requires, a reference in this Act to a Part by a number must be construed as a reference to the Part, designated by that number, of this Act.

Part 1.1A—Statement of Recognition

Pt 1.1A (Heading and ss 7AA–7D) inserted by No. 17/2023 s. 4.

7AA Statement of acknowledgement

S. 7AA inserted by No. 17/2023 s. 4.

(1) The Parliament acknowledges that removing an Aboriginal child from the care of a parent may—

(a) disrupt the child's connection to their culture; and

(b) cause harm to the child, including serious harm.

(2) The Parliament does not intend by this section to affect in any way the interpretation of this Act or of any other laws in force in Victoria.

7A Statement of Recognition

S. 7A inserted by No. 17/2023 s. 4.

(1) The Parliament formally recognises that Aboriginal people are the First Nations people of Australia.

(2) The Parliament acknowledges that—

(a) the child protection system played a key role in the enactment of policies leading to the dispossession, colonisation and assimilation of Aboriginal people; and

(b) the laws, practices and policies of former child protection systems resulted in the removal of Aboriginal children from their families, culture and Country, by compulsion, in an effort to assimilate and extinguish their culture and identity.

(3) The Parliament recognises the systematic forcible removal of Aboriginal children through the laws, practices and policies of the child protection system has substantially contributed to—

(a) a legacy of disconnection; and

(b) intergenerational trauma; and

(c) entrenched social disadvantage and dysfunction; and

(d) marginalisation; and

(e) a distrust of the child protection system.

(4) The Parliament recognises that ongoing structural inequality and systemic racism impact Aboriginal people and culture in relation to—

(a) decision-making in the child protection system; and

(b) over-representation of Aboriginal children in the child protection system.

(5) The Parliament further recognises the survival, resilience and success of Aboriginal families and communities in the face of the devastating impacts of these colonisation, dispossession and assimilation policies.

(6) The Parliament supports rights and initiatives that—

(a) address the factors that drive the over-representation of Aboriginal children in the child protection system; and

(b) will require Aboriginal children, families and communities to be treated fairly and equally.

(7) It is the intention of Parliament that the child protection system must recognise, respect and support the distinct cultural rights of Aboriginal people and their right to self-determination.

7B Acknowledgement of treaty process

S. 7B inserted by No. 17/2023 s. 4.

(1) The Parliament acknowledges Victoria's treaty process and the aspiration of Aboriginal people to achieve increased autonomy, Aboriginal decision-making and control of planning, funding and administration of services for Aboriginal children and families, including through self-determined Aboriginal representative bodies established through treaty.

(2) The Parliament does not intend by this section to affect in any way the interpretation of this Act or of any other law in force in Victoria.

7C Effect of this Part

S. 7C inserted by No. 17/2023 s. 4.

The Parliament does not intend by this Part to create in any person any legal right or give rise to any civil cause of action.

7D No effect on entitlement to compensation or creation of entitlement to compensation

S. 7D inserted by No. 17/2023 s. 4.

This Part is not intended to alter or affect an existing entitlement to compensation or create an entitlement to compensation arising from any matter referred to in section 7A.

Pt 1.1B (Heading and ss 7E–7H) inserted by No. 17/2023 s. 4.

Part 1.1B—Recognition principles

S. 7E inserted by No. 17/2023 s. 4.

7E Recognition principles

(1) The right of Aboriginal children, families and communities in Victoria to self-determination must be recognised, respected and supported.

(2) When considering the views of Aboriginal children, decision-makers must uphold their cultural rights and sustain their connections to family, community, culture and Country.

(3) Understanding of, and respect and support for, Aboriginal culture, cultural diversity, customary lore, knowledge, perspectives and expertise is to be demonstrated in decision-making.

(4) Strong connections with culture, family, Elders, communities and Country are to be recognised as the foundations needed for Aboriginal children to develop and thrive and to be protected from harm.

(5) Historic and ongoing biases and structural and everyday racisms create barriers to the best interests of the Aboriginal child and are to be recognised and overcome.

(6) The planning and provision of child and family services for Aboriginal children and Aboriginal families under this Act is to be based on commitment, accountability and responsibility to Aboriginal people in Victoria, with proper consideration to be given to the views of Aboriginal-led community services.

(7) An Aboriginal child's Aboriginal family, Elders and any Aboriginal-led community service that is responsible under this Act for the provision of services to the Aboriginal child each have a right to participate in the making of decisions under this Act that relate to the child, and must be given an opportunity to participate in the making of those decisions.

(8) Partnerships between the Secretary and Aboriginal-led community services in relation to the planning and provision of child and family services are to be equitable and support self-determination.

(9) Any transfer of decision-making to an Aboriginal-led community service under this Act is to be with the free, prior and informed consent of the Aboriginal-led community service.

(10) Funding provided under this Act to Aboriginal-led community services (separately or in partnership with other community services) to provide child and family services is to be transparent, equitable, flexible and sustainable and support self-determination.

(11) In this section—

Aboriginal-led community service means a community service provider that—

(a) is managed by Aboriginal persons; and

(b) provides services for the benefit of Aboriginal persons.

S. 7E(11) def. of *Aboriginal-led community service* amended by Nos 17/2023 s. 42, 6/2024 s. 66.

S. 7F inserted by No. 17/2023 s. 4.

7F Courts to have regard to and apply recognition principles

The Children's Court must have regard to and apply the principles set out in section 7E(1) to (5) (where relevant) in making any decision or taking any action in relation to an Aboriginal child.

S. 7G (Heading) amended by No. 6/2024 s. 67(1).

S. 7G inserted by No. 17/2023 s. 4.

7G Secretary and community service providers to have regard to and give effect to recognition principles

(1) The Secretary must have regard to and give effect to the principles set out in section 7E (where relevant) in making any decision or taking any action under this Act—

(a) in relation to an Aboriginal child; or

(b) in relation to an Aboriginal family; or

(c) in relation to the planning or provision of services under this Act to Aboriginal children and Aboriginal families.

S. 7G(2) amended by No. 6/2024 s. 67(2).

(2) A community service provider must have regard to and give effect to the principles set out in section 7E (where relevant) in making any decision or taking any action in relation to an Aboriginal child for whom it is providing, or is to provide, services under this Act.

S. 7H inserted by No. 17/2023 s. 4.

7H Role of recognition principles

(1) The recognition principles are intended—

(a) to give guidance in the administration of this Act; and

(b) to ensure that the distinct cultural rights of Aboriginal children and Aboriginal families and the right of Aboriginal people to self-determination are recognised, respected and supported.

(2) The recognition principles apply subject to section 10.

(3) The recognition principles—

(a) apply in addition to the principles in Divisions 3 and 4 of Part 1.2; and

(b) do not limit the principles in Divisions 3 and 4 of Part 1.2.

(4) Nothing in this Part applies in relation to any decision or action under Chapter 5 or Chapter 7 (in relation to any matter under Chapter 5).

Part 1.2—Principles

Division 1—Decision makers to have regard to principles

8 Decision makers to have regard to principles

(1) The Court must have regard to the principles set out in this Part (where relevant) in making any decision or taking any action under this Act.

(2) The Secretary must have regard to the principles set out in this Part (where relevant) in making any decision or taking any action under this Act or in providing any service under this Act to children and families.

S. 8(3) amended by No. 6/2024 s. 68.

(3) A community service provider must have regard to the principles set out in this Part (where relevant) in making any decision or taking any action in relation to a child for whom it is providing, or is to provide, services under this Act.

(4) This section does not apply in relation to any decision or action under Chapter 5 or Chapter 7 (in relation to any matter under Chapter 5).

9 Role of principles

(1) The principles set out in this Part are intended to give guidance in the administration of this Act.

(2) The principles do not apply to Chapter 5 or Chapter 7 (in relation to any matter under Chapter 5).

Division 2—Best interests principles

10 Best interests principles

(1) For the purposes of this Act the best interests of the child must always be paramount.

(2) When determining whether a decision or action is in the best interests of the child, the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her age and stage of development) must always be considered.

(3) In addition to subsections (1) and (2), in determining what decision to make or action to take in the best interests of the child, consideration must be given to the following, where they are relevant to the decision or action—

(a) the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child;

(b) the need to strengthen, preserve and promote positive relationships between the child and the child's parent, family members and persons significant to the child;

(c) the need, in relation to an Aboriginal child, to protect and promote his or her Aboriginal cultural and spiritual identity and development by, wherever possible, maintaining and building their connections to their Aboriginal family and community;

(d) the child's views and wishes, if they can be reasonably ascertained, and they should be given such weight as is appropriate in the circumstances;

(e) the effects of cumulative patterns of harm on a child's safety and development;

S. 10(3)(f) amended by No. 61/2014 s. 6(1), substituted by No. 6/2026 s. 4.

(f) the desirability of—

(i) continuity and stability in the child's care, including stable and enduring arrangements for care and parental responsibility; and

(ii) the child having physical stability, cultural stability and relational stability;

S. 10(3)(fa) inserted by No. 61/2014 s. 6(2).

(fa) the desirability of making decisions as expeditiously as possible and the possible harmful effect of delay in making a decision or taking an action;

(g) that a child is only to be removed from the care of his or her parent if there is an unacceptable risk of harm to the child;

(h) if the child is to be removed from the care of his or her parent, that consideration is to be given first to the child being placed with an appropriate family member or other appropriate person significant to the child, before any other placement option is considered;

(i) the desirability, when a child is removed from the care of his or her parent, to plan the reunification of the child with his or her parent;

(j) the capacity of each parent or other adult relative or potential care giver to provide for the child's needs and any action taken by the

parent to give effect to the goals set out in the case plan relating to the child;

(k) contact arrangements between the child and the child's parents, siblings, family members and other persons significant to the child;

S. 10(3)(k) amended by No. 52/2013 s. 5.

(l) the child's social, individual and cultural identity and religious faith (if any) and the child's age, maturity, sex and sexual identity;

(m) where a child with a particular cultural identity is placed in out of home care with a care giver who is not a member of that cultural community, the desirability of the child retaining a connection with their culture;

(n) the desirability of the child being supported to gain access to appropriate educational services, health services and accommodation and to participate in appropriate social opportunities;

(o) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance;

* * * * *

S. 10(3)(p) repealed by No. 61/2014 s. 6(3).

(q) the desirability of siblings being placed together when they are placed in out of home care;

(r) any other relevant consideration.

Division 3—Decision-making principles

S. 11 amended by No. 6/2024 s. 69.

11 Decision-making principles

In making a decision or taking an action in relation to a child, the Secretary or a community service provider must also give consideration to the following principles—

(a) the child's parent should be assisted and supported in reaching decisions and taking actions to promote the child's safety and wellbeing;

(b) where a child is placed in out of home care, the child's care giver should be consulted as part of the decision-making process and given an opportunity to contribute to the process;

(c) the decision-making process should be fair and transparent;

(d) the views of all persons who are directly involved in the decision should be taken into account;

(e) decisions are to be reached by collaboration and consensus, wherever practicable;

(f) the child and all relevant family members (except if their participation would be detrimental to the safety or wellbeing of the child) should be encouraged and given adequate opportunity to participate fully in the decision-making process;

(g) the decision-making process should be conducted in such a way that the persons involved are able to participate in and understand the process, including any meetings that are held and decisions that are made;

(h) persons involved in the decision-making process should be—

(i) provided with sufficient information, in a language and by a method that they can understand, and through an interpreter if necessary, to allow them to participate fully in the process; and

(ii) given a copy of any proposed case plan and sufficient notice of any meeting proposed to be held; and

(iii) provided with the opportunity to involve other persons to assist them to participate fully in the process; and

(i) if the child has a particular cultural identity, a member of the appropriate cultural community who is chosen or agreed to by the child or by his or her parent should be permitted to attend meetings held as part of the decision-making process.

Division 4—Additional decision-making principles for Aboriginal children

12 Additional decision-making principles

S. 12 amended by No. 48/2006 s. 4(2) (ILA s. 39B(1)).

S. 12(1) amended by No. 6/2024 s. 70.

(1) In recognition of the principle of Aboriginal self-management and self-determination, in making a decision or taking an action in relation to an Aboriginal child, the Secretary or a community service provider must also give consideration to the following principles—

(a) in making a decision or taking an action in relation to an Aboriginal child, an opportunity should be given, where relevant, to members of the Aboriginal community to

which the child belongs and other respected Aboriginal persons to contribute their views;

S. 12(b) amended by No. 48/2006 s. 4(1).

(b) a decision in relation to the placement of an Aboriginal child or other significant decision in relation to an Aboriginal child, should involve a meeting convened by an Aboriginal convener who has been approved by an Aboriginal agency or by an Aboriginal organisation approved by the Secretary and, wherever possible, attended by—

(i) the child; and

(ii) the child's parent; and

(iii) members of the extended family of the child; and

(iv) other appropriate members of the Aboriginal community as determined by the child's parent;

(c) in making a decision to place an Aboriginal child in out of home care, an Aboriginal agency must first be consulted and the Aboriginal Child Placement Principle must be applied.

S. 12(2) inserted by No. 48/2006 s. 4(2).

(2) The requirement under subsection (1)(c) to consult with an Aboriginal agency does not apply to the making of a decision or the taking of an action under Part 3.5.

S. 12(3) inserted by No. 48/2006 s. 4(2).

(3) In this section ***Aboriginal organisation*** means an organisation that is managed by Aboriginal persons and that carries on its activities for the benefit of Aboriginal persons.

13 Aboriginal Child Placement Principle

(1) For the purposes of this Act the Aboriginal Child Placement Principle is that if it is in the best interests of an Aboriginal child to be placed in out

of home care, in making that placement, regard must be had—

(a) to the advice of the relevant Aboriginal agency; and

(b) to the criteria in subsection (2); and

(c) to the principles in section 14.

(2) The criteria are—

(a) as a priority, wherever possible, the child must be placed within the Aboriginal extended family or relatives and where this is not possible other extended family or relatives;

(b) if, after consultation with the relevant Aboriginal agency, placement with extended family or relatives is not feasible or possible, the child may be placed with—

(i) an Aboriginal family from the local community and within close geographical proximity to the child's natural family;

(ii) an Aboriginal family from another Aboriginal community;

(iii) as a last resort, a non-Aboriginal family living in close proximity to the child's natural family;

(c) any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community.

(3) The requirements under subsection (1)(a) to have regard to the advice of the relevant Aboriginal agency and under subsection (2)(b) to consult with the relevant Aboriginal agency do not apply to the

S. 13(3) inserted by No. 48/2006 s. 4(3).

making of a decision or the taking of an action under Part 3.5.

S. 13(4) inserted by No. 17/2023 s. 4A.

(4) For the avoidance of doubt, the Court or a bail justice (as the case may be) must have regard to the Aboriginal Child Placement Principle in making any decision or taking any action in respect of a child in need of protection under Chapter 4.

S. 14 (Heading) amended by No. 17/2023 s. 5(1).

14 Further principles for Aboriginal children

Self-identification and expressed wishes of child

(1) In determining where a child is to be placed, account is to be taken of whether the child identifies as Aboriginal and the expressed wishes of the child.

Heading preceding s. 14(1A) inserted by No. 17/2023 s. 5(2).

Prevention principle

S. 14(1A) inserted by No. 17/2023 s. 5(2).

(1A) An Aboriginal child has a right to be brought up within the child's family and community.

Heading preceding s. 14(1B) inserted by No. 17/2023 s. 5(2).

Partnership principle

S. 14(1B) inserted by No. 17/2023 s. 5(2).

(1B) The Aboriginal community to which the child belongs and other respected Aboriginal persons have a right to participate in the making of a significant decision in relation to an Aboriginal child under this Act.

(1C) Representatives of the Aboriginal community have the right to participate in the design and implementation of child protection and community services relating to Aboriginal children and their families under this Act.

S. 14(1C) inserted by No. 17/2023 s. 5(2).

Participation principle

Heading preceding s. 14(1D) inserted by No. 17/2023 s. 5(2).

(1D) The parents and members of the extended family of an Aboriginal child have a right to participate, and to be enabled to participate in an administrative or judicial decision-making process under this Act that relates to that child.

S. 14(1D) inserted by No. 17/2023 s. 5(2).

Connection principle

Heading preceding s. 14(1E) inserted by No. 17/2023 s. 5(2).

(1E) An Aboriginal child has a right to develop and maintain a connection with the child's family, community, culture, Country and language.

S. 14(1E) inserted by No. 17/2023 s. 5(2).

Child with parents from different Aboriginal communities

(2) If a child has parents from different Aboriginal communities, the order of placement set out in sections 13(2)(b)(i) and 13(2)(b)(ii) applies but consideration should also be given to the child's own sense of belonging.

(3) If a child with parents from different Aboriginal communities is placed with one parent's family or community, arrangements must be made to ensure that the child has the opportunity for continuing

contact with his or her other parent's family, community and culture.

Child with one Aboriginal parent and one non-Aboriginal parent

(4) If a child has one Aboriginal parent and one non-Aboriginal parent, the child must be placed with the parent with whom it is in the best interests of the child to be placed.

Placement of child in care of a non-Aboriginal person

(5) If an Aboriginal child is placed with a person who is not within an Aboriginal family or community, arrangements must be made to ensure that the child has the opportunity for continuing contact with his or her Aboriginal family, community and culture.

Chapter 2—Administration

15 Functions and powers of the Secretary

The Secretary has the functions and powers conferred on the Secretary under this Act.

16 Responsibilities of the Secretary

(1) Without limiting any other responsibility of the Secretary under this Act, the Secretary has the following responsibilities—

(a) to promote the prevention of child abuse and neglect;

(b) to assist children who have suffered abuse and neglect and to provide services to their families to prevent further abuse and neglect from occurring;

(c) to work with community service providers to promote the development and adoption of common policies on risk and need assessment for vulnerable children and families;

S. 16(1)(c) amended by No. 6/2024 s. 71(a).

* * * * *

S. 16(1)(d) repealed by No. 17/2023 s. 43.

(e) to work with other government agencies and community service providers to ensure that children in out of home care receive appropriate educational, health and social opportunities;

S. 16(1)(e) amended by No. 6/2024 s. 71(b).

(f) to publish and promote a Charter for children in out of home care to provide a framework of principles to promote the wellbeing of those children;

S. 16(1)(g) substituted by No. 61/2014 s. 7.

(g) to provide or arrange the provision of services to assist in supporting a person under the age of 21 years to gain the capacity to make the transition to independent living where—

(i) the Secretary has had parental responsibility for the person; and

(ii) on the Secretary's parental responsibility ending, the person is of an age, or intends, to live independently;

(h) to conduct research on child development, abuse and neglect and to evaluate the effectiveness of community based and protective interventions in protecting children from harm, protecting their rights and promoting their development;

(i) to lead the on-going development of an integrated child and family service system;

(j) to give effect to any protocol existing between the Secretary and an Aboriginal agency.

(2) The statement of responsibilities of the Secretary under this section does not create, or confer on any person, any right or entitlement enforceable at law.

(3) The matters that may be addressed in the Charter for children in out of home care may include—

(a) the protection and enhancement of a child's identity and sense of self;

(b) treatment in care;

(c) quality of placement;

(d) support and provision of services.

(4) The kinds of services that may be provided to support a person to make the transition to independent living include—

(a) the provision of information about available resources and services;

(b) depending on the Secretary's assessment of need—

(i) financial assistance;

(ii) assistance in obtaining accommodation or setting up a residence;

(iii) assistance with education and training;

(iv) assistance with finding employment;

(v) assistance in obtaining legal advice;

(vi) assistance in gaining access to health and community services;

(c) counselling and support.

16A Power of the Secretary to enter into contracts

S. 16A inserted by No. 29/2010 s. 14.

Without limiting the powers conferred on the Secretary whether under this or any other Act, the Secretary may, on behalf of the Crown, enter into a contract with a person for the provision of goods or services.

16B Powers of the Secretary in relation to land

S. 16B inserted by No. 29/2010 s. 14.

(1) The Secretary may, on behalf of the Crown and for the purposes of this Act—

(a) acquire, hold or dispose of land; and

(b) otherwise deal with any land held by the Secretary.

(2) Any acquisition or disposition of or other dealing with land by the Secretary on behalf of the Crown must be made in the name of the "Secretary to the Department of Human Services".

(3) Without limiting subsections (1) and (2), the Secretary may, on behalf of the Crown, dispose of or otherwise deal with land held by the Secretary and that was acquired under this Act in the name of "Secretary to the Department of Human Services" by any person who previously held, acted in or performed the duties of, the office of Secretary.

S. 16C inserted by No. 29/2010 s. 14.

16C Committee of management

(1) The Secretary may be a committee of management under the **Crown Land (Reserves) Act 1978** under the name "Secretary to the Department of Human Services".

(2) Any record relating to a committee of management to which subsection (1) applies must refer to the committee of management in the name of "Secretary to the Department of Human Services".

S. 16D inserted by No. 29/2010 s. 14.

16D Record of dealings

(1) If the Secretary acquires any land on behalf of the Crown for the purposes of this Act, any recordings in the Register by the Registrar of Titles of the acquisition must be in the name of the "Secretary to the Department of Human Services" as registered proprietor.

(2) If the Secretary, on behalf of the Crown for the purposes of this Act, disposes of or otherwise deals with any land held in the name of "Secretary to the Department of Human Services", any recording in the Register by the Registrar of Titles must be made in the name of "Secretary to the Department of Human Services".

(3) If the Secretary, on behalf of the Crown, lodges with the Registrar of Titles any dealing in relation to any land for the purposes of this Act, the Registrar must make any recording in relation to

that dealing in the name of "Secretary to the Department of Human Services".

(4) To avoid doubt, land acquired in fee simple by the Secretary on behalf of the Crown for the purposes of this Act is Crown land.

(5) Despite subsection (4) and anything to the contrary in the **Land Act 1958** or the **Transfer of Land Act 1958**, if land acquired by the Secretary on behalf of the Crown for the purposes of this Act—

(a) is under the operation of the **Transfer of Land Act 1958**, it remains under the operation of that Act; and

(b) is not under the operation of the **Transfer of Land Act 1958**, it may be brought under the operation of that Act.

16E Secretary's powers in relation to intellectual property

S. 16E inserted by No. 29/2010 s. 14.

The Secretary may, on behalf of the Crown—

(a) acquire (whether by creation, lease, licence, receiving the assignment or grant of, or otherwise), hold, accept as security, or otherwise deal with any intellectual property right (for example, a trade mark, patent, design, copyright (including an associated moral right), plant breeder's right, circuit layout right, trade secret, or right arising from confidential information);

(b) assign, grant, lease, licence, sell or dispose of, any intellectual property right;

(c) seek any remedy in relation to, or do anything necessary to enforce, protect, maintain, register or exploit, any intellectual property right;

(d) seek any remedy in relation to, or do anything necessary to enforce, protect, maintain, register or exploit any Crown copyright.

17 Delegation

(1) The Secretary may, by instrument, delegate to any employee or class of employees any function or power of the Secretary under this Act or the regulations, except—

(a) the power to make an authorisation under section 18; and

(b) the power to make an authorisation under section 19, 215(3)(c), 597(3) or 597(4); and

S. 17(1)(c) repealed by No. 48/2006 s. 5(1)(a), new s. 17(1)(c) inserted by No. 29/2014 s. 5(1).

(c) the power to approve under section 72P(3) a period of seclusion of more than 24 hours; and

(d) the power to make an authorisation under section 195; and

S. 17(1)(e) repealed by No. 57/2015 s. 5.

* * * * *

(f) the power to approve under section 488(3) a period of isolation of more than 24 hours; and

S. 17(1)(fa) inserted by No. 48/2006 s. 5(1)(b).

(fa) the power to approve under section 488K a change of name application; and

(fb) the power to approve under section 488Q the making of an acknowledgement of sex application; and

S. 17(1)(fb) inserted by No. 25/2019 s. 21.

(g) this power of delegation.

(2) The Secretary may, by instrument, delegate to an executive within the meaning of the **Public Administration Act 2004** the power to make authorisations under section 19, 597(3) or 597(4).

(3) The Secretary may, by instrument, delegate to an executive within the meaning of the **Public Administration Act 2004** the power to make an authorisation under section 18.

S. 17(3) repealed by No. 48/2006 s. 5(2), new s. 17(3) inserted by No. 17/2023 s. 6.

(4) The Secretary may, by instrument, delegate to an executive within the meaning of the **Public Administration Act 2004** who is employed at the level of EO-2 or above—

S. 17(4) amended by No. 29/2014 s. 5(2), substituted by No. 21/2015 s. 3(Sch. 1 item 9).

(a) the power to approve under section 72P(3) a period of seclusion of more than 24 hours; and

(b) the power to approve under section 488(3) a period of isolation of more than 24 hours.

(5) The Secretary may, by instrument, delegate to any employee or class of employees any power of the Secretary (other than a power of delegation) under any other Act or under regulations made under any other Act.

S. 17(5) inserted by No. 29/2010 s. 15.

(6) Without limiting this section, the Secretary may, by instrument, delegate any function or power of the Secretary under this Act or the regulations, other than a power set out in subsection (1)(a) to (g), to—

S. 17(6) inserted by No. 37/2021 s. 351.

(a) the Social Services Regulator established under section 4 of the **Social Services Regulation Act 2021**; or

(b) a person employed or engaged by the Social Services Regulator.

S. 18 amended by Nos 57/2015 s. 6, 30/2019 s. 4, substituted by No. 17/2023 s. 7.

18 Secretary may authorise principal officer of Aboriginal agency to act

(1) The Secretary, in writing, may authorise the principal officer of an Aboriginal agency to perform specified functions and exercise specified powers referred to in subsection (2) in respect of any of the following—

(a) an Aboriginal child;

S. 18(1)(b) substituted by No. 14/2025 s. 10(1).

(b) if the Secretary believes a child or class of children to be an Aboriginal child or Aboriginal children—

(i) that child and any non-Aboriginal child who is a sibling of that child; or

(ii) that class of children and any non-Aboriginal child who is a sibling of a member of that class of children;

(c) if an authorisation has been made under this subsection in relation to an Aboriginal child, a non-Aboriginal child who is a sibling of that Aboriginal child;

S. 18(1)(d) substituted by No. 14/2025 s. 10(2).

(d) if an authorisation has been made under this subsection in relation to a child or class of children who the Secretary believes to be an Aboriginal child or Aboriginal children—

(i) a non-Aboriginal child who is a sibling of that child or those children; or

(ii) a class of non-Aboriginal children who are siblings of that child or a member of the class of children who the Secretary believes to be Aboriginal children.

(2) The functions and powers that may be specified are—

(a) functions and powers conferred by or under this Act on the Secretary as a protective intervener; and

(b) functions and powers conferred by or under this Act on the Secretary to receive reports under section 185 and to investigate those reports; and

(c) functions and powers conferred by or under this Act on the Secretary in relation to a protection order or relevant order.

(3) An authorisation under this section may only be made with the agreement of the Aboriginal agency and the principal officer.

(4) Before giving an authorisation, the Secretary must provide the Aboriginal agency and the principal officer with all information that is known to the Secretary and that is reasonably necessary to assist the Aboriginal agency and the principal officer to make an informed decision as to whether or not to agree to the authorisation.

(5) The principal officer may only be authorised if the principal officer is an Aboriginal person.

(6) Before giving an authorisation under subsection (1)(a) or (c), the Secretary must have regard to any view expressed by the child and the parent of the child if those views can be reasonably obtained.

(7) On an authorisation being given, this Act applies in relation to the performance of the specified function or the exercise of the specified power as if the principal officer were the Secretary.

(8) In this section—

relevant order means—

(a) a temporary assessment order; or

(b) an interim accommodation order; or

(c) a therapeutic treatment order; or

(d) a therapeutic treatment (placement) order; or

(e) a permanent care order.

S. 18AAA inserted by No. 17/2023 s. 7.

18AAA Revocation of authorisation under section 18(1)

(1) The Secretary may at any time in writing revoke an authorisation under section 18(1)(a) or (c) and on that revocation the Secretary may continue and complete any action commenced under the authorisation by the principal officer.

(2) The Secretary may at any time in writing revoke an authorisation under section 18(1)(b) or (d) in respect of any or all children who are the subject of the authorisation and on that revocation the Secretary may continue and complete any action commenced under the authorisation by the principal officer in relation to the children in respect of whom the authorisation is revoked.

(3) On the revocation of an authorisation under this section, the principal officer must provide the Secretary with all of the records that have been created by or on behalf of the Aboriginal agency, or provided to the Aboriginal agency, in respect of the child as a result of the authorisation.

(4) Despite the revocation of an authorisation in respect of an Aboriginal child or a child or class of children who the Secretary believes to be an Aboriginal child or Aboriginal children, an authorisation under section 18(1)(c) or (d) in respect of a non-Aboriginal child who is a sibling of that child or those children continues to have effect until revoked.

18AAB Principal officer to notify Secretary if principal officer considers authorisation no longer in best interests

S. 18AAB inserted by No. 17/2023 s. 7.

(1) At any time after an authorisation under section 18 has been made, if the principal officer of the Aboriginal agency considers that the authorisation is no longer in the best interests of a particular child or children who are the subject of that authorisation, the principal officer must notify the Secretary of this in writing as soon as practicable.

(2) In considering whether the authorisation is no longer in the best interests of a child, the principal officer must have regard to any view expressed by the child and the parent of the child, if those views can reasonably be obtained.

(3) On receiving a notification under this section, the Secretary may revoke the authorisation made under section 18 in accordance with section 18AAA.

(4) Nothing in this section affects the Secretary's power under section 18AAA to otherwise revoke the authorisation.

18A Powers and functions of acting principal officer

S. 18A inserted by No. 57/2015 s. 7.

(1) This section applies if a person is appointed to act as the principal officer of an Aboriginal agency during—

(a) a vacancy in the office of the principal officer; or

(b) any period when the principal officer is unable to perform the functions of the principal officer's office, whether because of illness, absence or for any other reason.

S. 18A(2) amended by No. 30/2019 s. 5.

(2) The person who is acting as the principal officer is authorised to perform the functions and exercise the powers specified in an authorisation under section 18 in respect of a child who is the subject of the authorisation as if—

(a) the person were the principal officer; and

(b) the person has all the functions, powers and duties of the principal officer under this Act.

(3) This section applies even if the person acting as the principal officer is not an Aboriginal person.

S. 18B inserted by No. 57/2015 s. 7.

18B Delegation by principal officer of Aboriginal agency

The principal officer of an Aboriginal agency may, by instrument, delegate to any person or class of person employed by the Aboriginal agency any function or power that the principal officer has been authorised under section 18 to perform or exercise, except this power of delegation.

S. 18C inserted by No. 57/2015 s. 7.

18C Disclosure of information by Secretary to principal officer of Aboriginal agency

(1) For the purposes of section 18, the Secretary may disclose to the principal officer of an Aboriginal agency any information that is otherwise prohibited from being disclosed under this Act.

(2) Subsection (1) applies despite anything to the contrary in this Act.

(3) Subsection (1) is subject to any contrary direction by a court.

(4) Information referred to in subsection (1) may only be disclosed by the Secretary to the extent that it relates to a child who is or is to be the subject of an authorisation of the principal officer under section 18.

S. 18C(4) amended by No. 30/2019 s. 6.

18D Use of information disclosed to Aboriginal agency and principal officer

S. 18D inserted by No. 57/2015 s. 7.

(1) A person must not disclose information provided by the Secretary to an Aboriginal agency or the principal officer of an Aboriginal agency under section 18(4) to any other person unless the disclosure is—

S. 18D(1) amended by No. 17/2023 s. 8.

(a) to a person employed by that Aboriginal agency; and

(b) for the purpose of assisting the Aboriginal agency and the principal officer to make an informed decision as to whether or not to agree to an authorisation.

Penalty: 10 penalty units.

(2) Subsection (1) does not apply to a principal officer of an Aboriginal agency who is authorised under section 18 in respect of the child to whom the information relates.

19 Secretary may authorise person in charge of community service to act

(1) The Secretary may authorise the person in charge of a community service or any person for the time being acting in or performing the duties of that person to exercise or perform on the Secretary's behalf any function or power conferred on the Secretary by or under—

S. 19(1) amended by No. 17/2023 s. 44.

(a) section 282; or

S. 19(1)(b) repealed by No. 4/2017 s. 17(2).

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S. 19(1)(c) amended by No. 61/2014 s. 8.

(c) section 320(1) (to the extent that it applies to the approval of persons as suitable to have parental responsibility for a child); or

(d) section 324.

(2) An authorisation under subsection (1) must be made by instrument and with the agreement of the person in charge of the community service, or of the person acting in or performing the duties of that person, at the time the authorisation is made.

S. 19A inserted by No. 17/2023 s. 9.

19A Information use and disclosure for purposes of authorised functions and powers

(1) The Secretary may disclose information to a principal officer authorised under section 18 or 19 for the performance of a function or exercise of a power by that principal officer under the authorisation.

(2) The principal officer may disclose to the Secretary any information obtained by the principal officer in the course of performing functions or exercising powers under the authorisation, if the information is necessary for performance of those functions or exercise of those powers.

(3) The principal officer may disclose to any person any information obtained by the principal officer in the course of performing functions or exercising powers under the authorisation, if the principal officer reasonably believes that the information is necessary for performance of those functions or exercise of those powers.

(4) The Secretary may require the principal officer to give information to the Secretary obtained by the principal officer in the course of performing functions or exercising powers under the authorisation if the information is necessary to update records held by the Secretary relating to the performance of functions or exercise of powers in relation to a child who is the subject of the authorisation.

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S. 20 repealed by No. 82/2012 s. 284.

20A Disclosure of information for administrative purposes

S. 20A inserted by No. 46/2009 s. 3.

Despite anything to the contrary in this Act, a person who discloses information obtained in connection with the administration or execution of this Act is not guilty of an offence if the disclosure is made in connection with the administration or execution of this Act or regulations under this Act or under a court order.

20B Report by Secretary

S. 20B inserted by No. 63/2016 s. 14.

(1) The Secretary must publish on the Department's Internet site the following details for each quarter of a calendar year in which the Secretary discloses information to the Commission under section 60A of the **Commission for Children and Young People Act 2012**—

(a) the total number of adverse events relating to children in out of home care that were disclosed by the Secretary to the Commission in the relevant quarter;

(b) the total number of adverse events relating to individuals detained in a youth justice centre that were disclosed by the Secretary to the Commission in the relevant quarter;

(c) the total number of adverse events relating to individuals detained in a youth justice residential centre that were disclosed by the Secretary to the Commission in the relevant quarter.

(2) The details must be published within one month of the end of the relevant quarter.

(3) In this section—

Commission means the Commission for Children and Young People established by section 6 of the **Commission for Children and Young People Act 2012**;

relevant quarter means the quarter of a calendar year to which the publication of details relates.

Chapter 3—Child and family services

Part 3.1—Support for community-based services and families

21 Object of Part

The object of this Part is to enable the provision of funding and resources for community-based child and family services and other services for families.

22 Purposes of community-based child and family services

The purposes of a community-based child and family service are—

(a) to provide a point of entry into an integrated local service network that is readily accessible by families, that allows for early intervention in support of families and that provides child and family services;

(b) to receive referrals about vulnerable children and families where there are significant concerns about their wellbeing;

S. 22(b) amended by No. 48/2006 s. 6.

(c) to undertake assessments of needs and risks in relation to children and families to assist in the provision of services to them and in determining if a child is in need of protection;

(d) to make referrals to other relevant agencies if this is necessary to assist vulnerable children and families;

(e) to promote and facilitate integrated local service networks working collaboratively to co-ordinate services and supports to children and families;

(f) to provide on-going services to support vulnerable children and families.

23 Power of Secretary to provide funds

S. 23(1) amended by No. 6/2024 s. 72.

(1) Subject to the approval of the Minister and having regard to the objects of this Part and, where relevant, the purposes of a community-based child and family service, the Secretary may allocate funds to any community-based child and family service provider, municipal council, or non-government agency out of money available for the purpose.

(2) The Secretary may allocate funds under subsection (1) to be used for such purposes and subject to such conditions as the Secretary considers appropriate.

24 Family assistance grants

Subject to the approval of the Minister, the Secretary may make any grants to assist families that the Secretary considers appropriate out of money available for the purpose.

25 Authority to use Crown property

S. 25(1) amended by No. 6/2024 s. 73.

(1) The Secretary may authorise any community-based child and family service provider, voluntary organisation, Government department, municipal council, person or body, to use for any purpose relating to the provision of services for children and families—

(a) any real or personal property vested in the Secretary and used for the purposes of the Department; or

(b) any land of the Crown reserved for any public purpose and used for the purposes of the Department (whether or not vested in trustees or jointly in trustees and the Minister

for the time being administering the **Crown Land (Reserves) Act 1978**).

(2) The Secretary must consult with the Secretary to the Department of Energy, Environment and Climate Action before giving an authority under this section.

S. 25(2) amended by No. 25/2025 s. 106(Sch. 1 item 7).

(3) An authority under this section is given by the Secretary for and on behalf of the Crown.

(4) This section applies despite anything to the contrary in the **Land Act 1958**, the **Crown Land (Reserves) Act 1978** or any other Act.

26 Agreements relating to use of Crown property

(1) The Secretary may refuse to grant an authority under section 25 until the community-based child and family service provider, voluntary organisation, Department head of the Government department, municipal council, person or body enters into an agreement with the Secretary for the expenditure of money towards—

S. 26(1) amended by No. 6/2024 s. 74.

(a) the making of improvements, renovations or repairs on any land authorised by the Secretary to be used; or

(b) the improvement or repair of any equipment authorised by the Secretary to be used; or

(c) the provision of any equipment or materials to be used for the purposes of the Department.

(2) An agreement under this section is entered into by the Secretary for and on behalf of the Crown.

Part 3.2—Concern about wellbeing of child

27 Object of Part

The object of this Part is to enable a confidential report or referral to be made about a child if there is a significant concern for the wellbeing of the child.

28 Report to Secretary about child

A person may make a report to the Secretary if the person has a significant concern for the wellbeing of a child.

29 Report to Secretary about unborn child

A person may make a report to the Secretary, before the birth of a child, if the person has a significant concern for the wellbeing of the child after his or her birth.

30 Response by Secretary to report

(1) If the Secretary receives a report under section 28, the Secretary may—

(a) provide advice to the person who made the report;

(b) provide advice and assistance to the child or the family of the child;

(c) refer the matter to a community-based child and family service or a service agency to provide advice, services and support to the child or the family of the child;

(d) make a determination, under section 34, that the report is a protective intervention report.

(2) If the Secretary receives a report under section 29, the Secretary may—

(a) provide advice to the person who made the report;

(b) provide advice and assistance to the mother of the unborn child;

(c) refer the matter to a community-based child and family service or a service agency to provide advice, services and support to the mother of the unborn child.

31 Referral to community-based child and family service about child

A person who has a significant concern for the wellbeing of a child may refer the matter to a community-based child and family service.

32 Referral to community-based child and family service about unborn child

A person who, before the birth of a child, has a significant concern for the wellbeing of the child after his or her birth may refer the matter to a community-based child and family service.

33 Response by community-based child and family service to referral

(1) If a matter is referred to a community-based child and family service under section 31, the service provider may—

S. 33(1) amended by No. 6/2024 s. 75(1).

(a) provide advice to the person who made the referral;

S. 33(1)(a) amended by No. 48/2006 s. 7(1).

(b) provide advice and assistance to the child or the family of the child;

(c) refer the matter to another community-based child and family service or to a service agency to provide advice, services and support to the child or the family of the child.

S. 33(1)(c) amended by No. 48/2006 s. 7(2).

S. 33(2) amended by No. 6/2024 s. 75(2).

(2) If a referral is made to a community-based child and family service under section 31 and the service provider considers that the child may be in need of protection, the service provider must report the matter to the Secretary.

S. 33(3) amended by No. 6/2024 s. 75(3).

(3) If a referral is made to a community-based child and family service under section 32, the service provider may—

(a) seek advice from the Secretary in relation to the referral;

(b) provide advice to the person who made the referral;

(c) provide advice and assistance to the mother of the unborn child;

S. 33(3)(d) amended by No. 48/2006 s. 7(3).

(d) refer the matter to another community-based child and family service or to a service agency to provide advice, services and support to the mother of the unborn child.

34 Is the report about a child in need of protection?

If the Secretary receives a report under section 28 or 33(2) and the Secretary considers that the child may be in need of protection, the Secretary may determine that the report is a protective intervention report for the purposes of this Act.

Note

Part 4.4 deals with protective intervention reports.

S. 35 amended by No. 48/2006 s. 8(1), repealed by No. 11/2018 s. 17.

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S. 36 amended by Nos 48/2006 s. 8(2)–(4), 23/2017 s. 32(1), repealed by No. 11/2018 s. 17.

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S. 37 amended by No. 26/2014 s. 455(Sch. item 2.3), repealed by No. 11/2018 s. 17.

38 Consultation with Secretary

S. 38 amended by No. 6/2024 s. 76.

A community-based child and family service provider may consult with the Secretary in relation to any matter relating to the purposes of the community-based child and family service as set out in section 22.

39 Records of disclosures

S. 39 amended by Nos 6/2024 s. 77, 58/2025 s. 447.

The Secretary and a community-based child and family service provider must make a written record of each report or referral received and each disclosure made under this Part to or by the Secretary, the provider or the community-based child and family service (as appropriate).

40 Reporters and referrers protected

S. 40 (Heading) amended by No. 48/2006 s. 9(1).

A report to the Secretary under section 28 or 29 or a referral to a community-based child and family service under section 31 or 32 if made in good faith—

(a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made; and

(b) does not make the person by whom it is made subject to any liability in respect of it; and

(c) without limiting paragraphs (a) and (b), does not constitute a contravention of—

(i) section 141 of the **Health Services Act 1988**; or

S. 40(c)(ii) substituted by No. 26/2014 s. 455(Sch. item 2.3), amended by No. 39/2022 s. 790.

(ii) section 730 of the **Mental Health and Wellbeing Act 2022**.

S. 41 (Heading) amended by No. 48/2006 s. 9(2).

41 Identity of reporter or referrer confidential

S. 41(1) substituted by No. 48/2006 s. 9(3), amended by Nos 30/2019 s. 7(1), 6/2024 s. 78(1).

(1) If a report is made to the Secretary under section 28 or 29, a person (other than the person who made it) must not disclose to any person other than the Secretary or a community-based child and family service provider—

(a) the name of the person who made the report; and

(b) any information that is likely to lead to the identification of the person who made the report.

Penalty: 60 penalty units.

S. 41(1A) inserted by No. 48/2006 s. 9(3), amended by Nos 30/2019 s. 7(2), 6/2024 s. 78(2).

(1A) If a referral is made to a community-based child and family service under section 31 or 32, a person (other than the person who made it) must not disclose to any person other than the Secretary or a community-based child and family service provider—

(a) the name of the person who made the referral; and

(b) any information that is likely to lead to the identification of the person who made the referral.

Penalty: 60 penalty units.

(2) Subsections (1) and (1A) do not apply if the person who made the report or referral— S. 41(2) amended by No. 30/2019 s. 7(3).

(a) gives written consent to the Secretary; or

(b) gives written or oral consent to the community-based child and family service provider. S. 41(2)(b) amended by No. 6/2024 s. 78(3).

(3) To avoid doubt, the name of a person who made a report or who made a referral may be shared between— S. 41(3) inserted by No. 30/2019 s. 7(4).

(a) the Secretary and any community-based child and family service provider; and S. 41(3)(a) amended by No. 6/2024 s. 78(4).

(b) a community-based child and family service provider and any other community-based child and family service provider. S. 41(3)(b) amended by No. 6/2024 s. 78(4).

42 Review by Victorian Civil and Administrative Tribunal

(1) A child or a child's parent may apply to VCAT for review of a decision relating to the recording of information about the child or parent by a community-based child and family service provider under section 39. S. 42(1) amended by No. 6/2024 s. 79.

(2) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Part 3.2A—Disclosure of information about child's contact with registrable offender

Ch.3 Pt 3.2A (Heading and ss 42A–42E) inserted by No. 82/2014 s. 28

42A Interpretation

S. 42A inserted by No. 82/2014 s. 28.

(1) In this Part—

authorised person means a person who is authorised in writing by the Secretary under subsection (2);

contact has the same meaning as in the **Sex Offenders Registration Act 2004**;

registrable offence has the same meaning as in the **Sex Offenders Registration Act 2004**;

registrable offender has the same meaning as in the **Sex Offenders Registration Act 2004**;

sex offender registration order has the same meaning as in the **Sex Offenders Registration Act 2004**.

(2) The Secretary, in writing, may authorise a person, or a class of person, to act under section 42D(2).

42B Secretaries may disclose information relating to registrable offenders

S. 42B inserted by No. 82/2014 s. 28.

(1) The Secretary to the Department of Justice may disclose to the Secretary any information about a registrable offender that is obtained or received by the Secretary to the Department of Justice in the performance of a function under the **Sex Offenders Registration Act 2004** that indicates that the registrable offender has, or has had, contact with a child.

(2) The Secretary may disclose to the Secretary to the Department of Justice any information about a registrable offender that is obtained or received by the Secretary in the performance of a function under this Act in relation to a child who has, or has had, contact with the registrable offender.

S. 42C inserted by No. 82/2014 s. 28.

42C Chief Commissioner of Police and Secretary may disclose information relating to registrable offenders

(1) The Chief Commissioner of Police may disclose to the Secretary any information contained in a report the Chief Commissioner receives under Part 3 of the **Sex Offenders Registration Act 2004** from a registrable offender if the report indicates that the registrable offender has, or has had, contact with a child.

(2) The Secretary may disclose to the Chief Commissioner of Police any information about a registrable offender that is obtained or received by the Secretary in the performance of a function under this Act in relation to a child who has, or has had, contact with the registrable offender.

S. 42D inserted by No. 82/2014 s. 28.

42D Disclosure of certain information relating to registrable offender in certain circumstances

(1) This section applies if the Secretary receives information about a registrable offender under section 42B(1) or 42C(1) that includes information of a kind referred to in subsection (2)(a) to (d).

(2) The Secretary or an authorised person may disclose the following information to any other person if the Secretary or authorised person believes on reasonable grounds that the disclosure of the information to that person is in the interests of the safety and wellbeing of the child referred to in the information—

(a) the registrable offender's name;

(b) details of each offence of which the registrable offender has been found guilty that resulted in the making of a sex offender registration order;

(c) the date on which the registrable offender was sentenced for any registrable offence;

(d) the length of the reporting period under the **Sex Offenders Registration Act 2004** that applies to the registrable offender;

(e) any other information that the Secretary or authorised person believes on reasonable grounds is in the interests of the safety and wellbeing of the child.

(3) Before acting under subsection (2), the Secretary or authorised person must take reasonable steps to notify the registrable offender of the Secretary or authorised person's intention to act under that subsection unless the Secretary or authorised person believes on reasonable grounds that doing so would endanger the life or safety of any person.

(4) An authorised person must not act under subsection (2) other than in accordance with the terms of their authorisation.

Penalty: 60 penalty units or 6 months imprisonment or both.

(5) Subsection (2) applies despite anything to the contrary in this or the **Sex Offenders Registration Act 2004**.

S. 42E inserted by No. 82/2014 s. 28.

42E Information obtained in certain circumstances not to be disclosed without authority

A person who is employed or engaged in the administration of this Act or the **Sex Offenders Registration Act 2004**, or a police officer, must not disclose information of a kind referred to in section 42D(2)(a) to (d) to any other person if the person or officer—

(a) receives that information in the course of that employment or engagement or in the course of performing a duty as a police officer; and

(b) is not an authorised person; and

(c) is not otherwise authorised to do so.

Penalty: 120 penalty units or imprisonment for 12 months or both.

Part 3.3—Community services

Division 1—Object of Part

43 Object of Part

S. 43 amended by No. 17/2023 s. 45.

The object of this Part is to provide for the establishment and operation of community services.

Division 2—Departmental services

44 Departmental community services and secure welfare services

S. 44 substituted by No. 29/2014 s. 6, amended by No. 6/2024 s. 80(2) (ILA s. 39B(1)).

(1) The Governor in Council may, by Order published in the Government Gazette—

(a) establish to be operated by the Department to meet the needs of children requiring protection, care or accommodation—

(i) a service as a community service; or

(ia) a service as an out of home care service; or

S. 44(1)(a)(ia) inserted by No. 6/2024 s. 80(1).

(ii) a service with lock-up facilities as a secure welfare service; or

(b) abolish a service referred to in paragraph (a).

(2) If a service is established as a community service under subsection (1)(a)(i), the Order must specify the prescribed class of community service to which that community service belongs.

S. 44(2) inserted by No. 6/2024 s. 80(2).

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Pt 3.3 Div. 3 (Heading and ss 45–57) amended by No. 61/2014 ss 133–135, repealed by No. 17/2023 s. 46.

Pt 3.3 Divs 4, 5 (Headings and ss 58–65) repealed by No. 17/2023 s. 46.

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Pt 3.3 Div. 6 (Heading and ss 66–71) amended by Nos 46/2009 ss 4–7, 20/2012 s. 226(Sch. 5 item 3), 9/2013 s. 42(Sch. 2 item 6), repealed by No. 17/2023 s. 46.

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Pt 3.3 Div. 7 (Heading) amended by No. 17/2023 s. 47.

Division 7—Information privacy and community services

S. 72 (Heading) amended by No. 17/2023 s. 48(1).

72 Community services

S. 72 amended by Nos 60/2014 s. 140(Sch. 3 item 5), 17/2023 s. 48(2), 6/2024 s. 81(1).

The **Privacy and Data Protection Act 2014** applies to a community service provider in relation to the collection and handling of information under this Act as if the community service provider were an organisation within the meaning of that Act.

Note to s. 72 amended by Nos 17/2023 s. 48(3), 6/2024 s. 81(2).

Note

The **Health Records Act 2001** may also apply to a community service provider.

Division 8—Secure welfare services—security measures

Ch. 3 Pt 3.3 Div. 8 (Heading and ss 72A–72P) inserted by No. 29/2014 s. 7.

72A Definitions

S. 72A inserted by No. 29/2014 s. 7.

In this Division—

child resident means a child who has been placed in a secure welfare service under this Act;

frisk search means a search of a person or of things in the possession or under the control of a person, other than a search conducted by use of an electronic or mechanical device, including—

(a) a search of a person conducted by quickly running the hands over the person's outer clothing; and

(b) for the purposes of paragraph (a), requiring the person to remove—

(i) his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat; and

(ii) anything else that is conveniently removed by the person;

screening search means a search of a person or of things in the possession or under the control of a person to detect the presence of unauthorised items, other than a search that may involve bodily contact, including—

(a) a search of a person conducted by passing or placing an electronic or mechanical device over, on or in close proximity to the person's outer clothing; and

(b) an examination (including an examination conducted by passing or placing an electronic or mechanical device over, on or in close proximity) of anything worn or carried by the person, including requiring the person to remove—

(i) his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat; and

(ii) anything else that is conveniently removed by the person;

seclusion, in relation to a child resident, means the placing of the child in a locked room separate from others and from the normal routine of the secure welfare service;

seizure register means the register maintained under section 72I;

staff member, in relation to a secure welfare service, means a person who is employed or directly engaged in the care of the child residents of the secure welfare service;

unauthorised item means any article or thing that may jeopardise the security of the secure welfare service or the safety of persons in the secure welfare service, including an article or thing referred to in section 72F(2)(a);

unclothed search means a search of a person or of things in the possession or under the control of a person that may include—

(a) requiring the person to remove all of his or her clothes; and

(b) an examination of the person's body (but not of the person's body cavities) and of those clothes;

visitor means any person, other than a child resident or staff member, who enters, leaves or remains in a secure welfare service.

72B Search on entering or leaving a secure welfare service

S. 72B inserted by No. 29/2014 s. 7.

(1) A person (whether a child resident, a visitor or any other person) who wishes or is required to enter or leave a place at which a secure welfare service is provided must, if asked, submit to a screening search.

S. 72B(1) amended by No. 6/2024 s. 82.

(2) A person must not be asked under this section to submit to a frisk search, an unclothed search or a search of his or her body cavities.

72C Secretary may order search

S. 72C inserted by No. 29/2014 s. 7.

(1) The Secretary may order at any time, if in his or her opinion it is necessary to do so in the interests of the security or good order of a secure welfare service or the child residents, that a staff member—

(a) conduct a screening search or a frisk search on a child resident; or

(b) search and examine any thing in the place at which the secure welfare service is provided.

S. 72C(1)(b) amended by No. 6/2024 s. 83.

(2) A child resident must not be asked under this section to submit to an unclothed search or a search of his or her body cavities.

72D Unclothed search of child resident

S. 72D inserted by No. 29/2014 s. 7.

(1) The Secretary may cause a child resident to be subjected to an unclothed search if in his or her opinion it is necessary to do so—

(a) in the interests of the security or good order of the secure welfare service; or

(b) in the interests of the safety or security of the child resident or any other person in the secure welfare service.

(2) A search under subsection (1) must not include a search of the child resident's body cavities.

(3) If necessary, reasonable force may be used to carry out a search under subsection (1).

S. 72E inserted by No. 29/2014 s. 7.

72E Manner of conducting frisk search or unclothed search

(1) In the case of a frisk search or an unclothed search, the Secretary must ensure that the search is conducted only by a staff member of the same sex as the child resident being searched.

(2) In the case of an unclothed search, the Secretary must ensure that the search is conducted in the presence of another staff member.

(3) The other staff member referred to in subsection (2)—

(a) must be positioned in such a way that the child resident being searched is not in the view of that other staff member; and

(b) must be of the same sex as the child resident being searched, unless—

(i) the search is, in the opinion of the Secretary, urgently required; and

(ii) a staff member of the same sex is not available.

72F Manner of conducting any search under this Division

S. 72F inserted by No. 29/2014 s. 7.

(1) Before carrying out a search of a person under this Division, the staff member who is to conduct the search must—

(a) inform the person of his or her authority to conduct the search; and

(b) in the case of a person other than a child resident—

(i) inform the person that he or she may refuse the search; and

(ii) inform the person of the consequences of refusal.

(2) The staff member who is to conduct the search of a child resident or any person who has consented to the search must—

(a) ask the person if he or she has in his or her possession any article or thing which jeopardises or is likely to jeopardise the security of the secure welfare service or the safety of persons in the service, including—

(i) any firearm, offensive weapon or other article that is capable of being used as a weapon; or

(ii) any form of drug without the consent of the Secretary; or

(iii) any form of alcoholic liquor or beverage; or

(iv) money; or

(v) any other article or thing not allowed by the regulations; and

(b) ask the person to produce any article or thing referred to in paragraph (a).

(3) A staff member carrying out a search of a person under this Division must do so—

(a) expeditiously; and

(b) with regard to the decency and self-respect of the person searched; and

(c) in compliance with any other prescribed requirement.

S. 72G inserted by No. 29/2014 s. 7.

72G Consequences of refusal to submit to search

If, when asked, a person other than a child resident does not submit to a search authorised to be carried out under this Division, a staff member may—

S. 72G(a) amended by No. 6/2024 s. 84(a).

(a) prohibit the person from entering the place at which the secure welfare service is provided; or

S. 72G(b) amended by No. 6/2024 s. 84.

(b) if the person is in the place at which the secure welfare service is provided, order the person to leave the place immediately.

S. 72H inserted by No. 29/2014 s. 7.

72H Seizure

(1) In carrying out a search of a person under this Division, a staff member may seize any article or thing of a kind referred to in section 72F(2)(a) that is found in the person's possession or produced in response to a request under section 72F(2)(b).

(2) A staff member who seizes any article or thing under subsection (1) must inform the Secretary.

(3) The Secretary must deal, in accordance with this Division, with any article or thing seized under this section.

72I Seizure register

S. 72I inserted by No. 29/2014 s. 7.

(1) The Secretary must maintain a register of articles and things seized under section 72H(1).

(2) If an article or thing is seized during a search, the Secretary must ensure that the prescribed information is entered in the seizure register.

72J Certain seized items to be handed to police

S. 72J inserted by No. 29/2014 s. 7.

(1) If any of the following articles or things is seized, it must be handed to a police officer—

S. 72J(1) amended by No. 37/2014 s. 10(Sch. item 18.2).

(a) a weapon;

(b) an explosive substance;

(c) a drug of dependence;

(d) any other article or thing which the person conducting the search suspects—

(i) is stolen; or

(ii) has been used in, or obtained as the result of, the commission of an offence.

(2) In this section, ***drug of dependence*** has the same meaning as it has in the **Drugs, Poisons and Controlled Substances Act 1981**.

72K Manner of dealing with seized things that may be used in a legal proceeding

S. 72K inserted by No. 29/2014 s. 7, amended by No. 6/2024 s. 85.

Subject to section 72J, if an article or thing that may be used in a legal proceeding is seized at a place at which a secure welfare service is provided, the Secretary must ensure that—

(a) the article or thing is held securely until the end of that proceeding; and

(b) if the person from whom the article or thing was seized is not the owner of the article or thing—

(i) the person from whom it was seized is informed whether or not it will be returned to the owner; and

(ii) if the owner's name and address are known, the owner is informed whether or not it will be returned; and

(c) if the person from whom the article or thing was seized is the owner of the article or thing, the person is informed whether or not it will be returned; and

(d) the article or thing is otherwise dealt with in accordance with section 72M.

S. 72L inserted by No. 29/2014 s. 7, amended by No. 6/2024 s. 86.

72L Manner of dealing with seized money

If money is seized at a place at which a secure welfare service is provided and that money is not suspected of being stolen or used in, or obtained as a result of, the commission of an offence, the money must be returned to the person from whom it was seized when the person is released from the secure welfare service or the person leaves the secure welfare service.

Note

See section 72F(2)(a)(iv).

S. 72M inserted by No. 29/2014 s. 7, amended by No. 6/2024 s. 87.

72M Manner of dealing with other seized articles or things

Subject to sections 72J, 72K and 72L, if an article or thing is seized at a place at which a secure welfare service is provided, the Secretary must ensure that—

(a) if the person from whom the article or thing was seized is not the owner of the article or thing—

(i) the person from whom it is seized is informed whether or not it will be returned to the owner; and

(ii) if the owner's name and address are known, the owner is informed whether or not it will be returned; and

(b) if the person from whom the article or thing was seized is the owner of the article or thing, the person is informed whether or not it will be returned; and

(c) the article is dealt with in any manner that is appropriate having regard to the nature of the article, including—

(i) disposing of the article or thing in accordance with section 72N;

(ii) returning the article or thing;

(iii) dismantling the article or thing.

72N Disposal

S. 72N inserted by No. 29/2014 s. 7.

(1) The Secretary must ensure that at least 2 staff members carry out the disposal of an article or thing that has been seized at a place at which a secure welfare service is provided.

S. 72N(1) amended by No. 6/2024 s. 88.

(2) If an article or thing is disposed of, the Secretary must ensure that the prescribed details are recorded in the seizure register.

72O Prohibition of use of seclusion as punishment

S. 72O inserted by No. 29/2014 s. 7.

The use of seclusion as a punishment is prohibited in relation to a child resident placed in a secure welfare service.

S. 72P inserted by No. 29/2014 s. 7.

72P Seclusion in secure welfare service

(1) The Secretary may authorise the seclusion of a child resident of a secure welfare service.

(2) Seclusion may only be authorised under subsection (1) if—

(a) all other reasonable steps have been taken to prevent the child resident from harming himself or herself or any other person or from damaging property; and

(b) the child's behaviour presents an immediate threat to his or her safety or the safety of any other person or to property.

(3) The period of seclusion must be approved by the Secretary.

(4) If necessary, reasonable force may be used to place a child resident in seclusion under this section.

(5) A child resident placed in seclusion must be closely supervised and observed at intervals of not longer than 15 minutes.

(6) The Secretary must make sure that the prescribed particulars of every use of seclusion under subsection (1) are recorded in a register established for this purpose.

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Pt 3.4 (Headings and ss 73–132) amended by Nos 48/2006 ss 10, 11, 80/2006 s. 26(Sch. item 12.1), 56/2007 s. 21, 46/2009 s. 8, 69/2009 s. 54(Sch. Pt 2 item 10), 37/2014 s. 10(Sch. item 18.3), 61/2014 s. 136, 67/2014 s. 147(Sch. 2 item 8.1), 63/2016 s. 15, 4/2017 ss 13, 14, 31/2018 ss 70, 71, 34/2020 ss 180, 181, repealed by No. 37/2021 s. 352.

Part 3.5—Child care agreements

Division 1—Introduction

133 Object

The object of this Part is to regulate arrangements for voluntary child care agreements to place children in out of home care.

134 Definitions

In this Part—

care in relation to a child, means the daily care and control of the child but not involving custody of the child;

child care agreement means an agreement under Division 2 or 3;

long-term child care agreement means an agreement entered into under Division 3;

S. 134 def. of *service provider* amended by Nos 23/2006 s. 234(3), 17/2023 s. 49, 6/2024 s. 89.

service provider means—

(a) the Secretary; or

(b) an out of home care service provider; or

(c) a disability service provider within the meaning of the **Disability Act 2006**;

short-term child care agreement means an agreement entered into under Division 2;

suitable person has the meaning set out in section 148;

suitable person agreement means an agreement referred to in section 147(b).

Division 2—Short-term child care agreements

135 Short-term child care agreements

(1) A parent of a child may enter into a written agreement with a service provider to place the child in the care of the service provider for the purpose of supporting the child and his or her parent and encouraging and assisting the child's parent to resume the care of the child.

(2) An agreement under subsection (1) does not affect the guardianship and custody of a child.

(3) An agreement under subsection (1) must specify a period not exceeding 6 months, for which the agreement is to have effect.

(4) The wishes of the child must be taken into account in making an agreement under this Division.

(5) A service provider (other than the Secretary) must notify the Secretary in writing of each agreement entered into by the service provider under subsection (1) within 14 days after entering into the agreement.

136 Return of child to parent who has custody

(1) If a parent who does not have custody of a child is a party to a short-term child care agreement, the person who does have custody of the child may request the service provider to return the child to that person.

(2) As soon as is practicable after receiving a request under subsection (1), the service provider must notify the parent who was a party to the agreement of the making of the request.

(3) Subject to any provision to the contrary made by or under the authority of this or any other Act, the service provider must cause the child to be returned to the person who has custody of the child—

(a) as soon as practicable after notifying the parent under subsection (2); or

(b) within a reasonable time if the parent cannot be notified.

137 Extension of agreement

(1) Subject to subsection (2), the parties to a short-term child care agreement, after reviewing the agreement, may agree to extend the agreement before it expires for a further period not exceeding 6 months.

(2) If the agreement relates to a child who has been in the care of the service provider for a continuous period of 6 months or for an aggregate of 6 months during a period of 9 months, the service provider must consult with the Secretary before agreeing to extend the agreement.

138 Maximum period for care under agreement

(1) A child may not be placed in the care of a service provider by virtue of this Division for a period exceeding 12 months, or for periods which in aggregate exceed 12 months in any period of 18 months unless the Secretary has consented in writing to that placement.

(2) A child may not be placed in the care of a service provider under this Division for a period exceeding 2 years or for periods which in the aggregate exceed 2 years in any period of 3 years.

139 Review of agreement

(1) The Secretary must review each short-term child care agreement—

(a) after the first 6 months of the agreement; and

(b) annually after the first review.

(2) The Secretary must advise the parties to a short-term agreement of the results of a review and the Secretary's recommendations arising from the review.

(3) The following may result from a review of an agreement under subsection (1)—

(a) the agreement may remain unchanged;

(b) the agreement may be terminated;

(c) the terms of the agreement may be varied.

140 Agreement may be made with minor

A short-term child care agreement is not void or voidable by reason only that a party to it has not attained the age of 18 years.

141 Termination of agreement

A short-term child care agreement may be terminated by either party giving notice in writing to the other party.

142 Return of child to parent at end of agreement

On the expiry or termination of a short-term child care agreement, the person having the care of the child must, as soon as is practicable, cause the child to be returned to his or her parent.

143 Rates of payment under agreement

The Minister may determine the rates to be paid in respect of children under a short-term child care agreement.

Division 3—Long-term child care agreements

144 Children who may be the subject of a long-term child care agreement

Subject to this Division, an agreement may be entered into under this Division with respect to a child who, immediately before the entering into of that agreement, had for a period of at least 2 years or an aggregate of at least 2 years in the preceding period of 3 years—

(a) been the subject of a short-term child care agreement or agreements; or

(b) been in the care of an out of home care service; or

S. 144(c) substituted by No. 23/2006 s. 234(4).

(c) been in the care of a residential service within the meaning of the **Disability Act 2006**.

S. 144(d) repealed by No. 23/2006 s. 234(4).

* * * * *

145 Long-term child care agreements

(1) A parent of a child may, with the written approval of the Secretary, enter into a written agreement with a service provider with respect to the care of the child.

(2) If the agreement provides for the child to be in the care of a suitable person, that person must also be a party to the agreement.

146 When will the Secretary approve an agreement?

The Secretary must not approve the entering into of a long-term child care agreement unless the Secretary is satisfied that—

(a) the agreement is in the best interests of the child; and

(b) there are no alternative means available that would enable the parent of the child to resume the care of the child; and

(c) the wishes of the child have, having regard to the age and understanding of the child, been taken into account in making the agreement; and

(d) the agreement provides for the parent of the child to have an on-going involvement with the child in the terms specified in the agreement.

147 Who may have the care of the child under an agreement?

A long-term child care agreement may provide for a child to be in the care of—

(a) an out of home care service; or

(b) a suitable person other than—

(i) a parent of the child; or

(ii) the Secretary in his or her official capacity; or

(iii) a person employed by a community service provider in the person's official capacity; or

S. 147(b)(iii) amended by No. 6/2024 s. 90.

(c) a disability service provider within the meaning of the **Disability Act 2006**.

S. 147(c) substituted by No. 23/2006 s. 234(5).

S. 147(d) repealed by No. 23/2006 s. 234(5).

* * * * *

148 Who is a suitable person?

(1) A person is a suitable person for the purposes of this Division if the person is approved in writing by the Secretary or by a person authorised by the Secretary to give approvals under this section as being a person suitable to have the long-term care of a child.

(2) An authorisation under subsection (1)—

(a) must be made by instrument; and

(b) may be made to the holder of an office or position or to any person for the time being acting in or performing the duties of an office or position.

(3) The Secretary must have regard to the prescribed matters before approving a person as a suitable person for the purposes of this Division.

(4) For the purposes of this section the matters prescribed for the purposes of this section may include matters relating to—

(a) the checking of criminal records and criminal history of the person and other usual members of the person's household;

(b) suitability and fitness of the person;

(c) previous history of the person as a carer of children.

149 What must an agreement include?

A long-term child care agreement must—

(a) set out the objectives of the agreement; and

(b) set out the role of the service provider which must include—

(i) participating in any review of the agreement; and

(ii) assisting in the resolution of any disputes that may arise relating to the care of the child; and

(iii) assisting, if required, in the provision of particular services specified in the agreement; and

(c) clarify the respective roles of the parent of the child, the service provider and, if the agreement provides for the child to be in the care of a suitable person, that suitable person.

150 Maximum period of care under agreement

A long-term child care agreement must specify the period for which the agreement is to have effect which—

(a) in the case of an agreement (other than a suitable person agreement), must not exceed 2 years; and

(b) in the case of a suitable person agreement, may be for any period up to the day on which the child attains the age of 18 years.

151 Return of child at request of parent with custody

(1) If a parent who does not have custody of a child is a party to a long-term child care agreement, the person who does have custody of the child may request the service provider to return the child to that person.

(2) As soon as is practicable after receiving a request under subsection (1), the service provider must notify the parent who was a party to the agreement of the making of the request.

(3) Subject to any provision to the contrary made by or under the authority of this or any other Act, the service provider must cause the child to be returned to the person who has custody of the child—

(a) as soon as practicable after notifying the parent under subsection (2); or

(b) within a reasonable time if the parent cannot be notified.

152 Review of agreement

(1) A long-term child care agreement (other than a suitable person agreement)—

(a) may be reviewed at any time during the period of the agreement at the request of one of the parties to the agreement; and

(b) must be reviewed by the Secretary at the end of the first 6 months of the agreement and then annually after the first review; and

(c) may, with the written approval of the Secretary, be extended for a period not exceeding 2 years with or without any variation in its terms or another long-term child care agreement may be entered into.

(2) A suitable person agreement—

(a) may be reviewed at any time during the period of the agreement at the request of one of the parties to the agreement; and

(b) must be reviewed by the Secretary at the end of the first 6 months of the agreement and then annually after the first review.

(3) Any of the following may result from a review of an agreement under subsection (2)—

(a) the agreement may be terminated;

(b) the agreement may be extended for a period that does not extend beyond the day on which the child attains the age of 18 years;

(c) the terms of the agreement may be varied;

(d) another long-term child care agreement may be entered into.

153 Agreement may be with minor

A long-term child care agreement is not void or voidable by reason only that a party to it has not attained the age of 18 years.

154 Termination of agreement

A long-term child care agreement may be terminated by any party by giving notice in writing to the other party or parties.

155 Return of child at end of agreement

S. 155 amended by No. 29/2006 s. 3(Sch. 1 item 5.1).

On the expiry or termination of a long-term child care agreement, the person having the care of the child must, as soon as is practicable, cause the child to be returned to his or her parent.

156 Rates of payment under agreement

The Minister may determine the rates to be paid in respect of children under a long-term child care agreement.

Division 4—Review of decision-making and reports

157 Review by Secretary

(1) The Secretary must prepare and implement procedures for the review of decisions relating to the care of the child made under or in relation to a child care agreement.

(2) The Secretary must ensure that a copy of the procedures is given to—

(a) the child; and

(b) the parent of the child; and

(c) the service provider; and

(d) in the case of a suitable person agreement, the suitable person under the agreement.

158 Review by Victorian Civil and Administrative Tribunal

(1) Any of the following may apply to VCAT for review of a decision made under or in relation to a child care agreement relating to the care of a child—

(a) the child;

(b) a parent of the child;

(c) any other person whose interests are affected by the decision.

(2) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

(3) Before a person is entitled to apply to VCAT for the review of a decision referred to in subsection (1), the person must have exhausted all available avenues for the review of the decision under section 157.

159 Report by service providers

A service provider (other than the Secretary) must report to the Secretary by 31 December in each year on—

(a) the number of child care agreements that the service provider has been a party to in the preceding 12 months; and

(b) the duration of each of those agreements.

160 Report by Secretary

The Secretary must publish on the Department's Internet site details of—

(a) the number of child care agreements entered into in the previous 12 months; and

(b) the number of child care agreements that the Secretary is aware exist.

Part 3.6—Restrictions on long-term care of children

161 Restrictions on who may provide long-term care of children

(1) A person must not, for fee or reward, provide care for a period longer than 24 hours for a child who is under 15 years of age.

Penalty: 15 penalty units.

(2) Subsection (1) does not apply to the provision of care for a child—

(a) by a parent or relative of the child; or

(b) in the case of an Aboriginal child, by a member of the Aboriginal community of that child; or

S. 161(2)(c) amended by No. 6/2024 s. 91.

(c) by an out of home care service provider or a secure welfare service provider; or

(d) by a person under a child care agreement within the meaning of Part 3.5; or

(e) by an institution or establishment conducted wholly for educational purposes or as a hospital or convalescent home; or

(f) by an institution or establishment conducted wholly as a holiday camp or for another similar purpose; or

(g) in a private house (including a boarding house) in which a child is temporarily accommodated; or

S. 161(2)(ga) inserted by No. 19/2019 s. 254(3).

(ga) by a registered NDIS provider providing to the child under the NDIS short term accommodation and assistance or supported independent living; or

(gb) by a disability service provider within the meaning of the **Disability Act 2006**; or

S. 161(2)(gb) inserted by No. 19/2019 s. 254(3).

(h) by an institution or establishment or an institution or establishment included in a class of institutions or establishments exempted from the operation of subsection (1) by the Secretary by notice sent by post to the institution or establishment concerned.

Ch. 3 Pt 3.7 (Heading and ss 161A, 161B) inserted by No. 29/2014 s. 8.

Part 3.7—Management of children in out of home care

S. 161A inserted by No. 29/2014 s. 8.

161A Definitions

In this Part—

S. 161A def. of *out of home carer* substituted by No. 17/2023 s. 50, amended by No. 6/2024 s. 92.

out of home carer means—

(a) a person who acts as a foster carer for an out of home care service provider; or

(b) a person employed or engaged by an out of home care service provider—

(i) as a carer for children; or

(ii) as a provider of services to children at an out of home care residence managed by the service provider.

S. 161B inserted by No. 29/2014 s. 8.

161B Prohibited actions

The following actions are prohibited in relation to a child placed in accordance with this Act in an out of home care service, including a secure welfare service, or in the care of an out of home carer—

(a) the use of physical force unless it is reasonable and—

(i) is necessary to prevent the child from harming himself or herself or anyone else or from damaging property; or

(ii) is necessary for the security of the out of home care service, secure welfare service or place where the child is cared for; or

(iii) is otherwise authorised by or under this or any other Act or at common law;

(b) the administering of corporal punishment, that is, any action which inflicts, or is intended to inflict, physical pain or discomfort on the child as a punishment;

(c) the use of any form of psychological pressure intended to intimidate or humiliate the child;

(d) the use of any form of physical or emotional abuse.

Chapter 4—Children in need of protection

Part 4.1—Children in need of protection

162 When is a child in need of protection?

(1) For the purposes of this Act a child is in need of protection if any of the following grounds exist—

(a) the child has been abandoned by his or her parents and after reasonable inquiries—

(i) the parents cannot be found; and

(ii) no other suitable person can be found who is willing and able to care for the child;

(b) the child's parents are dead or incapacitated and there is no other suitable person willing and able to care for the child;

(c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;

(d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;

(e) the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;

(f) the child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care.

(2) For the purposes of subsections (1)(c) to (1)(f), the harm may be constituted by a single act, omission or circumstance or accumulate through a series of acts, omissions or circumstances.

S. 162(2) amended by No. 48/2006 s. 12.

(3) For the purposes of subsection (1)(c), (d), (e) and (f)—

S. 162(3) inserted by No. 52/2013 s. 6.

(a) the Court may find that a future state of affairs is likely even if the Court is not satisfied that the future state of affairs is more likely than not to happen;

(b) the Court may find that a future state of affairs is unlikely even if the Court is not satisfied that the future state of affairs is more unlikely than not to happen.

163 Effect of conduct outside Victoria

For the purposes of this Act it does not matter whether the conduct constituting a ground referred to in section 162 occurred wholly or partly outside Victoria.

Part 4.2—Responsibilities of Minister

164 Responsibilities of Minister

The Minister has the following responsibilities—

(a) to establish and maintain child protection services; and

S. 164(b) amended by No. 6/2024 s. 93.

(b) to promote a clear definition of the respective responsibilities, in relation to children at risk of harm, of protective interveners, community service providers and other persons and bodies working with children and their families in a professional capacity.

S. 165 repealed by No. 61/2014 s. 144.

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Part 4.3—Responsibilities of Secretary

Division 1—Case planning

Ch. 4 Pt 4.3 Div. 1 (Heading) amended by No. 61/2014 s. 95.

166 What is a case plan?

(1) A case plan is a plan prepared by the Secretary for a child.

(2) A case plan must contain all decisions made by the Secretary concerning a child that—

(a) the Secretary considers to be significant decisions; and

(b) relate to the present and future care and wellbeing of the child, including the placement of, and contact with, the child.

S. 166(2)(b) amended by No. 52/2013 s. 7.

(3) A case plan for a child includes—

S. 166(3) substituted by No. 61/2014 s. 96.

(a) a stability objective for a child as required by section 167; and

S. 166(3)(a) amended by No. 6/2026 s. 5.

(b) in the case of an Aboriginal child in out of home care under an interim accommodation order, a protection order or a therapeutic treatment (placement) order, any planning for cultural support that is required for the child under section 176.

S. 167 (Heading) amended by No. 6/2026 s. 6(1).

167 Stability objective

S. 167 substituted by No. 61/2014 s. 97.

S. 167(1) amended by No. 6/2026 s. 6(2)(a).

(1) A case plan must include one of the following objectives (a ***stability objective***) to be considered in the following order of preference as determined to be appropriate in the best interests of the child—

(a) family preservation—the objective of ensuring a child who is in the care of a parent of the child remains in the care of a parent;

(b) family reunification—the objective of ensuring that a child who has been removed from the care of a parent of the child is returned to the care of a parent;

S. 167(1)(c) repealed by No. 6/2026 s. 6(2)(b).

* * * * *

(d) permanent care—the objective of arranging a permanent placement of the child with a permanent carer or carers;

(e) long-term out of home care—the objective of placing the child in—

(i) a stable, long-term care arrangement with a specified carer or carers; or

(ii) if an arrangement under subparagraph (i) is not possible, another suitable long-term care arrangement.

(2) For the purposes of subsection (1)(d) and (e), it is to be preferred that a child is placed— S. 167(2) amended by No. 6/2026 s. 6(3).

(a) with a suitable family member of the child or other person of significance to the child; or

(b) if a placement under paragraph (a) is not possible, with another suitable carer or carers.

* * * * * S. 167(3) amended by No. 8/2016 s. 3(1), repealed by No. 6/2026 s. 6(4).

* * * * * S. 167(4) amended by No. 8/2016 s. 3(2), repealed by No. 6/2026 s. 6(4).

* * * * * S. 167(5) inserted by No. 8/2016 s. 3(3), repealed by No. 6/2026 s. 6(4).

168 Preparation of case plan

S. 168 substituted by No. 61/2014 s. 97.

(1) The Secretary must ensure that a case plan is prepared in respect of a child if a protective intervener is satisfied on reasonable grounds that the child is in need of protection.

(1A) The Secretary must ensure that a case plan is prepared in respect of a child after the making by the Court of a therapeutic treatment (placement) order. S. 168(1A) inserted by No. 8/2016 s. 4(1).

(2) The Secretary must ensure that a copy of the case plan is given to the child and the child's parent—

(a) within 14 days of the preparation of the case plan; and

(b) within 8 weeks after the making by the Court of a protection order, if the case plan is prepared after the making of the order or is amended as a consequence of the making of the order; and

S. 168(2)(ba) inserted by No. 8/2016 s. 4(2).

(ba) within 8 weeks after the making by the Court of a therapeutic treatment (placement) order; and

(c) within 8 weeks after the extension by the Court of a protection order, if the case plan is amended as a consequence of the extension of the order; and

(d) within 14 days after any other amendment to the case plan.

S. 169 amended by No. 52/2013 s. 8, substituted by No. 61/2014 s. 97.

169 Review of case plan

(1) A case plan must include a date for the review of the case plan not more than 12 months after the date that the case plan is made and, once reviewed, not more than 12 months after the date of the review.

(2) The Secretary must review a case plan—

(a) on or before the review date specified in the case plan; and

(b) after the making by the Court of a protection order, if the protection order made in respect of a child is different to the protection order anticipated by the case plan; and

(c) when a child has been living in out of home care for a cumulative period of 12 months, if—

(i) the child is the subject of an interim accommodation order or a protection order; and

(ii) the stability objective for the child is family reunification; and

S. 169(2)(c)(ii) amended by No. 6/2026 s. 7.

(d) from time to time as otherwise appears necessary.

(3) A review of a case plan must include a review of—

(a) the progress being made to achieve the stability objective in the case plan; and

S. 169(3)(a) amended by No. 6/2026 s. 7.

(b) in the case of an Aboriginal child in out of home care under an interim accommodation order, a protection order or therapeutic treatment (placement) order, the cultural support needs of the child.

(4) Section 287A(4) applies to the determination of a cumulative period under this section.

S. 169(4) inserted by No. 8/2016 s. 5.

Division 1A—Therapeutic treatment planning

Ch. 4 Pt 4.3 Div. 1A (Heading and ss 169A–169C) inserted by No. 33/2018 s. 4.

169A What is a therapeutic treatment plan?

S. 169A inserted by No. 33/2018 s. 4.

(1) A therapeutic treatment plan is a plan prepared by the Secretary for a child for whom a therapeutic treatment order is made.

(2) A therapeutic treatment plan must contain all decisions and arrangements made by the Secretary concerning the child that—

(a) the Secretary considers to be significant; and

(b) relate to the child's participation in and attendance at the therapeutic treatment program.

S. 169B inserted by No. 33/2018 s. 4.

169B Preparation of therapeutic treatment plan

(1) The Secretary must ensure that a therapeutic treatment plan is prepared in respect of a child within 6 weeks after a therapeutic treatment order is made in respect of the child.

(2) Subject to subsection (3), the Secretary must ensure that a copy of the therapeutic treatment plan is given, within 14 days of the preparation of the plan, to each of the following—

(a) the child;

(b) the child's parent;

(c) any person who has care of the child;

(d) the provider of the therapeutic treatment program.

(3) The Secretary is not required to comply with subsection (2) to the extent that the Secretary is satisfied that it would be inappropriate for a person or provider referred to in that subsection to be given a copy of the plan.

S. 169C inserted by No. 33/2018 s. 4.

169C Review of therapeutic treatment plan

(1) A therapeutic treatment plan must specify a date for the review of the plan that is halfway through the period of the therapeutic treatment order to which the plan relates.

(2) The Secretary must review a therapeutic treatment plan—

(a) on or before the review date specified in the plan; and

(b) from time to time as otherwise appears necessary.

(3) Subject to subsection (4), the Secretary must ensure that the results of the review and any amendments to the plan are given, within 14 days of the review, to each of the following—

(a) the child;

(b) the child's parent;

(c) any person who has care of the child;

(d) the provider of the therapeutic treatment program.

(4) The Secretary is not required to comply with subsection (3) to the extent that the Secretary is satisfied that it would be inappropriate for a person or provider referred to in that subsection to be given the results of the review and the amendments.

* * * * * **Ss 170, 171 repealed by No. 61/2014 s. 97.**

Ch. 4 Pt 4.3 Div. 2 (Heading) substituted by No. 61/2014 s. 9.

Division 2—Responsibilities of Secretary for a child for whom Secretary has parental responsibility

S. 172 (Heading) amended by No. 61/2014 s. 10(1).

172 Powers of Secretary when Secretary has parental responsibility

S. 172(1) amended by No. 61/2014 s. 10(2).

(1) The Secretary, in relation to a child for whom the Secretary has sole parental responsibility—

(a) is the guardian of the person and estate of the child to the exclusion of all other persons; and

(b) has the same rights, powers, duties, obligations and liabilities as a natural parent of the child would have.

S. 172(2) amended by No. 61/2014 s. 10(3)(a).

(2) The Secretary, in relation to a child for whom the Secretary has parental responsibility—

S. 172(2)(a) substituted by No. 61/2014 s. 10(3)(b).

(a) has the sole right to care of the child; and

(b) may demand, sue for and recover any money due to the child; and

(c) in the name and on behalf of the child may commence and prosecute any proceeding relating to any property or rights of the child.

S. 172(3) substituted by No. 61/2014 s. 10(4).

(3) The Secretary may detain without warrant any child for whom the Secretary has parental responsibility as a result of a protection order.

(4) This section applies except as otherwise expressly provided by this Chapter or by any order made under this Chapter.

173 Placement of children

(1) This section applies in relation to a child—

(a) for whom the Secretary has parental responsibility under this Act; or

S. 173(1)(a) substituted by No. 61/2014 s. 11(1).

(b) of whom the Secretary is the guardian under the **Adoption Act 1984**; or

(c) in respect of whom the Secretary has authority under the **Adoption Act 1984** to exercise any rights of custody.

(2) The Secretary may deal with the child in any of the following ways—

(a) place him or her in an out of home care service;

(b) place him or her in a secure welfare service for a period not exceeding 21 days (and, in exceptional circumstances, for one further period not exceeding 21 days) if the Secretary is satisfied that there is a substantial and immediate risk of harm to the child;

(c) place him or her for adoption under the **Adoption Act 1984** if the Secretary has sole parental responsibility for the child and the child is available for adoption;

S. 173(2)(c) amended by No. 61/2014 s. 11(2).

(d) place him or her in any other suitable situation as circumstances require.

(3) For the purposes of subsection (2)(b), the assessment of risk may be made on the basis of a single incident or an accumulated risk.

174 Secretary's duties in placing child

(1) In dealing with a child under section 173, the Secretary—

(a) must have regard to the best interests of the child as the first and paramount consideration; and

(b) must make provision for the physical, intellectual, emotional and spiritual development of the child in the same way as a good parent would; and

(c) must have regard to the fact that the child's lack of adequate accommodation is not by itself a sufficient reason for placing the child in a secure welfare service; and

(d) must have regard to the treatment needs of the child.

(2) In placing a child under section 173(2)(d), the Secretary must have regard to the prescribed criteria (if any).

175 Support for child moving from secure welfare service

If a child is placed in a secure welfare service under section 173, the Secretary must plan for and support the transfer of the child to and integration of the child in another suitable placement in order to reduce the need for the child to be placed in a secure welfare service again.

S. 175A inserted by No. 61/2014 s. 172.

175A Secretary may specify certain issues

S. 175A(1) amended by Nos 61/2014 s. 12(1), 8/2016 s. 6.

(1) The Secretary may specify issues relating to a child in out of home care about which a person who has care of the child may be authorised to make decisions.

Example

The Secretary may specify issues including but not limited to—

- the signing of school consent forms; or
- obtaining routine medical care for the child, including immunisation on the recommendation of a registered medical practitioner, nurse, midwife or pharmacist in the lawful practice of their profession; or
- the day to day treatment of a child who suffers from a chronic or serious health condition.

Example to s. 175A(1) amended by No. 30/2019 s. 8.

(2) The Secretary must not specify an issue under subsection (1) that is a major long-term issue in relation to a child who is subject to an interim accommodation order, a family reunification order or a therapeutic treatment (placement) order.

S. 175A(2) amended by No. 61/2014 s. 12(2).

(3) The issues specified by the Secretary under this section may be specified in relation to—

(a) a particular child; or

(b) a child subject to a particular type of order; or

(c) a person who provides a certain category of care under this Act.

175B Authorisation of carer to make certain decisions

S. 175B inserted by No. 61/2014 s. 172.

(1) This section applies if a child is placed in out of home care in accordance with—

(a) an interim accommodation order; or

(b) a protection order that confers parental responsibility for the child on the Secretary.

S. 175B(1)(b) amended by No. 61/2014 s. 12(3).

(2) The Secretary, an out of home care service provider or the person in charge of an out of home care service may authorise a person who has care

S. 175B(2) amended by No. 6/2024 s. 94.

of the child to make decisions in relation to the child on the issues specified by the Secretary under section 175A.

(3) A person who is authorised under subsection (2) may make a decision in relation to the child on a specified issue, when the child is under that person's care, without consulting the Secretary about that issue.

S. 175C inserted by No. 61/2014 s. 12(4).

175C When Secretary must consult with parent of child

(1) This section applies if—

(a) a child who is subject to an interim accommodation order has been placed in out of home care; or

(b) the Secretary has parental responsibility for a child under a family reunification order or a therapeutic treatment (placement) order.

(2) The Secretary must, to the fullest extent possible, work with and engage any parent with whom the child is intended to be reunified in making case planning decisions for the child.

(3) The Secretary must not make a decision about a major long-term issue in relation to the child if a parent who has parental responsibility for the child disagrees with the decision.

(4) Subsection (3) does not apply to a decision about a major long-term issue that the Secretary is expressly authorised to make under this Act.

(5) The Secretary may make a decision on an issue in relation to the child that is not a major long-term issue without the agreement of a parent of the child.

176 Cultural support for Aboriginal child

S. 176 substituted by No. 61/2014 s. 98.

(1) The case plan for an Aboriginal child placed in out of home care must address the cultural support needs of the child.

(2) The Secretary must provide a cultural plan to each Aboriginal child in out of home care that is aligned with the case plan for the child.

(3) The case plan must reflect and be consistent with the child's cultural support needs, having regard to the child's circumstances, so as to—

(a) maintain and develop the child's Aboriginal identity; and

(b) encourage the child's connection to the child's Aboriginal community and culture.

(4) For the purposes of subsection (3), the child's cultural support needs may vary depending on—

(a) the length of time that the child has spent in out of home care; and

(b) the age of the child; and

(c) the length of time that the child is expected to remain in out of home care; and

(d) the extent of the child's contact with the child's Aboriginal family members; and

(e) whether the child is placed within the child's own Aboriginal community, another Aboriginal community or with non-Aboriginal carers.

(5) For the purposes of subsection (4), a child's Aboriginal community is—

(a) the Aboriginal community to which the child has a sense of belonging, if this can be ascertained by the Secretary; or

(b) if paragraph (a) does not apply, the Aboriginal community in which the child has primarily lived; or

(c) if paragraphs (a) and (b) do not apply, the Aboriginal community of the child's parent or grandparent.

177 State Guardianship Fund

(1) All money received by the Secretary as guardian of the estate of a child must be paid to the credit of an account established and kept in an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth by the Secretary under the name of the "State Guardianship Fund".

(2) The Secretary must keep an account showing the current amount at credit in the Fund on account of each child.

(3) Money standing to the credit of a child in the Fund which is not immediately required for use by the child may be invested in any manner in which trust money may be invested by a trustee under the **Trustee Act 1958** and interest earned must be credited to the account of the child at least once a year.

(4) Money standing to the credit of a child in the Fund may only be used for the benefit of the child and with the approval of the Secretary.

S. 177(5) amended by No. 61/2014 s. 67(a).

(5) On the Secretary ceasing to have sole parental responsibility for the child all money standing to the credit of the child in the Fund—

(a) if the child is over 18 years of age, must be paid to the child; and

(b) in any other case, may be paid to the child or may, if the Secretary considers it to be in the interests of the child to do so, be retained

(wholly or in part) in the Fund until the child is 18 years of age.

(6) The Secretary must, on ceasing to have sole parental responsibility for a child, notify the child of the amount standing to his or her credit in the Fund.

S. 177(6) amended by No. 61/2014 s. 67(b).

Division 3—Responsibility to provide information

178 Responsibility of Secretary to provide information to parents

(1) If a child is in out of home care because of a protection order or a therapeutic treatment (placement) order, the Secretary has a responsibility to provide information to the parents about the child, including the provision of personal information.

(2) The Secretary is not required to provide information to a parent under subsection (1) if—

(a) the child is over the age of 12 years and does not consent to the provision of the information and the Secretary considers the refusal of consent to be reasonable; or

(b) the Secretary considers that it is not in the best interests of the child to provide the information; or

(c) the Court has made an order under section 531 dispensing with service of all documents on that parent.

179 Responsibility of Secretary or out of home care service providers to provide information to carers

S. 179 (Heading) amended by No. 6/2024 s. 95(1).

(1) If the Secretary or an out of home care service provider intends to place a child in the care of a person other than the parent of the child, the Secretary or the provider must provide the carer

S. 179(1) amended by No. 6/2024 s. 95(2).

with all information that is known to the Secretary or the provider and that is reasonably necessary to assist the carer to make an informed decision as to whether or not to accept the care of the child.

S. 179(2) amended by No. 6/2024 s. 95(3).

(2) If the Secretary or an out of home care service provider has placed a child in the care of a person other than the parent of the child, the Secretary or the provider must provide the carer with any information known to the Secretary or the provider regarding the medical status of the child to enable the carer to provide appropriate care for the child.

180 Confidentiality

A person who is given information about a child under section 179 must not disclose that information to any other person except for the purpose of providing appropriate care for the child.

Penalty: 10 penalty units.

Part 4.4—Reporting

Division 1—Introduction

181 Who is a protective intervener?

For the purposes of this Act the following persons are protective interveners—

(a) the Secretary;

(b) all police officers;

S. 181(b) substituted by No. 37/2014 s. 10(Sch. item 18.4), amended by No. 17/2023 s. 10(a).

(c) the principal officer of an Aboriginal agency authorised under section 18 to perform functions and exercise powers of a protective intervener, to the extent that the principal officer performs those functions and exercises those powers in relation to a child who is the subject of the authorisation.

S. 181(c) inserted by No. 17/2023 s. 10(b).

182 Who is a mandatory reporter?

(1) The following persons are mandatory reporters for the purposes of this Act—

(a) a registered medical practitioner;

(b) a nurse;

S. 182(1)(b) substituted by Nos 97/2005 s. 182(Sch. 4 item 10.2), 13/2010 s. 51(Sch. item 12.4).

(ba) a midwife;

S. 182(1)(ba) inserted by No. 13/2010 s. 51(Sch. item 12.4).

S. 182(1)(c) amended by Nos 24/2006 s. 6.1.2(Sch. 7 item 7.2(a)), 19/2014 s. 89(2).

(c) a person who is registered as a teacher or an early childhood teacher under the **Education and Training Reform Act 2006** or has been granted permission to teach under that Act;

S. 182(1)(d) substituted by No. 24/2006 s. 6.1.2(Sch. 7 item 7.2(b)).

(d) the principal of a Government school or a non-Government school within the meaning of the **Education and Training Reform Act 2006**;

S. 182(1)(e) amended by No. 37/2014 s. 10(Sch. item 18.5).

(e) a police officer;

S. 182(1)(ea) inserted by No. 30/2019 s. 9.

(ea) a person in religious ministry;

S. 182(1)(f) amended by No. 80/2011 s. 79(Sch. item 2.2) (as amended by No. 43/2012 s. 3(Sch. item 6)), substituted by No. 37/2019 s. 19.

(f) on and from the relevant date, the approved provider or nominated supervisor of or a person with a post-secondary qualification in the care, education or minding of children who is employed or engaged by, a children's service within the meaning of the **Children's Services Act 1996**;

S. 182(1)(fa) inserted by No. 80/2011 s. 79(Sch. item 2.3).

(fa) on and from the relevant date, the approved provider or nominated supervisor of, or a person with a post-secondary qualification in the care, education or minding of children who is employed or engaged by an education and care service within the meaning of the Education and Care Services National Law (Victoria);

(g) on and from the relevant date, a person with a post-secondary qualification in youth, social or welfare work who works in the health, education or community or welfare services field and who is not referred to in paragraph (h);

(h) on and from the relevant date, a person employed under Part 3 of the **Public Administration Act 2004** to perform the duties of a youth and child welfare worker;

(i) on and from the relevant date, a registered psychologist;

(j) on and from the relevant date, a youth justice officer;

(k) on and from the relevant date, a youth parole officer;

(l) on and from the relevant date, a member of a prescribed class of persons.

S. 182(2) amended by No. 19/2014 s. 89(3).

(2) In paragraph (f), (fa), (g), (h), (i), (j), (k) or (l) of subsection (1) ***the relevant date***, in relation to a person or class of persons referred to in that paragraph, means the date fixed for the purposes of that paragraph by an Order made by the Governor in Council and published in the Government Gazette.

(3) In the case of subsection (1)(l), different dates may be fixed by Order in Council for the purposes of different prescribed classes of persons.

Division 2—Report to protective intervener

183 Report to protective intervener

Any person who believes on reasonable grounds that a child is in need of protection may report to a protective intervener that belief and the reasonable grounds for it.

184 Mandatory reporting

S. 184(1) amended by No. 30/2010 s. 44(1).

(1) A mandatory reporter who, in the course of practising his or her profession or carrying out the duties of his or her office, position or employment as set out in section 182, forms the belief on reasonable grounds that a child is in need of protection on a ground referred to in section 162(1)(c) or 162(1)(d) must report to the Secretary that belief and the reasonable grounds for it as soon as practicable—

(a) after forming the belief; and

(b) after each occasion on which he or she becomes aware of any further reasonable grounds for the belief.

Penalty: 10 penalty units.

(2) It is a defence to a charge under subsection (1) for the person charged to prove that he or she honestly and reasonably believed that all of the reasonable grounds for his or her belief had been the subject of a report to the Secretary made by another person.

S. 184(2A) inserted by No. 30/2019 s. 10(1).

(2A) To avoid doubt, a person is not exempt from the requirement to report under subsection (1) merely because the information would be privileged under section 127 of the **Evidence Act 2008**.

(3) The requirement imposed by subsection (1)(b) applies to a mandatory reporter referred to in paragraph (f) to (l) of section 182(1) even if his or her belief was first formed before the relevant date under section 182(1) for that paragraph.

S. 184(3A) inserted by No. 30/2019 s. 10(2).

(3A) The requirement imposed by subsection (1) applies to a person in religious ministry, even if the person's belief was first formed before the commencement of section 9 of the **Children Legislation Amendment Act 2019**, provided the

person continues to hold that belief on or after that commencement.

(4) For the purposes of this section, a belief is a belief on reasonable grounds if a reasonable person practising the profession or carrying out the duties of the office, position or employment, as the case requires, would have formed the belief on those grounds.

185 Report on child in need of therapeutic treatment

S. 185 amended by No. 33/2018 s. 5.

Any person who believes on reasonable grounds that a child is in need of therapeutic treatment (as defined in section 244) may report to the Secretary that belief and the reasonable grounds for it.

186 Grounds for belief

Grounds for a belief referred to in this Division are—

(a) matters of which a person has become aware; and

(b) any opinions based on those matters.

187 Determination by Secretary about report

(1) If a report is made to the Secretary under section 183 or 184, the Secretary may—

(a) provide advice to the person who made the report; or

(b) determine that the report is a protective intervention report for the purposes of this Act; or

(c) determine that the report should be dealt with as a report to the Secretary under section 28.

(2) If the Secretary makes a determination under subsection (1)(c), the report may be dealt with under this Act as if it were a report to the Secretary under section 28.

S. 187(3) inserted by No. 36/2014 s. 6(3), amended by No. 36/2014 s. 7(4).

(3) If a report contains information that must be disclosed under section 327 of the **Crimes Act 1958**, the Secretary must report the information to a police officer as soon as practicable after receiving the report.

188 Record of report

The Secretary must keep a written record of each report made to the Secretary under this Division.

Division 3—Protection of reporters

189 Reporters protected

A report made under Division 2 in good faith—

(a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made; and

(b) does not make the person by whom it is made subject to any liability in respect of it; and

(c) without limiting paragraphs (a) and (b), does not constitute a contravention of—

(i) section 141 of the **Health Services Act 1988**; or

S. 189(c)(ii) substituted by No. 26/2014 s. 455(Sch. item 2.3), amended by No. 39/2022 s. 791.

(ii) section 730 of the **Mental Health and Wellbeing Act 2022**.

190 Evidence and legal proceedings

(1) In any legal proceeding evidence may be given as to the grounds contained in—

(a) a report under section 183 or 184 or a report determined to be a protective intervention report under section 34; or

(b) a report under section 185 that a child is in need of therapeutic treatment.

(2) However in a legal proceeding evidence that a particular matter is contained in a report referred to in subsection (1) or evidence that identifies the person who made that report as the reporter, or is likely to lead to the identification of that person as the reporter is only admissible in the proceeding if—

(a) the court or tribunal grants leave for the evidence to be given; or

(b) the reporter consents in writing to the admission of that evidence.

(3) A witness appearing in a legal proceeding must not be asked and, if asked, is entitled to refuse to answer—

(a) any question to which the answer would or might identify the person who made a report referred to in subsection (1) as the reporter or would or might lead to the identification of that person as the reporter; or

(b) any question as to whether a particular matter is contained in a report referred to in subsection (1)—

unless the court or tribunal grants leave for the question to be asked or the reporter has consented in writing to the question being asked.

(4) A court or tribunal may only grant leave under subsection (2) or (3) if—

(a) in the case of a proceeding in the Court or in any other court arising out of a proceeding in the Court or in VCAT on a review under section 333, it is satisfied that it is necessary for the evidence to be given to ensure the safety and wellbeing of the child;

(b) in any other case, it is satisfied that the interests of justice require that the evidence be given.

191 Confidentiality

S. 191(1) amended by Nos 48/2006 s. 13(1), 6/2024 s. 96(1).

(1) If a report referred to in section 190(1) is made, a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than a protective intervener or a community-based child and family service provider in accordance with subsection (4)—

(a) the name of the person who made the report; or

(b) any information that is likely to lead to the identification of the person who made the report.

Penalty: 10 penalty units.

(2) Subsection (1) does not apply to a disclosure made to a court or tribunal in accordance with section 190.

S. 191(3) amended by No. 37/2014 s. 10(Sch. item 18.5).

(3) Subsection (1) does not apply to a disclosure to the Therapeutic Treatment Board of the name or information leading to the identification of a police officer who made a report under section 185.

(4) If a report is made to the Secretary under section 183 or 184, the information referred to in subsection (1) may be disclosed to a community-based child and family service provider if—

S. 191(4) inserted by No. 48/2006 s. 13(2), amended by No. 6/2024 s. 96(2).

(a) the Secretary has made a determination under section 187(1)(c) in respect of the report; and

(b) the matter is referred to the community-based child and family service under section 30.

(5) A community-based child and family service provider to which information referred to in subsection (1) is disclosed must not disclose that information to any other person except in accordance with this Part.

S. 191(5) amended by Nos 48/2006 s. 13(2), 6/2024 s. 96(3).

Penalty: 60 penalty units.

Part 4.5—Disclosure of information

Division 1—Voluntary disclosure of information

S. 192 substituted by No. 11/2018 s. 18.

192 Disclosure and use of information under this Act

(1) If the Secretary or a protective intervener believes on reasonable grounds that it is required for the performance of the Secretary's or protective intervener's duties or functions under this Act, or the exercise of the Secretary's or protective intervener's powers under this Act, the Secretary or protective intervener may request information from, disclose information to, or receive information from—

(a) the Secretary; or

(b) a protective intervener; or

(c) an information holder; or

(d) a service agency; or

S. 192(1)(e) amended by No. 17/2023 s. 51, substituted by No. 6/2024 s. 97.

(e) a community service provider, a person in charge of a community service or a person employed or engaged by a community service provider, in the provider or person's official capacity; or

(f) any other individual.

(2) A person or entity who is requested under subsection (1) to provide information to the Secretary or a protective intervener may disclose that information to the Secretary or protective intervener.

(3) A disclosure of information made under this section in good faith—

(a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made; and

(b) does not make the person by whom it is made subject to any liability in respect of it; and

(c) without limiting paragraphs (a) and (b), does not constitute a contravention of—

S. 192(3)(c) substituted by No. 30/2019 s. 11.

(i) section 141 of the **Health Services Act 1988**; or

(ii) section 730 of the **Mental Health and Wellbeing Act 2022**; or

S. 192(3)(c)(ii) amended by No. 39/2022 s. 792.

(iii) Part 6A of the **Child Wellbeing and Safety Act 2005**.

Note

See also Part 6A of the **Child Wellbeing and Safety Act 2005** in respect of the use and disclosure obligations of persons or bodies prescribed to be information sharing entities or restricted information sharing entities for the purposes of that Act.

(4) In this section—

S. 192(4) inserted by No. 17/2023 s. 11.

(a) a reference to the Secretary includes a reference to a principal officer who is performing functions or exercising powers conferred on the Secretary under an authorisation made under section 18 or 19; and

(b) a reference to a protective intervener includes a reference to a principal officer who is performing functions or exercising powers of a protective intervener under an authorisation made under section 18.

S. 193 (Heading) amended by No. 6/2024 s. 98(1).

193 Disclosure of information in course of consultation by a community-based child and family service provider

S. 193 amended by No. 26/2014 s. 455(Sch. item 2.3), substituted by No. 11/2018 s. 19.

(1) This section applies if a community-based child and family service receives a referral under Part 3.2.

S. 193(2) amended by No. 6/2024 s. 98(2)(a).

(2) The community-based child and family service provider may, for the purpose of assessing a risk to a child, consult with any of the following—

(a) the Secretary;

S. 193(2)(b) amended by No. 6/2024 s. 98(2)(b).

(b) a community service provider;

(c) a service agency;

(d) an information holder.

S. 193(3) amended by No. 6/2024 s. 98(3)(a).

(3) The community-based child and family service provider may, for the purpose of determining which community-based child and family service provider or service agency is an appropriate body to provide assistance for the child or the family of the child or the mother of the unborn child, consult with any of the following—

(a) the Secretary;

S. 193(3)(b) amended by No. 6/2024 s. 98(3)(b).

(b) a community service provider;

(c) a service agency.

(4) For the purpose only of a consultation under this section, a community-based child and family service provider may disclose information about the child or family to, and receive information about the child or family from, the person or body permitted to be consulted.

S. 193(4) amended by No. 6/2024 s. 98(4).

(5) A person or entity consulted under subsection (2) or (3) by a community-based child and family service provider may disclose information about the child or family to the community-based child and family service provider.

S. 193(5) amended by No. 6/2024 s. 98(5).

(6) A disclosure of information made under this section in good faith—

(a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made; and

(b) does not make the person by whom it is made subject to any liability in respect of it; and

(c) without limiting paragraphs (a) and (b), does not constitute a contravention of—

(i) section 141 of the **Health Services Act 1988**; or

(ii) section 730 of the **Mental Health and Wellbeing Act 2022**; or

S. 193(6)(c)(ii) amended by No. 39/2022 s. 793.

(iii) Part 6A of the **Child Wellbeing and Safety Act 2005**.

Division 2—Compulsory disclosure of information

194 Who is an authorised officer?

(1) The Secretary may authorise any person in a prescribed class of employees as an authorised officer for the purposes of this Division.

(2) An authorisation may be general or limited to specified functions.

S. 195 amended by No. 37/2014 s. 10(Sch. item 18.5), substituted by No. 11/2018 s. 20.

195 Secretary may authorise direction to disclose

The Secretary may authorise a direction to be given to an information holder (other than a police officer) under this Division, if the Secretary believes on reasonable grounds that the information holder has information that is relevant to the protection or development of a child—

(a) in respect of whom a protection order is in force; or

(b) who is the subject of—

(i) a protective intervention report; or

(ii) a report under section 185; or

(iii) a protection application; or

(iv) an application for a therapeutic treatment order; or

(v) an application for a therapeutic treatment (placement) order; or

(vi) an irreconcilable difference application; or

(c) in respect of whom a therapeutic treatment order or a therapeutic treatment (placement) order is in force.

196 Authorised officer may require disclosure of information

(1) This section applies if the Secretary has authorised under section 195 the giving of a direction in relation to a child.

S. 196(1) amended by No. 11/2018 s. 21.

(2) An authorised officer may in writing direct any information holder—

(a) to give information to the authorised officer, orally or in writing on any matter concerning the protection or development of the child; and

(b) to produce documents to the authorised officer that relate to any matter concerning the protection or development of the child; and

(c) to give reasonable assistance to the authorised officer in relation to the child.

(2A) An authorised officer giving a direction under this section must advise the information holder that the information provided to the authorised officer in relation to a child may be disclosed to the Secretary and used for the protection or development of the child.

S. 196(2A) inserted by No. 48/2006 s. 14(1).

(3) An authorised officer may disclose to the Secretary any information or document provided to the authorised officer under this Division.

(3A) Subject to section 202, the Secretary may use and disclose the information or documents for a purpose relating to the protection or development of the child.

S. 196(3A) inserted by No. 48/2006 s. 14(2).

(4) Nothing in this section permits a direction requiring the disclosure by any person employed at or appointed to the Children's Court Clinic of any information or document relating to the carrying out the Clinic's functions.

197 Refusal or failure to comply with requirement

A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an authorised officer under this Division.

Penalty: 10 penalty units.

198 Protection against self-incrimination

It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Division, if the giving of the information or the doing of that other thing would tend to incriminate the person.

S. 199 (Heading) amended by No. 69/2009 s. 54(Sch. Pt 1 item 7.1).

S. 199 amended by No. 69/2009 s. 54(Sch. Pt 1 item 7.2).

199 Legal professional privilege and client legal privilege

It is a reasonable excuse for a person to refuse or fail to give information or do any other thing that the person is required to do by or under this Division, if the giving of the information or the doing of that other thing would be a breach of legal professional privilege or client legal privilege.

200 Medical professional privilege does not apply

(1) It is not a reasonable excuse for a person to refuse or fail to give information or produce documents to an authorised officer under this Division on the ground of medical professional privilege.

S. 200(2) amended by No. 69/2009 s. 54(Sch. Pt 2 item 10).

(2) Sections 28(2), 28(3) and 32C of the **Evidence (Miscellaneous Provisions) Act 1958** do not apply to prevent—

(a) the giving of information or production of documents to an authorised officer as required under this Division; or

(b) the information given or documents produced to the authorised officer under this Division in relation to a child being given in

evidence in any proceedings under this Chapter in relation to the child.

201 Offence to give false or misleading information

A person must not—

(a) give information to an authorised officer under this Division that the person believes to be false or misleading in any material particular; or

(b) produce a document to an authorised officer under this Division that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 10 penalty units.

202 Exclusion of evidence of disclosed information

Information given or documents produced to an authorised officer in relation to a child under this Division must not be given in evidence in a legal proceeding other than a proceeding in relation to the child under this Chapter.

* * * * * **S. 203 repealed by No. 61/2014 s. 137.**

Part 4.6—Investigation

Division 1—Investigation of protective intervention report

204 Directions for protective interveners

(1) The Minister may—

(a) issue directions to be followed by protective interveners in the exercise of their functions; or

(b) amend, in whole or in part, any directions issued under paragraph (a).

S. 204(2) amended by No. 37/2014 s. 10(Sch. item 18.6).

(2) The Minister must consult with the Minister administering the **Victoria Police Act 2013** before issuing directions relating to protective interveners who are police officers.

(3) The Minister must cause any directions issued and any amendments made under subsection (1) to be published in the Government Gazette.

205 Investigation by protective intervener

(1) A protective intervener must, as soon as practicable after receiving a protective intervention report, investigate, or cause another protective intervener to investigate, the subject-matter of the report in a way that will be in the best interests of the child.

(2) A protective intervener who is investigating the subject-matter of a report—

S. 205(2)(a) amended by No. 11/2018 s. 22(1)(a).

(a) must inform the child and the child's parents that any information they give may be used for the purposes of a protection application.

* * * * *

S. 205(2)(b) repealed by No. 11/2018 s. 22(1)(b).

Note

See also Part 5A of the **Family Violence Protection Act 2008** in respect of the use and disclosure obligations of persons or bodies prescribed to be information sharing entities under that Act.

Note to s. 205(2) inserted by No. 23/2017 s. 32(2).

* * * * *

S. 205(3) repealed by No. 11/2018 s. 22(2).

206 Record of investigation

(1) On completing an investigation of a protective intervention report, the protective intervener must, as soon as practicable, make a written record of—

(a) details of the investigation; and

(b) the results of the investigation.

* * * * *

S. 206(2) amended by Nos 61/2014 s. 145, 23/2017 s. 32(2), repealed by No. 11/2018 s. 23.

* * * * *

S. 206(3) repealed by No. 11/2018 s. 23.

207 Provision of protection report to police

(1) The Secretary must, on a request made in accordance with any directions of the Minister by a police officer who is investigating the subject-matter of a protective intervention report, submit a protection report to that police officer within 21 days.

S. 207(1) amended by No. 37/2014 s. 10(Sch. item 18.7(a)).

S. 207(2) amended by No. 37/2014 s. 10(Sch. item 18.7(a)).

(2) A police officer who receives a protection report under subsection (1) or the author of that report must not disclose any information contained in it to any person other than another protective intervener who is investigating the subject-matter of the protective intervention report.

Penalty: 10 penalty units.

Note to s. 207(2) inserted by No. 23/2017 s. 32(3), substituted as Notes by No. 11/2018 s. 24.

Notes

1 See also Part 5A of the **Family Violence Protection Act 2008** in respect of the use and disclosure obligations of persons or bodies prescribed to be information sharing entities under that Act.

2 See also Part 6A of the **Child Wellbeing and Safety Act 2005** in respect of the use and disclosure obligations of persons or bodies prescribed to be information sharing entities or restricted information sharing entities for the purposes of that Act.

S. 207(3) amended by No. 37/2014 s. 10(Sch. item 18.7(b)).

(3) Nothing in subsection (2) prevents the disclosure to a court by a police officer of information contained in a protection report received by that police officer.

208 Protection of givers of information

The giving of information to a protective intervener in good faith during the course of the investigation of the subject-matter of a protective intervention report—

(a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is given; and

(b) does not make the person by whom it is given subject to any liability in respect of it; and

(c) does not constitute a contravention of—

(i) section 141 of the **Health Services Act 1988**; or

(ii) section 730 of the **Mental Health and Wellbeing Act 2022**.

S. 208(c)(ii) substituted by No. 26/2014 s. 455(Sch. item 2.3), amended by No. 39/2022 s. 794(1).

209 Confidentiality

S. 209(1) amended by No. 61/2014 s. 145.

(1) A protective intervener must not disclose to any person, other than to another protective intervener or to a person in connection with a court proceeding or to a person in connection with a review by VCAT—

(a) the name of a person who gave information in confidence to a protective intervener during the course of the investigation of the subject-matter of a protective intervention report; or

(b) any information that is likely to lead to the identification of a person referred to in paragraph (a)—

without the written consent of the person referred to in paragraph (a) or authorisation by the Secretary.

Penalty: 10 penalty units.

(2) The Secretary may only authorise the disclosure of information to a person under subsection (1) if the Secretary believes on reasonable grounds that the disclosure is necessary to ensure the safety and wellbeing of the child.

(3) In this section ***court proceeding*** includes a proceeding in the Family Court of Australia.

Division 2—Investigation of therapeutic treatment report

210 Investigation by Secretary

(1) The Secretary must, as soon as practicable after receiving a report under section 185 that a child is in need of therapeutic treatment, investigate the subject-matter of the report in a way that will best promote the provision of assistance and, where appropriate, therapeutic treatment to the child.

(2) The Secretary, in carrying out the investigation—

S. 210(2)(a) amended by No. 11/2018 s. 25(a).

(a) must inform the child and the child's parents that any information they give may be used for the purposes of a therapeutic treatment application.

S. 210(2)(b) repealed by No. 11/2018 s. 25(b).

* * * * *

Note to s. 210(2) inserted by No. 23/2017 s. 32(4).

Note

See also Part 5A of the **Family Violence Protection Act 2008** in respect of the use and disclosure obligations of persons or bodies prescribed to be information sharing entities under that Act.

211 Record of investigation

(1) On completing an investigation of the subject-matter of a report under section 185, the Secretary must, as soon as practicable, make a written record of—

(a) details of the investigation; and

(b) the results of the investigation.

* * * * *

S. 211(2) amended by Nos 61/2014 s. 145, 23/2017 s. 32(4), repealed by No. 11/2018 s. 26.

* * * * *

S. 211(3) repealed by No. 11/2018 s. 27.

212 Protection of givers of information

The giving of information to the Secretary in good faith during the course of the investigation of a report under section 185—

(a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is given; and

(b) does not make the person by whom it is given subject to any liability in respect of it; and

(c) does not constitute a contravention of—

(i) section 141 of the **Health Services Act 1988**; or

(ii) section 730 of the **Mental Health and Wellbeing Act 2022**.

S. 212(c)(ii) substituted by No. 26/2014 s. 455(Sch. item 2.3), amended by No. 39/2022 s. 794(2).

S. 213 amended by No. 61/2014 s. 145.

213 Confidentiality

The Secretary must not disclose to any person, other than to the Therapeutic Treatment Board or to a person in connection with a court proceeding or to a person in connection with a review by VCAT—

(a) the name of a person who gave information in confidence to the Secretary during the course of the investigation of the subject-matter of a report under section 185; or

(b) any information that is likely to lead to the identification of a person referred to in paragraph (a)—

without the written consent of the person referred to in paragraph (a) unless the Secretary believes on reasonable grounds that the disclosure is necessary to ensure provision of assistance or therapeutic treatment for the child.

Part 4.7—Procedure in Family Division

Division 1—General

214 How proceeding in Family Division commenced

S. 214 amended by No. 26/2023 s. 35.

A proceeding in the Family Division is commenced by filing an application in the Court.

215 Conduct of proceedings in Family Division

(1) The Family Division—

(a) must conduct proceedings before it in an informal manner; and

(b) must proceed without regard to legal forms; and

* * * * *

S. 215(1)(c) repealed by No. 52/2013 s. 9.

(d) may inform itself on a matter in such manner as it thinks fit, despite any rules of evidence to the contrary.

(2) The Attorney-General may appear or be represented in any proceeding before the Family Division and may call and examine or cross-examine witnesses and make submissions.

(3) Despite anything to the contrary in this or any other Act, the Secretary or his or her delegate, in the capacity of being a party to any proceeding before the Family Division whether as a protective intervener or otherwise, may appear—

(a) personally; or

(b) by a legal practitioner; or

(c) by an employee of the public service (whether or not admitted as a barrister and solicitor of the Supreme Court) who is

authorised by the Secretary to appear in proceedings before the Family Division.

(4) An authorisation under subsection (3)(c)—

(a) must be made by instrument;

(b) may be of a particular employee or of a class of employees;

(c) may be subject to any conditions or limitations that the Secretary may specify in it.

(5) For the purposes of sections 226(4)(b), 226(4)(c) and 537(4), an employee representing a party in accordance with subsection (3)(c) must be taken to be that party's legal practitioner or legal representative.

(6) Nothing in subsection (3) affects any right of the Secretary or his or her delegate to appear in any other matter in the Court personally or by a legal practitioner.

S. 215(7) inserted by No. 69/2009 s. 54(Sch. Pt 1 item 7.3).

(7) Nothing in subsection (1)(d) prevents the application of Part 3.10 of the **Evidence Act 2008**.

S. 215A inserted by No. 52/2013 s. 10.

215A Standard of proof

The standard of proof of any fact in an application under this Act in the Family Division is the balance of probabilities.

215B Management of child protection proceedings

S. 215B inserted by No. 52/2013 s. 11.

(1) Without limiting Part 1.1B or 1.2 or section 215(1), in any proceeding before the Family Division under this Act, the Court may— S. 215B(1) amended by No. 17/2023 s. 12.

(a) consider the needs of the child and the impact that the proceeding may have on the child;

(b) conduct proceedings in a manner that promotes cooperative relationships between the parties;

(c) ask any person connected to the proceeding whether that person considers that—

(i) the child has been, or is at risk of being, subjected to or exposed to abuse, neglect or family violence;

(ii) he or she or any other person connected to the proceeding has been, or is at risk of being subjected to family violence;

(d) actively direct, control and manage proceedings;

(e) narrow the issues in dispute;

(f) determine the order in which the issues are decided;

(g) give directions or make orders about the timing of steps that are to be taken in proceedings;

(h) in deciding whether a particular step is to be taken, consider whether the likely benefits justify the costs of taking it;

(i) make appropriate use of technology, such as videoconferencing;

(j) deal with as many aspects of the matter on a single occasion as possible;

(k) where possible, deal with the matter without requiring the parties attend Court;

(l) do any other thing that the Court thinks fit.

(2) In this section—

family violence has the meaning given in the **Family Violence Protection Act 2008**.

S. 216 amended by No. 61/2014 s. 68.

216 Power of Family Division to make certain orders by consent in absence of parties

If on an application to the Family Division for the extension of a family reunification order or a care by Secretary order the Court is satisfied that the parties to the proceeding have agreed on the terms of the order and that the making of the order is in the best interests of the child, the Court may make the order without requiring the parties to attend, or be represented at, the proceeding.

S. 216A inserted by No. 52/2013 s. 12.

216A Child not required to attend Court in Family Division

In any proceeding before the Family Division under this Act, a child is not required to attend before the Court unless—

(a) the child expresses a wish to attend; or

(b) the Court orders that the child attend; or

(c) this Act requires that the child attend.

Note

A child is not required to attend the hearing of a proceeding only because documents have been served on the child under this Act.

Division 2—Conciliation conferences

Ch. 4 Pt 4.7 Div. 2 (Heading) amended by No. 52/2013 s. 13.

217 Referral of application to conciliation conference

S. 217 (Heading) amended by No. 52/2013 s. 14(1).

(1) The Family Division may, on the application of a party or without that application, order that any application made to the Family Division under this Act be referred for a conciliation conference to one or two convenors appointed under section 227.

S. 217(1) amended by No. 52/2013 s. 14(2).

(2) The purpose of the conciliation conference is to give the parties to the application the opportunity to agree or advise on the action that should be taken in the best interests of the child.

S. 217(2) amended by No. 52/2013 s. 14(2).

* * * * *

S. 217(3) repealed by No. 52/2013 s. 14(3).

218 What is a conciliation conference?

S. 218 (Heading) amended by No. 52/2013 s. 15(1).

(1) The purpose of a conciliation conference is to enable the parties to the application, with the assistance of the convenor or convenors—

S. 218(1) amended by No. 52/2013 s. 15(2).

(a) to identify the issues in dispute; and

(b) to consider alternatives; and

(c) to try to reach an agreement as to the action to be taken in the best interests of the child.

S. 218(2) amended by No. 52/2013 s. 15(2).

(2) The role of a convenor or the convenors of a conciliation conference is—

(a) to chair the conference; and

(b) to advise on and determine the process to be followed for the conference; and

(c) to provide to the Court a written report of the conclusions reached at the conference.

S. 219 repealed by No. 52/2013 s. 16.

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S. 220 (Heading) amended by No. 52/2013 s. 17(1).

S. 220 amended by No. 52/2013 s. 17(2).

220 Guidelines for conciliation conferences

A conciliation conference must be conducted in accordance with any guidelines issued from time to time by the Court.

S. 221 (Heading) amended by No. 52/2013 s. 18(1).

S. 221 amended by Nos 52/2013 s. 18(2), 11/2021 s. 30 (ILA s. 39B(1)).

221 Time and place of conciliation conference

(1) The Court may fix a time and place for the holding of the conciliation conference or may direct that a convenor fix, within 14 working days, a time and place.

S. 221(2) inserted by No. 11/2021 s. 30.

(2) For the purposes of this section, the place for the holding of the conciliation conference includes the holding of a conciliation conference by audio link or audio visual link.

222 Who is to attend a conciliation conference?

S. 222 (Heading) amended by No. 52/2013 s. 19(1).

(1) A conciliation conference is to be attended by the child's parent and the Secretary.

S. 222(1) amended by No. 52/2013 s. 19(2).

(2) The Court may, in addition, order that any of the following attend—

(a) the child;

(b) a relative or relatives of the child;

(c) in the case of an Aboriginal child, a member of the child's Aboriginal community as agreed to by the child;

(d) if the child's parent is an Aboriginal person, a member of the parent's Aboriginal community as agreed to by the parent;

(e) in the case of a child from an ethnic background, a member of the appropriate ethnic community who is chosen or agreed to by the child or by his or her parent;

(f) if the child has a disability, an advocate for the child;

(g) if the child's parent has a disability, an advocate for the parent;

(h) any other support person for the child requested by the child.

S. 222(3) amended by No. 52/2013 s. 19(2).

(3) If a parent of the child has a legal representative, the legal representative may attend the conciliation conference.

(4) If the child is mature enough to give instructions and has a separate legal representative, the legal representative may attend.

S. 222(5) amended by No. 52/2013 s. 19(2).

(5) If, in exceptional circumstances, the Court determines that it is in the best interests of a child who, in the opinion of the Court is not mature enough to give instructions, for the child to be legally represented at a conciliation conference, the legal representative may attend.

S. 222(6) amended by No. 52/2013 s. 19(2).

(6) Nothing in section 524 (except subsections (10) and (11)) or 525 applies to a conciliation conference.

S. 222(7) inserted by No. 52/2013 s. 19(3).

(7) A convenor or the convenors of a conciliation conference may—

(a) permit any other person to attend the conference; and

(b) specify whether, or in what manner, the person may participate in the conference; and

(c) require the person to leave the conference at any time; and

(d) require that any other specified person not attend the conference.

S. 222(8) inserted by No. 11/2021 s. 31.

(8) A convenor of a conciliation conference may permit one or more persons referred to in this section to attend the conciliation by means of audio link or audio visual link.

223 Report to Court by convenor

S. 223(1) amended by No. 52/2013 s. 20(1).

(1) A written report made by a convenor under section 218 as a result of a conciliation conference is admissible in the proceedings of the Family Division in respect of the child who is the subject of the conference for the purpose of establishing the conclusions reached at the conference.

S. 223(2) repealed by No. 52/2013 s. 20(2).

* * * * *

224 Court to consider report of convenor

S. 224 amended by No. 52/2013 s. 21.

If the Family Division has referred an application to a conciliation conference under this Division, the Court may consider the written report of the convenor or convenors of the conference in determining what order or finding to make in respect of the application.

225 Immunity of participants

(1) A convenor has, in the performance of his or her duties as convenor of a conciliation conference under this Division, the same protection and immunity as a magistrate has in the performance of his or her duties.

S. 225(1) amended by No. 52/2013 s. 22.

(2) A person representing a party in a conciliation conference has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the Court.

S. 225(2) amended by No. 52/2013 s. 22.

226 Confidentiality of conciliation conferences

S. 226 (Heading) amended by No. 52/2013 s. 23(1).

(1) Evidence of anything said or done or admissions made at a conciliation conference is only admissible in a proceeding before a court if the court grants leave or all the parties to the conciliation conference consent.

S. 226(1) amended by No. 52/2013 s. 23(2).

(2) A court may only grant leave under subsection (1) if satisfied that it is necessary to do so to ensure the safety and wellbeing of the child.

(3) Subject to subsection (4), a person who attends a conciliation conference must not disclose any statement made at, or information provided to, the conference without the leave of the Court or the consent of all the parties to the conciliation conference.

S. 226(3) amended by No. 52/2013 s. 23(2).

Penalty: 10 penalty units.

(4) Nothing in subsection (3) prevents—

S. 226(4)(a) amended by No. 52/2013 s. 23(2).

(a) the convenor making a record of the proceedings at the conciliation conference;

(b) discussions taking place between a person who attended the conference and his or her legal representative;

(c) discussions taking place between the legal representatives of persons who attended the conference;

(d) discussions taking place between protective interveners about the conference.

S. 227 (Heading) amended by No. 52/2013 s. 24.

227 Conciliation convenors

S. 227(1) amended by No. 23/2012 s. 3(1).

(1) The President may appoint as many convenors as are necessary for the purposes of this Division.

(2) A convenor is to be appointed on the terms and conditions set out in the instrument of appointment.

S. 227(3) substituted by Nos 48/2006 s. 15, 23/2012 s. 3(2).

(3) The President must not appoint a person as a convenor unless the President is satisfied that the person is of good character and has appropriate qualifications and experience.

S. 227(4) substituted by No. 48/2006 s. 15, amended by No. 23/2012 s. 3(2).

(4) The President may remove a convenor from office at any time.

(5) A convenor is not, in respect of the office of convenor, subject to the **Public Administration Act 2004**.

Part 4.8—Protective intervention

Division 1—Temporary assessment orders

228 Application for temporary assessment order by notice

(1) The Secretary may give a notice under this section if the Secretary—

(a) has a reasonable suspicion that a child is, or is likely to be, in need of protection; and

(b) is of the opinion that further investigation and assessment of the matter is warranted; and

(c) is of the opinion that the investigation and assessment cannot properly proceed unless a temporary assessment order is made.

(2) The Secretary may by notice direct—

(a) the child to appear; and

(b) the child's parents to produce the child—

before the Court for the hearing of an application for a temporary assessment order.

(3) A notice cannot be given under this section if—

(a) a protection order (other than an undertaking) is in force in respect of the child; or

(b) an application for a protection order has been made in respect of the child but has not been determined.

(4) A notice under this section must—

S. 228(4)(a) amended by No. 26/2023 s. 36.

(a) be issued out of the Court; and

(b) be served, in accordance with section 594, on the child's parent and, if the child is of or above the age of 12 years, the child.

229 Application for temporary assessment order without notice

(1) The Secretary may apply to the Court for leave for the hearing of an application for a temporary assessment order in respect of a child without giving the notice under section 228 if the Secretary—

(a) has a reasonable suspicion that a child is, or is likely to be, in need of protection; and

(b) is of the opinion that further investigation and assessment of the matter is warranted; and

(c) is of the opinion that the investigation and assessment cannot properly proceed unless a temporary assessment order is made; and

(d) is satisfied that the giving of the notice required by section 228 is inappropriate in the circumstances.

(2) An application cannot be made under this section if—

(a) a protection order (other than an undertaking) is in force in respect of the child; or

(b) an application for a protection order has been made in respect of the child but has not been determined.

(3) The Court may grant leave for the application to be dealt with without giving the notice under section 228 if the Court is satisfied that it is appropriate to do so.

230 Matters to be considered by Court

In deciding whether or not to make a temporary assessment order, the Court must consider—

(a) whether there is information or evidence that would lead to a person having a reasonable suspicion that the child is, or is likely to be, in need of protection; and

(b) whether a further investigation and assessment of the matter is warranted; and

(c) whether the Court is satisfied that the investigation and assessment cannot properly proceed unless a temporary assessment order is made; and

(d) whether the proposed investigation or assessment is likely to provide relevant information that is unlikely to be obtained elsewhere; and

(e) whether any distress the investigation or assessment is likely to cause the child will be outweighed by the value of the information that might be obtained; and

(f) any other matter that the Court considers relevant.

231 Temporary assessment order

After considering the matters set out in section 230, the Court may make a temporary assessment order if it is satisfied that—

(a) the making of the order is in the best interests of the child; and

(b) it is necessary for the Secretary to assess whether or not the child is in need of protection; and

(c) the Secretary cannot properly carry out the investigation or assessment unless the order is made.

232 What may a temporary assessment order provide for?

(1) A temporary assessment order may—

(a) authorise the Secretary to enter the premises where the child is living;

(b) require the parent of the child or any person with whom the child is living to permit the Secretary to enter the premises where the child is living;

(c) require the parent of the child or any person with whom the child is living to permit the Secretary to interview the child and to take the child to a place determined by the Secretary for that interview;

(d) authorise, subject to section 233, the medical examination of the child by a registered medical practitioner or a registered psychologist;

(e) direct the parent of the child or any person with whom the child is living to permit the Secretary to take the child for that medical examination;

(f) authorise the results of the medical examination to be given to the Secretary;

S. 232(1)(f) amended by No. 48/2006 s. 16.

(g) require the parent of the child or any person with whom the child is living to attend an interview with the Secretary and, subject to section 234, to answer any questions put to them in the interview;

(h) give any other directions or impose any conditions that the Court considers to be in the best interests of the child.

(2) If the application for a temporary assessment order is made under section 229, the order must include a statement setting out the right of the child or the parent of the child to apply to the Court under section 235 for the order to be varied or revoked.

(3) If the temporary assessment order authorises the medical examination of the child, the order must include a statement setting out the terms of section 233.

(4) A temporary assessment order must direct the Secretary to provide to the Court by a date specified in the order a report about the outcome of the investigation or assessment.

233 Child not to be medically examined in certain cases

Despite a temporary assessment order, a registered medical practitioner or registered psychologist by whom the child is to be examined under the order must not examine the child if—

(a) the medical practitioner or psychologist is of the opinion that the child has sufficient understanding to give or refuse consent to the examination; and

(b) the child refuses that consent.

234 Protection of privileges

(1) Despite a temporary assessment order, a person may refuse to answer a question put by the Secretary in an interview authorised by the order on the ground that—

(a) to answer might tend to incriminate the person; or

(b) the information is privileged on the ground of legal professional privilege or client legal privilege.

S. 234(1)(b) amended by No. 69/2009 s. 54(Sch. Pt 1 item 7.4).

(2) Before the Secretary begins an interview of a person authorised by a temporary assessment order, the Secretary must advise the person of the person's rights under subsection (1).

235 Application for variation or revocation of order made in absence of child

(1) If a temporary assessment order has been made without notice to the child and the parent of the child, the child or the parent of the child may at any time apply to the Court for the variation or revocation of the order.

(2) The applicant must serve notice of the application on the Secretary and each other party to the order a reasonable time before the hearing of the application.

(3) An application under this section must be heard expeditiously.

(4) On an application under this section, the Court may—

(a) vary the terms of the order; or

(b) revoke the order; or

(c) dismiss the application.

236 Duration of temporary assessment order

(1) A temporary assessment order made after notice is given under section 228 remains in force for the period (not exceeding 21 days) beginning on the date of the order that is specified in the order.

(2) A temporary assessment order that is made on an application under section 229 remains in force for the period (not exceeding 10 days) beginning on the date of the order that is specified in the order.

(3) A temporary assessment order cannot be extended.

(4) Despite subsections (2) and (3), if an application is made under section 235 to vary or revoke an order referred to in subsection (2), the Court, if it considers exceptional circumstances exist, may extend the period of operation of the order to a total period not exceeding 21 days.

237 Secretary may apply for warrant

S. 237(1) amended by No. 37/2014 s. 10(Sch. item 18.8).

(1) The Secretary may apply to the Court for the issue of a search warrant to authorise a police officer to enter any premises where a child is believed to be located and search for and apprehend the child to enable the Secretary to exercise his or her powers under a temporary assessment order.

S. 237(2) amended by Nos 37/2014 s. 10(Sch. item 18.8), 6/2018 s. 68(Sch. 2 item 20.1).

(2) The Court may grant the search warrant if the Court is satisfied by evidence on oath or by affirmation or by affidavit by the Secretary that it is necessary to issue the warrant to authorise a police officer to enter any premises where a child is believed to be located and search for and apprehend the child to enable the Secretary to exercise his or her powers under a temporary assessment order.

S. 237(3) amended by No. 37/2014 s. 10(Sch. item 18.8).

(3) The search warrant authorises a police officer to whom it is directed to use reasonable force to enter any premises where a child to whom the temporary assessment order relates is believed to be located, by force if necessary, and search for and apprehend the child and bring the child to the Secretary to enable the Secretary to exercise his or her powers under the temporary assessment order.

(4) The search warrant is executed only when the police officer enters the premises where the child is actually located.

S. 237(4) amended by No. 37/2014 s. 10(Sch. item 18.8).

(5) On executing a search warrant, the police officer executing the warrant—

S. 237(5) amended by No. 37/2014 s. 10(Sch. item 18.8).

(a) must announce that he or she is authorised by the warrant to enter the place; and

(b) if the police officer has been unable to obtain unforced entry, must give any person at the place an opportunity to allow entry to the place.

S. 237(5)(b) amended by No. 37/2014 s. 10(Sch. item 18.8).

(6) A police officer need not comply with subsection (5) if he or she believes on reasonable grounds that immediate entry to the place is required to ensure—

S. 237(6) amended by No. 37/2014 s. 10(Sch. item 18.8).

(a) the safety of any person; or

(b) that the effective execution of the search warrant is not frustrated.

(7) Unless executed earlier, a search warrant issued under this section remains in force for the duration of the temporary assessment order.

(8) Subject to this section, the rules that apply to search warrants under the **Magistrates' Court Act 1989** extend and apply to a search warrant under this section.

238 Report to Court by Secretary

(1) The Secretary must provide a report in writing to the Court by the date for that report specified in the temporary assessment order.

(2) The report must set out—

(a) details of the action taken by the Secretary under the order; and

(b) the results of the investigation and assessment; and

(c) any other information that the Secretary considers ought to be provided to the Court or that the Court directs to be included in the report.

(3) Unless otherwise directed by the Court, the Secretary must cause a copy of the report to be given to each of the following—

(a) the child who is the subject of the report;

(b) the child's parent;

(c) the legal practitioners representing that child;

(d) the legal practitioners representing that child's parent;

(e) any other person specified by the Court.

239 Appeal against temporary assessment order

(1) If the Court makes a temporary assessment order in respect of a child or dismisses an application for a temporary assessment order in respect of a child, then—

(a) the child; or

(b) a parent of the child; or

(c) the Secretary—

may appeal to the Supreme Court against the order or the dismissal.

(2) If the Court makes an order dismissing an application by the Secretary for leave for the hearing of an application for a temporary assessment order in respect of a child without

giving notice under section 228, the Secretary may appeal to the Supreme Court against that order.

(3) On an appeal under this section against a temporary assessment order, the Supreme Court must—

(a) if it thinks that a different temporary assessment order should have been made—

(i) set aside the order of the Children's Court; and

(ii) make any other order that it thinks ought to have been made; or

(b) if it thinks that a temporary assessment order should not have been made, set aside the order of the Children's Court; or

(c) in any other case, dismiss the appeal.

(4) On an appeal under this section against the dismissal of an application for a temporary assessment order, the Supreme Court must—

(a) if it thinks that the application should not have been dismissed, make the order that it thinks ought to have been made; or

(b) in any other case, dismiss the appeal.

Division 2—Action by protective intervener

240 Action by protective intervener

(1) If a protective intervener is satisfied on reasonable grounds that a child is in need of protection, he or she may—

(a) serve a notice under section 243 stating that a protection application in respect of the child will be made to the Court; or

S. 240(1)(a) substituted by No. 52/2013 s. 25(1).

S. 240(1)(b) amended by No. 52/2013 s. 25(2).

(b) with or without a warrant, under section 241, place the child in emergency care or cause another protective intervener to place the child in emergency care pending the hearing of a protection application.

S. 240(2) repealed by No. 61/2014 s. 146.

* * * * *

(3) If the procedure set out in subsection (1)(a) or (1)(b) has been taken in respect of a child, a protective intervener must as soon as possible make a protection application to the Court and give a copy of the application to—

(a) the child's parents, unless they cannot be found after reasonable inquiries; and

(b) the child, if he or she is of or above the age of 12 years.

S. 241 (Heading) substituted by No. 52/2013 s. 26(1).

241 Protective intervener may place child in need of protection in emergency care

(1) If a protective intervener is satisfied on reasonable grounds that a child is in need of protection and that it is inappropriate to take the procedure set out in section 240(1)(a), he or she may—

S. 241(1)(a) amended by No. 52/2013 s. 26(2)(a).

(a) without a warrant, place the child in emergency care or cause another protective intervener to place the child in emergency care; or

S. 241(1)(b) amended by No. 52/2013 s. 26(2)(b).

(b) apply to a magistrate for the issue of a search warrant for the purpose of having the child placed in emergency care.

(2) A search warrant issued under subsection (1)—

(a) may only be directed to a named police officer or generally all police officers; and

S. 241(2)(a) amended by No. 37/2014 s. 10(Sch. item 18.9).

(b) may be endorsed by the person issuing it with a direction that the child be released on an interim accommodation order of the type referred to in section 263(1)(a) or 263(1)(b) as specified in the endorsement.

242 Actions on placing child in emergency care

S. 242 (Heading) substituted by No. 52/2013 s. 27(1).

(1) A protective intervener must on placing a child in emergency care under section 241 give to—

S. 242(1) amended by No. 52/2013 s. 27(2).

(a) the child's parents, unless they cannot be found after reasonable inquiries; and

(b) the child, if he or she is of or above the age of 12 years—

a written statement containing the prescribed information relating to the placing of children in emergency care under that section.

(2) If a child has been placed in emergency care under section 241, the Court must hear an application for an interim accommodation order in respect of the child as soon as practicable and in any event within one working day after the child was placed in emergency care.

S. 242(2) substituted by No. 52/2013 s. 27(3).

(3) Unless the Court hears an application for an interim accommodation order within 24 hours after the child was placed in emergency care, a bail justice must hear an application for an interim accommodation order in respect of the child as soon as possible within that period of 24 hours.

S. 242(3) substituted by No. 52/2013 s. 27(3).

S. 242(4) repealed by No. 52/2013 s. 27(3).

* * * * *

S. 242(5) amended by No. 52/2013 s. 27(4).

(5) Until an application for an interim accommodation order is made to the Court or a bail justice, a child placed in emergency care under section 241 may only be placed—

(a) in an out of home care service; or

(b) if there is a substantial and immediate risk of harm to the child, in a secure welfare service; or

(c) in other accommodation approved by the Secretary in accordance with the prescribed criteria (if any).

S. 243 (Heading) amended by No. 52/2013 s. 28(1).

243 Making a protection application without placing child in emergency care

S. 243(1) substituted by No. 52/2013 s. 28(2).

(1) If a protective intervener is satisfied on reasonable grounds that a child is in need of protection, he or she may serve a notice stating that a protection application in respect of the child will be made to the Court on a day and at a time specified in the notice.

(2) A notice under subsection (1) must—

S. 243(2)(a) amended by No. 26/2023 s. 37.

(a) be issued out of the Court; and

(b) set out the grounds on which a protective intervener intends to make a protection application; and

(c) be served on the child's parent and, if the child is of or above the age of 12 years, the child, in accordance with section 594.

S. 243(3) substituted by No. 52/2013 s. 28(3).

(3) If the Court orders that the child appear before the Court for the hearing of the protection application and the child does not appear, the Court may, if satisfied that the order has come to the attention of the child's parent or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent, issue a search warrant for the purpose of having the child placed in emergency care.

(4) Sections 241 and 242 apply to the issue and execution of a warrant under subsection (3) as if it were a warrant issued under section 241(1).

Division 3—Child in need of therapeutic treatment

Subdivision 1—When is a child in need of therapeutic treatment?

244 When is a child in need of therapeutic treatment?

S. 244 substituted by No. 33/2018 s. 6.

For the purposes of this Division, a child is in need of therapeutic treatment if the child has exhibited sexually abusive behaviours.

245 Referral to Therapeutic Treatment Board for advice

(1) This section applies if—

(a) the Secretary receives a report under section 185 that a child is in need of therapeutic treatment; or

(b) the Court has referred a matter to the Secretary under section 349(2).

S. 245(2) amended by No. 37/2014 s. 10(Sch. item 18.10).

(2) If the Secretary receives a report from a police officer under section 185, the Secretary must refer the matter to the Therapeutic Treatment Board for advice.

(3) If the Secretary receives a report from any other person under section 185, the Secretary may refer the matter to the Therapeutic Treatment Board for advice.

(4) If the Secretary receives a referral from the Court under section 349(2), the Secretary must refer the matter to the Therapeutic Treatment Board for advice.

(5) If a matter is to be referred to the Therapeutic Treatment Board, it must be referred before the Secretary applies for a therapeutic treatment order in relation to the matter.

(6) On a referral to it under this section, the Therapeutic Treatment Board must provide advice as to whether it is appropriate to seek a therapeutic treatment order in respect of the child.

(7) The Secretary must consider any advice received from the Therapeutic Treatment Board under this section before applying for a therapeutic treatment order.

Subdivision 2—Therapeutic treatment orders

246 Secretary may apply for therapeutic treatment order

(1) If the Secretary is satisfied on reasonable grounds that a child is in need of therapeutic treatment, the Secretary may by notice direct—

(a) the child to appear; and

(b) the child's parent to produce the child—

before the Court for the hearing of a therapeutic treatment application.

(2) A notice under subsection (1) must—

(a) be issued out of the Court; and

S. 246(2)(a) amended by No. 26/2023 s. 38.

(b) set out the grounds on which the Secretary intends to make a therapeutic treatment application; and

(c) be served on the child's parent and the child in accordance with section 594.

247 Issue of search warrant if child does not appear

(1) If the child does not appear before the Court for the hearing of the therapeutic treatment application, the Court may issue a search warrant for the purpose of having the child placed in emergency care.

S. 247(1) amended by No. 52/2013 s. 29(1).

(2) A search warrant issued by the Court under subsection (1)—

S. 247(2) substituted by No. 52/2013 s. 29(2).

(a) may only be directed to a named police officer or generally all police officers; and

S. 247(2)(a) amended by No. 37/2014 s. 10(Sch. item 18.11).

(b) may be endorsed by the person issuing it with a direction that the child be released on an interim accommodation order of the type referred to in section 263(1)(a) or (b) as specified in the endorsement.

247A Actions on placing child in emergency care—therapeutic treatment application

S. 247A inserted by No. 52/2013 s. 30.

(1) On the placement in emergency care on a search warrant under section 247(1) of a child who is the subject of a therapeutic treatment application, a protective intervener must give to—

(a) the child's parents, unless they cannot be found after reasonable enquiries; and

(b) the child, if he or she is of or above the age of 12 years—

a written statement containing the prescribed information relating to the placing of children in emergency care.

(2) Subject to subsection (4), a child placed in emergency care on a search warrant must be brought before the Court for the hearing of an application for an interim accommodation order as soon as practicable and, in any event, within one working day after the child was placed in emergency care.

(3) Unless a child is brought before the Court under subsection (2) within 24 hours after the child was placed in emergency care, he or she must be brought before a bail justice as soon as possible within that period of 24 hours for the hearing of an application for an interim accommodation order.

(4) Until a child placed in emergency care on a search warrant is brought before the Court or a bail justice for the making of an interim accommodation order, the child may only be placed—

(a) in an out of home care service; or

(b) if there is a substantial and immediate risk of harm to the child, in a secure welfare service; or

(c) in other accommodation approved by the Secretary in accordance with the prescribed criteria (if any).

248 When Court may make order under this Division

S. 248 amended by No. 33/2018 s. 7(1)(2) (ILA s. 39B(1)).

(1) The Court may make a therapeutic treatment order in respect of a child if the Court is satisfied—

(a) that the child has exhibited sexually abusive behaviours; and

(b) that the order is necessary to ensure the child's access to, or attendance at, an appropriate therapeutic treatment program.

S. 248(2) inserted by No. 33/2018 s. 7(2).

(2) In deciding whether or not to make a therapeutic treatment order in respect of a child, the Court must consider—

(a) the seriousness of the child's sexually abusive behaviours; and

(b) any previous history of sexually abusive behaviours of the child and how those behaviours were addressed; and

(c) the particular characteristics and circumstances of the child; and

(d) any other matters the Court considers relevant.

249 Therapeutic treatment order

(1) A therapeutic treatment order must require the child to participate in an appropriate therapeutic treatment program.

(2) A therapeutic treatment order may include—

(a) a condition directing the parent of the child or any person who has the care of the child to take any necessary steps to enable the child to participate in a therapeutic treatment program; and

(b) a condition directing the child to permit reports of his or her progress and attendance at the therapeutic treatment program to be given to the Secretary; and

S. 249(2)(ba) inserted by No. 33/2018 s. 8.

(ba) a condition requiring the Secretary to report to the Court, at the time or times specified by the Court, of the child's progress and attendance at the therapeutic treatment program; and

(c) any other conditions that the Court considers appropriate.

S. 250 amended by No. 33/2018 s. 9(1) (ILA s. 39B(1)).

250 Duration of order

(1) A therapeutic treatment order remains in force for the period (not exceeding 12 months) specified in the order.

S. 250(2) inserted by No. 33/2018 s. 9(1).

(2) Subsection (1) applies even if the child attains the age of 18 years after the order is made.

S. 251 amended by No. 61/2014 s. 139.

251 Statements by child not admissible in criminal proceedings

Any statement made by a child when participating in a therapeutic treatment program under a therapeutic treatment order or voluntarily in an appropriate therapeutic treatment program is not admissible in any criminal proceedings in relation to the child.

Subdivision 3—Therapeutic treatment (placement) orders

252 When can a therapeutic treatment (placement) order be made?

(1) The Court, on the application of the Secretary, may make a therapeutic treatment (placement) order in respect of a child if—

(a) the Court makes or has made a therapeutic treatment order in respect of the child; and

(b) the Court is satisfied that the therapeutic treatment (placement) order is necessary for the treatment of the child.

(2) The Secretary must serve notice of the application on the child and the child's parent a reasonable time before the hearing of the application.

(3) A notice under subsection (2) must—

(a) be issued out of the Court; and

S. 252(3)(a) amended by No. 26/2023 s. 39.

(b) set out the grounds on which the Secretary has made the application for a therapeutic treatment (placement) order; and

(c) be served on the child's parent and the child in accordance with section 594.

253 Therapeutic treatment (placement) order

A therapeutic treatment (placement) order—

(a) grants parental responsibility for the child to the Secretary; and

S. 253(a) amended by No. 61/2014 s. 99(1).

(b) subject to paragraph (a), does not otherwise affect parental responsibility for the child; and

S. 253(b) substituted by No. 61/2014 s. 99(2).

(c) may include any conditions that the Court considers to be in the best interests of the child, including a condition concerning contact with a parent or other person.

S. 253(c) amended by No. 52/2013 s. 31, substituted by No. 61/2014 s. 99(3).

S. 254 amended by No. 33/2018 s. 9(2) (ILA s. 39B(1)).

254 Duration of order

(1) A therapeutic treatment (placement) order remains in force for the period (not exceeding the period of the therapeutic treatment order to which it relates) specified in the order.

S. 254(2) inserted by No. 33/2018 s. 9(2).

(2) Despite subsection (1), a therapeutic treatment (placement) order ceases to be in force if the child attains the age of 18 years or marries, whichever happens first.

Subdivision 4—Extension of orders

255 Application for extension of order

(1) The Secretary may apply to the Court for one extension of the period of—

(a) a therapeutic treatment order; or

(b) a therapeutic treatment (placement) order.

(2) An application to extend a therapeutic treatment order may be made at any time while the order is in force.

(3) An application to extend a therapeutic treatment (placement) order may be made at any time while the order and the therapeutic treatment order to which it relates is in force.

(4) If an application is made under this section to extend an order, the order continues in force until the application is determined.

(5) The Secretary must cause a copy of an application under this section to be served, in accordance with section 594, on the child's parent and the child.

256 Extension of order

(1) If an application is made under section 255 to extend a therapeutic treatment order, the Court may extend the order for a period not exceeding 12 months if it is satisfied that the child is still in need of therapeutic treatment.

S. 256(1A) inserted by No. 33/2018 s. 10(1).

(1A) Subsection (1) applies even if the child has attained the age of 18 years before the therapeutic treatment order is extended or will attain the age of 18 years during the period of extension.

(2) If an application is made under section 255 to extend a therapeutic treatment (placement) order, the Court may extend the order for a period not exceeding the period of the therapeutic treatment order to which it relates if the Court is satisfied that the therapeutic treatment (placement) order is still necessary for the therapeutic treatment of the child.

(3) The Court must not extend an order under this section unless the Court is satisfied that therapeutic treatment is still available for the child.

S. 256(4) inserted by No. 33/2018 s. 10(2).

(4) Despite the extension of a therapeutic treatment (placement) order under this section, the therapeutic treatment (placement) order ceases to be in force if the child attains the age of 18 years or marries, whichever happens first.

Subdivision 5—Variation and revocation of orders

257 Variation of order

(1) An application for a variation of the conditions of a therapeutic treatment order or a therapeutic treatment (placement) order may be made to the Court by—

(a) the Secretary; or

(b) the child in respect of whom the order is made; or

(c) a parent of the child.

(2) An applicant under subsection (1) must serve a copy of the application on each other person who may make an application under this section in respect of the order a reasonable time before the hearing of the application.

(3) On an application under subsection (1) the Court may vary any of the conditions included in the order or add or substitute a condition but must not—

(a) in the case of a therapeutic treatment order, make a change in the requirement to participate in a therapeutic program or extend the period of the order; and

(b) in the case of a therapeutic treatment (placement) order, make any change in custody or extend the period of the order.

258 Revocation of order

(1) The Secretary may apply to the Court to revoke a therapeutic treatment order or a therapeutic treatment (placement) order.

(2) If criminal proceedings against a child have been adjourned pending the completion by the child of a therapeutic treatment program under a therapeutic treatment order, the Secretary must seek the advice of the Therapeutic Treatment Board for advice before applying to the Court to revoke the therapeutic treatment order.

(3) The Secretary must give notice of the application to the child and the child's parent.

(4) A notice under subsection (3) must—

(a) be issued out of the Court; and

S. 258(4)(a) amended by No. 26/2023 s. 40.

(b) set out the grounds on which the Secretary seeks the revocation of the order; and

(c) be served on the child's parent and the child in accordance with section 594.

(5) The child or the parent of the child may apply to the Court for the revocation of a therapeutic treatment order or a therapeutic treatment (placement) order.

(6) An applicant under subsection (5) must serve a copy of the application on the Secretary and any other person who was a party to the application for the therapeutic treatment order or therapeutic treatment (placement) order a reasonable time before the hearing of the application.

(7) On an application under this section, the Court may revoke the therapeutic treatment order or therapeutic treatment (placement) order.

(8) A therapeutic treatment (placement) order is revoked when the therapeutic treatment order to which it relates is revoked.

Division 4—Irreconcilable differences

259 Application if there is an irreconcilable difference

(1) A person who has parental responsibility for a child and who believes that there is a substantial and presently irreconcilable difference between himself or herself and the child to such an extent that the care and control of the child are likely to be seriously disrupted may, subject to section 260,

S. 259(1) amended by Nos 61/2014 s. 69, 8/2016 s. 7(1).

apply to the Court for a finding that such a difference exists.

S. 259(2) amended by No. 8/2016 s. 7(2).

(2) A child who believes that there is a substantial and presently irreconcilable difference between himself or herself and the person who has parental responsibility for him or her to such an extent that the care and control of him or her are likely to be seriously disrupted may, subject to section 260, apply to the Court for a finding that such a difference exists.

(3) The applicant must cause notice of the irreconcilable difference application to be served on all other parties to the application and on the Secretary at least 5 days before the hearing of the application.

(4) A notice under subsection (3) must—

S. 259(4)(a) amended by No. 26/2023 s. 41.

(a) be issued out of the Court; and

(b) set out the grounds on which the applicant has made the irreconcilable difference application; and

(c) be served on the child's parent or the child (as the case requires) in accordance with section 594.

(5) With the leave of the Court, the Secretary may appear or be represented on the hearing of the irreconcilable difference application and may call and examine or cross-examine witnesses and make submissions.

260 Conciliation counselling

S. 260(1) substituted by No. 26/2023 s. 42(1).

(1) Before a person files an irreconcilable difference application in the Court, the person must lodge an application for conciliation counselling with the Secretary.

(2) If an application for conciliation counselling is lodged with the Secretary, he or she must—

S. 260(2)(a) amended by No. 61/2014 s. 70.

(a) cause information relating to conciliation counselling and appropriate support services to be given or sent by post to the child, the person who has parental responsibility for the child and any other relevant parties; and

(b) ensure that conciliation counselling is provided to those persons—

as soon as possible within the period of 21 days after that lodgement.

(3) The purpose of conciliation counselling is to assist the parties in the resolution of their differences and thereby avoid proceedings in the Court.

(4) The person conducting conciliation counselling must—

(a) undertake conciliation counselling with each of the parties separately; and

(b) hold at least one conference involving all the parties.

S. 260(4A) inserted by No. 11/2021 s. 32.

(4A) The person conducting conciliation counselling may permit one or more of the parties to undertake conciliation counselling, or participate in a conference, by means of audio link or audio visual link.

(5) At the end of the period of 21 days referred to in subsection (2) the Secretary must provide a certificate of conciliation counselling to each party who participated in the conciliation counselling.

(6) The Secretary may provide a certificate of conciliation counselling to a party even if a conference involving all the parties did not take place if—

(a) that party was willing to attend a conference involving all the parties but one or more other parties refused to attend; or

(b) the Secretary determined that exceptional circumstances existed which would have the effect that attendance at a conference involving all the parties would subject one of the parties to extreme duress or emotional distress.

S. 260(7) inserted by No. 26/2023 s. 42(2).

(7) A person who files an irreconcilable difference application in the Court must file with that application a certificate of conciliation counselling issued by the Secretary within the last 3 months.

261 Proceeding on application if party does not appear

S. 261(1) substituted by No. 52/2013 s. 32.

(1) If the Court orders that the child appear before the Court for the hearing of the irreconcilable difference application, and the child does not appear, the Court may issue a search warrant for the purpose of having the child placed in emergency care.

(2) Sections 241 and 242 apply to the issue and execution of the warrant as if it were a warrant issued under section 241(1).

(3) If the person who has parental responsibility for the child does not appear before the Court for the hearing of the irreconcilable difference application, the Court may proceed to hear and determine the application in that person's absence if the Court is satisfied that a copy of the application was served on that person in accordance with section 259(4).

S. 261(3) amended by No. 61/2014 s. 71.

Division 5—Interim accommodation orders

262 Interim accommodation order

(1) The Court may make an interim accommodation order in respect of a child if—

(a) the child has been placed in emergency care by a protective intervener under this Chapter; or

S. 262(1)(a) amended by No. 52/2013 s. 33(a).

(b) a protection application is filed in the Court; or

S. 262(1)(b) amended by No. 26/2023 s. 43.

(c) a child has been placed in emergency care under section 247; or

S. 262(1)(c) amended by No. 52/2013 s. 33(b).

(d) an irreconcilable difference application is filed in the Court; or

S. 262(1)(d) amended by No. 26/2023 s. 43.

(e) an application for conciliation counselling is lodged with the Secretary under section 260; or

(f) the hearing by the Court of a proceeding in the Family Division (including a proceeding under this section) is adjourned; or

(g) an application for an extension or further extension of the period of an interim accommodation order has been made to the Court under section 267; or

(h) an interim accommodation order or any condition attached to an interim accommodation order has not been complied with; or

(i) an application for a new interim accommodation order has been made to the Court under section 270(1); or

S. 262(1)(j) amended by No. 52/2013 s. 33(c).

(j) the child is placed in emergency care on a warrant issued under this Chapter; or

(k) an appeal has been instituted under Part 4.11 to the Supreme Court or the County Court against an order made by the Children's Court under this Chapter; or

(l) a question of law has been reserved by the Family Division under section 533 for the opinion of the Supreme Court.

(2) An application for an interim accommodation order may be made—

(a) by the child or a parent of the child; or

(b) by a protective intervener.

(3) The Supreme Court or the County Court may also make an interim accommodation order in respect of a child if the hearing by it of an appeal against an order made by the Children's Court under this Chapter is adjourned.

(4) Without limiting any other power to make an interim accommodation order that is expressly conferred on a bail justice by this Division, a bail justice may also make an interim accommodation order in respect of a child in the circumstances referred to in subsection (1)(a), (c), (h), (i) and (j).

(5) If a bail justice makes an interim accommodation order—

(a) he or she must cause a written copy of the order to be given to every party to the application for the order at the time the order is made; and

(b) the protective intervener or, if there is no protective intervener involved, the bail justice must cause a copy of the order to be filed in the Court as soon as possible.

S. 262(5)(b) amended by No. 26/2023 s. 43.

(5A) Despite anything to the contrary in this section, an interim accommodation order must not be made in respect of a child if the Court is satisfied that—

S. 262(5A) inserted by No. 61/2014 s. 13(1).

(a) a protection order could be made in respect of the child under Part 4.9; or

(b) a permanent care order could be made in respect of the child under section 319.

(6) Despite anything to the contrary in this section, an interim accommodation order must not be made in respect of a child in relation to whom a family reunification order, a care by Secretary order or a long-term care order is in force.

S. 262(6) amended by No. 61/2014 s. 13(2).

(7) Despite anything to the contrary in this Chapter, if an interim accommodation order is made as a result of a breach of a family preservation order, that family preservation order is suspended on the making of the interim accommodation order and remains suspended for the period of operation of the interim accommodation order but the period of

S. 262(7) amended by No. 61/2014 s. 13(3).

the family preservation order is not extended by the suspension.

263 Conditions of interim accommodation order

(1) An interim accommodation order may provide for—

S. 263(1)(a) amended by No. 64/2010 s. 12(1)(a)(b).

(a) the release of the child pending the hearing, or the resumption of the hearing; or

S. 263(1)(b) amended by No. 64/2010 s. 12(1)(c)(d).

(b) the release of the child into the care of his or her parent pending the hearing, or the resumption of the hearing; or

S. 263(1)(c) amended by No. 64/2010 s. 12(1)(e)(f).

(c) the placement of the child with a suitable person or suitable persons pending that hearing, or the resumption of the hearing, and following a report (whether oral or written) from the Secretary on that person's or those persons' suitability; or

(d) the placement of the child in an out of home care service pending that hearing or resumption; or

(e) the placement of the child in a secure welfare service pending that hearing or resumption if there is a substantial and immediate risk of harm to the child; or

(f) the placement of the child in a declared hospital on the provision to the Court or bail justice of a statement in the prescribed form by or on behalf of the chief executive of the hospital that a bed is available for the child at the hospital; or

S. 263(1)(fa) inserted by No. 61/2014 s. 14.

(fa) the placement of the child with a disability service provider within the meaning of the **Disability Act 2006** if the child is the recipient of disability services under that Act; or

(fb) the placement of the child with a registered NDIS provider providing to the child under the NDIS short term accommodation and assistance or supported independent living; or

S. 263(1)(fb) inserted by No. 19/2019 s. 254(4).

(g) the placement of the child in a declared parent and baby unit on the provision to the Court or bail justice of a statement in the prescribed form by or on behalf of the chief executive of the agency managing the parent and baby unit that a place is available for the child at the parent and baby unit.

* * * * * S. 263(2) repealed by No. 64/2010 s. 12(2).

(3) An interim accommodation order must not be made providing for the placement of a child in a secure welfare service in any case referred to in section 262(1)(d) or 262(1)(e) unless the Court or bail justice making the order is of the opinion that the placement is necessary to ensure the attendance of the child on the hearing of the irreconcilable difference application.

(4) An interim accommodation order must not be made in any case referred to in section 262(1)(c) unless the Court or bail justice making the order is of the opinion that the placement is necessary to ensure the attendance of the child on the hearing of the therapeutic treatment application.

(5) The fact that the child does not have adequate accommodation is not by itself a sufficient reason for the making of an order providing for the placement of a child in a secure welfare service.

(6) In preparing a report under subsection (1)(c), the Secretary must have regard to the prescribed criteria (if any).

(7) An interim accommodation order may include any conditions that the Court or bail justice considers should be included in the best interests of the child.

S. 263(8) amended by No. 52/2013 s. 34.

(8) Conditions included in an interim accommodation order may relate to the contact with a parent or other person by the child.

(9) The Governor in Council may by Order published in the Government Gazette declare hospitals and parent and baby units for the purposes of subsection (1).

264 Duration of interim accommodation order

S. 264(1) amended by No. 64/2010 s. 13(1).

(1) Subject to this section, an interim accommodation order under section 263(1)(a), 263(1)(b), 263(1)(c) or 263(1)(d) remains in force for the period specified in the order and beginning on the day the order is made.

S. 264(2) amended by No. 64/2010 s. 13(2).

(2) Subject to this section an interim accommodation order of a kind referred to in paragraph (e), (f) or (g) of section 263(1) remains in force for the period (not exceeding 21 days) specified in the order and beginning on the day on which the order is made.

(3) An interim accommodation order made by a bail justice only remains in force until the application is heard by the Court on the next working day.

(4) An interim accommodation order made in any case referred to in section 262(1)(e) only remains in force until an irreconcilable difference application has been made to the Court or for the period of 21 days (beginning on the day on which the order is made), whichever is the shorter.

265 Parent entitled to know child's whereabouts

(1) A parent is entitled to be given details of the child's whereabouts under an interim accommodation order unless the Court or bail justice making the order directs that those details be withheld from the parent.

(2) The Court or a bail justice may only give a direction under subsection (1) if of the opinion that the direction is in the best interests of the child.

266 Power of Secretary to transfer child

(1) If an interim accommodation order provides for the placement of a child in an out of home care service or a secure welfare service, the Secretary may from time to time, if he or she believes that it is advisable in the best interests of the child, transfer the child—

(a) from one out of home care service to another out of home care service; or

(b) from one secure welfare service to another secure welfare service.

(2) If the whereabouts of a child are changed under subsection (1), the Secretary must give notice of that change to—

(a) the child's parent, unless a direction has been given under section 265; and

(b) the Court.

S. 266(2)(b) amended by No. 26/2023 s. 44.

267 Extension of interim accommodation order

(1) Subject to subsection (2), at any time while an interim accommodation order made by the Court is in force an application for an extension or further extension of the period of the order may be made to the Court by a protective intervener.

(2) On an application under subsection (1) the Court may—

S. 267(2)(a) amended by No. 64/2010 s. 14(1)(a).

(a) in the case of an order of a kind referred to in section 263(1)(a), 263(1)(b), 263(1)(c) or 263(1)(d), extend the order for the period specified in the order and beginning on the day the order is made if it is satisfied that it is in the best interests of the child to do so;

S. 267(2)(b) amended by No. 64/2010 s. 14(1)(b).

(b) in the case of an order of a kind referred to in paragraph (f) or (g) of section 263(1), extend the order for the period (not exceeding 21 days) specified in the order and beginning on the day on which the order is made if it is satisfied that it is in the best interests of the child to do so;

(c) in the case of an order of a kind referred to in section 263(1)(e), extend the order (if it has not previously been extended) for one further period (not exceeding 21 days) beginning on the day on which the order is made if it is satisfied that exceptional circumstances exist which justify it in doing so.

(3) The Court may not vary or revoke an interim accommodation order or make a new interim accommodation order on an application under subsection (1).

(4) The Court may, if in its opinion special circumstances exist which justify it in doing so, refuse to hear an application under subsection (1) unless the applicant has given notice of the application to—

(a) the person who applied for the interim accommodation order; and

(b) any other party to the proceeding in which that order was made; and

(c) any person with whom the child is living—

a reasonable time before the hearing of the application.

(5) If the Court proceeds to hear an application under subsection (1) without requiring notice of it to be given as specified in subsection (4), it must cause a written copy of any order made by it on the application to be given as soon as possible to the persons and parties referred to in paragraphs (a), (b) and (c) of subsection (4).

268 Application for variation of interim accommodation order

(1) If the Court makes an interim accommodation order in respect of a child, the child or a parent of the child may apply to the Court for variation of the conditions included in the order if—

(a) the applicant was not legally represented at the hearing of the application for the order; or

(b) new facts or circumstances have arisen since the making of the order.

(2) If—

(a) the Court makes an interim accommodation order in respect of a child; and

(b) new facts or circumstances have arisen since the making of the order—

a protective intervener may apply to the Court for variation of the conditions included in the order.

S. 268(3) substituted by No. 52/2013 s. 35(1).

(3) On an application under subsection (2) by a protective intervener, he or she may serve—

(a) unless paragraph (b) applies, a notice stating that an application for variation of the conditions included in the interim accommodation order will be made to the Court on a day and at a time specified in the notice; or

(b) if the child is the subject of an interim accommodation order made under section 262(1)(c), a notice directing—

(i) the child to appear before the Court; and

(ii) the parent or other person with whom the child is living to produce the child before the Court.

(4) A notice under subsection (3) must be served on—

(a) the child's parent or other person with whom the child is living; and

(b) if the child is of or above the age of 12 years, the child—

a reasonable time before the hearing of the application.

S. 268(5) amended by No. 52/2013 s. 35(2)(a).

(5) If a notice under subsection (3) is served in accordance with subsection (4) and the child does not appear before the Court, in the case of a notice under subsection (3)(a), if ordered to do so by the Court or, in the case of a notice under subsection (3)(b), at the time stated in the notice—

(a) a protective intervener may, without a warrant, place the child in emergency care; or

S. 268(5)(a) amended by No. 52/2013 s. 35(2)(b).

(b) the Court may, if satisfied that the order or notice has come to the attention of the child's parent or other person with whom the child is living or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent or other person with whom the child is living, issue a search warrant for the purpose of having the child placed in emergency care.

S. 268(5)(b) amended by No. 52/2013 s. 35(2)(c).

(6) Sections 241 and 242 apply, or if the child is the subject of an interim accommodation order made under section 262(1)(c) sections 247(2) and 247A apply, with any necessary modifications to—

S. 268(6) substituted by No. 52/2013 s. 35(3).

(a) the placing of a child in emergency care (with or without a warrant) under this section; and

(b) the issue and execution of a search warrant under this section.

(7) On the child appearing or being brought before the Court under this section, the Court may vary the conditions of the order.

(8) If the child is not required to appear before the Court on the hearing of an application under this section, the Court may hear and determine the application in the absence of the child.

S. 268(8) inserted by No. 52/2013 s. 35(4).

269 Procedure on breach of interim accommodation order

(1) If a protective intervener has reasonable grounds for believing that an interim accommodation order or any condition of an interim accommodation order has not been, or is not being, complied with, he or she may serve—

S. 269(1) substituted by No. 52/2013 s. 36(1).

(a) unless paragraph (b) applies, a notice stating that an application for an order under subsection (7) will be made to the Court on a day and at a time specified in the notice; or

(b) if the child is the subject of an interim accommodation order made under section 262(1)(c), a notice directing—

(i) the child to appear before the Court; and

(ii) the parent or other person with whom the child is living to produce the child before the Court.

(2) A notice under subsection (1) must be served on—

(a) the child's parent or other person with whom the child is living; and

(b) if the child is of or above the age of 12 years, the child—

a reasonable time before the commencement of the hearing under this section.

S. 269(3) amended by No. 52/2013 s. 36(2)(a).

(3) If a notice under subsection (1) is served in accordance with subsection (2) and the child does not appear before the Court, in the case of a notice under subsection (1)(a), if ordered to do so by the Court or, in the case of a notice under subsection (1)(b), at the time stated in the notice—

S. 269(3)(a) amended by No. 52/2013 s. 36(2)(b).

(a) a protective intervener may, without a warrant, place the child in emergency care; or

S. 269(3)(b) amended by No. 52/2013 s. 36(2)(c).

(b) the Court may, if satisfied that the order or notice has come to the attention of the child's parent or other person with whom the child is living or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent or other person with whom the

child is living, issue a search warrant for the purpose of having the child placed in emergency care.

S. 269(4) amended by No. 52/2013 s. 36(3).

(4) If a protective intervener—

(a) is satisfied that there is good reason not to proceed as specified in subsection (1) or that service of a notice under subsection (1) cannot be carried out; and

(b) is satisfied on reasonable grounds that there has been a failure to comply with the interim accommodation order or any condition attached to it—

he or she may, without a warrant, place the child in emergency care or apply to a magistrate for the issue of a search warrant for the purpose of having the child placed in emergency care.

S. 269(5) substituted by No. 52/2013 s. 36(4).

(5) As soon as possible after a child is placed in emergency care under subsection (4) and in any event within 24 hours after that placement—

(a) unless paragraph (b) applies, the application for an order under subsection (7) must be made to the Court or a bail justice; or

(b) if the child is the subject of an interim accommodation order made under section 262(1)(c), the child must be brought before the Court or a bail justice.

S. 269(6) substituted by No. 52/2013 s. 36(5).

(6) Sections 241 and 242 apply, or if the child is the subject of an interim accommodation order made under section 262(1)(c) sections 247(2) and 247A apply, with any necessary modifications to—

(a) the placing of a child in emergency care (with or without a warrant) under this section; and

(b) the issue and execution of a search warrant under this section.

(7) On the child appearing or being brought before the Court or a bail justice under this section, the Court or bail justice—

(a) may revoke the interim accommodation order and make another interim accommodation order; or

(b) may refuse to revoke the interim accommodation order; or

(c) may make another interim accommodation order if the interim accommodation order expired after the notice was served under subsection (1) or the protective intervener proceeded as specified in subsection (4), as the case requires.

S. 269(8) inserted by No. 52/2013 s. 36(6).

(8) If the child is not required to appear before the Court on the hearing of an application under this section, the Court may hear and determine the application in the absence of the child.

270 Application for new interim accommodation order

(1) If an interim accommodation order is in force in respect of a child, the child or a parent of the child may apply to the Court for a new interim accommodation order if—

(a) the applicant was not legally represented at the hearing of the application for the order; or

(b) new facts or circumstances have arisen since the making of the order.

(2) If the Court makes an interim accommodation order in respect of a child, a protective intervener (whether or not the order is still in force) may apply to the Court for a new interim accommodation order if—

(a) new facts or circumstances have arisen since the making of the order; or

(b) the protective intervener is satisfied on reasonable grounds that the child is living in conditions which are unsatisfactory in terms of the safety and wellbeing of the child.

S. 270(3) substituted by No. 52/2013 s. 37(1).

(3) On an application under subsection (2) by a protective intervener, he or she may serve—

(a) unless paragraph (b) applies, a notice stating that an application for a new interim accommodation order will be made to the Court on a day and at a time specified in the notice; or

(b) if the child is the subject of an interim accommodation order made under section 262(1)(c), a notice directing—

(i) the child to appear before the Court; and

(ii) the parent or other person with whom the child is living to produce the child before the Court.

(4) A notice under subsection (3) must be served on—

(a) the child's parent or other person with whom the child is living; and

(b) if the child is of or above the age of 12 years, the child—

a reasonable time before the commencement of the hearing under this section.

S. 270(5) amended by No. 52/2013 s. 37(2)(a).

(5) If a notice under subsection (3) is served in accordance with subsection (4) and the child does not appear before the Court, in the case of a notice under subsection (3)(a), if ordered to do so by the Court or, in the case of a notice under subsection (3)(b), at the time stated in the notice—

S. 270(5)(a) amended by No. 52/2013 s. 37(2)(b).

(a) a protective intervener may, without a warrant, place the child in emergency care; or

S. 270(5)(b) amended by No. 52/2013 s. 37(2)(c).

(b) the Court may issue a search warrant for the purpose of having the child placed in emergency care, if the Court is satisfied that the order or notice has come to the attention of the child's parent or other person with whom the child is living or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent or other person with whom the child is living.

(6) If on an application under subsection (2) by a protective intervener in the circumstances set out in subsection (2)(b), the protective intervener is satisfied that there is good reason not to proceed as specified in subsection (3) or that service of a notice under subsection (3) cannot be carried out, he or she may—

S. 270(6)(a) amended by No. 52/2013 s. 37(3).

(a) without a warrant, place the child in emergency care; or

(b) apply to a magistrate for the issue of a search warrant.

S. 270(7) substituted by No. 52/2013 s. 37(4).

(7) Sections 241 and 242 apply, or if the child is the subject of an interim accommodation order made under section 262(1)(c) sections 247(2) and 247A apply, with any necessary modifications to—

(a) the placing of a child in emergency care (with or without a warrant) under this section; and

(b) the issue and execution of a search warrant under this section.

(8) As soon as possible after a child is placed in emergency care under subsection (6) and in any event within 24 hours after that placement—

S. 270(8) substituted by No. 52/2013 s. 37(5).

(a) unless paragraph (b) applies, the application for a new interim accommodation order must be made to the Court or a bail justice; or

(b) if the child is the subject of an interim accommodation order made under section 262(1)(c), the child must be brought before the Court or a bail justice.

(9) On the child appearing or being brought before the Court or a bail justice under this section, the Court or bail justice may make a new interim accommodation order.

(9A) If the child is not required to appear before the Court on the hearing of an application under this section, the Court may hear and determine the application in the absence of the child.

S. 270(9A) inserted by No. 52/2013 s. 37(6).

(10) Nothing in this section limits the power of the Court to make another interim accommodation order where the existing order was made by a bail justice or was made by the Court on an adjournment of a proceeding.

271 Appeal against interim accommodation order

(1) If the Court makes an interim accommodation order in respect of a child or dismisses an application for an interim accommodation order in respect of a child, then—

(a) the child; or

(b) a parent of the child; or

(c) a protective intervener—

may appeal to the Supreme Court against the order or the dismissal.

(2) On an appeal under this section against an interim accommodation order, the Supreme Court must—

(a) if it thinks that a different interim accommodation order should have been made—

(i) set aside the order of the Children's Court; and

(ii) make any other order that it thinks ought to have been made; or

(b) in any other case, dismiss the appeal.

(3) On an appeal under this section against the dismissal of an application for an interim accommodation order, the Supreme Court must—

(a) if it thinks that the application should not have been dismissed, make the order that it thinks ought to have been made; or

(b) in any other case, dismiss the appeal.

Division 6—Undertakings

272 Order requiring undertaking

S. 272(1) amended by No. 48/2006 s. 17.

(1) In a proceeding on a protection application or on an irreconcilable difference application, the Court may make an order under this Division requiring a person to give an undertaking.

(2) The order may require—

(a) the child; or

(b) the child's parent; or

(c) the person with whom the child is living—

to enter into an undertaking in writing to do or refrain from doing the thing or things specified in the undertaking for the period specified in the undertaking.

(3) The period specified in the undertaking must be a period not exceeding 6 months or, if the Court is satisfied that there are special circumstances which warrant the making of an order for such a period, exceeding 6 months but not exceeding 12 months.

(4) An undertaking may include any conditions that the Court considers to be in the best interests of the child.

(5) The Court may only make an order requiring a person to enter into an undertaking if that person consents to the making of the order.

273 Variation or revocation of undertaking

(1) An application for a variation of an undertaking or of any conditions of an undertaking or for the revocation of an undertaking may be made to the Court by—

(a) the child; or

(b) the child's parent; or

(c) the person with whom the child is living.

(2) The applicant must as soon as possible cause a copy of an application under this section to be given or sent by post to any person by or on behalf of whom the application could have been made.

(3) On an application under subsection (1) the Court may—

(a) if the application is for a variation of an undertaking or of any conditions of an undertaking, vary the undertaking or any of the conditions of the undertaking or add or substitute a condition but must not extend the period of the undertaking; or

(b) if the application is for the revocation of an undertaking, revoke the undertaking.

Part 4.9—Protection orders

Division 1—General

274 When Court may make order under this Part

The Court may make an order under this Part in respect of a child if the Court finds—

(a) that the child is in need of protection; or

S. 274(b) amended by No. 61/2014 s. 15.[1]

(b) that there is a substantial and irreconcilable difference between the person who has care of the child and the child to such an extent that the care and control of the child are likely to be seriously disrupted.

275 Types of protection order

(1) If the Court makes a finding under section 274 it may make any one of the following protection orders—

(a) an order requiring a person to give an undertaking;

S. 275(1)(b) substituted by No. 61/2014 s. 16.

(b) a family preservation order;

S. 275(1)(c) substituted by No. 61/2014 s. 16.

(c) a family reunification order;

S. 275(1)(d) substituted by No. 61/2014 s. 16.

(d) a care by Secretary order;

S. 275(1)(e) substituted by No. 61/2014 s. 16.

(e) a long-term care order.

* * * * *

S. 275(1)(f)–(h) repealed by No. 61/2014 s. 16.

(2) A protection order may continue in force after the child attains the age of 17 years but ceases to be in force when the child attains the age of 18 years.

(3) A care by Secretary order or a long-term care order may be made in relation to a child who is under the age of 18 years but ceases to be in force when the child attains the age of 18 years or marries, whichever happens first.

S. 275(3) inserted by No. 8/2016 s. 8.

276 Restrictions on the making of protection orders

(1) Subject to section 557(2), the Court must not make a protection order unless—

(a) it has received and considered a disposition report; and

(b) it is satisfied that all reasonable steps have been taken by the Secretary to provide the services necessary in the best interests of the child.

(2) The Court must not make a protection order that has the effect of removing a child from the care of the child's parent unless—

S. 276(2) amended by No. 61/2014 s. 17 (as amended by No. 27/2015 s. 3).

(a) the Court has considered and rejected as being contrary to the best interests of the child, an order allowing the child to remain in the care of the child's parent; and

S. 276(2)(a) amended by No. 61/2014 s. 17 (as amended by No. 27/2015 s. 3).

S. 276(2)(b) amended by No. 61/2014 s. 17 (as amended by No. 27/2015 s. 3).

(b) the Court is satisfied by a statement contained in a disposition report in accordance with section 558(c) that all reasonable steps have been taken by the Secretary to provide the services necessary to enable the child to remain in the care of the child's parent; and

(c) the Court considers that the making of the order is in the best interests of the child.

(3) The fact that the child does not have adequate accommodation is not by itself a sufficient reason for the making of an order referred to in subsection (2).

S. 276A inserted by No. 61/2014 s. 18.

276A Court to have regard to certain matters

(1) In determining whether to make a protection order, the Court must have regard to advice from the Secretary as to—

(a) if a case plan has been prepared in relation to the child, the objectives of the case plan; and

(b) if the child has one or more siblings under the age of 18 years, the arrangements in place for the care of those siblings; and

(c) the age of the child and the period of time that the child has spent in out of home care during the child's lifetime (whether or not as a consequence of a court order).

(2) In determining whether to make a protection order that has the effect of conferring parental responsibility for a child on the Secretary, the Court must have regard to advice from the Secretary as to—

(a) the likelihood of a parent of the child permanently resuming care of the child during the term of the protection order; and

(b) the outcome of any previous attempts to reunify any child with the parent of the child; and

(c) if a parent of the child has previously had another child permanently removed from the parent's care, the desirability of making an early decision about the future permanent care arrangements for the child the subject of the proposed order; and

(d) the benefits to the child of making a care by Secretary order to facilitate alternate arrangements for the permanent care of the child if—

S. 276A (2)(d)(i) amended by No. 6/2026 s. 8.

(i) the child is in out of home care as a result of an order under this Part and has been in out of home care under such an order for a cumulative period of 24 months; and

(ii) there appears to be no realistic prospect of the child being able to safely return permanently to the care of the child's parent within a further period of 12 months; and

(iii) there are no permanent care arrangements already available for the child; and

(e) the desirability of making a permanent care order, if the child is placed with a person who is intended to have permanent care of the child.

(3) Section 287A(4) applies to the determination of a cumulative period under this section (except subsection (1)(c)).

S. 277 substituted by No. 61/2014 s. 19.

277 Service of applications

(1) The applicant must as soon as possible cause a copy of an application for the following to be given or sent in accordance with subsection (2)—

(a) the variation of an undertaking under this Part or of any conditions of an undertaking or for the revocation of an undertaking; or

(b) the variation or revocation of a family preservation order; or

(c) the extension of the period of a family preservation order; or

(d) the extension of the period of a family reunification order or a care by Secretary order; or

(e) the variation or revocation of a family reunification order; or

S. 277(1)(ea) inserted by No. 8/2016 s. 22(1).

(ea) a care by Secretary order applied for under section 289(1A); or

S. 277(1)(eb) inserted by No. 8/2016 s. 22(1).

(eb) a long-term care order applied for under section 290(1A); or

(f) the revocation of a care by Secretary order or a long-term care order; or

(g) an order in respect of a failure to comply with a family preservation order or an interim accommodation order.

(2) The application must be given or sent by post—

(a) to any person by or on behalf of whom such an application could have been made; and

(b) in the case of an application referred to in subsection (1)(c), (d), (ea) or (eb), to the child and the parent of the child.

S. 277(2)(b) amended by No. 8/2016 s. 22(2).

Division 2—Undertaking

278 Undertaking—protection order

(1) By an order referred to in section 275(1)(a) the Court may require—

(a) the child; or

(b) the child's parent; or

(c) the person with whom the child is living—

to enter into an undertaking in writing to do or refrain from doing the thing or things specified in the undertaking for the period specified in the undertaking.

(2) The period specified in the undertaking must be a period not exceeding 6 months or, if the Court is satisfied that there are special circumstances which warrant the making of an order for such a period, exceeding 6 months but not exceeding 12 months.

(3) An undertaking may include any conditions that the Court considers to be in the best interests of the child.

(4) The Court may only make an order requiring a person to enter into an undertaking if that person consents to the making of the order.

279 Variation or revocation of undertaking

(1) An application for a variation of an undertaking or of any conditions of an undertaking or for the revocation of an undertaking may be made to the Court by—

(a) the child; or

(b) the child's parent; or

(c) the person with whom the child is living.

(2) On an application under subsection (1) the Court may—

(a) if the application is for a variation of an undertaking or of any conditions of an undertaking, vary the undertaking or any of the conditions of the undertaking or add or substitute a condition but must not extend the period of the undertaking; or

(b) if the application is for the revocation of an undertaking, revoke the undertaking.

Ch. 4 Pt 4.9 Div. 3 (Heading) substituted by No. 61/2014 s. 20.

Division 3—Family preservation order

S. 280 (Heading) substituted by No. 61/2014 s. 21(1).

280 Family preservation order

S. 280(1) amended by No. 61/2014 s. 21(2)(a).

(1) A family preservation order—

(a) gives the Secretary responsibility for the supervision of the child; and

S. 280(1)(b) substituted by No. 61/2014 s. 21(2)(b).

(b) does not affect a person's parental responsibility for the child; and

(c) provides for the child to be placed in the day to day care of one or both of the child's parents.

S. 280(2) amended by No. 61/2014 s. 21(3).

(2) A family preservation order remains in force for the period specified in the order which must either be a period—

(a) not exceeding 12 months; or

(b) exceeding 12 months but not exceeding 2 years, if the Court is satisfied that there are special circumstances which warrant the making of an order for such a period.

S. 280(3) substituted by No. 61/2014 s. 21(4).

(3) If, under subsection (2)(b), the Court specifies a period exceeding 12 months for a family preservation order to remain in force, it must direct the Secretary to review the operation of the order before the end of the period of 12 months after the making of the order.

S. 280(4) substituted by No. 61/2014 s. 21(4).

(4) Following a review under subsection (3), the Secretary, may, with the agreement of the child (if the child is aged 10 years or older) and the child's parent, determine that the family preservation order should end.

S. 280(5) inserted by No. 61/2014 s. 21(4).

(5) The Secretary must notify the Court of a determination under subsection (4).

S. 280(6) inserted by No. 61/2014 s. 21(4).

(6) If a notice is given under subsection (5), the family preservation order ends at the end of 12 months after the order is made or on the date that notice is given, whichever is the later.

S. 280(7) inserted by No. 61/2014 s. 21(4).

(7) The Secretary must notify the child (if the child is aged 10 years or older), the child's parent and any other persons that the Court directs if the family preservation order ends in accordance with subsection (6).

281 Family preservation order may impose conditions

S. 281 (Heading) amended by No. 61/2014 s. 22(1).

S. 281(1) substituted by No. 61/2014 s. 22(2).

(1) A family preservation order may include conditions to be observed by—

(a) the child in respect of whom it is made; or

(b) a parent of the child.

S. 281(1A) inserted by No. 61/2014 s. 22(2).

(1A) Conditions that may be included under subsection (1) are conditions that the Court considers—

(a) to be in the best interests of the child; and

(b) are reasonably capable of being carried out by each person who will be subject to the condition; and

(c) promote the continuing care of the child by a parent of the child.

S. 281(2) amended by No. 61/2014 s. 22(3).

(2) A family preservation order must not include any condition as to where the child lives, unless the condition relates to—

(a) the child living with a specified parent; or

(b) the child living as far as possible for an equal amount of time with each parent if the parents do not live in the same household.

S. 282 (Heading) amended by No. 61/2014 s. 23(1).

282 Powers of Secretary under family preservation order

S. 282(1) amended by No. 61/2014 s. 23(2).

(1) If the Court makes a family preservation order in respect of a child, the parent must permit the Secretary to visit the child at his or her place of residence and to carry out the duties of the Secretary under the order.

(2) The Secretary may, by notice in the prescribed form, give to—

S. 282(2)(a) amended by No. 61/2014 s. 23(2).

(a) the child in respect of whom a family preservation order is made; or

(b) a parent of the child—

any direction that the Secretary considers to be in the best interests of the child and that is both reasonable and lawful.

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Ch. 4 Pt 4.9 Div. 4 (Heading and s. 283) amended by No. 52/2013 s. 38, repealed by No. 61/2014 s. 24.

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Ch. 4 Pt 4.9 Div. 5 (Heading and ss 284–286) amended by No. 52/2013 s. 39, repealed by No. 61/2014 s. 24.

Division 6—Family reunification order

Ch. 4 Pt 4.9 Div. 6 (Heading) substituted by No. 61/2014 s. 25.

287 Family reunification order

S. 287 amended by No. 52/2013 s. 40, substituted by No. 61/2014 s. 26.

(1) A family reunification order—

(a) confers parental responsibility for the child on the Secretary; and

(b) confers responsibility for the sole care of the child on the Secretary; and

(c) subject to this Division, remains in force for the period (not exceeding 24 months) specified in the order; and

S. 287(1)(c) amended by No. 6/2026 s. 9.

(d) may include any conditions that the Court considers—

(i) to be in the best interests of the child; and

(ii) are reasonably capable of being carried out by each person who will be subject to the condition; and

(iii) promote the reunification of the child with a parent of the child; and

(e) must provide that if, while the order is in force, the Secretary is satisfied that it is in the child's best interests, the Secretary may in writing direct that a parent of the child is to resume parental responsibility for the child to the exclusion of the Secretary.

(2) The conferral of parental responsibility on the Secretary does not affect the parental responsibility of any other person for the child in relation to making decisions about major long term issues except as provided for under this Act or by an order of the Court.

(3) The conditions that may be included in accordance with subsection (1)(d) may include a condition concerning contact between the child and a parent of the child or another person of significance to the child.

287A Determining the period of a family reunification order for a child in out of home care for 24 months or less

S. 287A (Heading) amended by No. 6/2026 s. 10(1).

S. 287A inserted by No. 61/2014 s. 27.

(1) This section applies to the determination of the period of a family reunification order for a child who is or has been in out of home care for a cumulative period of 24 months or less as a result of any of the following orders—

S. 287A(1) amended by No. 6/2026 s. 10(2).

(a) an interim accommodation order;

(b) a family reunification order;

(c) a care by Secretary order;

(d) a long-term care order;

(e) a therapeutic treatment (placement) order.

(2) Subject to subsection (3), the period specified in the family reunification order must not have the effect that the child will be placed in out of home care for a cumulative period exceeding 24 months commencing on the date that the child is first placed in out of home care under the first of those orders.

S. 287A(2) substituted by No. 6/2026 s. 10(3).

(3) The family reunification order may specify a period (not exceeding 12 months) that would have the effect that the child is placed in out of home care under one or more orders specified in subsection (1) for a cumulative period of more than 24 months if the Court is satisfied that the order is in the best interests of the child, including by having regard to—

S. 287A(3) substituted by No. 6/2026 s. 10(3).

(a) any previous family reunification order and the duration of each order; and

(b) the extent to which a parent of the child has engaged with services and supports necessary for the safe reunification with the child; and

(c) any circumstances that have impeded the progress of a parent's safe reunification with the child including circumstances preventing timely access to services and supports necessary for reunification.

(4) For the purposes of determining a cumulative period under this section—

(a) any period that the child is in out of home care under a child care agreement under Part 3 or under a private arrangement made by a parent is to be disregarded; and

S. 287A(4)(b) amended by No. 8/2016 s. 9(1).

(b) any period that the child is being cared for by a parent under an interim accommodation order, an undertaking or a family preservation order under this Part, including after that order or undertaking ceases to be in force, must be disregarded; and

S. 287A(4)(c) amended by No. 8/2016 s. 9(2).

(c) any period that the child was in out of home care must be disregarded if the child has subsequently been in the care of a parent without the child being subject to any order under this Part.

S. 287B inserted by No. 6/2026 s. 11.

287B Determining the period of a family reunification order for a child in out of home care for more than 24 months

(1) This section applies if the child is or has been in out of home care for a cumulative period of more than 24 months as a result of any of the following orders—

(a) an interim accommodation order;

(b) a family reunification order;

(c) a care by Secretary order;

(d) a long-term care order;

(e) a therapeutic treatment (placement) order.

(2) The family reunification order may specify a period not exceeding 12 months if the Court is satisfied that the order is in the best interests of the child, including by having regard to—

(a) any previous family reunification order and the duration of each order; and

(b) the extent to which a parent of the child has engaged with services and supports necessary for the safe reunification with the child; and

(c) any circumstances that have impeded the progress of a parent's safe reunification with the child including circumstances preventing timely access to services and supports necessary for reunification.

(3) Section 287A(4) applies to the determination of a cumulative period under this section.

288 Lapsing of family reunification order

S. 288 (Heading) amended by No. 61/2014 s. 28(1).

(1) A family reunification order—

S. 288(1) amended by No. 61/2014 s. 28(2).

(a) is, subject to subsection (2), suspended on the making, with the prior consent of the Secretary, of an application under the Family Law Act 1975 of the Commonwealth by a person who is not a parent of the child, seeking an order with respect to parental responsibility for the child, on the terms of

S. 288(1)(a) amended by No. 61/2014 s. 28(3).

which the parties to the application have agreed; and

(b) ceases to be in force on the making of that order under the Family Law Act 1975 of the Commonwealth.

S. 288(2) amended by No. 61/2014 s. 28(2).

(2) A family reunification order that has been suspended under subsection (1)(a) revives if—

(a) the application for the order sought under the Family Law Act 1975 of the Commonwealth is withdrawn; or

(b) the order sought is refused.

S. 288A inserted by No. 61/2014 s. 29.

288A Change to nature of order

(1) If under a family reunification order the Secretary directs that a parent or parents of a child are to resume parental responsibility for the child to the exclusion of the Secretary, then on and from the date of the direction—

(a) the Secretary ceases to have parental responsibility for the child; and

(b) the parent resumes parental responsibility for the child as specified in the direction; and

(c) the family reunification order is taken to be a family preservation order giving the Secretary responsibility for the supervision of the child and placing the child in the day to day care of the parent or parents who have parental responsibility for the child; and

(d) the conditions of the family reunification order continue to apply as conditions of the family preservation order; and

(e) Division 3 applies to the order; and

(f) the order ceases to be a family reunification order for the purposes of this Act.

(2) The Secretary must give a copy of a direction under this section to—

(a) the Court; and

(b) the child; and

(c) the parent of the child.

(3) The Secretary may apply to the Court to determine that the order is to include conditions.

(4) The Court may determine that the order is to include conditions of a kind referred to in section 281, without requiring the parties to attend, or be represented at, the proceeding.

(5) If the Court makes a determination under subsection (4), the order is taken to include those conditions as if they were included in the order under section 281.

Division 7—Care by Secretary order

Ch. 4 Pt 4.9 Div. 7 (Heading and s. 289) amended by No. 48/2006 s. 18(1), substituted as Ch. 4 Pt 4.9 Div. 7 (Heading and ss 289, 289A) by No. 61/2014 s. 30.

289 Care by Secretary order

S. 289 amended by No. 48/2006 s. 18(1), substituted by No. 61/2014 s. 30.

(1) A care by Secretary order—

(a) confers parental responsibility for the child on the Secretary to the exclusion of all other persons; and

(b) subject to this Division, remains in force for a period of 2 years; and

(c) ceases to be in force when the child attains the age of 18 years or when the child marries, whichever happens first; and

(d) must provide that if, while the order is in force, the Secretary is satisfied that it is in the child's best interests, the Secretary may in writing direct that a parent of the child is to resume parental responsibility for the child.

S. 289(1A) inserted by No. 8/2016 s. 10.

(1A) Subject to Division 1, a care by Secretary order may be made on the application of the Secretary.

S. 289(1B) inserted by No. 8/2016 s. 10.

(1B) A protection order applying to a child at the date of an application for a care by Secretary order in relation to the child continues in force until the application is determined.

S. 289(1C) inserted by No. 8/2016 s. 10.

(1C) If the Court decides not to make a care by Secretary order, it may, if satisfied that the grounds for the finding under section 274 still exist, make—

(a) an order requiring a person to give an undertaking under this Part; or

(b) a family preservation order in respect of the child; or

(c) a family reunification order in respect of the child; or

(d) a long-term care order in respect of the child; or

(e) an order extending a protection order that is in force in respect of the child.

(2) The Court must direct the Secretary to review the operation of the order before the end of the period of 12 months after the making of the order.

(3) Following a review under subsection (2), the Secretary, with the agreement of the child (if the child is aged 10 years or older) and the child's parent, may determine that the order should end.

(4) The Secretary must notify the Court of a determination under subsection (3).

(5) If a notice is given under subsection (4), the order ends at the end of 12 months after the order is made or on the date that notice is given, whichever is the later.

(6) The Secretary must notify the child (if the child is aged 10 years or older), the child's parent and any other persons that the Court directs if the order ends in accordance with subsection (5).

(7) Section 288 applies to a care by Secretary order as if any reference to a family reunification order were a reference to a care by Secretary order.

289A Change to nature of order

S. 289A inserted by No. 61/2014 s. 30.

(1) If under a care by Secretary order the Secretary directs that a parent or parents of the child are to resume parental responsibility for the child, then on and from the date of the direction—

(a) the Secretary ceases to have parental responsibility for the child; and

(b) the parent resumes parental responsibility for the child as specified in the direction; and

(c) the care by Secretary order is taken to be a family preservation order giving the Secretary responsibility for the supervision of the child and placing the child in the day to day care of the parent or parents who have parental responsibility for the child; and

(d) Division 3 applies to the order; and

(e) the order ceases to be a care by Secretary order for the purposes of this Act.

(2) The Secretary must give a copy of a direction under this section to—

(a) the Court; and

(b) the child; and

(c) the parent of the child.

(3) The Secretary may apply to the Court to determine that the order is to include conditions.

(4) The Court may determine that the order is to include conditions of a kind referred to in section 281, without requiring the parties to attend, or be represented at, the proceeding.

(5) If the Court makes a determination under subsection (4), the order is taken to include those conditions as if they were included in the order under section 281.

Ch. 4 Pt 4.9 Div. 8 (Heading and s. 290) amended by No. 48/2006 s. 18(2)(3), substituted by No. 61/2014 s. 31.

Division 8—Long-term care order

S. 290 amended by No. 48/2006 s. 18(2)(3), substituted by No. 61/2014 s. 31.

290 Long-term care order

(1) A long-term care order—

(a) confers parental responsibility for the child on the Secretary to the exclusion of all other persons; and

(b) subject to this Division, remains in force until the child attains the age of 18 years or marries, whichever happens first; and

(c) despite anything to the contrary in Division 7 or 10, may be made instead of extending a care by Secretary order.

(1A) Subject to Division 1, a long-term care order may be made on the application of the Secretary.

S. 290(1A) inserted by No. 8/2016 s. 11.

(1B) A protection order applying to a child at the date of an application for a long-term care order in relation to the child continues in force until the application is determined.

S. 290(1B) inserted by No. 8/2016 s. 11.

(1C) If the Court decides not to make a long-term care order, it may, if satisfied that the grounds for the finding under section 274 still exist, make—

S. 290(1C) inserted by No. 8/2016 s. 11.

(a) an order requiring a person to give an undertaking under this Part; or

(b) a family preservation order in respect of the child; or

(c) a family reunification order in respect of the child; or

(d) a care by Secretary order in respect of the child; or

(e) an order extending a protection order that is in force in respect of the child.

(2) The Court must not make a long-term care order unless the Court is satisfied that—

(a) there is a person or persons available with whom the child will continue to live for the duration of the order; and

(b) the person or persons referred to in paragraph (a) will not consent to the making of a permanent care order; and

(c) the Secretary consents to the making of the order; and

(d) if the child is of or over the age of 10 years, the child does not oppose the making of the order; and

(e) the making of the order is in the best interests of the child.

(3) The Court must direct the Secretary to review the operation of the order before the end of each period of 12 months after the making of the order.

(4) Following a review under subsection (3), the Secretary, with the agreement of the child (if the child is aged 10 years or older) and the child's parent, may determine that order should end.

(5) The Secretary must notify the Court of a determination under subsection (4).

(6) If a notice is given under subsection (5), the order ends at the end of 12 months after the order is made or on the date that notice is given, whichever is the later.

(7) The Secretary must notify the child (if the child is aged 10 years or older), the child's parent and any other persons that the Court directs if the order ends in accordance with subsection (6).

(8) Section 288 applies to a long-term care order as if any reference to a family reunification order were a reference to a long-term care order.

Ch. 4 Pt 4.9 Div. 9 (Heading and ss 291, 292) amended by No. 52/2013 s. 41, repealed by No. 61/2014 s. 32.

* * * * *

Division 10—Extension of protection orders

293 Application for extension of protection order

(1) The Secretary may apply to the Court for an extension or additional extension of the period of—

(a) a family preservation order;

S. 293(1)(a) substituted by No. 61/2014 s. 33(1).

(b) a family reunification order;

S. 293(1)(b) substituted by No. 61/2014 s. 33(1).

(c) a care by Secretary order.

S. 293(1)(c) substituted by No. 61/2014 s. 33(1).

* * * * *

S. 293(1)(d) repealed by No. 61/2014 s. 33(1).

(2) An extension application may be made at any time while the order is in force.

(3) If an extension application is made in respect of an order, the order continues in force until the application is determined.

* * * * *

S. 293(4) repealed by No. 61/2014 s. 33(2).

294 Extension of order

S. 294 amended by No. 6/2026 s. 12(1)(2) (ILA s. 39B(1)).

(1) If an extension application is made in respect of a family preservation order or a care by Secretary order, the Court may extend the order if it is

satisfied that this is in the best interests of the child.

S. 294(2) inserted by No. 6/2026 s. 12(2).

(2) If an extension application is made in respect of a family reunification order, the Court may extend the order if it is satisfied that this is in the best interests of the child, including by having regard to—

(a) any previous extension of the family reunification order and the duration of each extension; and

(b) the extent to which a parent of the child has engaged with services and supports necessary for the safe reunification with the child; and

(c) any circumstances that have impeded the progress of a parent's safe reunification with the child including circumstances preventing timely access to services and supports necessary for reunification.

S. 294A inserted by No. 61/2014 s. 34.

294A Restrictions on the extension of protection orders

S. 294A(1) repealed by No. 6/2026 s. 13.

* * * * *

(2) The Court must not extend a care by Secretary order unless the Court is satisfied that—

(a) firstly, a permanent care order is not appropriate in the circumstances; and

(b) secondly, a long-term care order is not appropriate in the circumstances.

(3) Despite subsection (2), the Court may extend a care by Secretary order if the Court is satisfied that there are exceptional circumstances which justify the making of a further care by Secretary order.

* * * * *

S. 295 amended by No. 52/2013 s. 42, repealed by No. 61/2014 s. 35.

296 Duration of extension

(1) On an extension application relating to a family preservation order, the Court may extend the order for a period ending not later than 2 years after the extension or additional extension is granted.

S. 296(1) amended by No. 61/2014 s. 36(1).

(2) On an extension application relating to a family reunification order, the Court may extend the order by a period of up to 12 months.

S. 296(2) substituted by Nos 61/2014 s. 36(2), 6/2026 s. 14(1).

* * * * *

S. 296(3)–(5) inserted by No. 61/2014 s. 36(2), repealed by No. 6/2026 s. 14(2).

(6) On an extension application relating to a care by Secretary order, the Court may extend the order for a period of 2 years.

S. 296(6) inserted by No. 61/2014 s. 36(2).

* * * * *

S. 297 repealed by No. 61/2014 s. 37.

S. 298 substituted by No. 61/2014 s. 38 (as amended by No. 21/2015 s. 3(Sch. 1 item 10)).

298 Review of extended orders

(1) If under this Division the Court specifies a period exceeding 12 months for an extension of a protection order, it must direct the Secretary to review the operation of the order before the end of the period of 12 months after the making of the order.

(2) Following a review under subsection (1), the Secretary, with the agreement of the child (if the child is aged 10 years or older) and the child's parent, may determine that the order should end.

(3) The Secretary must notify the Court of a determination under subsection (2).

(4) If a notice is given under subsection (3), the order ends at the end of 12 months after the order is made or on the date that notice is given, whichever is the later.

(5) The Secretary must notify the child (if the child is aged 10 years or older), the child's parent and any other persons that the Court directs if the order ends in accordance with subsection (4).

Division 11—Variation of protection orders

299 Application of Division

This Division applies to the following protection orders—

S. 299(a) substituted by No. 61/2014 s. 39.

(a) a family preservation order;

S. 299(b) substituted by No. 61/2014 s. 39.

(b) a family reunification order.

* * * * *

S. 299(c)–(e) repealed by No. 61/2014 s. 39.

300 Application for variation of order

S. 300 amended by No. 61/2014 s. 40(a).

An application for a variation of a protection order to which this Division applies or the conditions of such an order may be made to the Court by—

(a) the child in respect of whom the order was made; or

(b) a parent of the child; or

(c) the Secretary.

S. 300(c) substituted by No. 61/2014 s. 40(b).

* * * * *

S. 300(d)(e) repealed by No. 61/2014 s. 40(b).

300A Secretary may apply for variation of order without notice

S. 300A inserted by No. 61/2014 s. 41.

The Secretary may apply to the Court for a variation of the conditions of a family reunification order without serving notice under section 277 if the Secretary is satisfied on reasonable grounds that—

(a) there has been an unexpected change in circumstances; and

(b) the application is necessary for the safety and wellbeing of the child.

S. 301 amended by No. 61/2014 s. 42(a).

301 Decision of Court on application for variation

On an application under section 300, the Court may vary the order or any of the conditions included in the order or add or substitute a condition but must not—

(a) extend the period of the order; or

S. 301(b) substituted by No. 61/2014 s. 42(b).

(b) in the case of a family reunification order, make any change to the conferral of parental responsibility for the child.

S. 302 (Heading) amended by No. 61/2014 s. 43(1).

302 Interim variation of family reunification order

S. 302(1) amended by No. 61/2014 s. 43(2).

(1) On an application under section 300 or 300A in relation to a family reunification order, the Court may vary any of the conditions included in the order or add or substitute a condition pending the final determination of the application.

S. 302(2) amended by No. 61/2014 s. 43(3).

(2) The Court must not under subsection (1) make any change to the conferral of parental responsibility for the child or extend the period of the order.

(3) The variations made under subsection (1) have effect until the final determination of the application.

Division 12—Revocation of protection orders

S. 303 substituted by No. 61/2014 s. 44.

303 Application of Division

This Division applies to the following protection orders—

(a) family preservation order;

(b) family reunification order;

(c) care by Secretary order;

(d) long-term care order.

304 Application for revocation of order—general

(1) An application for the revocation of a protection order to which this Division applies may be made to the Court by—

(a) the child in respect of whom the order was made; or

(b) a parent of the child; or

(c) the Secretary.

S. 304(1)(c) substituted by No. 61/2014 s. 45(1).

* * * * *

S. 304(1)(d)(e) repealed by No. 61/2014 s. 45(1).

(2) This section does not apply to a care by Secretary order or a long-term care order.

S. 304(2) substituted by No. 61/2014 s. 45(2).

305 Application for revocation of care by Secretary order

S. 305 (Heading) amended by No. 61/2014 s. 46(1).

(1) An application for the revocation of a care by Secretary order may be made to the Court by—

S. 305(1) amended by No. 61/2014 s. 46(2).

(a) the Secretary; or

(b) subject to subsection (2), the child in respect of whom the order is made or a parent of the child.

(2) A person referred to in subsection (1)(b) may only apply to the Court under that subsection if—

S. 305(2)(a) amended by No. 61/2014 s. 46(2).

(a) circumstances have changed since the making of the care by Secretary order and the person has asked the Secretary to review the case plan and the Secretary has either refused to review the case plan or has reviewed it in a way that the person finds unsatisfactory; or

(b) the Secretary makes a notification in accordance with section 289(2) in respect of the order.

S. 306 (Heading) amended by No. 61/2014 s. 47(1).

306 Application for revocation of long-term care order

S. 306(1) amended by No. 61/2014 s. 47(2).

(1) An application for the revocation of a long-term care order may be made to the Court by—

(a) the Secretary; or

(b) subject to subsection (3), the child in respect of whom the order is made or a parent of the child.

(2) The Secretary must apply to the Court under subsection (1) if the Secretary has become aware that—

(a) the child or the person or persons with whom the child is to live under the order has withdrawn his or her consent to the continuation of the order; or

(b) the relationship between the child and the person or persons with whom the child is to live under the order has irretrievably broken down; or

(c) the child has not lived with the person or persons with whom the child is to live under the order for a period of 3 months and it seems unlikely that the child will be able to return to live with that person or those persons in the foreseeable future.

(3) If a long-term care order has been in force for more than 12 months, a parent of the child may only apply to the Court under subsection (1) with the leave of the Court.

S. 306(3) amended by No. 61/2014 s. 47(2).

307 Decision of Court on application for revocation

(1) On an application under section 304, the Court may revoke the order.

(2) This section does not apply to a family reunification order.

S. 307(2) amended by No. 61/2014 s. 48.

308 Revocation of family reunification order or care by Secretary order

S. 308 (Heading) substituted by No. 61/2014 s. 49(1).

On an application under section 304 in respect of a family reunification order or on an application under section 305, the Court—

S. 308 amended by No. 61/2014 s. 49(2).

(a) must revoke the order if it is satisfied that—

(i) the Secretary, the child and the child's parent have agreed to the revocation; and

(ii) the revocation of the order is in the best interests of the child; and

(b) in any other case, may revoke the order if it is satisfied that it is in the best interests of the child to do so.

S. 309 (Heading) substituted by No. 61/2014 s. 50.

309 Revocation of long-term care order

On an application under section 306, the Court may revoke the order if it is satisfied that it is in the best interests of the child to do so.

310 Court may make further orders on revocation

S. 310(1)(2) repealed by No. 61/2014 s. 51(1).

* * * * *

S. 310(3) amended by No. 61/2014 s. 51(2)(a).

(3) If the Court revokes a family reunification order under section 308, it may, if satisfied that the grounds for the finding under section 274 still exist, make—

(a) an order requiring a person to give an undertaking under this Part; or

S. 310(3)(b) amended by No. 61/2014 s. 51(2)(b).

(b) a family preservation order in respect of the child; or

S. 310(3)(c) amended by No. 61/2014 s. 51(2)(c).

(c) if the Court is satisfied that the changed circumstances justify it in doing so, a care by Secretary order or long-term care order in respect of the child.

(4) If the Court revokes an order under section 308(a), the Court may only make an order under subsection (3)(c) if the application for revocation was made by the Secretary.

S. 310(5) amended by No. 61/2014 s. 51(3)(a).

(5) If the Court revokes a care by Secretary order, it may, if satisfied that the grounds for the finding under section 274 still exist, make—

(a) an order requiring a person to give an undertaking under this Part; or

S. 310(5)(b) amended by No. 61/2014 s. 51(3)(b).

(b) a family preservation order in respect of the child.

(6) If the Court revokes a long-term care order, it may, if satisfied that the grounds for the finding under section 274 still exist, make—

S. 310(6) amended by No. 61/2014 s. 51(4)(a).

(a) an order requiring a person to give an undertaking under this Part; or

(b) a family preservation order in respect of the child; or

S. 310(6)(b) amended by No. 61/2014 s. 51(4)(b).

(c) a care by Secretary order.

S. 310(6)(c) substituted by No. 61/2014 s. 51(4)(c).

(7) If the Court makes a care by Secretary order under subsection (6), it must make the order as if the application under that subsection were an application for an extension or further extension of a care by Secretary order, as the case requires, taking into account the cumulative period that the child has been the subject of a care by Secretary order and a long-term care order.

S. 310(7) amended by No. 61/2014 s. 51(5).

Division 13—Breach of protection order

311 Application of Division

S. 311 substituted by No. 61/2014 s. 52.

This Division applies to a family preservation order.

312 Breach of protection order—notice of application

S. 312 (Heading) amended by No. 52/2013 s. 43(1).

(1) If at any time while a protection order to which this Division applies is in force the Secretary is satisfied on reasonable grounds that—

S. 312(1) amended by No. 52/2013 s. 43(2).

(a) there has been a failure to comply with any condition of the order; or

S. 312(1)(b) amended by No. 61/2014 s. 53(1).

(b) there has been a failure to comply with any direction given by the Secretary under section 282(2); or

S. 312(1)(c) repealed by No. 61/2014 s. 53(2).

* * * * *

(d) the child is living in conditions which are unsatisfactory in terms of the safety and wellbeing of the child—

the Secretary may serve a notice stating that an application will be made to the Court on a day and at a time specified in the notice for an order under section 318(2) confirming, varying or revoking the protection order.

(2) A notice under subsection (1) must be served on the relevant person and, if the child is of or above the age of 12 years, the child in accordance with section 594.

S. 312(3) substituted by No. 61/2014 s. 53(3).

(3) In this section, ***relevant person*** means the parent of the child.

S. 313 (Heading) substituted by No. 52/2013 s. 44(1).

313 Placing child in emergency care when notice is served

S. 313 amended by No. 52/2013 s. 44(2)(a).

If a notice under section 312(1) is served in accordance with section 312(2) and the child does not appear before the Court if ordered to do so by the Court—

S. 313(a) amended by No. 52/2013 s. 44(2)(b).

(a) the Secretary may, without a warrant, place the child in emergency care; or

S. 313(b) amended by No. 52/2013 s. 44(2)(c).

(b) the Court may, if satisfied that the order has come to the attention of the relevant person within the meaning of section 312 or, if the

child is of or above the age of 12 years, the child, issue a search warrant for the purpose of having the child placed in emergency care.

314 Placing child in emergency care without notice

S. 314 (Heading) substituted by No. 52/2013 s. 45(1).

(1) This section applies if—

(a) the Secretary is satisfied that there is good reason not to proceed as specified in section 312(1) or that service of a notice under section 312(1) cannot be carried out; and

(b) the Secretary is satisfied on reasonable grounds that—

(i) there has been a failure to comply with any condition of the family preservation order; or

S. 314(1)(b)(i) amended by No. 61/2014 s. 54(a).

(ii) there has been a failure to comply with any direction given by the Secretary under section 282(2); or

S. 314(1)(b)(ii) amended by No. 61/2014 s. 54(b).

* * * * *

S. 314(1)(b)(iii) repealed by No. 61/2014 s. 54(c).

(iv) the child is living in conditions which are unsatisfactory in terms of the safety and wellbeing of the child.

(2) The Secretary may, without a warrant, place the child in emergency care or apply to a magistrate for the issue of a search warrant.

S. 314(2) amended by No. 52/2013 s. 45(2).

315 Requirements when placing child in emergency care

S. 315 (Heading) substituted by No. 52/2013 s. 46(1).

Sections 241 and 242 apply with any necessary modifications to the placing of a child in emergency care and the issue and execution of a search warrant under this Division.

S. 315 amended by No. 52/2013 s. 46(2).

S. 316 amended by No. 61/2014 s. 55.

316 Order to continue

If the Secretary takes action as specified in section 312 or 314, the protection order to which the action relates continues in force until the matter is determined by the Court under section 318.

S. 317 amended by No. 52/2013 s. 47, repealed by No. 61/2014 s. 56.

* * * * *

318 Decision of Court

S. 318(1) amended by Nos 48/2006 s. 19, 52/2013 s. 48, substituted by No. 61/2014 s. 57(1).

(1) On an application for an order under subsection (2), the Court may make an order under that subsection if satisfied that—

(a) there has been a failure to comply with any condition of the order; or

(b) there has been a failure to comply with any direction given by the Secretary under section 282(2); or

(c) the child is living in conditions which are unsatisfactory in terms of the safety and wellbeing of the child.

(2) The Court may—

(a) confirm the protection order as originally made; or

(b) vary any of the conditions included in the protection order or add or substitute a condition but must not—

(i) extend the period of the order; or

S. 318(2)(b)(ii) repealed by No. 61/2014 s. 57(2).

* * * * *

(c) revoke the protection order.

(3) If the Court revokes a protection order under subsection (2), it may, if satisfied that the grounds for the finding under section 274 still exist, make a further protection order under this Part in respect of the child.

S. 318(3) amended by No. 61/2014 s. 57(3).

Part 4.10—Permanent care orders

319 When Court may make permanent care order

(1) The Court may make a permanent care order in respect of a child if—

(a) the child's parent or, if the child's parent has died, the child's surviving parent has not had care of the child for a period of at least 6 months or for periods that total at least 6 months of the last 12 months; and

(b) it is satisfied that—

S. 319(1)(b)(i) amended by No. 61/2014 s. 58.

(i) the parent is unable or unwilling to resume parental responsibility for the child; or

S. 319(1)(b)(ii) amended by No. 61/2014 s. 58.

(ii) it would not be in the best interests of the child for the parent to resume parental responsibility for the child; and

S. 319(1)(c) amended by No. 61/2014 s. 58.

(c) it is satisfied that the person or persons named in the application as suitable to have parental responsibility for the child is or are suitable having regard to—

(i) any prescribed matters; and

(ii) any wishes expressed by the parent in relation to those prescribed matters; and

S. 319(1)(d) amended by No. 61/2014 s. 58.

(d) it is satisfied that the person or persons named in the application is or are willing and able to assume responsibility for the permanent care of the child by having parental responsibility for the child; and

(e) it is satisfied that, so far as is practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child; and

(f) it is satisfied that the best interests of the child will be promoted by the making of the order.

(2) Any period that the child is in the care of a person or body under a child care agreement within the meaning of Part 3.5 must be disregarded in calculating any period under subsection (1).

320 Application for permanent care order

S. 320(1) amended by No. 61/2014 s. 59(1).

(1) An application for a permanent care order may be made by the Secretary in relation to a person who is, or persons who are, approved by the Secretary as suitable to have parental responsibility for the child.

S. 320(1A) inserted by No. 61/2014 s. 59(2).

(1A) The Secretary must not approve a person as suitable to have parental responsibility for a child under a permanent care order unless the Secretary is satisfied that the person will comply with the condition to be included in the permanent care order under section 321(1)(ca).

S. 320(2) amended by No. 61/2014 s. 59(3).

(2) With the leave of the Court, the person or persons named in the application as suitable to have parental responsibility for the child may appear, and be legally represented at, the hearing of the application and may call and examine or cross-examine witnesses and make submissions.

(3) The person or persons referred to in subsection (2) must be taken to be a party to a proceeding in the Court for the purposes of section 522, 523, 526 or 527.

(4) The Secretary must cause notice of the application to be served on—

(a) the child who is the subject of the application; and

(b) the parent of the child; and

S. 320(4)(c) amended by No. 61/2014 s. 59(3).

(c) the person or persons named in the application as suitable to have parental responsibility for the child; and

(d) such other persons as the Court directs.

(5) A notice under subsection (4) must—

S. 320(5)(a) amended by No. 26/2023 s. 45.

(a) be issued out of the Court; and

(b) set out the grounds on which the applicant has made the application; and

(c) be served on a person—

S. 320(5)(c)(i) amended by No. 11/2021 s. 33.

(i) by posting, not less than 14 days before the hearing date stated in the notice, a copy of the notice addressed to the person at the last known place of residence or business of the person; or

S. 320(5)(c)(ii) amended by No. 11/2021 s. 33.

(ii) by delivering, not less than 5 days before the hearing date stated in the notice, a copy of the notice to the person; or

S. 320(5)(c)(iii) amended by No. 11/2021 s. 33.

(iii) by leaving, not less than 5 days before the hearing date stated in the notice, a copy of the notice for the person at the last known place of residence or business of the person with a person who apparently resides or works there and who apparently is not less than 16 years of age.

S. 320(6) inserted by No. 8/2016 s. 12.

(6) A protection order applying to a child at the date of an application for a permanent care order in relation to the child continues in force until the application is determined.

(7) If the Court decides not to make a permanent care order, it may, if satisfied that the grounds for the finding under section 274 still exist, make— S. 320(7) inserted by No. 8/2016 s. 12.

(a) an order requiring a person to give an undertaking under this Part; or

(b) a family preservation order in respect of the child; or

(c) a family reunification order in respect of the child; or

(d) a care by Secretary order in respect of the child; or

(e) a long-term care order in respect of the child; or

(f) an order extending a protection order that is in force in respect of the child.

321 Permanent care order

(1) A permanent care order—

(a) subject to paragraph (b), confers parental responsibility for the child on the person or persons named in the order (not being the child's parent or the Secretary) to the exclusion of all other persons; and S. 321(1)(a) amended by No. 61/2014 s. 60(1)(a).

(b) may confer parental responsibility for the child jointly on the person or persons named in the order and the child's parent if the Court is satisfied that— S. 321(1)(b) amended by No. 61/2014 s. 60(1)(b)(i).

(i) the Secretary, the child and the persons to be named in the order as the persons having parental responsibility for the child have agreed on the terms of the order; and S. 321(1)(b)(i) amended by No. 61/2014 s. 60(1)(b)(ii).

(ii) special circumstances exist which justify the making of such an order; and

(c) may continue in force after the child attains the age of 17 years but ceases to be in force—

(i) when the child attains the age of 18 years; or

(ii) when the child marries—

whichever happens first; and

S. 321(1)(ca) inserted by No. 61/2014 s. 60(1)(c).

(ca) must include a condition that the person caring for the child must, in the best interests of the child and unless the Court otherwise provides, preserve—

(i) the child's identity and connection to the child's culture of origin; and

(ii) the child's relationships with the child's birth family; and

S. 321(1)(d) amended by No. 52/2013 s. 49, substituted by No. 61/2014 s. 60(1)(d).

(d) may include conditions that the Court considers in the best interests of the child concerning contact with the child's parent which may provide for contact up to 4 times a year; and

S. 321(1)(e) amended by No. 52/2013 s. 49.

(e) may include conditions that the Court considers to be in the best interests of the child concerning contact with the child's siblings and other persons significant to the child; and

(f) in the case of an Aboriginal child, may include a condition incorporating a cultural plan for the child.

Note to s. 321(1) inserted by No. 61/2014 s. 60(2).

Note

A person who has parental responsibility for a child under a permanent care order is a ***parent*** within the meaning of section 3(1) of this Act and has, in relation to the child, all the duties, powers, responsibilities and authority which, by law or custom, parents have in relation to children, to the exclusion of all others.

(1A) A condition referred to in subsection (1)(d) or (e) does not prevent additional contact being arranged from time to time by agreement in the child's best interests.

S. 321(1A) inserted by No. 61/2014 s. 60(3).

(1B) Before including a condition referred to in subsection (1)(d), (e) or (f), the Court must have regard to the primacy of the child's relationship with the child's permanent care family and whether the condition—

S. 321(1B) inserted by No. 61/2014 s. 60(3).

(a) is necessary to protect the child or support the permanence of the placement; and

(b) is necessary to promote the child's continuing connection to the child's parents, siblings or culture; and

(c) is sufficiently flexible to accommodate the child's changing developmental needs over time; and

(d) is reasonable in the context of the child's permanent care family's life; and

(e) is necessary given the capacity of the person caring for the child to meet the condition referred to in subsection (1)(ca).

(1C) A permanent care order may include a condition that a child must not have contact with a parent, sibling or other person.

S. 321(1C) inserted by No. 61/2014 s. 60(3).

(2) On the making of a permanent care order any protection order then in force in respect of the child ceases to be in force.

322 Restrictions on the making of permanent care orders

(1) The Court must not make a permanent care order unless it has received and considered a disposition report.

S. 322(2) repealed by No. 61/2014 s. 61(1).

* * * * *

(3) The Court must not make a permanent care order if a protection order is in force in respect of the child but an application to the Court to revoke it has been made but not yet determined.

S. 322(4) amended by No. 61/2014 s. 61(2).

(4) The Court must not make a permanent care order if there is a current proceeding under the Family Law Act 1975 of the Commonwealth seeking an order (on the terms of which the parties to the proceeding have agreed) with respect to the parental responsibility for the child, being a proceeding commenced by a person who is not a parent of the child.

S. 323 substituted by No. 61/2014 s. 62.

323 Restrictions on the making of permanent care order in respect of an Aboriginal child

(1) The Court must not make a permanent care order to place an Aboriginal child solely with a non-Aboriginal person or persons unless the disposition report states that—

(a) no suitable placement can be found with an Aboriginal person or persons; and

(b) the decision to seek the order has been made in consultation with the child, where appropriate; and

(c) the Secretary is satisfied that the order sought will accord with the Aboriginal Child Placement Principle.

(2) The Court must not make a permanent care order in respect of an Aboriginal child unless—

(a) the Court has received a report from an Aboriginal agency that recommends the making of the order; and

(b) a cultural plan has been prepared for the child.

324 Lapsing of permanent care order

(1) A permanent care order—

(a) is, subject to subsection (2), suspended on the making, with the prior consent of the Secretary, of an application under the Family Law Act 1975 of the Commonwealth by a person who is not a parent of the child in respect of whom the permanent care order is made, seeking an order with respect to the parental responsibility for the child, on the terms of which the parties to the proceeding have agreed; and

S. 324(1)(a) amended by No. 61/2014 s. 73.

(b) ceases to be in force on the making of that order under the Family Law Act 1975 of the Commonwealth.

(2) A permanent care order that has been suspended under subsection (1)(a) revives if—

(a) the application for the order sought under the Family Law Act 1975 of the Commonwealth is withdrawn; or

(b) the order sought is refused.

325 Disputes between persons jointly granted parental responsibility

S. 325 (Heading) substituted by No. 61/2014 s. 63(1).

If two persons who have been conferred joint parental responsibility for a child under a permanent care order cannot agree on the exercise or performance of a right, power or duty vested in them as persons who have parental responsibility for the child, either of them may apply to the Court and the Court may make any orders regarding the exercise of the right or power or the performance of the duty that it thinks fit.

S. 325 amended by No. 61/2014 s. 63(2).

S. 325A inserted by No. 61/2014 s. 64.

325A Change to nature of order

(1) The Secretary must notify the Court if the Secretary is informed that each person conferred parental responsibility for the child under a permanent care order has died.

(2) On and from the date that notice is given by the Secretary to the Court under subsection (1)—

(a) the Secretary is taken to have sole parental responsibility for the child; and

(b) the permanent care order is taken to be a care by Secretary order; and

(c) Division 7 of Part 4.9 applies to the order; and

(d) the order ceases to be a permanent care order for the purposes of this Act.

(3) The Secretary must notify the following of the change of order under this section—

(a) the person who has the care of the child;

(b) if the child is aged 10 years or over, the child;

(c) the parent of the child.

326 Variation or revocation of permanent care order

S. 326(1) substituted by No. 61/2014 s. 65(1).

(1) An application for the variation of a permanent care order or for the revocation (in whole or in part) of a permanent care order may be made to the Court by—

(a) the child in respect of whom the order is made; or

S. 326(1)(b) substituted by No. 8/2016 s. 13(1).

(b) a person who is a parent of the child (other than a person referred to in paragraph (c)), with leave of the Court; or

(c) a person who has parental responsibility for the child under the order (the ***permanent care parent***); or

S. 326(1)(c) substituted by No. 8/2016 s. 13(1).

(d) the Secretary.

(1A) A sibling of the child may make an application to the Court for the variation of a permanent care order.

S. 326(1A) inserted by No. 61/2014 s. 65(1).

(1B) An application by a person under subsection (1)(b) to vary a permanent care order made before the end of the period of 12 months after the order is made may only be made on the basis that a contact condition in the order has not been complied with.

S. 326(1B) inserted by No. 61/2014 s. 65(1), amended by No. 8/2016 s. 13(2).

(1C) In determining whether to grant leave to a person under subsection (1)(b), the best interests of the child are the paramount consideration and the Court must—

S. 326(1C) inserted by No. 61/2014 s. 65(1), amended by No. 8/2016 s. 13(2).

(a) first have regard to the current circumstances of the child; and

(b) have regard to the matters specified in section 321(1B); and

(c) have regard to potential disruption to the child's permanent care placement and the child's relationship with the permanent care family; and

(d) in the case of an application to vary an order, have regard to whether—

(i) it appears that a party has not complied with any condition or the order; or

(ii) there has been a significant change in the circumstances of the parent or the child since the original order was made; and

(e) in the case of an application to revoke an order, have regard to whether the circumstances of the parent have changed significantly to the extent that the parent can demonstrate that the parent would be able to permanently fulfil the responsibilities and duties of parenthood, including the capacity to provide adequately for the emotional, intellectual, educational and other needs of the child.

S. 326(1D) inserted by No. 61/2014 s. 65(1), amended by No. 8/2016 s. 13(2).

(1D) To assist the Court in determining whether to grant leave to a person under subsection (1)(b), the Court may request a report from the Secretary about the current circumstances of the child.

S. 326(1E) inserted by No. 61/2014 s. 65(1).

(1E) To assist the Court in determining whether to vary a permanent care order in relation to a contact condition, the Court may request a report from the Secretary about the contact needs of the child.

S. 326(1F) inserted by No. 61/2014 s. 65(1).

(1F) To assist the Court in determining whether to revoke a permanent care order, the Court may request a report from the Secretary to assist the Court in determining whether revocation would be in the child's best interests.

(2) The applicant must cause notice of the application to be served on—

(a) the child who is the subject of the application; and

S. 326(2)(b) substituted by No. 61/2014 s. 65(2).

(b) each person who has parental responsibility for the child under the order; and

(c) each person who is a parent of the child (other than a person referred to in paragraph (b)); and

S. 326(2)(c) amended by No. 29/2006 s. 3(Sch. 1 item 5.2), substituted by No. 61/2014 s. 65(2).

(d) the Secretary; and

(e) such other persons as the Court directs.

(2A) If a parent requires leave of the Court to bring an application to vary or revoke a permanent care order, notice of the application under subsection (2) must not be served on—

S. 326(2A) inserted by No. 61/2014 s. 65(3).

(a) the child who is the subject of the application; or

(b) each person who has parental responsibility for the child under the order—

unless that leave is granted.

(3) A notice under subsection (2) must—

(a) be issued out of the Court; and

S. 326(3)(a) amended by No. 26/2023 s. 46.

(b) set out the grounds on which the applicant has made the application; and

(c) be served on a person—

(i) by posting, not less than 14 days before the hearing date stated in the notice, a copy of the notice addressed to the person at the last known place of residence or business of the person; or

S. 326(3)(c)(i) amended by No. 11/2021 s. 34.

(ii) by delivering, not less than 5 days before the hearing date stated in the notice, a copy of the notice to the person; or

S. 326(3)(c)(ii) amended by No. 11/2021 s. 34.

S. 326(3)(c)(iii) amended by No. 11/2021 s. 34.

(iii) by leaving, not less than 5 days before the hearing date stated in the notice, a copy of the notice for the person at the last known place of residence or business of the person with a person who apparently resides or works there and who apparently is not less than 16 years of age.

S. 327 amended by No. 61/2014 s. 66(2) (ILA s. 39B(1)).

327 Decision on application for variation or revocation

(1) On an application under section 326, the Court may, if satisfied that it is in the best interests of the child to do so—

S. 327(1)(a) amended by No. 61/2014 s. 66(1).

(a) if the application is for a variation of the order, vary any of the conditions included in the order or add or substitute a condition but must not make any change to the parental responsibility for the child; or

(b) if the application is for the revocation of the order, revoke the order in whole or in part.

S. 327(2) inserted by No. 61/2014 s. 66(2).

(2) The limit on contacts that applies to a condition imposed under section 321(1)(d) does not apply to a variation of a contact condition of a permanent care order if the variation is made more than 12 months after the making of the order.

Part 4.11—Appeals and reviews

Division 1—Appeals

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S. 328 amended by Nos 68/2009 s. 60, 15/2013 s. 9, 61/2014 s. 74, 3/2016 s. 51, 8/2016 s. 22(3), repealed by No. 44/2019 s. 3.[2]

329 Appeal to Supreme Court on a question of law

(1) A party to a proceeding before the Family Division or the Attorney-General, if he or she appeared or was represented in the proceeding under section 215(2), may appeal to the Supreme Court, on a question of law, from a final order of the Court in that proceeding.

S. 329(1A) inserted by No. 1/2022 s. 42.

(1A) If the Children's Court was constituted by the Chief Magistrate who is a dual commission holder, the appeal is to be made to the Court of Appeal.

S. 329(2) amended by No. 61/2014 s. 75.

(2) The person or persons named in an application for a permanent care order as suitable to have parental responsibility for a child must, for the purposes of this section, be taken to be a party to the proceeding for the permanent care order.

(3) If a protective intervener wishes to appeal under this section, the appeal must be brought by the Secretary on behalf of the protective intervener.

(4) An appeal under subsection (1)—

(a) must be instituted not later than 30 days after the day on which the order complained of was made; and

(b) does not operate as a stay of any order made by the Court unless the Supreme Court so orders.

(5) Subject to subsection (4), an appeal under subsection (1) must be brought in accordance with the rules of the Supreme Court.

(6) An appeal instituted after the end of the period referred to in subsection (4)(a) is deemed to be an application for leave to appeal under subsection (1).

(7) The Supreme Court may grant leave under subsection (6) and the appellant may proceed with the appeal if the Supreme Court—

(a) is of the opinion that the failure to institute the appeal within the period referred to in subsection (4)(a) was due to exceptional circumstances; and

(b) is satisfied that the case of any other party to the appeal would not be materially prejudiced because of the delay.

(8) After hearing and determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court with or without any direction in law.

(9) An order made by the Supreme Court on an appeal under subsection (1), other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.

(10) The Supreme Court may, as it thinks fit, provide for a stay of the order or may make any interim accommodation order pending the hearing of the appeal that the Children's Court has jurisdiction to make.

330 Appeals to be heard in open court

S. 330(1) amended by No. 44/2019 s. 4.

(1) Proceedings on an appeal under section 329 are, subject to subsection (2), to be conducted in open court.

(2) The Supreme Court or County Court (as the case requires) may, on the application of a party or of any other person who has a direct interest in the proceeding or without any such application—

(a) order that the whole or any part of a proceeding be heard in closed court; or

(b) order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.

(3) Any party to the proceeding and any other interested person has standing to support or oppose an application under subsection (2).

(4) If an order has been made under this section, the Supreme Court or County Court (as the case requires) must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the Court is being held.

(5) An order posted under this section must not contain any particulars likely to lead to the identification of the child who is a party to the proceeding.

(6) A person must not contravene an order made and posted under this section.

Penalty:

(a) In the case of a person of or above the age of 18 years, 25 penalty units or committal for a term of not more than six months to prison; or

(b) In the case of a child of or above the age of 15 years, 25 penalty units or detention for a period of not more than six months in a youth justice centre; or

(c) In the case of a child under the age of 15 years, 12 penalty units or detention for a period of not more than three months in a youth residential centre.

Division 2—Reviews

331 Internal review

(1) The Secretary must prepare and implement procedures for the review within the Department of decisions made as part of the decision-making process following the making of a protection order.

S. 331(2) amended by No. 63/2016 s. 16.

(2) The Secretary must ensure that a copy of the procedures prepared under subsection (1) is given to the child and his or her parent together with the copy of the case plan required to be given under section 168.

S. 331(3) inserted by No. 57/2015 s. 8, amended by No. 30/2019 s. 12.

(3) This section does not apply to a decision of a principal officer of an Aboriginal agency who is authorised under section 18 to perform specified functions or exercise specified powers of the Secretary in respect of a child.

S. 332 repealed by No. 61/2014 s. 147, new s. 332 inserted by No. 57/2015 s. 9.

332 Internal review—decision of principal officer of Aboriginal agency

S. 332(1) amended by No. 30/2019 s. 13.

(1) The principal officer of an Aboriginal agency who is authorised under section 18 in respect of a child must prepare and implement procedures for the review within the Aboriginal agency of decisions

made as part of the decision-making process under the authorisation.

(2) The principal officer must ensure that a copy of the procedures prepared under subsection (1) is given to the child and the child's parent, together with the copy of the case plan required to be given under section 168 (if applicable), as soon as practicable after the authorisation under section 18 is given.

333 Review by Victorian Civil and Administrative Tribunal

(1) A child or a child's parent may apply to VCAT for review of—

(a) a decision contained in a case plan prepared in respect of the child under section 168 or any other decision made by the Secretary concerning the child; or

S. 333(1)(a) amended by Nos 61/2014 s. 148(1)(a), 57/2015 s. 10(1), 8/2016 s. 14.

(b) without limiting paragraph (a), a decision contained in a case plan prepared in respect of the child under section 168 by the principal officer of an Aboriginal agency or any other decision made by the principal officer concerning the child under an authorisation under section 18.

S. 333(1)(b) repealed by No. 61/2014 s. 148(1)(b), new s. 333(1)(b) inserted by No. 57/2015 s. 10(2).

(2) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 333(3) amended by Nos 61/2014 s. 148(2), 57/2015 s. 10(3).

(3) Before a person is entitled to apply to VCAT for the review of a decision referred to in subsection (1), the person must have exhausted all available avenues for the review of the decision under section 331 or 332.

Part 4.12—Interstate movement of children and transfers

Division 1—Interstate movement of children

334 Definition

In this Division ***State*** means a State or Territory of the Commonwealth.

335 Interstate movement of children

(1) The Secretary may, on request by or on behalf of the Minister or other person in another State exercising guardianship in that State over a child under an enactment corresponding to this Chapter, declare the child to be under the sole parental responsibility of the Secretary if the child has entered or is about to enter Victoria.

S. 335(1) amended by Nos 61/2014 s. 76(1), 8/2016 s. 15(1).

(2) A declaration under subsection (1) is for all purposes to be deemed to be a care by Secretary order of 2 years duration commencing from—

S. 335(2) amended by Nos 61/2014 s. 76(2), 8/2016 s. 15(2).

(a) the date when the Minister or other person in the other State was last granted guardianship of the child or the period of that guardianship was last extended; or

(b) if the date referred to in paragraph (a) occurred more than 2 years before the date of the declaration under subsection (1), the latter date.

S. 335(2)(b) amended by No. 8/2016 s. 15(2).

(3) A deemed care by Secretary order referred to in subsection (2) may be extended or revoked in accordance with the provisions of Division 10 or 12 of Part 4.9 (as the case requires).

S. 335(3) amended by No. 61/2014 s. 76(2).

S. 335(4) amended by No. 61/2014 s. 76(2).

(4) Subject to subsections (2) and (3), a deemed care by Secretary order referred to in subsection (2) remains in force—

(a) until the child leaves Victoria; or

(b) until the child would have ceased to be under the guardianship of the Minister or other person in the other State if the child had remained in the other State.

336 Financial or other arrangements

The Secretary may make financial or other arrangements with the Minister or other person in another State exercising guardianship in that State over a child under an enactment corresponding to this Chapter—

S. 336(a) amended by Nos 61/2014 s. 77, 8/2016 s. 16.

(a) for the care of that child in Victoria and may, subject to those arrangements, cause the child while he or she is under the sole parental responsibility of the Secretary to be removed from Victoria and returned to that other State; and

S. 336(b) amended by Nos 61/2014 s. 77, 8/2016 s. 16.

(b) for the care in that other State of a child who is under the sole parental responsibility of the Secretary under this Act or of whom the Secretary is the guardian under the **Adoption Act 1984**.

337 Transfer agreements

S. 337(1) amended by No. 61/2014 s. 78(1).

(1) The Minister may enter into a general agreement with a Minister in another State for the transfer of children under the parental responsibility or supervision of the Secretary—

(a) into or out of Victoria; or

(b) through Victoria from one State to another.

(2) If the Minister enters into an agreement with a Minister in another State under subsection (1), the Secretary—

(a) may make an arrangement with that Minister, or with a person authorised by that Minister for the purpose in the agreement, for the transfer of a particular child—

(i) to that State from Victoria; or

(ii) to Victoria from that State; and

(b) in relation to any particular child who is under the parental responsibility of the Secretary, may make financial arrangements with that Minister, or with a person authorised by that Minister for the purpose in the agreement, for the care of the child in that other State.

S. 337(2)(b) amended by No. 61/2014 s. 78(2).

Division 2—Transfer of child protection orders and proceedings

338 Transfer of child protection orders and proceedings

Schedule 1 sets out provisions relating to the transfer of child protection orders and proceedings between Victoria and another State or a Territory of Australia or between Victoria and New Zealand.

Part 4.13—Therapeutic Treatment Board

339 Establishment of Therapeutic Treatment Board

There is established a Board to be called the Therapeutic Treatment Board.

340 Constitution of Board

The members of the Therapeutic Treatment Board are to be appointed by the Governor in Council, on the recommendation of the Minister, from persons nominated by—

(a) the Chief Commissioner of Police; and

(b) one or more health services that the Minister considers appropriate; and

S. 340(c) substituted by No. 68/2009 s. 61.

(c) the DPP; and

(d) the Secretary.

341 Functions of Board

The functions of the Therapeutic Treatment Board are—

(a) to evaluate and advise the Minister on services available for the treatment of children in need of therapeutic treatment (within the meaning of section 244); and

(b) to provide advice to the Secretary under Division 3 of Part 4.8.

342 Committees

(1) The Therapeutic Treatment Board may, subject to the approval of the Minister, appoint for the purposes of carrying out any of its functions under this Act, a committee consisting of such of its members as it determines.

(2) A committee appointed under this section must report to the Therapeutic Treatment Board.

343 Procedure of the Board

(1) A majority of the members for the time being of the Therapeutic Treatment Board constitutes a quorum of that Board.

(2) The Board may regulate its own proceedings.

Ch. 4 Pt 4.14 (Heading and s. 343A) inserted by No. 6/2026 s. 15.

Part 4.14—Review of Children, Youth and Families Amendment (Stability) Act 2026

S. 343A inserted by No. 6/2026 s. 15.

343A Review of Children, Youth and Families Amendment (Stability) Act 2026

(1) The Minister must cause an independent review of the operation of the amendments made to this Act by the **Children, Youth and Families Amendment (Stability) Act 2026** to be commenced on the fifth anniversary of the first day on which all the provisions of that Act have commenced.

(2) The review must address the impact of the amendments made by the **Children, Youth and Families Amendment (Stability) Act 2026** on—

(a) children in need of protection or who are the subject of protective intervention or applications or orders under Chapter 4 and their families; and

(b) proceedings under Chapter 4; and

(c) Victoria's child protection system.

(3) In addition, the Minister may direct that the review address—

(a) the operation of this Act (other than Chapter 7) to the extent it relates to child protection; and

(b) whether any additional legislative, administrative or policy reform is necessary to improve the operation of Victoria's child protection system.

(4) The review is to be completed within 12 months after the day on which it is commenced.

(5) The Minister must cause the report on the review to be laid before each House of the Parliament not later than 6 months after it is given to the Minister.

Chapter 5—Children and the criminal law

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Ch. 5 Pt 5.1 (Heading and s. 344) repealed by No. 32/2024 s. 782.

Ch. 5 Pt 5.1A (Heading and ss 344A–344D) inserted by No. 7/2009 s. 429 (as amended by No. 68/2009 ss 47, 54(o)).

Part 5.1A—Commencement of proceedings

S. 344A inserted by No. 7/2009 s. 429 (as amended by No. 68/2009 ss 47, 54(o)).

344A Time limits for filing a charge-sheet

(1) A proceeding against a child for a summary offence must be commenced within 6 months after the date on which the offence is alleged to have been committed except where—

(a) the Court extends the time for commencement of the proceeding under section 344C; or

S. 344A(1)(b) amended by No. 37/2014 s. 10(Sch. item 18.12).

(b) the child, after receiving legal advice, gives written consent, and a police officer of or above the rank of sergeant consents, to the proceeding being commenced after the expiry of that period.

(2) A proceeding against a child for an indictable offence may be commenced at any time, except where otherwise provided by or under this or any other Act.

(3) If a proceeding for a summary offence is commenced against a child after the child has given consent under subsection (1)(b) in respect of the proceeding, the Court, on the first appearance

of the child before the Court, must be satisfied that the child obtained legal advice before giving consent under subsection (1)(b).

(4) If the Court is not satisfied that the child obtained legal advice before giving consent under subsection (1)(b), it must—

(a) adjourn the hearing to enable the child to obtain that legal advice; and

(b) advise the child and, if present, a parent or person with parental responsibility for the child that, after obtaining legal advice, the child may withdraw his or her consent to the commencement of the proceeding.

S. 344A(4)(b) amended by No. 61/2014 s. 79(a).

(5) After obtaining legal advice in the circumstances referred to in subsection (4)—

(a) a child; or

(b) if the child is under the age of 15 years and is not legally represented, a parent or person with parental responsibility for the child—

S. 344A(5)(b) amended by No. 61/2014 s. 79(b).

may withdraw the consent given under subsection (1)(b).

(6) If the child withdraws consent under subsection (5), the Court must strike out the charge.

S. 344A(7) amended by No. 61/2014 s. 79(c).

(7) If the child is under the age of 15 years, the Court may adjourn any hearing referred to in this section, or a resumed hearing, to enable a parent or person with parental responsibility for the child to attend.

Note to s. 344A inserted by No. 18/2010 s. 45, amended by No. 64/2010 s. 54, substituted as Notes by No. 32/2024 s. 783.

Notes

1 It is conclusively presumed that a child who is under 12 years of age cannot commit an offence—see section 10 of the **Youth Justice Act 2024**.

2 Section 53 of the **Infringements Act 2006** and Part 4 of Schedule 3 to this Act also provide for the extension of the period in which a proceeding may be commenced in respect of an offence for which an infringement notice was issued.

S. 344B inserted by No. 7/2009 s. 429 (as amended by No. 68/2009 ss 47, 54(o)).

344B Application for extension of time for commencement of proceeding

(1) An informant may apply to the Court for an extension of the period within which a proceeding against a child for a summary offence may be commenced.

(2) An application under subsection (1) may be made within 12 months after the date on which the summary offence is alleged to have been committed.

(3) Only one application may be made under this section.

(4) At least 14 days before the hearing of the application, the applicant must file in the Court and serve, in accordance with section 594, on the child—

(a) notice of the application signed by the applicant; and

(b) notice of the charge signed by the applicant.

(5) An application must be supported by—

(a) oral sworn or affirmed evidence; or

S. 344B(5)(a) amended by No. 6/2018 s. 68(Sch. 2 item 20.2).

(b) affidavit; or

(c) a statement signed by the applicant and containing an acknowledgment signed by the applicant in the presence of an authorised person that the statement is true and correct and is made in the belief that a person making a false statement is liable to the penalties of perjury; or

(d) any other means that the Court considers appropriate.

344C Extension of time

S. 344C inserted by No. 7/2009 s. 429 (as amended by No. 68/2009 ss 47, 54(o)).

(1) On the hearing of an application under section 344B, the Court may extend the period for commencing the proceeding to a date within 12 months after the date on which the summary offence is alleged to have been committed.

(2) In determining the application, the Court must have regard to—

(a) the age of the child; and

(b) the seriousness of the alleged offence and the circumstances in which it is alleged to have occurred; and

(c) whether the delay in commencing the proceeding was caused by factors beyond the control of the applicant; and

(d) the length of the delay; and

(e) any other matter that the Court considers relevant.

(3) The child is entitled to appear at the hearing of the application and address the Court but if the child does not appear, the Court may proceed to hear and determine the application in his or her absence.

(4) If the Court extends the period for commencing the proceeding, the informant must file the charge-sheet without delay.

(5) On the filing of the charge-sheet—

(a) if the child is present before the Court and ready to proceed, the Court may hear and determine the charge; or

(b) if the child is not present before the Court, the informant must serve, in accordance with section 594, on the child notice of the Court's determination.

S. 344D inserted by No. 7/2009 s. 429 (as amended by No. 68/2009 ss 47, 54(o)).

344D Rehearing

(1) If an application under section 344B is heard and determined in the absence of the child, the child may apply to the Court for an order that the determination be set aside and that the application be reheard.

(2) On an application for a rehearing, the Court may set aside the order made under section 344C(1) if it considers it appropriate to do so and rehear the application.

(3) A notice of intention to apply for a rehearing must—

(a) state the reason why the child did not appear at the hearing; and

(b) be filed with the registrar at the venue of the Court at which the order was made.

(4) The applicant must serve, in accordance with section 593, on the respondent a copy of the notice and may serve it on the day on which the charge is listed for hearing.

Part 5.2—Procedures and standard of proof

Division 1—Custody and bail

345 Children to be proceeded against by summons

S. 345 amended by No. 68/2009 s. 62(1)(2), substituted by No. 1/2016 s. 20.

(1) There is a presumption in favour of proceeding by summons if an accused is a child.

(2) A police officer must have regard to this presumption in commencing a criminal proceeding against a child.

(3) For the avoidance of doubt, subsection (2) does not affect the ways in which a criminal proceeding against a child may be commenced by a police officer.

S. 345(4) amended by No. 6/2018 s. 68(Sch. 2 item 20.3).

(4) On the filing of a charge-sheet against a child a registrar must not issue in the first instance a warrant to arrest unless satisfied by evidence on oath or by affirmation or by affidavit that the circumstances are exceptional.

(5) Subsection (4) has effect despite anything to the contrary in section 12 of the **Criminal Procedure Act 2009**.

Note to s. 345 inserted by No. 32/2024 s. 784.

Note

It is conclusively presumed that a child who is under 12 years of age cannot commit an offence—see section 10 of the **Youth Justice Act 2024**.

346 Child in custody to be brought before Court or bail justice

(1) Subject to this section, the provisions of Subdivision (30A) of Division 1 of Part III of the **Crimes Act 1958** apply to the custody and investigation of a child.

S. 346(2) amended by No. 3/2018 s. 25(1).

(2) Subject to subsection (3), a child taken into custody must be—

(a) released unconditionally; or

(b) released on bail in accordance with the **Bail Act 1977**; or

S. 346(2)(b) amended by No. 26/2017 s. 19(1).

(c) brought before the Court; or

(d) if the Court is not sitting at any convenient venue, brought before a bail justice—

within a reasonable time of being taken into custody but not later than 24 hours after being taken into custody.

(3) Subsection (2) does not apply if bail may only be granted to a child by a court. In such a case the child must be brought before the Court as soon as practicable and—

S. 346(3) amended by No. 26/2012 s. 3(1), repealed by No. 1/2016 s. 18(1)(a), new s. 346(3) inserted by No. 3/2018 s. 25(2).

(a) no later than the next working day after being taken into custody; or

(b) if the proper venue of the Court is in a prescribed region of the State, within 2 working days after being taken into custody.

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S. 346(4) repealed by No. 1/2016 s. 18(1)(a).

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S. 346(5) amended by No. 26/2012 s. 3(2), repealed by No. 1/2016 s. 18(1)(a).

(6) The **Bail Act 1977** (to the extent that it is not inconsistent with this section) applies to an application for bail by a child.

Note to s. 346(6) inserted by No. 1/2016 s. 18(2), substituted by Nos 26/2017 s. 19(2), 28/2023 s. 117.

Note

The **Bail Act 1977** contains provisions that are particular to children. These include the following—

- section 3B (determination in relation to a child);
- section 5AA (conditions of bail granted to a child in certain circumstances);
- section 10(3) (power of police officer, sheriff or authorised person to grant or refuse bail);
- section 10A(3) and (6) (power of bail justice to grant or refuse bail);
- section 12(4) and (5) (power of court to grant or refuse bail);
- section 16B (capacity of child to give bail undertaking);
- section 24(3A) (arrest of person released on bail);

Additionally, section 3A (determination in relation to an Aboriginal person) applies if the child is an Aboriginal person.

S. 346(7) amended by Nos 37/2014 s. 10(Sch. item 18.12), 61/2014 s. 80, repealed by No. 1/2016 s. 18(1)(a).

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S. 346(8)(9) repealed by No. 1/2016 s. 18(1)(a).

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S. 346(10) amended by Nos 68/2009 s. 63, 37/2014 s. 10(Sch. item 18.12), repealed by No. 1/2016 s. 18(1)(a).

347 Child in custody to be placed in remand centre

(1) If a child is remanded in custody by a court or a bail justice, the child must be placed in a remand centre except as otherwise provided by the regulations with respect to prescribed regions of the State.

S. 347(1A) inserted by No. 3/2018 s. 25(3).

(1A) A child to whom bail may only be granted by a court and who is detained in police custody pending being brought before the Court must be placed in a remand centre except as otherwise provided by the regulations.

(2) If any children are remanded in custody in a police gaol under this section, they—

(a) are entitled to be kept separate from adults who are detained there;

(b) are entitled to be kept separate according to their sex;

(c) subject to the **Corrections Act 1986** and the regulations made under that Act, are entitled to receive visits from parents, relatives, legal practitioners, persons acting on behalf of legal practitioners and other persons;

(d) are entitled to have reasonable efforts made to meet their medical, religious and cultural needs including, in the case of Aboriginal children, their needs as members of the Aboriginal community;

(e) are entitled to complain to the Chief Commissioner of Police or the Ombudsman about the standard of care, accommodation or treatment which they are receiving in the police gaol;

(f) are entitled to be advised of their entitlements under this subsection.

(3) It is the responsibility of the Chief Commissioner of Police to make sure that subsection (2) is complied with.

S. 347A inserted by No. 45/2017 s. 59.

347A Child may be temporarily held in police gaol to facilitate transport to and from court and youth justice facilities

(1) For the purposes of facilitating the transportation of a child to or from a court or a youth justice facility, a child may be temporarily held or detained in a police gaol for no more than 2 working days.

(2) If a child is held or detained in a police gaol under this section, the child—

(a) must be kept separate from adults who are detained there;

(b) is entitled to be kept separately according to the child's sex;

(c) subject to the **Corrections Act 1986** and the regulations made under that Act, is entitled to receive visits from parents, relatives, legal practitioners, persons acting on behalf of legal practitioners and other persons;

(d) is entitled to have reasonable efforts made to meet the child's medical, religious and cultural needs including, in the case of an Aboriginal child, the child's needs as a member of the Aboriginal community;

(e) is entitled to complain to the Chief Commissioner of Police or the Ombudsman about the standard of care, accommodation or treatment which the child is receiving in the police gaol;

(f) is entitled to be advised of the child's entitlements under this subsection.

(3) It is the responsibility of the Chief Commissioner of Police to make sure that subsection (2) is complied with.

347B Statements by child participating in treatment or rehabilitation program not admissible in proceedings

S. 347B inserted by No. 32/2024 s. 855.

(1) Any statement, confession, admission or information that is made or given by a child for the purposes of assessment for a treatment or rehabilitation program or whilst participating in a treatment or rehabilitation program is not admissible in—

(a) a hearing under the **Bail Act 1977**; or

(b) any proceeding (whether civil or criminal) other than a proceeding for a support and engagement order under the **Terrorism (Community Protection) Act 2003**.

(2) Subsection (1) does not apply if the child consents to the use or disclosure of the statement, confession, admission or information referred to in that subsection.

(3) In this section—

treatment or rehabilitation program means any treatment, rehabilitation or intervention provided under this Chapter that is offered to or undertaken by a child—

(a) as part of early intervention or diversion; or

(b) after the child is charged with an offence or while the child is on bail or remand; or

(c) after the commencement of a proceeding; or

(d) while subject to a probation order, a youth supervision order, a youth attendance order or a youth control order or serving a sentence of detention.

S. 347C inserted by No. 32/2024 s. 855.

347C Risk rating derived from assessment of child's risk of re-offending not admissible before child is sentenced

Any score, assessment or rating related to a child's risk of re-offending derived from an assessment of the child's individual risks and needs conducted after the alleged commission of an offence is not admissible in—

(a) a hearing under the **Bail Act 1977**; or

(b) any criminal proceeding before the child is sentenced for the offence.

S. 348 amended by No. 26/2012 s. 4, repealed by No. 1/2016 s. 18(1)(b).

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Division 2—Referral for investigation

349 Referral to Secretary

(1) If—

S. 349(1)(a) amended by No. 68/2009 s. 64.

(a) a child appears as an accused in a criminal proceeding in the Court; and

(b) the Court considers that there is prima facie evidence that grounds exist for the making of a protection application in respect of the child—

the Court may refer the matter of an application to the Secretary for investigation.

(2) If—

(a) a child appears as an accused in a criminal proceeding in the Court; and

S. 349(2)(a) amended by No. 68/2009 s. 64.

(b) the Court considers that there is prima facie evidence that grounds exist for the making of an application for a therapeutic treatment order in respect of the child—

the Court may refer the matter of an application to the Secretary for investigation.

(3) In deciding whether or not to refer a matter to the Secretary under subsection (2), the Court must consider—

S. 349(3) inserted by No. 33/2018 s. 11.

(a) the seriousness of the child's sexually abusive behaviours; and

(b) any previous history of sexually abusive behaviours of the child and how those behaviours were addressed; and

(c) the particular characteristics and circumstances of the child; and

(d) any other matters the Court considers relevant.

350 Report of investigation

(1) If a matter is referred to the Secretary under section 349, the Secretary must enquire into the matter and provide, within 21 days of the referral, a report on the matter to the Court.

(2) A report provided under subsection (1) must—

(a) confirm that the Secretary has enquired into the matter referred; and

(b) advise that—

(i) a protection application has been made by the Secretary; or

(ii) an application for a therapeutic treatment order has been made by the Secretary; or

(iii) the Secretary is satisfied that no protection application or no application for a therapeutic treatment order, as the case may be, is required.

351 Report on outcome of application

If a protection application or an application for a therapeutic treatment order is made by the Secretary, the Secretary, as soon as possible after the determination of the application, must report to the Criminal Division—

(a) that the application was dismissed; or

(b) that a protection order or a therapeutic treatment order, as the case may be, was made and state the terms of the order.

S. 352 amended by No. 68/2009 s. 65.

352 Court must adjourn in case of therapeutic treatment order

If the Secretary reports to the Criminal Division under section 351 that a therapeutic treatment order has been made in respect of a child, and the Court has not yet made a finding in the criminal proceedings in which the child is an accused, the Court must adjourn the criminal proceedings for a period not less than the period of the therapeutic treatment order.

352A Report to Criminal Division on child's progress under therapeutic treatment order

S. 352A inserted by No. 33/2018 s. 12.

(1) If a therapeutic treatment order has been made in respect of a child, the Court may require the Secretary to report to the Criminal Division at the time or times specified by the Court, on the child's progress and attendance at the therapeutic treatment program.

(2) The Court may make a requirement under subsection (1)—

(a) when adjourning criminal proceedings under section 352; or

(b) at any other time during the period of the therapeutic treatment order when the Court is exercising the jurisdiction of the Criminal Division in relation to the child.

(3) The Court may direct the Secretary to provide a copy of the report to—

(a) the child; and

(b) the prosecutor.

353 Report to Criminal Division on outcome of therapeutic treatment order

(1) If criminal proceedings are adjourned under section 352, the Secretary must report to the Criminal Division—

(a) on the completion of the therapeutic treatment order; or

(b) on the revocation of the therapeutic treatment order.

(2) The report must set out details of the child's participation in and attendance at the therapeutic treatment program under the order.

(3) The Court may direct the Secretary to provide a copy of the report to—

(a) the child; and

(b) the prosecutor.

354 Hearing of adjourned case

(1) If criminal proceedings are adjourned under section 352 and the therapeutic treatment order is revoked, the Court may, on the application of the Secretary, re-list the adjourned case at short notice if the Court considers it appropriate to do so.

(2) Notice of an application under subsection (1) must be given to—

(a) the Court; and

(b) the prosecutor; and

(c) the child.

(3) On the adjourned hearing date, the Court must consider—

(a) the report of the Secretary under section 353; and

(b) submissions made by or on behalf of the child and the prosecutor in relation to the matters in the report.

(4) If the Court is satisfied that the child has attended and participated in the therapeutic treatment program under the therapeutic treatment order, it must discharge the child without any further hearing of the criminal proceedings.

S. 354(4A) inserted by No. 61/2014 s. 140.

(4A) For the purposes of subsection (4), the Court must have regard to the following—

(a) the child's attendance record;

(b) the nature and extent of the child's participation;

(c) whether or not the child's participation was to the satisfaction of the therapeutic treatment provider;

(d) the opinion of the therapeutic treatment provider as to the effectiveness of the treatment.

(5) If the child is not discharged under subsection (4), the Court may determine what (if any) further proceedings in the Criminal Division in respect of the child are appropriate.

354A Powers of Court in criminal proceedings if child accused voluntarily participates in therapeutic treatment program

S. 354A inserted by No. 61/2014 s. 141.

(1) This section applies if—

(a) a child appears as an accused in a criminal proceeding in the Court; and

S. 354A(1)(a) amended by No. 33/2018 s. 13.

(b) the Court has not yet made a finding in the criminal proceeding; and

(c) the Court is satisfied that the child has exhibited sexually abusive behaviours that would justify referring the matter to the Secretary under section 349(2); and

(d) the Court is satisfied that the child has attended and participated, is attending and participating or will attend and participate voluntarily in an appropriate therapeutic treatment program.

(2) The Court may—

(a) adjourn the criminal proceeding for a period not less than the period of the therapeutic treatment program; and

(b) re-list the adjourned case at short notice.

(3) On the adjourned hearing date, if the Court is satisfied that the child has voluntarily attended and participated in an appropriate therapeutic treatment program, it must discharge the child without any further hearing of the criminal proceeding.

(4) For the purposes of subsection (3), the Court must have regard to the following—

(a) the child's attendance record;

(b) the nature and extent of the child's participation;

(c) whether or not the child's participation was to the satisfaction of the therapeutic treatment provider;

(d) the opinion of the therapeutic treatment provider as to the effectiveness of the treatment.

(5) If the child is not discharged under subsection (3), the Court may determine what (if any) further proceedings in the Criminal Division in respect of the child are appropriate.

355 Pre-sentence report to Court

(1) If a matter is referred to the Secretary under section 349, the Court may order the Secretary to prepare a pre-sentence report in respect of the child and may, subject to section 522(2), defer sentencing the child until the Secretary provides the pre-sentence report (if any) and a report under section 350(2)(b)(iii) or 351.

(2) The Secretary must forward a pre-sentence report on the child to the Criminal Division at the same time as the report under section 351 if the pre-sentence report has been ordered by the Court.

Division 3—Procedure for indictable offences that may be heard and determined summarily

Ch. 5 Pt 5.2 Div. 3 (Heading) amended by No. 68/2009 s. 66.

356 Procedure for indictable offences that may be heard and determined summarily

S. 356 (Heading) amended by No. 68/2009 s. 67.

(1) If a child is charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, child homicide, homicide by firearm, a designated offence committed when the child was aged 15 years or over, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death), the Court must, before the hearing of any evidence, inform the child and his or her parent, if present, that the child may object to the charge being heard and determined summarily.

S. 356(1) amended by Nos 7/2008 ss 7(1)(a), 8(a), 63/2014 s. 5(1)(a), 16/2020 s. 12, 54/2025 s. 14(1).

(2) If the parent of a child who—

(a) is charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, child homicide, homicide by firearm, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death); and

S. 356(2)(a) amended by Nos 7/2008 ss 7(1)(a), 8(a), 63/2014 s. 5(1)(b), 16/2020 s. 12.

(b) is under the age of 15 years—

is not present before the Court, the Court may adjourn the hearing of the proceeding for the purpose of securing the parent's attendance or may proceed to hear and determine the proceeding in the parent's absence.

S. 356(3) amended by Nos 7/2008 ss 7(1)(a), 8(a), 63/2014 s. 5(1)(c), 16/2020 s. 12, 54/2025 s. 14(2)(a).

(3) If a child is charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, child homicide, homicide by firearm, a designated offence committed when the child was aged 15 years or over, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death), the Court must hear and determine the charge summarily unless—

(a) before the hearing of any evidence the child objects; or

S. 356(3)(ab) inserted by No. 43/2017 s. 23(1).

(ab) subsection (6) applies; or

S. 356(3)(ac) inserted by No. 54/2025 s. 14(2)(b).

(ac) subsection (7A) applies; or

S. 356(3)(ad) inserted by No. 54/2025 s. 14(2)(b).

(ad) subsection (7C) applies; or

S. 356(3)(ae) inserted by No. 54/2025 s. 14(2)(b).

(ae) subsection (8A) applies; or

(b) at any stage the Court considers that the charge is unsuitable by reason of exceptional circumstances to be determined summarily—

and the Court must conduct a committal proceeding into the charge and, in the circumstances mentioned in paragraph (b), must give reasons for declining to determine the charge summarily.

(4) If a child charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, child homicide, homicide by firearm, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death), is—

S. 356(4) amended by Nos 7/2008 ss 7(1)(a), 8(a), 63/2014 s. 5(1)(d), 16/2020 s. 12.

(a) under the age of 15 years; and

(b) not legally represented—

the child's parent may, for the purposes of subsection (3)(a), object on the child's behalf.

(5) If the Court hears and determines summarily a charge against a child for an indictable offence, the Court may find the child not guilty of the offence charged but guilty of having attempted to commit the offence charged.

(6) If a child is charged before the Court with an offence referred to in paragraph (f) of the definition of ***Category A serious youth offence*** in section 3(1) committed when the child was aged 16 years or over, the Court must not hear and determine the charge summarily unless—

S. 356(6) inserted by No. 43/2017 s. 23(2), amended by Nos 16/2020 s. 12, 54/2025 s. 14(3).

(a) the child or the prosecution requests that the charge be heard and determined summarily; and

(b) the Court is satisfied that the sentencing options available to it under this Act are adequate to respond to the child's offending; and

(c) any of the following applies—

(i) it is in the interests of the victim or victims that the charge be heard and determined summarily;

(ii) the accused is particularly vulnerable because of cognitive impairment or mental illness;

(iii) there is a substantial and compelling reason why the charge should be heard and determined summarily.

Note to s. 356(6) inserted by No. 54/2025 s. 14(4).

Note

The offences referred to in paragraph (f) of the definition of ***Category A serious youth offence*** in section 3(1) are terrorism and foreign incursion offences.

S. 356(7) inserted by No. 43/2017 s. 23(2), amended by No. 54/2025 s. 14(5).

(7) In determining whether there is a substantial and compelling reason, under subsection (6)(c)(iii), why the charge should be heard and determined summarily, the Court must have regard to the intention of Parliament that a charge for an offence referred to in paragraph (f) of the definition of ***Category A serious youth offence*** in section 3(1) should not normally be heard and determined summarily.

S. 356(7A) inserted by No. 54/2025 s. 14(6).

(7A) If a child is charged before the Court with a designated offence committed when the child was aged 14 years, the Court must not hear and determine the charge summarily unless—

(a) the child or the prosecution requests that the charge be heard and determined summarily; and

(b) the Court is satisfied that the sentencing options available to it under this Act are adequate to respond to the child's offending; and

(c) any of the following applies—

(i) it is in the interests of the victim or victims that the charge be heard and determined summarily;

(ii) the accused is particularly vulnerable because of cognitive impairment or mental illness;

(iii) there is a substantial and compelling reason why the charge should be heard and determined summarily.

S. 356(7B) inserted by No. 54/2025 s. 14(6).

(7B) In determining whether there is a substantial and compelling reason, under subsection (7A)(c)(iii), why the charge should be heard and determined summarily, the Court must have regard to the intention of Parliament that a charge for a designated offence committed by a child aged 14 years should not normally be heard and determined summarily.

S. 356(7C) inserted by No. 54/2025 s. 14(6).

(7C) If a child is charged before the Court with an offence against section 79 of the **Crimes Act 1958** (carjacking) committed when the child was aged 14 years or over, the Court must not hear and determine the charge summarily unless—

(a) the child or the prosecution requests that the charge be heard and determined summarily; and

(b) the Court is satisfied that the sentencing options available to it under this Act are adequate to respond to the child's offending; and

(c) any of the following applies—

(i) it is in the interests of the victim or victims that the charge be heard and determined summarily;

(ii) the accused is particularly vulnerable because of cognitive impairment or mental illness;

(iii) there is a substantial and compelling reason why the charge should be heard and determined summarily.

S. 356(7D) inserted by No. 54/2025 s. 14(6).

(7D) In determining whether there is a substantial and compelling reason, under subsection (7C)(c)(iii), why the charge should be heard and determined summarily, the Court must have regard to the intention of Parliament that a charge for an offence against section 79 of the **Crimes Act 1958** (carjacking) committed when the child was aged 14 years or over should not normally be heard and determined summarily.

S. 356(8) inserted by No. 43/2017 s. 23(2), amended by No. 54/2025 s. 14(7).

(8) If a child is charged before the Court with an offence referred to in paragraph (b) or (c) of the definition of ***Category B serious youth offence*** in section 3(1) committed when the child was aged 16 years or over, the Court must consider whether subsection (3) has the effect that the offence should not be heard and determined summarily.

Note to s. 356(8) inserted by No. 54/2025 s. 14(8).

Note

The offences referred to in paragraphs (b) and (c) of the definition of ***Category B serious youth offence*** in section 3(1) are rape and rape by compelling sexual penetration.

S. 356(8A) inserted by No. 54/2025 s. 14(9).

(8A) The Court must not hear and determine summarily a charge against a child for an indictable offence if—

(a) the child is committed for trial in respect of another indictable offence; and

(b) the offences are related offences; and

(c) the Court determines that there is no substantial and compelling reason to hear and determine the charge summarily.

(8B) For the purposes of subsection (8A), an offence is related to another offence if—

S. 356(8B) inserted by No. 54/2025 s. 14(9).

(a) the offence is founded on the same facts as the other offence; or

(b) the offences together form, or are part of, a series of offences of the same or similar character.

Example

If an aggravated burglary and an armed robbery are part of a series of offences of the same or similar character, those offences are related offences for the purposes of subsection (8A).

(9) The Children's Court must hear and determine a charge summarily if it has been transferred to the Court under section 168 of the **Criminal Procedure Act 2009** because of the operation of section 168A of that Act.

S. 356(9) inserted by No. 43/2017 s. 23(2), substituted by No. 3/2018 s. 26(1), amended by No. 8/2019 s. 90(2).

(10) In this section—

designated offence has the same meaning as in section 516.

S. 356(10) inserted by No. 54/2025 s. 14(10).

356A Exceptional circumstances

S. 356A inserted by No. 43/2017 s. 5.

(1) For the purposes of section 356(3)(b), exceptional circumstances exist, in relation to a charge referred to in section 356(3) in respect of a child, if the Court considers that the sentencing options available to it under this Act are inadequate to respond to the child's offending.

(2) In determining whether the sentencing options available to the Court under this Act are inadequate to respond to the child's offending, the Court must have regard to—

(a) the seriousness of the conduct alleged, including the impact on any victims of the conduct and the role of the accused in the conduct; and

(b) the nature of the offence concerned; and

(c) the age and maturity of the child, and any disability or mental illness of the child, at the time of the offence and the time of sentencing; and

(d) the seriousness, nature and number of any prior offences committed by the child; and

(e) whether the alleged offence was committed while the child was in youth detention, on parole or in breach of an order made under this Act; and

(f) any other matter the Court considers relevant.

Example to s. 356A(2) inserted by No. 54/2025 s. 15.

Example

If the child has previously committed a number of serious armed robberies or aggravated burglaries, the seriousness, nature and number of those offences.

Ch. 5 Pt 5.2 Div. 3A (Heading and ss 356B–356K) inserted by No. 43/2017 s. 59.

Division 3A—Diversion

S. 356B inserted by No. 43/2017 s. 59.

356B Application of Division

(1) This Division does not apply to—

(a) an offence punishable by a minimum or fixed sentence or penalty, including cancellation or suspension of a licence or permit to drive a motor vehicle and disqualification under the **Road Safety Act 1986** or the **Sentencing Act 1991** from

obtaining such a licence or permit or from driving a motor vehicle on a road in Victoria but not including the incurring of demerit points under the **Road Safety Act 1986** or regulations made under that Act; or

(b) an offence against section 49(1) of the **Road Safety Act 1986** not referred to in paragraph (a).

(2) This Division does not affect the incurring of demerit points under the **Road Safety Act 1986** or regulations made under that Act.

356C Purposes of diversion

S. 356C inserted by No. 43/2017 s. 59.

The following purposes of diversion are to guide the operation of this Division—

(a) a child should be diverted away from the criminal justice system where possible and appropriate;

(b) the risk of stigma being caused to a child by contact with the criminal justice system should be reduced;

(c) a child should be encouraged to accept responsibility for unlawful behaviour;

(d) a child's offending should be responded to in a manner that acknowledges the child's needs and assists with rehabilitation;

(e) a child should be provided with opportunities to strengthen and preserve relationships with family and other persons of importance in the child's life;

(f) a child should be provided with ongoing pathways to connect with education, training and employment.

S. 356D inserted by No. 43/2017 s. 59.

356D Adjournment to undertake diversion program

(1) Subject to this Division, at any time before taking a formal plea from a child in a criminal proceeding for an offence, the Court may, on its own motion or on application by the child or the prosecutor, adjourn the proceeding for a period not exceeding 4 months to enable the child to participate in and complete a diversion program.

(2) The Court may refuse to accept a plea of guilty from a child in a criminal proceeding for an offence, or may allow the child to withdraw such a plea, if—

(a) there has been no application for an adjournment under subsection (1); and

(b) the Court considers it necessary to consider the appropriateness of diversion; and

(c) the Court has not heard any evidence in the proceeding; and

(d) in the case of a withdrawal of a plea, the Court is satisfied that the prosecutor does not object to diversion.

(3) Despite anything to the contrary in subsection (1), the Court may not adjourn a proceeding for the purpose of the child completing a diversion program if—

(a) the prosecutor does not consent to the adjournment; or

(b) the child does not consent to the adjournment in accordance with section 356E.

(4) The Court, as far as practicable, must consider the following matters when determining whether to grant an adjournment under subsection (1)—

(a) the seriousness and the nature of the offending;

(b) the seriousness and the nature of any previous offending;

(c) the impact on the victim (if any);

(d) the interests of justice and any other matter the Court considers appropriate.

(5) In considering the matters in subsection (4), the Court may inform itself in any way it considers appropriate.

356E Acknowledgement of responsibility and consent to diversion by the child

S. 356E inserted by No. 43/2017 s. 59.

(1) An adjournment must not be granted under section 356D(1) unless the child—

(a) acknowledges to the Court responsibility for the offence; and

(b) consents to the Court adjourning the proceeding for the purpose of the child participating in a diversion program.

(2) A child's acknowledgement to the Court of responsibility for an offence is inadmissible as evidence in a proceeding for that offence and does not constitute a plea.

(3) A plea withdrawn under section 356D(2) is inadmissible as evidence in a proceeding for the offence and does not constitute a plea.

356F Prosecutorial consent to diversion

S. 356F inserted by No. 43/2017 s. 59.

A prosecutor must consider the following matters when determining whether to consent to an adjournment under section 356D(1)—

(a) the availability of suitable diversion programs;

(b) the impact on the victim (if any);

(c) the child's failure to complete previous diversion programs (if any);

(d) the alleged level of involvement of the child in the offending;

(e) any other matter that the prosecutor considers relevant.

S. 356G inserted by No. 43/2017 s. 59.

356G Matters to be considered when determining the type of diversion program

(1) The Court, as far as practicable, must consider the following matters when determining the type of diversion program to be ordered—

(a) the diversion program should not be more punitive than the sentence that would have been imposed had the child been found guilty;

(b) the diversion program should be achievable by the child and measurable;

(c) the personal characteristics and circumstances of the child;

(d) the desirability of maintaining a child's engagement in education, training and employment;

(e) the diversion program should be culturally appropriate;

(f) the impact on the victim (if any);

(g) the appropriateness of a restorative approach;

(h) any other matter the Court considers appropriate.

(2) In considering the matters in subsection (1), the Court may inform itself in any way it considers appropriate.

S. 356H inserted by No. 43/2017 s. 59.

356H Extension of adjournment

(1) Despite anything to the contrary in section 356D, the Court may adjourn the proceeding for a further period not exceeding 2 months if it considers it to

be appropriate to enable the completion of the diversion program.

(2) The total period of the adjournment under section 356D(1) and subsection (1) must not exceed 6 months.

356I Conclusion of the diversion program

S. 356I inserted by No. 43/2017 s. 59.

(1) If a child completes a diversion program to the satisfaction of the Court—

(a) no plea to the charge is to be taken, or if a plea to the charge was withdrawn under section 356D(2) no further plea to the charge is to be taken; and

(b) the Court must discharge the child without any finding of guilt; and

(c) the fact of participation in the diversion program is not to be treated as a finding of guilt except for the purposes of—

(i) Division 1 of Part 3 and Part 10 of the **Confiscation Act 1997**; and

(ii) section 9 of the **Control of Weapons Act 1990**; and

(iii) section 151 of the **Firearms Act 1996**; and

(iv) Part 4 of the **Sentencing Act 1991**; and

(d) the fact of participation in the diversion program and the discharge of the child is a defence to a later charge for the same offence or a similar offence arising out of the same circumstances.

Note

In relation to subsection (1)(c)(iv) see section 417.

(2) If a child does not complete a diversion program to the satisfaction of the Court and the child is subsequently found guilty of the charge, the Court must take into account the extent to which the child complied with the diversion program when sentencing the child.

S. 356J inserted by No. 43/2017 s. 59.

356J Diversion program and community service activities

If an adjournment is granted under section 356D(1) and the diversion program requires a person to engage in community service activities, section 407(3) of this Act applies as if a reference to a direction under subsection (1) were a reference to a diversion program.

S. 356K inserted by No. 43/2017 s. 59.

356K Natural justice

Nothing in this Division affects the requirement to observe the rules of natural justice.

Division 4—Standard of proof

357 Proof beyond reasonable doubt

S. 357(1) amended by No. 8/2008 s. 22(2)(a).

(1) On the summary hearing of a charge for an offence, whether indictable or summary, the Court must be satisfied of a child's guilt on proof beyond reasonable doubt by relevant and admissible evidence.

(2) If the Court is not satisfied in accordance with subsection (1), it must dismiss the charge.

Division 5—Reports and other matters to be taken into account in considering sentence

358 Court may only consider certain reports and other matters

If the Court finds a child guilty of an offence, the Court may, in considering sentence, take into account only the following—

(a) a pre-sentence report prepared by the Secretary or the Secretary to the Department of Justice and the evidence, if any, of its author;

(b) a group conference report prepared by a group conference convenor and the evidence, if any, of its author;

(ba) a youth control order planning meeting report;

S. 358(ba) inserted by No. 43/2017 s. 10.

(c) any report, submission or evidence given, made or tendered by or on behalf of the child who is to be sentenced;

(d) any offences of which the child has been convicted or found guilty before the commission of the offence under consideration;

(e) any submission on sentencing made by the informant or prosecutor or any person appearing on behalf of the Crown;

(f) any victim impact statement made, or other evidence given, under section 359.

359 Victim impact statements

(1) If the Court finds a child guilty of an offence, a victim of the offence may make a victim impact statement to the Court for the purpose of assisting the Court in determining sentence.

(2) A victim impact statement may be made—

(a) in writing by statutory declaration; or

(b) in writing by statutory declaration and orally by sworn or affirmed evidence.

S. 359(2)(b) amended by No. 6/2018 s. 68(Sch. 2 item 20.4).

(3) A victim impact statement may be made by another person on behalf of a victim—

(a) who is under the age of 18 years; or

(b) who the Court is satisfied is incapable of making the statement because of mental illness or for any other reason; or

(c) that is not an individual.

(4) A victim impact statement contains particulars of the impact of the offence on the victim and of any injury, loss or damage suffered by the victim as a direct result of the offence.

S. 359(4A) inserted by No. 18/2010 s. 4(1).

(4A) A victim impact statement may include photographs, drawings or poems and other material that relates to the impact of the offence on the victim or to any injury, loss or damage suffered by the victim as a direct result of the offence.

(5) The Court may rule as inadmissible the whole or any part of a victim impact statement.

(6) If the victim prepares a victim impact statement, the victim must, a reasonable time before sentencing is to take place—

(a) file a copy with the Court; and

(b) provide a copy to—

(i) the child or the legal practitioner representing the child; and

(ii) the prosecutor.

(7) The Court may, at the request of the child or the prosecutor, call a victim who has made a victim impact statement, or a person who has made a victim impact statement on behalf of a victim, to give evidence.

(8) A victim or other person who gives evidence under subsection (7) may be cross-examined and re-examined.

(9) A victim, or a person who has made a victim impact statement on behalf of a victim, may call a witness to give evidence in support of any matter contained in the victim impact statement.

(10) A witness who gives evidence under subsection (9) may be cross-examined and re-examined.

(11) Any party to the proceeding may lead evidence on any matter contained in a victim impact statement.

S. 359(12) substituted by No. 18/2010 s. 4(2).

(12) A person who has made a victim impact statement may request that any part of that victim impact statement—

(a) is read aloud or displayed in the course of the sentencing hearing by—

(i) the person making the request; or

(ii) a person chosen by the person making the request who consents and who is approved by the Court for that purpose; or

(b) is read aloud in the course of the sentencing hearing by the prosecutor.

S. 359(12A) inserted by No. 18/2010 s. 4(2).

(12A) If a request is made under subsection (12), and the person specified in the request is available to do so during the course of the sentencing hearing, the Court must ensure that any admissible parts of the victim impact statement that are—

(a) identified in the request; and

(b) appropriate and relevant to sentencing—

are read aloud or displayed by the person or persons specified in the request in open court in the course of the sentencing hearing.

S. 359(12B) inserted by No. 18/2010 s. 4(2).

(12B) For the purposes of subsection (12A), the Court may direct the person who made the request or the person chosen by that person as to which admissible parts of the victim impact statement are appropriate and relevant to sentencing.

(13) Nothing in this section prevents the presiding magistrate from reading aloud any admissible part of a victim impact statement in the course of sentencing the child or at any other time in the course of the sentencing hearing.

S. 359A inserted by No. 18/2010 s. 5.

359A Alternative arrangements for reading aloud of victim impact statement

(1) On the application of the person who is to read aloud the victim impact statement at a sentencing hearing, on the application of the prosecutor or on its own motion, the Court may direct that alternative arrangements be made for the reading aloud of a victim impact statement under section 359, including arrangements—

(a) permitting the victim impact statement to be read aloud from a place other than the court room by means of a closed-circuit television or other facilities that enable communication between that place and the court room;

(b) using screens to remove the person reading the victim impact statement from the direct line of vision of the child;

(c) permitting a person, chosen by the person reading the victim impact statement and approved by the Court for this purpose, to be beside the person reading the victim impact statement while it is read aloud, for the purpose of providing emotional support for the person reading the victim impact statement;

(d) permitting only persons specified by the Court to be present while the victim impact statement is read aloud.

(2) The Court may, on the application of the person who is to read aloud the victim impact statement, on the application of the prosecutor or on its own motion, revoke or vary a direction made under subsection (1).

(3) For the purposes of this section, the ***reading aloud*** of a victim impact statement includes the display of material included in the victim impact statement.

359B Alternative arrangements for examination

S. 359B inserted by No. 18/2010 s. 5.

(1) On the application of a person who gives evidence under section 359(7) or (9), on the application of the prosecutor or on its own motion, the Court may direct that alternative arrangements be made for the examination and cross-examination of that person, including arrangements—

(a) permitting the person to be examined and cross-examined from a place other than the court room by means of a closed-circuit television or other facilities that enable communication between that place and the court room;

(b) using screens to remove the person from the direct line of vision of the child;

(c) permitting a person, chosen by the person being examined and cross-examined and approved by the Court for this purpose, to be beside the person being examined and cross-examined during the examination and cross-examination, for the purpose of providing emotional support for the person being examined and cross-examined;

(d) permitting only persons specified by the Court to be present while the person is being examined and cross-examined.

(2) The Court may, on the application of a person who gives evidence under section 359(7) or (9), on the application of the prosecutor or on its own motion, revoke or vary a direction made under subsection (1).

Part 5.3—Sentences

Ch. 5 Pt 5.3 (Heading) substituted by No. 68/2009 s. 68(1)(a).

Division 1—Sentencing generally

360 Sentences

S. 360 (Heading) substituted by No. 68/2009 s. 68(1)(b).

(1) If the Court finds a child guilty of an offence, whether indictable or summary, the Court may—

(a) without conviction, dismiss the charge; or

(b) without conviction, dismiss the charge and order the giving of an undertaking under section 363; or

(c) without conviction, dismiss the charge and order the giving of an accountable undertaking under section 365; or

(d) without conviction, place the child on a good behaviour bond under section 367; or

(e) with or without conviction, impose a fine under section 373; or

(f) with or without conviction, place the child on probation under section 380; or

(g) with or without conviction, release the child on a youth supervision order under section 387; or

(h) convict the child and make a youth attendance order under section 397; or

(ha) convict the child and make a youth control order under section 409B; or

S. 360(1)(ha) inserted by No. 43/2017 s. 11.

(i) convict the child and order that the child be detained in a youth residential centre under section 410; or

(j) convict the child and order that the child be detained in a youth justice centre under section 412.

(2) If the Court is of the opinion that sentencing should be deferred, the Court may defer sentencing the child in accordance with section 414.

S. 360(3) amended by No. 68/2009 s. 68(1)(c).

(3) In addition to any other sentence, the Court may order the child—

(a) to make restitution or pay compensation in accordance with section 417; or

(b) to pay costs.

S. 360(4) amended by No. 68/2009 s. 68(1)(c).

(4) The Court may not make an order referred to in subsection (3) a special condition of another sentence.

(5) If under any Act other than this Act a court is authorised on a conviction for an offence—

(a) to make an order with respect to any property or thing the subject of or in any way connected with the offence; or

(b) to impose any disqualification or like disability on the person convicted—

then the Court may, if it finds a child guilty of that offence, make any such order or impose any such disqualification or disability despite the child not being convicted of the offence.

(6) The Court must not pass a sentence that imposes any condition or requirement on a person or body that is not a party to the proceeding unless the Court is satisfied that the person or body consents to that condition or requirement.

361 Sentencing hierarchy

The Court must not impose a sentence referred to in any of the paragraphs of section 360(1) unless it is satisfied that it is not appropriate to impose a sentence referred to in any preceding paragraph of that section.

362 Matters to be taken into account

(1) In determining which sentence to impose on a child, the Court must, as far as practicable, have regard to—

(a) the need to strengthen and preserve the relationship between the child and the child's family; and

(b) the desirability of allowing the child to live at home; and

(c) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and

(d) the need to minimise the stigma to the child resulting from a court determination; and

(e) the suitability of the sentence to the child; and

(f) if appropriate, the need to ensure that the child is aware that he or she must bear a responsibility for any action by him or her against the law; and

(fa) the need for the sentence to— **S. 362(1)(fa) inserted by No. 54/2025 s. 11(a).**

(i) recognise the impact of the child's offending on any victim of that offending; and

(ii) provide opportunities for the child to restore any harm caused by their offending; and

(iii) take into account any steps the child has taken to restore such harm, to the extent that the child has the capacity to do so; and

S. 362(1)(g) substituted by No. 43/2017 s. 24, amended by No. 8/2019 s. 90(3), substituted by No. 54/2025 s. 11(b).[3]

(g) the need to protect the community from any further offending by the child; and

S. 362(1)(h) inserted by No. 43/2017 s. 42(b).

(h) if appropriate, the need to deter the child from committing offences in remand centres, youth residential centres or youth justice centres.

Note to s. 362(1) inserted by No. 32/2024 s. 785.

Note

Section 24C of the **Spent Convictions Act 2021** restricts how a court may use a spent childhood conviction (within the meaning of that Act) and information about the conduct to which a spent childhood conviction relates

(2) In passing sentence on a child who has appeared before the Family Division or who is or has been the subject of an order of the Family Division (including a therapeutic treatment order), the Court must not impose a sentence more severe than it would have imposed had the child not so appeared or been the subject of such an order.

(3) If a child has participated in a group conference and has agreed to the group conference outcome plan, the Court must impose a sentence less severe than it would have imposed had the child not participated in a group conference.

S. 362(4) amended by No. 48/2006 s. 20.

(4) If sentencing of a child is deferred for the purpose of the child's participation in a group conference and the child has failed to participate in the group conference, the Court must not impose a sentence more severe than it would have imposed had sentencing not been so deferred.

(4A) If sentencing of a child is deferred for the purpose of the child's participation in a youth control order planning meeting and the child has failed to participate in the meeting, the Court must not impose a sentence more severe than it would have imposed had sentencing not been so deferred.

S. 362(4A) inserted by No. 43/2017 s. 12(1).

(5) If, in sentencing a child, the Court imposes a less severe sentence than it would otherwise have imposed because of an undertaking given by the child to assist, after sentencing, law enforcement authorities in the investigation or prosecution of an offence, the Court must—

S. 362(5) inserted by No. 30/2010 s. 30.

(a) announce that it is doing so; and

(b) cause to be noted in the records of the Court the fact that the undertaking was given and its details.

(6) Nothing in subsection (5) requires the Court to state the sentence that it would have imposed but for the undertaking that was given.

S. 362(6) inserted by No. 30/2010 s. 30.

(7) A reference in subsection (3) or (4) to a group conference does not include a reference to a group conference ordered under section 409F(2)(g).

S. 362(7) inserted by No. 43/2017 s. 12(2).

362A Sentence discount for guilty plea

S. 362A inserted by No. 8/2008 s. 4.

(1) If—

S. 362A(1) amended by No. 30/2010 s. 31(1).

(a) in sentencing a child, the Court imposes a less severe sentence than it would otherwise have imposed because the child pleaded guilty to the offence; and

(b) the sentence imposed on the child is or includes—

(i) a youth attendance order; or

(ii) a youth residential centre order; or

(iii) a youth justice centre order—

the Court must state in respect of each offence the sentence that it would have imposed but for the plea of guilty.

(2) In the case of a sentence other than a sentence referred to in subsection (1)(b), the Court may state the sentence that it would have imposed but for the plea of guilty.

S. 362A(3) amended by No. 22/2009 s. 8, substituted by No. 30/2010 s. 31(2).

(3) If the Court makes a statement under this section, it must record or cause to be recorded (whether in writing or in another form) in respect of each offence the sentence that it would have imposed but for the plea of guilty.

(4) The failure of the Court to comply with this section does not invalidate any sentence imposed by it.

(5) Nothing in subsection (4) prevents a court on an appeal against sentence from reviewing a sentence imposed by the Court in circumstances where there has been a failure to comply with this section.

S. 362B inserted by No. 43/2017 s. 7.

362B Aggregate sentence of detention

(1) This section applies if a child is convicted by the Court of 2 or more offences which—

(a) are founded on the same facts; or

(b) form, or are part of, a series of offences of the same or a similar character.

(2) The Court may impose an aggregate sentence of detention in respect of those offences in place of a separate sentence of detention in respect of all or any 2 or more of them.

(3) The term of the aggregate sentence of detention must not exceed the total effective period of detention that could have been imposed in respect of the offences in accordance with this Act if the Court had imposed a separate sentence of detention in respect of each of them.

(4) If the Court proposes to impose an aggregate sentence of detention it must, before doing so, announce in open court, in language likely to be readily understood by the child—

(a) the decision to impose an aggregate sentence and the reasons for doing so; and

(b) the effect of the proposed aggregate sentence.

(5) If the Court imposes an aggregate sentence of detention in respect of 2 or more offences, the Court—

(a) is not required to identify separate events giving rise to specific charges; and

(b) is not required to announce—

(i) the sentences that would have been imposed for each offence, had separate sentences been imposed; or

(ii) whether those sentences would have been imposed concurrently or cumulatively.

(6) To avoid doubt, an aggregate sentence of detention may be imposed in respect of convictions for offences that are the subject of a rolled-up charge or a representative charge.

Note

A representative charge is a charge in an indictment for an offence that is representative of a number of offences of the same type alleged to have been committed by the accused. A rolled-up charge is a charge in an indictment that alleges

that the accused has committed more than one offence of the same type between specified dates.

(7) Nothing in this section affects the requirements of—

(a) section 362A (sentence discount for guilty plea); or

(b) section 411 (youth residential centre orders); or

(c) section 413 (youth justice centre orders).

Division 2—Undertaking

363 Non-accountable undertaking

(1) If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, without conviction, dismiss the charge and order that—

(a) the child; and

(b) if required, the child's parent—

give an undertaking, with or without conditions, to do or refrain from doing the act or acts specified in the undertaking for a period not exceeding 6 months or, in exceptional circumstances, 12 months.

(2) An undertaking may be given in relation to one, or more than one, offence.

364 Breach of undertaking

If an undertaking under section 363 is breached, the Court must not take any action.

Division 3—Accountable undertaking

365 Accountable undertaking

If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, without conviction, dismiss the charge in

accordance with section 363, and order that on breach of the undertaking by the child, the child be made accountable and dealt with for the breach under section 366.

366 Breach of undertaking

(1) If—

(a) a person has given an undertaking to the Court or another court under section 365; and

(b) it appears to the Court that the person has failed to comply with the undertaking—

the Court may direct that the person and, if the person is under the age of 15 years, his or her parent be served with a notice to appear before the Court at a specified time.

(2) If a notice is served under subsection (1) and the person fails to appear before the Court at the time specified, the Court may direct that a warrant to arrest the person be issued.

(3) A person alleged to have failed to comply with an undertaking under section 365 must appear or be brought before the Court constituted by—

(a) the magistrate who made the order under section 365, if he or she still holds the office of magistrate; or

(b) any other magistrate if—

(i) the first-mentioned magistrate does not still hold the office of magistrate or it is otherwise impracticable for the first-mentioned magistrate to constitute the Court; or

(ii) the person consents.

S. 366(3)(b)(i) amended by No. 52/2013 s. 50.

(4) If a person does not consent to the Court constituted by any other magistrate dealing with the breach, the proceeding must be adjourned for hearing before the Court constituted by the magistrate who made the order under section 365, if he or she still holds the office of magistrate.

(5) If the Court is satisfied that the person has failed to comply with an undertaking given under section 365, the Court may—

(a) cancel the undertaking; or

(b) continue or vary the undertaking but must not extend the period of the undertaking; or

(c) revoke the order dismissing the charge and impose a fine not exceeding 1 penalty unit.

Division 4—Good behaviour bond

367 Good behaviour bond

(1) If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, without conviction, adjourn the proceeding if it appears expedient to do so, having regard to all the circumstances of the matter including—

(a) the nature of the offence; and

(b) the character and antecedents of the child; and

(c) whether or not the child pleaded guilty.

(2) The period of an adjournment under this section must be specified by the Court and must not exceed—

(a) 12 months; or

(b) if the child is aged 15 years or more on the day on which the proceeding is adjourned and the circumstances are exceptional, 18 months.

(3) An adjournment under this section must not be granted unless the child enters into a bond for an amount less than one half of the maximum fine that may be imposed on the child under section 373 on the following conditions—

(a) that the child appears, if so required by the Court, at the time to which the further hearing is adjourned;

(b) that the child appears before the Court, if required to do so, during the period of the adjournment;

(c) that the child is of good behaviour during the period of the adjournment;

(d) that the child observes any special conditions imposed by the Court.

(4) A bond may be entered into in relation to one, or more than one, offence.

(5) Subject to this section, the Court may grant an adjournment under this section to a child who is serving or is about to serve a term of detention in respect of another offence and in such a case the period of the adjournment shall commence on the discharge of the child from detention by due course of law.

(6) Subject to subsection (5), a child who has entered into a bond under this section must be allowed to go at large.

368 Dismissal where bond observed

If, at the further hearing of a proceeding adjourned under section 367, the Court is satisfied that the child has observed the conditions of the bond, the Court must dismiss the charge.

369 Child required to appear

(1) A child to whom an adjournment under section 367 has been granted may be required to appear before the Court—

(a) by order of the Court; or

(b) by notice issued by the registrar.

(2) An order or notice under subsection (1) must be served not less than 14 days before the day on which the child is required to appear.

370 Failure to appear

(1) If—

(a) the Court, when granting an adjournment under section 367, specifies that the child is required to appear at the time to which the further hearing is adjourned and the child fails to do so; or

(b) a child fails to appear as required by order or notice under section 369; or

(c) reasonable efforts have been made to serve an order or notice under section 369, but have been unsuccessful—

a warrant to arrest may be issued by the Court, directing that the child be arrested and brought before the Court as soon as possible.

(2) If a child is brought before the Court under subsection (1), the Court may remand the child in custody or on bail to be brought or to appear before the Court at a specified time and venue.

(3) If a child is remanded on bail under subsection (2) and fails to appear in accordance with the conditions of bail, the Court may issue a further warrant to arrest.

371 Breach of bond

(1) If—

(a) a person has been released on a bond under section 367; and

(b) it appears to the Court that the person has failed to be of good behaviour or to observe any condition of the bond—

the Court may direct that the person and, if the person is under the age of 15 years, his or her parent be served with a notice to appear before the Court at a specified time.

(2) If a notice is served on a person under subsection (1) and the person fails to appear before the Court at the time specified, the Court may, if satisfied that the notice has come to the attention of the person—

(a) direct that a warrant to arrest the person be issued; or

(b) proceed under subsection (5) in the absence of the person.

(3) A person alleged to have failed to be of good behaviour or to observe any condition of a bond must (whether a notice under subsection (1) has been issued or not) appear or be brought before the Court—

(a) constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate; or

(b) constituted by any other magistrate—

(i) if the first-mentioned magistrate does not still hold the office of magistrate or it is otherwise impracticable for the first-mentioned magistrate to constitute the Court; or

S. 371(3)(b)(i) amended by No. 52/2013 s. 51.

(ii) with the person's consent.

(4) If a person does not consent to the Court constituted by any other magistrate dealing with the breach, the proceeding must be adjourned for hearing before the Court constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate.

(5) If—

(a) a person has been released on a bond under section 367; and

(b) the Court is satisfied that the person has failed to be of good behaviour or to observe any condition of the bond—

the Court may—

(c) declare the bond to be forfeited and impose no penalty; or

(d) proceed with the further hearing and determination of the charge and deal with the person in any manner in which the person could have been dealt with before the adjournment was granted.

372 Time for application

If a breach of a bond is constituted by—

(a) any act the subject of a charge before a court, a proceeding for the breach must be commenced not later than 3 months after a finding of guilt in respect of the charge; or

S. 372(b) amended by No. 61/2014 s. 151.

(b) any other act, a proceeding for the breach must be commenced not later than 3 months after the alleged breach and before the expiry of the period of the adjournment under section 367.

Division 5—Fines

373 Fines

If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, with or without conviction, impose a fine—

(a) in respect of each offence, not exceeding—

(i) 1 penalty unit, if the child is under the age of 15 years or 5 penalty units in any other case; or

(ii) the maximum fine which may be imposed on an adult for the same offence—

whichever is the lower amount; and

(b) in respect of more than one offence, not exceeding an aggregate of 2 penalty units, if the child is under the age of 15 years or 10 penalty units in any other case.

374 Financial circumstances of child to be considered

If the Court determines to impose a fine on a child in respect of an offence, the Court must take into consideration, among other things, the financial circumstances of the child when determining the amount of the fine.

375 Instalment orders

(1) In sections 375 to 379—

child includes a person on whom the Court has imposed a fine but who is of or above the age of 19 years at the time of an application under section 377;

fine means the sum of money payable by a child under an order of the Court made in respect of an offence and includes costs but does not include a sum of money payable by way of restitution or compensation;

instalment order means an order made under subsection (2) that a fine be paid by 2 or more instalments and, if such an order has been varied, means the order as so varied.

(2) If the Court determines to impose a fine on a child, the Court—

(a) must, if the child so requests, order that the fine be paid by instalments; or

(b) in any other case, may order that the fine be paid by instalments, if the Court deems it appropriate to do so.

376 Time to pay

If the Court does not make an instalment order in respect of a fine, the Court, at the time of imposing the fine, may order that the child be allowed time for the payment of the fine.

377 Application for time to pay, for instalment order or for variation of instalment order

A child who has been ordered by the Court to pay a fine may apply at any time in the prescribed manner to the appropriate registrar for—

(a) an order that the child be allowed time for the payment of the fine; or

(b) an order that the fine be paid by instalments; or

(c) an order for the variation of an instalment order.

378 Default in payment of fine or instalment

(1) If for a period of more than one month a person defaults in the payment of a fine or of any instalment under an instalment order, the Court may—

S. 378(1) amended by No. 48/2006 s. 21.

(a) determine that payment of the amount of the fine that remains unpaid not be enforced; or

(b) adjourn the hearing or further hearing of the matter for up to 6 months on any terms that the Court thinks fit; or

(c) order that the fine be varied as specified in the order of the Court; or

(d) if the default is in the payment of an instalment under an instalment order, order that the instalment order be varied as specified in the order of the Court; or

(e) order that the fine then unpaid be levied by a warrant to seize property; or

(f) release the person on probation or a youth supervision order for a period not exceeding 3 months but in no case extending beyond the person's twenty-first birthday.

S. 378(1)(f) amended by Nos 48/2006 s. 21, 28/2007 s. 3(Sch. item 8).

(2) The Court must not make an order under subsection (1) unless the person has been served by post or otherwise with a notice to appear before the Court in respect of the default in payment.

S. 378(2) amended by No. 48/2006 s. 21.

(3) If—

S. 378(3) amended by No. 48/2006 s. 21.

(a) a notice is served on a person under subsection (2) and the person fails to appear before the Court at the time specified and the Court is satisfied that the notice has come to the attention of the person; or

S. 378(3)(a) amended by No. 48/2006 s. 21.

(b) service of a notice under subsection (2) cannot be effected—

the Court may adjourn the proceeding and order that a warrant to arrest the person be issued.

379 Reduction of order by payment of portion of fine

If—

S. 379(a) amended by No. 48/2006 s. 21.

(a) a person is released on probation under section 378(1)(f) or a youth supervision order has been made under section 378(1)(f); and

(b) before the expiry of the term of the order, it appears to the Court that part of the fine has been paid—

the total term of the period of probation or the youth supervision order must be reduced by the number of days bearing as nearly as possible the same proportion to the total number of days in the term as the amount paid bears to the whole amount of the fine.

Division 6—Probation orders

380 Court may order probation

(1) If the Court finds a child guilty of one or more offences, whether indictable or summary, the Court may, with or without conviction, place the child on probation for a specified term—

(a) not exceeding 12 months; or

(b) not exceeding 18 months if the offence or one of the offences is punishable by imprisonment for a term of more than 10 years—

and not extending beyond his or her twenty-first birthday.

(2) The Court may only make an order under subsection (1) if the child has consented to the order being made.

381 Conditions of probation orders

(1) If a person is released on probation, the probation order is subject to the following conditions—

(a) the person must report to the Secretary within 2 working days after the order is made;

(b) the person must, during the period of the probation order, report to the assigned youth justice officer as required by the youth justice officer;

(c) the person must not re-offend during the period of the probation order;

(d) the person must not leave the State without the written permission of the Secretary;

(e) the person must notify the assigned youth justice officer of any change of residence, school or employment within 48 hours after the change;

(f) the person must obey the reasonable and lawful instructions of the assigned youth justice officer.

(2) Subject to subsections (3) and (4), the Court may order the person to observe any special condition for the whole or any part of the period of probation.

(3) A special condition ordered under subsection (2) must relate to the offence and the Court must, in its statement of reasons for the sentence, give its reason for ordering the special condition.

(4) A special condition which may be ordered under subsection (2) may be—

(a) that the person attend school, if the child is under school-leaving age; or

(b) that the person abstain from alcohol; or

(c) that the person abstain from the use of illegal drugs; or

(d) that the person reside at a specified address; or

(e) that the person not leave his or her place of residence between specified hours on specified days; or

(f) that the person undergo medical, psychiatric, psychological or drug counselling or treatment; or

S. 381(4)(g) substituted by Nos 23/2006 s. 234(6), 68/2009 s. 68(1)(d).

(g) if a pre-sentence report includes a statement from the Secretary that the person has an intellectual disability within the meaning of the **Disability Act 2006**, that the person participate in disability services available under that Act as directed by the Secretary; or

(h) any other condition that the Court considers necessary or desirable.

(5) A probation order may at any time during the period of the order be varied or revoked by the Court in accordance with section 421.

382 Concurrent probation orders

(1) If a person is found guilty on the same day, or in the same proceeding, of more than one offence, the aggregate period of any probation orders imposed in respect of the offences must not exceed 18 months or extend beyond the person's twenty-first birthday.

(2) Despite anything to the contrary in any Act, every probation order imposed on a person by the Court shall, unless otherwise directed by the Court at the time of making the probation order, be, as from the date of its commencement, served concurrently with any uncompleted probation order or orders imposed on that person, whether previously to or at the time the relevant order was made.

(3) If the Court imposes a probation order on a person who has not completed another probation order, it may direct that the order being imposed be served in part concurrently with the other order or wholly cumulatively on it.

383 Court may require Secretary to report

(1) If a person has been placed on probation under section 380 and at any time during the period of probation the Court—

(a) finds the person guilty of an offence; and

(b) is aware that a probation order is in force in respect of the person—

the Court may require the Secretary to provide the Court with a report on the extent to and the manner in which the person has complied with the probation order.

(2) In dealing with the offence referred to in subsection (1)(a), the Court—

(a) may take into account the report referred to in that subsection; and

(b) must not impose on the person a penalty greater than the penalty which the Court may impose for that offence.

384 Breach of probation

(1) If—

(a) a person has been placed on probation under section 380; and

(b) at any time during the probation period it appears to the Court or to the Secretary that the person has failed to observe any condition, or amended condition, of the probation order—

the Court or the Secretary may cause the person and, if the person is under the age of 15 years, his or her parent to be served, by post or otherwise, with a notice to appear before the Court at a specified time.

(2) If—

(a) a notice is served on a person under subsection (1) and the person fails to appear before the Court at the time specified and the Court is satisfied that the notice has come to the attention of the person; or

(b) service of a notice under subsection (1) cannot be effected—

the Court may direct that a warrant to arrest the person be issued.

(3) A person alleged to have failed to observe any condition, or amended condition, of a probation order must appear or be brought before the Court—

(a) constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate; or

(b) constituted by any other magistrate—

(i) if the first-mentioned magistrate does not still hold the office of magistrate or it is otherwise impracticable for the first-mentioned magistrate to constitute the Court; or

S. 384(3)(b)(i) amended by No. 26/2012 s. 5(1).

(ii) with the person's consent.

* * * * *

S. 384(4) repealed by No. 26/2012 s. 5(2).

(5) If—

(a) a person has been placed on probation; and

(b) the person is brought or appears before the Court (whether a notice under subsection (1) has been issued or not); and

(c) the Court is satisfied that the person has failed to observe any condition, or amended condition, of the probation order—

the Court may—

(d) confirm the probation order; or

(e) vary, add or substitute any special condition of the probation order but must not extend the period of the order; or

(f) revoke the probation order and impose any sentence that the Court thinks just; or

S. 384(5)(f) amended by No. 68/2009 s. 68(1)(e).

(g) if the probation order has expired, impose any sentence that the Court thinks just.

S. 384(5)(g) amended by No. 68/2009 s. 68(1)(e).

(6) In considering what order to make under subsection (5), the Court may take into account—

(a) a report on the person prepared by the Secretary under section 385; and

(b) the fact of the making of the probation order; and

(c) the extent to which and the manner in which the person has complied with the probation order.

385 Secretary's report

(1) If a person is brought or appears before the Court under section 384, the Secretary must prepare a report on the person including—

(a) the nature and circumstances of the breach of the probation order; and

(b) the extent to which and the manner in which the person has complied with the probation order; and

S. 385(1)(c) amended by No. 68/2009 s. 68(1)(f).

(c) the recommendation of the Secretary with respect to an appropriate sentence for the person; and

(d) any other relevant matter.

(2) Any statement made in a report under subsection (1) must be relevant to—

(a) the breach of the probation order; and

S. 385(2)(b) amended by No. 68/2009 s. 68(1)(f).

(b) the sentence (if any) recommended in the report.

(3) A report under subsection (1) must be provided, after the Court is satisfied that a person has failed to observe a condition, or amended condition, of the probation order and before the Court makes an order under section 384(5), to—

(a) the Court; and

(b) the person who is the subject of the report; and

(c) the legal practitioners representing the person; and

(d) any other person whom the Court has ordered is to receive a copy of the report.

386 Time for application

If a breach of a probation order is constituted by—

(a) any act the subject of a charge before a Court, any proceeding for the breach must be commenced not later than 3 months after a finding of guilt in respect of the charge; or

(b) any other act, any proceeding for the breach must be commenced not later than 14 working days after the alleged breach.

Division 7—Youth supervision orders

387 Court may impose youth supervision order

(1) If the Court finds a child guilty of one or more offences, whether indictable or summary, the Court may, with or without conviction, release the child on a youth supervision order for a specified term—

(a) not exceeding 12 months; or

(b) not exceeding 18 months if the offence or one of the offences is punishable by imprisonment for a term of more than 10 years—

and not extending beyond his or her twenty-first birthday.

(2) The Court may make an order under subsection (1) only if—

(a) the venue at which the Court is then sitting is in a prescribed region of the State; and

(b) the child has consented to the order being made.

388 Concurrent youth supervision orders

(1) If a person is found guilty on the same day, or in the same proceeding, of more than one offence, the aggregate period of any youth supervision orders imposed in respect of the offences must not exceed 18 months or extend beyond the person's twenty-first birthday.

(2) Despite anything to the contrary in any Act, every youth supervision order imposed on a person by the Court shall, unless otherwise directed by the Court at the time of making the youth supervision order, be, as from the date of its commencement, served concurrently with any uncompleted youth supervision order or orders imposed on that person, whether previously to or at the time the relevant order was made.

(3) If the Court imposes a youth supervision order on a person who has not completed another youth supervision order, it may direct that the order being imposed be served in part concurrently with the other order or wholly cumulatively on it.

389 Youth supervision orders

(1) If a person is released on a youth supervision order, the order is subject to the following conditions—

(a) the person must report to the Secretary within 2 working days after the order is made;

(b) the person must, during the period of the youth supervision order, report to the Secretary as required by the Secretary;

(c) the person must not re-offend during the period of the youth supervision order;

(d) the person must not leave the State without the written permission of the Secretary;

(e) the person must notify the Secretary of any change of residence, school or employment within 48 hours after the change;

(f) the person must attend a youth justice unit or any other place specified in the youth supervision order;

(g) the person must participate in a community service program or any other program, if so directed by the Secretary;

(h) the person must obey the reasonable and lawful instructions of the Secretary.

(2) Subject to subsection (3), the Court may order the person to observe any special condition for the whole or any part of the period of a youth supervision order.

(3) Subsections (3) and (4) of section 381 apply to a special condition ordered under subsection (2) of this section in the same manner as they apply to a special condition ordered under subsection (2) of that section.

(4) A youth supervision order may at any time during the period of the order be varied or revoked by the Court in accordance with section 421.

(5) A requirement by the Secretary under subsection (1)(b) that a person report to the Secretary must specify dates and times which, as far as practicable, avoid interference—

(a) with the attendance of the person at his or her place of employment, education, training or religious observance; or

(b) with the person's religious beliefs.

(6) A direction given by the Secretary under subsection (1)(g)—

(a) may require a person to engage in community service activities—

(i) at or in relation to a community service organisation; or

(ii) at the home of any old, infirm or disabled person; or

(iii) on any Crown land or land occupied by the Crown or owned, leased or occupied by any person or body under any Act for a public purpose; and

(b) must not require a person to engage in any community service activities so as to take the place of some other person who would usually be engaged in those activities for hire or reward if that other person is absent from those activities because of an industrial dispute involving that other person's employer or is otherwise available and willing to perform the work required in those activities.

(7) If a direction under subsection (1)(g) requires a person to engage in community service activities—

(a) the person is, for the purposes of the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013** or any other Act or law, to be taken to be a worker employed by the Crown; and

S. 389(7)(a) amended by No. 67/2013 s. 649(Sch. 9 item 2(1)(a)).

(b) for the purposes of the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013** the weekly earnings of the person are to be taken to be an amount equivalent to the weekly earnings of the person in any full-time employment in which the person is engaged at that time or, if the person is not then engaged in full-time employment, an amount which the Minister administering the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013** considers reasonable in the circumstances of the case; and

S. 389(7)(b) amended by No. 67/2013 s. 649(Sch. 9 item 2(1)(b)).

(c) the person is not entitled to receive any remuneration in respect of any work performed in those community service activities.

390 Suspension of youth supervision order

(1) If—

(a) at the time the Court makes a youth supervision order, the person in respect of whom the order is made is in custody in a remand centre, youth residential centre, youth justice centre or prison; or

(b) after the making of a youth supervision order, the person in respect of whom the order is made is taken into custody in a remand centre, youth residential centre, youth justice centre or prison—

the Secretary may by notice in writing in the prescribed form sent by registered post to, or served personally on, the person suspend the person's service of the youth supervision order.

(2) The Secretary must, after consultation with the appropriate parole board, superintendent of a youth residential centre or youth justice centre or the Secretary to the Department of Justice, determine a time at and date on which a person shall commence or re-commence service of the youth supervision order and must by a notice in writing sent by registered post to, or served personally on, the person specify the time at and date on which the person is first required to report to the Secretary.

(3) With the consent of the appropriate parole board, the Secretary may direct that the term of operation of a youth supervision order be served concurrently with a period of parole but the service of the youth supervision order must not be a condition of the parole.

391 Court may require Secretary to report

(1) If a person has been released on a youth supervision order and at any time during the term of the order the Court—

(a) finds the person guilty of an offence; and

(b) is aware that a youth supervision order is in force in respect of the person—

the Court may require the Secretary to provide the Court with a report on the extent to and the manner in which the person has complied with the youth supervision order.

(2) In dealing with the offence referred to in paragraph (a) of subsection (1), the Court—

(a) may take into account the report referred to in that subsection; and

(b) must not impose on the person a penalty greater than the penalty which the Court may impose for that offence.

392 Breach of youth supervision order

(1) If—

(a) a person has been released on a youth supervision order; and

(b) at any time during the period of the order it appears to the Court or the Secretary that the person has failed to observe any condition, or amended condition, of the order—

the Court or the Secretary may cause the person and, if the person is under the age of 15 years, his or her parent to be served, by post or otherwise, with a notice to appear before the Court at a specified time.

(2) If—

(a) a notice is served on a person under subsection (1) and the person fails to appear before the Court at the time specified and the Court is satisfied that the notice has come to the attention of the person; or

(b) service of a notice under subsection (1) cannot be effected—

the Court may direct that a warrant to arrest the person be issued.

(3) A person alleged to have failed to observe any condition, or amended condition, of a youth supervision order must appear or be brought before the Court—

(a) constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate; or

(b) constituted by any other magistrate—

S. 392(3)(b)(i) amended by No. 26/2012 s. 6(1).

(i) if the first-mentioned magistrate does not still hold the office of magistrate or it is otherwise impracticable for the first-mentioned magistrate to constitute the Court; or

(ii) with the person's consent.

S. 392(4) repealed by No. 26/2012 s. 6(2).

* * * * *

393 Penalties for breach

If—

(a) a person has been released on a youth supervision order; and

(b) the person is brought or appears before the Court (whether a notice under section 392(1) has been issued or not); and

(c) the Court is satisfied that the person has failed to observe any condition, or amended condition, of the order—

the Court may make an order—

(d) varying the youth supervision order but not extending the term of the order; or

(e) confirming the youth supervision order and directing the person to comply with the youth supervision order; or

(f) revoking the youth supervision order and imposing any sentence that the Court thinks just; or

S. 393(f) amended by No. 68/2009 s. 68(1)(g).

(g) if the youth supervision order has expired, imposing any sentence that the Court thinks just.

S. 393(g) amended by No. 68/2009 s. 68(1)(g).

394 Matters to be taken into account

(1) In considering what order to make under section 393, the Court may take into account—

(a) a report on the person prepared by the Secretary under subsection (2); and

(b) the fact of the making of the youth supervision order; and

(c) the extent to and the manner in which the person has complied with the youth supervision order.

(2) If a person is brought or appears before the Court under section 393, the Secretary must prepare a report on the person including—

(a) the nature and circumstances of the breach of the youth supervision order; and

(b) the extent to which and the manner in which the person has complied with the order; and

(c) the recommendation of the Secretary with respect to an appropriate sentence for the person; and

S. 394(2)(c) amended by No. 68/2009 s. 68(1)(h).

(d) any other relevant matter.

(3) Any statement made in a report under subsection (2) must be relevant to—

(a) the breach of the youth supervision order; and

(b) the sentence (if any) recommended in the report.

S. 394(3)(b) amended by No. 68/2009 s. 68(1)(h).

(4) A report under subsection (2) must be provided, after the Court is satisfied that a person has failed to observe any condition, or amended condition, of the order and before the Court makes an order under section 393, to—

(a) the Court; and

(b) the person who is the subject of the report; and

(c) the legal practitioners representing the person; and

(d) any other person whom the Court has ordered is to receive a copy of the report.

395 Time for application

If a breach of a youth supervision order is constituted by—

(a) any act the subject of a charge before a court, any proceeding for the breach must be commenced not later than 3 months after a finding of guilt in respect of the charge; or

(b) any other act, any proceeding for the breach must be commenced not later than 14 working days after the alleged breach.

Division 8—Youth attendance orders

396 Definitions

In this Division—

week means the period of 7 days commencing on a Monday;

working day does not include a Saturday, Sunday or public holiday.

397 Youth attendance order

(1) If—

(a) the Court convicts a child of one or more offences for which the Court considers that the child would otherwise be sentenced to detention in a youth justice centre as a result of the gravity or habitual nature of the child's unlawful behaviour; and

(b) on the day of sentencing, the child is of or above the age of 15 years—

the Court may make a youth attendance order in respect of the child with a specified term not exceeding 12 months and not extending beyond his or her twenty-first birthday.

(2) The power to make a youth attendance order is subject to the restrictions set out in section 398.

398 Restrictions on power to make youth attendance order

The Court does not have power to make a youth attendance order under section 397(1) unless—

(a) the offence or one of the offences is punishable by imprisonment; and

(b) it has made enquiries of the Secretary and is satisfied that the child is a suitable person to be placed on a youth attendance order; and

(c) the child has consented to the order being made.

399 Sentencing court to impose requirements

(1) The Court, when making a youth attendance order, must impose on the person the following requirements—

(a) that the person does not commit another offence during the period that the order is in force;

(b) that the person attend at a youth justice unit for the number of weeks specified by the Court (not being more than 52 weeks);

(c) that the person report to the Secretary within 2 working days after the order is made;

(d) that the person does not leave the State without the written permission of the Secretary;

(e) that the person notify the Secretary of any change of residence, school or employment within 48 hours after the change;

(f) that the person comply with the provisions of a notice under section 402 and with the requirements for attendance in paragraphs (a) and (b) of section 402(1);

(g) that the person attend at any alternative day and time fixed under section 402(5) or attend for such extension of the term of the order as is fixed under section 402(6);

(h) that the person carry out the reasonable and lawful directions of the Secretary or any person acting under the authority of the Secretary under sections 406 and 407(1).

(2) Subject to subsection (3), the Court may order the person to observe any special condition for the whole or any part of the period of the youth attendance order.

(3) Sections 381(3) and 381(4) apply to a special condition ordered under subsection (2) of this section in the same manner as they apply to a special condition ordered under subsection (2) of that section.

400 Concurrent orders

(1) If a person is convicted on the same day, or in the same proceeding, of more than one offence—

(a) the aggregate period of any youth attendance orders imposed in respect of the offences must not exceed 12 months or extend beyond the person's twenty-first birthday; and

(b) if the Court makes a youth attendance order in relation to an offence and directs that the person be detained in a youth justice centre in respect of another offence, the aggregate term of attendance and detention in respect of all of the offences must not exceed 3 years.

(2) Despite anything to the contrary in any Act, every youth attendance order imposed on a person by the Court shall, unless otherwise directed by the Court at the time of making the youth attendance order, be, as from the date of its commencement, served concurrently with any uncompleted youth attendance order or orders imposed on that person, whether previously to or at the time the relevant order was made.

(3) If the Court imposes a youth attendance order on a person who has not completed another youth attendance order, it may direct that the order being imposed be served in part concurrently with the other order or wholly cumulatively on it.

401 Copy of order to be given

(1) A youth attendance order must be in the prescribed form.

(2) The Court, when it makes a youth attendance order, must cause a copy of the order to be given or sent by post to—

(a) the person; and

(b) the Secretary.

402 Reporting

(1) Subject to subsections (5) and (6), a person in respect of whom a youth attendance order is made must in every week during the term of the order—

(a) attend for a maximum of 3 attendances; and

(b) attend under paragraph (a) for a maximum of 10 hours of which no more than 4 hours may be spent in community service activities under section 407.

(2) Subject to subsection (1), the Secretary must from time to time specify in a notice in the prescribed form sent by registered post to, or served personally on, the person—

(a) the periods of time; and

(b) the starting and finishing times of each such period; and

(c) the number of times; and

(d) the total number of hours—

in each week during which the person is required to attend the youth justice unit.

(3) Subject to subsection (1), the Secretary may from time to time vary the details referred to in paragraph (a), (b), (c) or (d) of subsection (2) by notice sent by registered post to, or served personally on, the person.

(4) In specifying the dates and times of attendance for a person in a notice under this section the Secretary must specify dates and times which, as far as practicable, avoid interference—

(a) with the attendance of the person at his or her place of employment, education, training or religious observance; or

(b) with the person's religious beliefs.

(5) The Secretary may excuse a person from reporting at a youth justice unit on any occasion—

(a) on account of illness certified by a registered medical practitioner; or

(b) on account of any other good cause—

and if the Secretary so excuses a person, the Secretary may fix an alternative day and time and must specify the day and time in a notice sent by registered post to, or served personally on, the person.

(6) If it is not reasonably practicable for a person to make up time for which the person has been excused under subsection (5) during the term of the youth attendance order, the Secretary may extend the term of the youth attendance order so that the lost time can be made up and must inform the person of the extension by a notice sent by

registered post to, or served personally on, the person.

403 Suspension of youth attendance order

(1) If—

(a) at the time the Court makes a youth attendance order, the person in respect of whom the order is made is in custody in a remand centre, youth residential centre, youth justice centre or prison; or

(b) after the making of a youth attendance order, the person in respect of whom the order is made is taken into custody in a remand centre, youth residential centre, youth justice centre or prison—

the Secretary may by a notice in writing in the prescribed form sent by registered post to, or served personally on, the person suspend the person's service of the youth attendance order.

(2) The Secretary must, after consultation with the appropriate parole board, superintendent of a youth residential centre or youth justice centre or the Secretary to the Department of Justice, determine a time at and date on which a person shall commence or re-commence service of the youth attendance order and must by a notice in writing sent by registered post to, or served personally on, the person specify the time at and date on which the person is first required to report to the Secretary.

(3) With the consent of the appropriate parole board, the Secretary may direct that the term of operation of a youth attendance order be served concurrently with a period of parole but the service of the youth attendance order must not be a condition of the parole.

404 Court may require Secretary to report

(1) If, at any time during a person's service of a youth attendance order, the Court—

(a) finds the person guilty of an offence; and

(b) is aware that a youth attendance order is in force in respect of the person—

the Court may require the Secretary to provide the Court with a report on the extent to and the manner in which the person has complied with the youth attendance order.

(2) In dealing with the offence referred to in paragraph (a) of subsection (1), the Court—

(a) may take into account the report referred to in that subsection; and

(b) must not impose on the person a penalty greater than the penalty which the Court may impose for that offence.

405 Objects of youth attendance order

The objects of a youth attendance order are to provide a person in respect of whom a youth attendance order is in force with activities and requirements—

(a) which take into account the gravity of the person's behaviour; and

(b) which penalise the person by imposing restrictions on his or her liberty; and

(c) which require the person to make amends for the offence committed by him or her by performing community services; and

(d) which provide the person with opportunities to receive such instruction, guidance, assistance and experiences as will assist the person in developing an ability to abide by

the law and complete the requirements of the youth attendance order.

406 Person subject to control etc. of Secretary etc.

A person in respect of whom a youth attendance order is in force is subject to the reasonable control, direction and supervision of the Secretary or any person acting under the authority of the Secretary during—

(a) each period of the person's attendance at a youth justice unit; and

(b) the person's absence from a youth justice unit when the person is complying with a direction of that person; and

(c) the person's time of travel between the youth justice unit and a place outside the youth justice unit at which the person is directed to be by that person.

407 Community service

(1) A person in respect of whom a youth attendance order is in force must engage in community service or other activities as directed by the Secretary.

(2) A direction given by the Secretary—

(a) may require a person to engage in community service activities—

(i) at or in relation to a community service organisation; or

(ii) at the home of any old, infirm or disabled person; or

(iii) on any Crown land or land occupied by the Crown or owned, leased or occupied by any person or body under any Act for a public purpose; and

(b) must not require a person to engage in any community service activities so as to take the place of some other person who would usually be engaged in those activities for hire or reward if that other person is absent from those activities because of an industrial dispute involving that other person's employer or is otherwise available and willing to perform the work required in those activities.

(3) If a direction under subsection (1) requires a person to engage in community service activities—

S. 407(3)(a) amended by No. 67/2013 s. 649(Sch. 9 item 2(2)).

(a) the person is, for the purposes of the **Accident Compensation Act 1985** and the **Workplace Injury Rehabilitation and Compensation Act 2013** or any other Act or law, to be taken to be a worker employed by the Crown; and

S. 407(3)(b) amended by No. 67/2013 s. 649(Sch. 9 item 2(2)).

(b) for the purposes of the **Accident Compensation Act 1985** and the **Workplace Injury Rehabilitation and Compensation Act 2013** the weekly earnings of the person are to be taken to be an amount equivalent to the weekly earnings of the person in any full-time employment in which the person is engaged at that time or, if the person is not then engaged in full-time employment, an amount which the Minister administering the **Accident Compensation Act 1985** and the **Workplace Injury Rehabilitation and Compensation Act 2013** considers reasonable in the circumstances of the case; and

(c) the person is not entitled to receive any remuneration in respect of any work performed in those community service activities.

408 Breach of youth attendance order

(1) A person subject to a youth attendance order who—

(a) commits an offence during the period that the youth attendance order is in force; or

(b) does not report to the Secretary as specified under section 399(1)(c) or 403(2) (as the case requires); or

(c) fails to attend the youth justice unit as specified in a notice under section 402(2) or at an alternative time and on an alternative day fixed under section 402(5) without being excused from attending; or

(d) fails to comply with an extension of the term of the youth attendance order under section 402(6); or

(e) contravenes any provision of a regulation made for the purposes of this Division; or

(f) contravenes any reasonable direction of the Secretary under section 406 or 407(1); or

(g) refuses to work as directed during an attendance at a youth justice unit; or

(h) is absent from or leaves—

(i) a youth justice unit; or

(ii) any other place at which the person has been directed to be present under section 406(b)—

without reasonable excuse at a day and time when the person is required to be present; or

(i) fails to observe any other requirement or special condition imposed by the Court under section 399—

must be taken to have breached the youth attendance order.

(2) Subject to subsection (3), on application to the Court by the Secretary, the Court may, if it is satisfied that a person has breached a youth attendance order, make—

(a) an order varying the youth attendance order, but not extending the term of the order; or

(b) an order confirming the youth attendance order and directing the person to comply with the youth attendance order; or

(c) an order revoking the youth attendance order and imposing any sentence that the Court thinks just but must not make an order for the person to be kept in custody for a period longer than the period of the breached youth attendance order; or

S. 408(2)(c) amended by No. 68/2009 s. 68(1)(i).

(d) if the youth attendance order has expired, imposing any sentence that the Court thinks just, but must not make an order for the person to be kept in custody for a period longer than the period of the breached youth attendance order.

S. 408(2)(d) amended by No. 68/2009 s. 68(1)(i).

(3) If a breach of a youth attendance order is constituted by—

(a) any act the subject of a charge before a court, any proceeding for the breach must be commenced not later than 3 months after a finding of guilt in respect of the charge; or

(b) any other act, any proceeding for the breach must be commenced not later than 14 working days after the alleged breach.

(4) If at any time during the period that a youth attendance order is in force it appears to the Secretary that the person subject to the order has breached it, the Secretary may cause the person to be served, by post or otherwise, with a notice to appear before the Court at a specified time.

(5) In dealing with an application under subsection (2), the Court must take into account—

(a) a report on the person prepared by the Secretary; and

(b) the fact of the making of the youth attendance order; and

(c) the extent to and the manner in which the person has complied with the youth attendance order.

(6) If—

(a) a notice is served on a person under subsection (4) and he or she fails to appear before the Court at the time specified and the Court is satisfied that the notice has come to the attention of the person; or

(b) service of a notice under subsection (4) cannot be effected—

the Court may direct that a warrant to arrest the person be issued.

(7) A person alleged to have breached a youth attendance order must appear or be brought before the Court—

(a) constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate; or

(b) constituted by any other magistrate—

(i) if the first-mentioned magistrate does not still hold the office of magistrate or it is otherwise impracticable for the first-mentioned magistrate to constitute the Court; or

S. 408(7)(b)(i) amended by No. 26/2012 s. 7(1).

(ii) with the person's consent.

* * * * *

S. 408(8) repealed by No. 26/2012 s. 7(2).

409 Application for variation or revocation of order

(1) Subject to subsections (2), (3) and (4), the Secretary or a person in respect of whom a youth attendance order is in force may apply to the Court for a variation or the revocation of the youth attendance order.

(2) An application under subsection (1) may be made where—

(a) the circumstances of the person—

(i) have changed since the making of the youth attendance order; or

(ii) were not accurately presented to the Court or the Secretary before the making of the youth attendance order; or

(b) the person is in custody or is otherwise unable to comply with the youth attendance order; or

(c) the person is no longer willing to comply with the order.

(3) If the Secretary is the applicant under subsection (1), the Secretary must, as soon as practicable after the making of the application, send by registered post to, or serve personally on, the person in respect of whom the order is in force a notice of the date set by the Court for the hearing of the application.

(4) If the person in respect of whom the order is in force is the applicant under subsection (1), the principal registrar must, as soon as practicable after the making of the application, send by registered post to, or cause to be served personally on, the Secretary a notice of the date set by the Court for the hearing of the application.

(5) In dealing with an application under subsection (1), the Court must take into account—

(a) a report on the person prepared by the Secretary; and

(b) the fact of the making of the youth attendance order; and

(c) the extent to and the manner in which the person has complied with the youth attendance order—

and, subject to subsection (6), may make—

(d) an order varying the youth attendance order, but not extending the period of the order; or

(e) an order directing that the youth attendance order continue in force; or

S. 409(5)(f) amended by No. 68/2009 s. 68(1)(j).

(f) an order revoking the youth attendance order and imposing any sentence that the Court thinks just but must not make an order for the person to be kept in custody for a period longer than the period of the breached youth attendance order.

(6) If a person in respect of whom an application is made under subsection (1) fails to appear before the Court at the time fixed for the hearing of the application, a warrant to arrest the person may be issued by the Court.

(7) Division 3 of Part 4 of the **Magistrates' Court Act 1989** applies, with any necessary modifications, to warrants under subsection (6), and in particular with the modification that a reference to the bringing of a person before the Magistrates' Court is to be construed as a reference to bringing the person as soon as practicable before the Children's Court.

S. 409(8) amended by No. 68/2009 s. 68(1)(k).

(8) If it is not possible for the Court to deal immediately with an application under subsection (1) in respect of which the person has been arrested under subsection (6), for the purposes of granting bail the provisions of this Act and the **Bail Act 1977** apply, with any necessary modifications, and in particular with the modification that a reference to a person accused of an offence or an accused is to be construed as a reference to the person.

(9) If a person is being held in custody pending the determination of an application under subsection (1), the person must be detained in a youth justice centre.

(10) If a person changes his or her place of residence, the Secretary may, on receipt of an application in writing by the person, send by registered post to, or serve personally on, the person a written authority to attend at another youth justice unit specified in the authority at the time and place specified in the authority and the giving of the authority has effect as if it were a variation of a youth attendance order by the Court under subsection (5)(d).

Division 8A—Youth control orders

Subdivision 1—Youth control orders

Ch. 5 Pt 5.3 Div. 8A (Headings and ss 409A–409ZA) inserted by No. 43/2017 s. 13.

S. 409A inserted by No. 43/2017 s. 13.

409A Objects of a youth control order

The objects of a youth control order in respect of a child are—

(a) to provide a judicially supervised, intensive supervision regime for the child; and

(b) to penalise the child by imposing restrictions on his or her liberty; and

(c) to provide intensive, targeted supervision to the child, to help him or her to develop an ability to abide by the law; and

(d) to engage the child in education, training or work (whether paid or unpaid); and

(e) to give the child an opportunity to demonstrate a desire to cease offending.

S. 409B inserted by No. 43/2017 s. 13.

409B Court may make youth control order

(1) The Court may make a youth control order in respect of a child if—

(a) the Court convicts the child of one or more offences whether indictable or summary; and

(b) the Court considers that the child would otherwise be sentenced to detention in a youth justice centre or a youth residential centre as a result of the gravity or habitual nature of the child's unlawful behaviour.

(2) The term of a youth control order must not exceed 12 months and must not extend beyond the child's twenty-first birthday.

(3) The power to make a youth control order is subject to the restrictions set out in section 409C.

409C Restrictions on power to make a youth control order

S. 409C inserted by No. 43/2017 s. 13.

The Court does not have power to make a youth control order in respect of a child under section 409B(1) unless—

(a) the offence or one of the offences committed by the child is punishable by imprisonment; and

(b) the Court has made enquiries of the Secretary and is satisfied that the child is a suitable person to be placed on a youth control order; and

(c) the child has consented to the youth control order being made; and

(d) a youth control order plan has been developed for the child.

409D Court order for youth control order planning meeting

S. 409D inserted by No. 43/2017 s. 13.

(1) The Court must order that a youth control order planning meeting be held for a child if the Court is considering making a youth control order in respect of the child.

(2) The Court may order that a youth control order planning meeting be held for a child if—

(a) a youth control order is in force in respect of the child; and

(b) the Court considers that such a meeting is necessary.

Note

The requirements for youth control order planning meetings are set out in Subdivision 2 of this Division.

(3) Before ordering that a youth control order planning meeting be held for a child, the Court must make inquiries of the child, the Secretary and any other person the Court considers appropriate about the people who should attend the meeting, having regard to—

(a) the objects of a youth control order (see section 409A); and

(b) the purpose of the meeting (see section 409S).

(4) Nothing in this section affects the obligation of the Court to direct that a pre-sentence report be prepared in respect of the child under section 571.

S. 409E inserted by No. 43/2017 s. 13.

409E Matters to which Court is to have regard in determining whether to make a youth control order

In determining whether to make a youth control order in respect of a child, the Court must have regard to the following—

(a) the child's behaviour on any bail supervision program in which he or she has participated;

(b) the child's behaviour on remand, if applicable;

(c) the extent to which the child has acknowledged responsibility for his or her offending;

(d) the availability of education, training or work opportunities (whether paid or unpaid) for the child;

(e) the child's willingness to engage in education, training or work (whether paid or unpaid);

(f) the report of the youth control order planning meeting held for the child (see Subdivision 2);

(g) any other matter the Court considers relevant.

409F Court to impose certain requirements

S. 409F inserted by No. 43/2017 s. 13.

(1) A youth control order in respect of a child is subject to the following requirements—

(a) that the child not commit another offence, whether within or outside Victoria, during the period that the order is in force;

(b) that the child report to the Secretary within 2 working days after the order is made;

(c) that the child report to the Secretary, as required by the Secretary, during the period that the order is in force;

(d) that the child comply with any lawful and reasonable directions given by the Secretary;

(e) that the child attend the Court as directed by the Court under section 409L;

(f) that the child participate in education, training or work (whether paid or unpaid), for some or all of the period that the order is in force;

(g) that the child notify the Secretary of any change in the child's residence, school or employment within 2 working days after the change;

(h) that the child not leave Victoria without the permission of the Secretary.

(2) When making a youth control order, the Court may, having regard to the child's youth control order plan and personal circumstances, impose on the child any of the following requirements—

(a) that the child participate in one or more community service activities;

(b) that the child undergo treatment for drug or alcohol dependence;

(c) that the child attend a counselling or treatment service of any kind;

(d) that the child reside at a specified address;

(e) that the child not leave his or her place of residence between specified hours on specified days;

(f) that the child not contact specified persons;

(g) that the child attend and participate in a group conference;

(h) that the child participate in cultural programs or attend culturally specific community support services;

(i) that the child not use specified social media if this is required for the protection of the community;

(j) that the child not visit particular places or areas, or only visit the places or areas at specified times;

(k) if a pre-sentence report includes a statement from the Secretary that the child has an intellectual disability within the meaning of the **Disability Act 2006**, that the child participate in disability services available under that Act as directed by the Secretary;

(l) any other requirement that the Court considers appropriate, having regard to the circumstances of the child.

(3) The Court must attach requirements to a youth control order in accordance with—

(a) the principle of proportionality; and

(b) the objects of a youth control order, as set out in section 409A.

(4) If a requirement of a youth control order is that the child attend and participate in a group conference, the group conference is to be held in accordance with section 415(2) to (11).

409G Non-accountable parental undertaking

S. 409G inserted by No. 43/2017 s. 13.

If the Court makes a youth control order in respect of a child, the Court may make an order that the child's parent give an undertaking, with or without conditions, to support the child to comply with the youth control order for a period not exceeding the period of the youth control order.

409H Breach of undertaking

S. 409H inserted by No. 43/2017 s. 13.

If an undertaking under section 409G is breached, the Court must not take any action.

409I Concurrent orders

S. 409I inserted by No. 43/2017 s. 13.

(1) If a child is convicted on the same day, or in the same proceeding, of more than one offence—

(a) the aggregate period of any youth control orders made in respect of the offences must not exceed 12 months or extend beyond the child's twenty-first birthday; and

(b) if the Court—

(i) makes a youth control order in relation to an offence; and

(ii) directs that the child be detained in a youth justice centre in respect of another offence—

the aggregate term of detention and youth control orders in respect of all of the offences must not exceed 4 years.

(2) Subject to subsection (3), a youth control order in respect of a child must be served, from the date the order commences, concurrently with any uncompleted youth control order in respect of that child.

(3) If the Court makes a youth control order in respect of a child who has not completed another youth control order, it may, at the time of making the order, direct that the order be served—

(a) in part concurrently with the other order; or

(b) wholly cumulatively on the other order.

(4) If the Court—

(a) makes a youth control order in respect of a child in relation to one or more offences; and

(b) directs that the child be detained in a youth residential centre in respect of one or more other offences—

the aggregate term of detention and youth control orders must not exceed 2 years.

S. 409J inserted by No. 43/2017 s. 13.

409J Copy of order to be given

(1) A youth control order must be in the prescribed form.

(2) The Court, when it makes a youth control order in respect of a child, must cause a copy of the order to be given or sent by post to—

(a) the child and, if the child is aged under 15 years, the child's parent; and

(b) the Secretary.

409K Remission of monitoring etc. to the Court

S. 409K inserted by No. 43/2017 s. 13.

If a court other than the Court makes a youth control order, the court that made the order must remit to the Court the matters in respect of the order in—

(a) section 409L (reporting and monitoring); and

(b) section 409N (variation); and

(c) subject to section 423, section 409Q (revocation).

409L Reporting and monitoring

S. 409L inserted by No. 43/2017 s. 13.

(1) A child in respect of whom a youth control order is in force must attend the Court from time to time as directed by the Court, for the Court to consider—

(a) the child's compliance with the order; and

(b) the ongoing suitability of the requirements of the order.

(2) The Court must direct that the child attend the Court at least monthly for the first half of the order.

(3) The Secretary must provide a report to the Court about the child's compliance before each attendance by the child before the Court.

(4) A report under subsection (3) must be filed in the Court at least 3 working days before the attendance, or otherwise as directed by the Court.

S. 409L(4) amended by No. 26/2023 s. 47.

(5) The author of a report under subsection (3) must provide a copy of the report, at least 3 working days before the attendance to—

(a) the child who is the subject of the report and, if the child is aged under 15 years, the child's parent; and

(b) the legal practitioner representing the child; and

(c) any other person the Court has ordered is to receive a copy of the report.

(6) When the child attends the Court, the Court must consider whether the order should be varied under section 409N.

(7) The Court is to be constituted by the magistrate who sentenced the child, unless—

(a) that magistrate does not still hold office as a magistrate; or

(b) the matters in this section were remitted to the Court under section 409K; or

(c) it is otherwise impracticable for that magistrate to constitute the Court.

S. 409M inserted by No. 43/2017 s. 13.

409M Suspension of youth control order

(1) This section applies if—

(a) at the time the Court makes a youth control order in respect of a child, the child is in custody in a remand centre, youth residential centre, youth justice centre or prison; or

(b) after the making of a youth control order in respect of a child, the child is taken into custody in a remand centre, youth residential centre, youth justice centre or prison.

(2) The Secretary may, by notice served on the child and, if the child is aged under 15 years, the child's parent, suspend the child's service of the order throughout the period of custody.

(3) The Secretary must, after consultation with the appropriate parole board, superintendent of a youth residential centre or youth justice centre—

(a) determine a time at which, and a date on which, a person must commence or recommence service of the order; and

(b) serve a notice on the child specifying the time at and date on which the child is first required to report to the Secretary.

Note

Sections 593 to 596 deal with service of documents.

(4) The Secretary may, with the consent of the appropriate parole board, direct that the term of operation of a youth control order be served concurrently with a period of parole, but that service must not be a condition of the parole.

409N Variation of youth control order

S. 409N inserted by No. 43/2017 s. 13.

(1) The Court may vary a youth control order in respect of a child from time to time if the Court considers it appropriate to do so, based on its assessment of the child's compliance having regard to reports and discussions at attendances at the Court under section 409L.

(2) The Court may vary an order under subsection (1) on its own initiative, or on the application of—

(a) the child or, if the child is aged under 15 years, the child's parent; or

(b) the Secretary.

(3) An application under subsection (2) may be made—

(a) orally, when the child attends Court under section 409L; or

(b) by filing an application with the Court and serving a copy of the application—

(i) if the application is made by the child or the child's parent—on the Secretary; or

(ii) if the application is made by the Secretary—on the child and, if the child is aged under 15 years, the child's parent.

Note

Sections 593 to 596 deal with service of documents.

(4) Variations of a youth control order may—

(a) make the order more restrictive, if the Court considers that the child's compliance is unsatisfactory and the Court considers that making the order more restrictive would assist the child's compliance with the order; or

(b) make the order less restrictive if—

(i) the Court considers that the child's compliance is satisfactory; or

(ii) the Court considers that the child's compliance is unsatisfactory but that making the order less restrictive would assist the child's compliance with the order.

(5) When varying a youth control order, the Court must have regard to the matters set out in section 409F(2) and (3).

409O Warning of possible variation of a youth control order

S. 409O inserted by No. 43/2017 s. 13.

The Court may give a warning to a child when the child attends the Court under section 409L, stating that the Court may at a later time vary a youth control order in respect of the child, if—

(a) the Court considers that the child is failing to comply with the requirements of the order; and

(b) the Court considers it appropriate to give such a warning.

409P Neither consent nor warning required

S. 409P inserted by No. 43/2017 s. 13.

To avoid doubt, a youth control order in respect of a child may be varied or revoked—

(a) without the consent of the child; and

(b) without a warning being given to the child under section 409O.

409Q Revocation of youth control order

S. 409Q inserted by No. 43/2017 s. 13.

(1) The Court must revoke a youth control order in respect of a child if an application for revocation has been made and—

(a) the Court is satisfied that the child has breached the order, by failing to comply with the order to such an extent that he or she is no longer suitable for the order; or

(b) the child commits an offence punishable on first conviction with imprisonment for life or for a term of 5 years or more during the period that the youth control order is in force.

(2) The youth control order may be revoked on the application of—

(a) the child or, if the child is aged under 15 years, the child's parent; or

(b) if it appears to the Secretary that the child has breached the order for any reason—the Secretary; or

(c) if the child has been convicted of an offence punishable on first conviction with imprisonment for life or for a term of 5 years or more during the period that the youth control order is in force—a police officer.

(3) If the breach is constituted by—

(a) an act that is the subject of a charge before a court, the application for revocation must be made not later than 3 months after a finding of guilt in respect of the charge; or

(b) any other act, the application for revocation must be made not later than 14 working days after the alleged breach.

(4) An application under subsection (2) may be made by filing an application with the Court and serving a copy of the application—

(a) if the application is made by the child or the child's parent—on the Secretary; or

(b) if the application is made by the Secretary—on the child and, if the child is aged under 15 years, the child's parent; or

(c) if the application is made by a police officer—on the Secretary and the child and, if the child is aged under 15 years, the child's parent.

Note

Sections 593 to 596 deal with service of documents.

(5) The Court is to be constituted by the magistrate who made the youth control order, unless—

(a) that magistrate does not still hold office as a magistrate; or

(b) the matters in this section were remitted to the Court under section 409K; or

(c) it is otherwise impracticable for that magistrate to constitute the Court.

(6) Before the Court considers an application to revoke an order under this section, notice of the hearing concerning the revocation must be served by the Court on—

(a) the child and, if the child is aged under 15 years, the child's parent; and

(b) the applicant for revocation—

and the Court may order that a warrant to arrest be issued against the child if he or she does not attend for the hearing.

Notes

1 For requirements relating to breach of sentence see section 423.

2 Sections 593 to 596 deal with service of documents.

409R Consequences of revocation of youth control order

S. 409R inserted by No. 43/2017 s. 13.

(1) If the Court revokes a youth control order in respect of a child, the Court must impose a sentence of detention on the child, unless the Court considers that detention is not appropriate because exceptional circumstances exist.

(2) The sentence of detention must not be for a period longer than the remaining period of the youth control order.

(3) In sentencing the child, the Court must have regard to—

(a) the period for which the youth control order has been in force; and

(b) the extent of the child's compliance with the order.

Subdivision 2—Youth control order planning meetings

S. 409S inserted by No. 43/2017 s. 13.

409S Purpose of youth control order planning meeting

The purpose of a youth control order planning meeting for a child is—

(a) to develop, through discussion, a youth control order plan for the child; or

(b) to review or vary a youth control order plan that is in force for a child.

S. 409T inserted by No. 43/2017 s. 13.

409T Requirements for youth control order planning meetings

(1) A youth control order planning meeting for a child must be chaired by a convenor appointed by a service approved under section 480A.

(2) The convenor of the meeting is to fix the date on which, and the time and place at which, the meeting is to be held.

S. 409T(2A) inserted by No. 11/2021 s. 35(1).

(2A) For the purposes of subsection (2), the place at which the meeting is to be held includes a meeting to be held by audio link or audio visual link.

(3) The meeting must be attended by the following—

(a) the child;

(b) the child's legal practitioner;

(c) a youth justice officer, other than an honorary youth justice officer;

(d) the convenor;

(e) any other person directed by the Court to attend.

(4) The meeting may be attended by one or more of the following, as directed by the Court—

(a) members of the child's family;

(b) persons of significance to the child;

(c) persons of significance within the child's community;

(d) police officers;

(e) representatives of the Department of Education and Training;

(f) social workers;

(g) representatives of drug and alcohol services, mental health services, counselling services or other services;

(h) child protection workers;

(i) any other person permitted to attend by the convenor;

(j) any other person.

S. 409T(5) inserted by No. 11/2021 s. 35(2).

(5) The convenor, having regard to the views of the attendees of the meeting, may require or permit one or more of the attendees to—

(a) appear before the meeting by audio visual link or audio link; or

(b) participate in the meeting by making oral or written submissions.

S. 409U inserted by No. 43/2017 s. 13.

409U Youth control order plan

(1) A youth control order plan for a child is a plan designed to—

(a) assist the child to take responsibility for his or her actions; and

(b) reduce the likelihood of the child re-offending; and

(c) provide the child with opportunities to receive instruction, guidance, assistance and experiences that will assist the child to develop the ability to abide by the law and complete the requirements of the youth control order; and

(d) provide the Court with information about which requirements of the youth control order would best meet the objects of the order (as set out in section 409A).

(2) A youth control order plan must be agreed to by the child.

S. 409V inserted by No. 43/2017 s. 13.

409V Requirements for report of meeting

The convenor of a youth control order planning meeting must—

(a) prepare a report of the meeting for the Court; and

(b) include in the report the youth control order plan agreed to by the child.

S. 409W (Heading) amended by No. 26/2023 s. 48(1).

S. 409W inserted by No. 43/2017 s. 13, amended by No. 26/2023 s. 48(2).

409W Youth control order planning meeting report to be filed in the Court

A youth control order planning meeting report must be filed in the Court at least 3 working days before the return date for proceedings in relation to the youth control order.

409X Access to youth control order planning meeting report

S. 409X inserted by No. 43/2017 s. 13.

The author of a youth control order planning meeting report must, at least 3 working days before the return date referred to in section 409W, send a copy of the report to—

(a) the child who is the subject of the report and, if the child is aged under 15 years, the child's parent; and

(b) the legal practitioner representing the child; and

(c) any other person the Court has ordered is to receive a copy of the report.

409Y Confidentiality of meeting

S. 409Y inserted by No. 43/2017 s. 13.

(1) Subject to section 409V and Division 1 of Part 7.8, the proceedings of a youth control order planning meeting are confidential except with the leave of the Court or consent of all the people who attended the meeting.

(2) Nothing in subsection (1) prevents any of the following—

(a) the convenor making a record of the proceedings at the youth control order planning meeting;

(b) discussions taking place between any person who attended the meeting;

(c) discussions taking place between the legal representatives of persons who attended the meeting.

S. 409Z inserted by No. 43/2017 s. 13.

409Z Report by appellate court

(1) If an appellate court finds a person guilty of an offence and adjourns the proceedings for the purpose of a youth control order planning meeting, it must order a youth control order planning meeting report.

(2) The report must be prepared by the convenor of the youth control order planning meeting.

(3) Sections 430N and 430O apply to youth control order planning meeting reports under this section in the same way as they apply to group conference reports.

Subdivision 3—Secretary

S. 409ZA inserted by No. 43/2017 s. 13.

409ZA References to the Secretary

In this Division—

Secretary means the Secretary to the Department of Justice and Regulation.

Division 9—Youth residential centre orders

410 Court may make youth residential centre order

(1) If—

(a) the Court finds a child guilty of an offence, whether indictable or summary; and

S. 410(1)(b) amended by No. 32/2024 s. 786.

(b) on the day of sentencing, the child is aged 12 years or more but under 15 years; and

(c) the Court is satisfied that the circumstances and nature of the offence are sufficiently serious to warrant the making of a youth residential centre order and that no other sentence is appropriate; and

(d) the offence is one punishable by imprisonment (other than for default in payment of a fine); and

(e) it has received and considered a pre-sentence report; and

S. 410(1)(e) amended by No. 61/2014 s. 100(a).

(f) if the child has participated in a group conference under section 415, the Court has received and considered the group conference report prepared under section 415(8)—

S. 410(1)(f) inserted by No. 61/2014 s. 100(b).

the Court may convict the child and order that the child be detained in a youth residential centre.

(2) If the Court makes an order under subsection (1), it must—

(a) state in writing the reasons for the order; and

(b) cause the statement of reasons to be entered in the court register; and

(c) unless the Court otherwise orders, cause a copy of the written statement of reasons to be given or sent by post within 21 days after the making of the order to the child, the child's parents and other parties to the proceeding.

(3) The failure of the Court to comply with subsection (2) does not invalidate an order made by the Court under subsection (1).

(4) The Court must not make an order under subsection (1) if the child is not present before the Court.

411 Youth residential centre orders

(1) If a child is ordered to be detained in a youth residential centre under section 410, the period of detention in respect of an offence must not exceed the maximum term of imprisonment for the offence if committed by an adult and in any event must not exceed 1 year.

(2) If a child is convicted on the same day, or in the same proceeding, of more than one offence—

S. 411(2)(a) amended by No. 43/2017 s. 43(1).

(a) subject to subsection (2A), any period of detention in a youth residential centre shall be concurrent with any period of detention in respect of any other of the offences, unless the Court, at the time of sentencing, states that the sentences are cumulative and gives reasons for its decision; and

(b) the aggregate period of detention in a youth residential centre which may be required in respect of all of the offences must not exceed 2 years; and

(c) if the Court imposes a sentence of detention in a youth residential centre on a child who has not completed another sentence of detention in a youth residential centre, the Court may direct that the sentence being imposed be served in part concurrently with the other sentence or wholly cumulatively on it.

S. 411(2A) inserted by No. 43/2017 s. 43(2).

(2A) If one or more of the offences referred to in subsection (2) is—

(a) an offence involving an assault on a youth justice custodial worker on duty; or

(b) an offence constituted by escape from a remand centre, youth justice centre or a youth residential centre; or

(c) an offence involving property damage to a remand centre, a youth justice centre or a youth residential centre—

any period of detention imposed on the child for that offence or those offences must be served cumulatively with any period of detention in respect of any of the other offences, unless the Court, at the time of sentencing, states that the sentences are concurrent and gives reasons for its decision.

(3) If—

(a) a sentence of detention in a youth residential centre is imposed on a child already under sentence of detention in a youth residential centre; and

(b) the subsequent sentence is cumulative on any uncompleted prior sentence; and

(c) the aggregate of the periods of the unexpired portion of the prior sentence and the subsequent sentence exceeds 2 years—

the subsequent sentence is to be taken to be a sentence that the child be further detained in a youth residential centre after the expiration of the period of the prior sentence for the period determined by deducting from 2 years the period of the unexpired portion of the prior sentence at the date of the passing of the subsequent sentence.

(4) The Court may make recommendations in writing as to the management or treatment of, or any other matter concerning, a child sentenced to detention in a youth residential centre.

(5) Subject to this section, the provisions of Subdivision (4) of Division 2 of Part 3 of the **Sentencing Act 1991** (except sections 32, 32A and 33) apply to an order made by the Criminal Division detaining a child in a youth residential

S. 411(5) amended by No. 43/2017 s. 43(3).

centre as if a reference to the Magistrates' Court were a reference to the Children's Court.

Division 10—Youth justice centre orders

412 Court may make youth justice centre order

(1) If—

(a) the Court finds a child guilty of an offence, whether indictable or summary; and

(b) on the day of sentencing, the child is aged 15 years or more but under 21 years; and

(c) the Court is satisfied that no other sentence is appropriate; and

(d) the offence is one punishable by imprisonment (other than for default in payment of a fine); and

S. 412(1)(e) amended by No. 61/2014 s. 101(a).

(e) it has received and considered a pre-sentence report; and

S. 412(1)(f) inserted by No. 61/2014 s. 101(b).

(f) if the child has participated in a group conference under section 415, the Court has received and considered the group conference report prepared under section 415(8)—

the Court may convict the child and order that the child be detained in a youth justice centre.

(2) If the Court makes an order under subsection (1), it must—

(a) state in writing the reasons for the order; and

(b) cause the statement of reasons to be entered in the court register; and

(c) unless the Court otherwise orders, cause a copy of the written statement of reasons to be given or sent by post within 21 days after

the making of the order to the child, the child's parents and other parties to the proceeding.

(3) The failure of the Court to comply with subsection (2) does not invalidate an order made by the Court under subsection (1).

(4) The Court must not make an order under subsection (1) if the child is not present before the Court.

413 Youth justice centre orders

(1) Subject to this section, the provisions of Subdivision (4) of Division 2 of Part 3 of the **Sentencing Act 1991** (except sections 32 and 33) apply to an order made by the Criminal Division detaining a child in a youth justice centre as if a reference to the Magistrates' Court were a reference to the Children's Court.

(2) If a child is ordered to be detained in a youth justice centre under section 412, the period of detention in respect of an offence must not exceed the maximum term of imprisonment for the offence if committed by an adult and in any event must not exceed 3 years.

S. 413(2) amended by No. 43/2017 s. 52(1).

(3) If a child is convicted on the same day, or in the same proceeding, of more than one offence—

(a) subject to subsection (3A), any period of detention in a youth justice centre shall be concurrent with any period of detention in respect of any other of the offences, unless the Court, at the time of sentencing, states that the sentences are cumulative and gives reasons for its decision; and

S. 413(3)(a) amended by No. 43/2017 s. 44(1).

(b) the aggregate term of detention in a youth justice centre which may be required in respect of all of the offences must not exceed 4 years.

S. 413(3)(b) amended by No. 43/2017 s. 52(2).

S. 413(3A) inserted by No. 43/2017 s. 44(2).

(3A) If one or more of the offences referred to in subsection (3) is—

(a) an offence involving an assault on a youth justice custodial worker on duty; or

(b) an offence constituted by escape from a remand centre or a youth justice centre; or

(c) an offence involving property damage to a remand centre or a youth residential centre or a youth justice centre—

any period of detention imposed on the child for that offence or those offences must be served cumulatively with any period of detention in respect of any of the other offences, unless the Court, at the time of sentencing, states that the sentences are concurrent and gives reasons for its decision.

S. 413(4) amended by No. 43/2017 s. 44(3).

(4) Subject to subsection (4A), every term of detention in a youth justice centre imposed on a child by a court must, unless otherwise directed by the court at the time of pronouncing the sentence, be, as from the date of its commencement, served concurrently with any uncompleted sentence or sentences of detention in a youth justice centre imposed on that child, whether before or at the time the relevant sentence was imposed.

S. 413(4A) inserted by No. 43/2017 s. 44(4).

(4A) If one or more of the offences to which a sentence of detention referred to in subsection (4) is—

(a) an offence involving an assault on a youth justice custodial worker on duty; or

(b) an offence constituted by escape from a remand centre or a youth justice centre; or

(c) an offence involving property damage to a remand centre or a youth justice centre—

any period of detention imposed on the child for that offence or those offences must be served cumulatively with any uncompleted sentence or sentences of detention in a youth justice centre imposed on the child, unless the Court, at the time of sentencing, states that the sentences are concurrent and gives reasons for its decision.

(5) The Court may make recommendations in writing as to the management or treatment of, or any other matter concerning, a child sentenced to detention in a youth justice centre.

Division 11—Deferral of sentencing

414 Deferral of sentencing

S. 414(1) amended by No. 61/2014 s. 102(1).

(1) If—

(a) the Court is of the opinion that sentencing should, in the interests of the child, be deferred; and

(b) the child agrees to a deferral of sentencing; and

(c) in the case of deferral of sentencing for the purpose of the child's participation in a group conference—

(i) the Court is of the opinion, after consultation with the Secretary, that the child is suitable to participate in a group conference; and

(ii) the child agrees to participate in a group conference—

the Court may defer sentencing the child in accordance with this section.

(2) If the Court defers sentencing a child, the Court—

S. 414(2)(a) amended by No. 61/2014 s. 102(2)(a).

(a) subject to paragraph (ab), must adjourn the case to a fixed date for sentence and release the child unconditionally or adjourn the case to a fixed date for sentence and release the child on bail; and

S. 414(2)(ab) inserted by No. 61/2014 s. 102(2)(b).

(ab) if the Court is considering convicting the child and ordering that the child be detained in a youth residential centre or a youth justice centre and the deferral of sentencing is for the purpose of the child's participation in a group conference, must adjourn the case to a fixed date for sentence and—

(i) release the child unconditionally; or

(ii) release the child on bail; or

(iii) remand the child in custody for a period not exceeding 21 clear days; and

(b) may order the preparation of a pre-sentence, or a further pre-sentence, report; and

(c) if a group conference is to be held, must order the preparation of a group conference report.

S. 414(3) inserted by No. 61/2014 s. 102(3).

(3) The period for which sentencing may be deferred is—

(a) subject to paragraph (b), a period not exceeding 4 months; or

(b) if the child is remanded in custody under subsection (2)(ab)(iii), a period not exceeding 2 months.

S. 414(4) inserted by No. 61/2014 s. 102(3).

(4) When a child is brought before the Court on the expiry of a period of remand in custody ordered under subsection (2)(ab)(iii), the Court must not remand the child in custody for a further period exceeding 21 clear days.

(5) Bail must not be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation.

S. 414(5) inserted by No. 61/2014 s. 102(3).

415 Group conference

(1) The Court may consider deferral of sentencing for the purpose of a child's participation in a group conference if the Court is considering—

S. 415(1) substituted by No. 61/2014 s. 103.

(a) placing the child on probation under section 380; or

(b) releasing the child on a youth supervision order under section 387; or

(c) convicting the child and making a youth attendance order under section 397; or

(d) convicting the child and ordering that the child be detained in a youth residential centre under section 410; or

(e) convicting the child and ordering that the child be detained in a youth justice centre under section 412; or

S. 415(1)(e) amended by No. 43/2017 s. 14(a).

(f) convicting the child and making a youth control order under section 409B.

S. 415(1)(f) inserted by No. 43/2017 s. 14(b).

(2) A group conference must be chaired by a convenor appointed by a service approved under section 480.

(3) The convenor is to fix the date on which and the time and place at which a group conference is to be held.

(3A) For the purposes of subsection (3), the place at which the group conference is to be held includes a group conference to be held by audio link or audio visual link.

S. 415(3A) inserted by No. 11/2021 s. 36(1).

(4) The purpose of a group conference is to facilitate a meeting between the child and other persons (including, if they wish to participate, the victim or their representative and members of the child's family and other persons of significance to the child) which has the following objectives—

(a) to increase the child's understanding of the effect of their offending on the victim and the community;

(b) to reduce the likelihood of the child re-offending;

(c) to negotiate an outcome plan that is agreed to by the child.

(5) An outcome plan is a plan designed to assist the child to take responsibility and make reparation for his or her actions and to reduce the likelihood of the child re-offending.

(6) A group conference must be attended by—

(a) the child; and

(b) the child's legal practitioner; and

S. 415(6)(c) amended by No. 37/2014 s. 10(Sch. item 18.12).

(c) the informant or other police officer; and

(d) the convenor.

(7) A group conference may be attended by—

(a) members of the child's family; and

(b) persons of significance to the child; and

(c) the victim of the offence or the victim's representative; and

(d) any other person permitted to attend by the convenor.

S. 415(7A) inserted by No. 11/2021 s. 36(2).

(7A) The convenor, having regard to the views of the attendees of the group conference, may require or permit one or more of the attendees to—

(a) appear before the group conference by audio visual link or audio link; or

(b) participate in the group conference by making oral or written submissions.

(8) The convenor must prepare a group conference report for the Court and must include in the report the outcome plan, if any, agreed to by the child.

(9) Subject to subsection (8) and Division 7 of Part 7.8, the proceedings of a group conference are confidential.

(10) Subject to subsections (8) and (11), a person who attends a group conference must not disclose any statement made at, or information provided to, the conference without the leave of the Court or the consent of all the parties to the group conference.

Penalty applying to this subsection: 10 penalty units.

(11) Nothing in subsection (10) prevents—

(a) the convenor making a record of the proceedings at the group conference;

(b) discussions taking place between a person who attended the conference and his or her legal representative;

(c) discussions taking place between the legal representatives of persons who attended the conference.

416 Hearing of adjourned case

(1) The Court may, on application by the child, re-list an adjourned case at short notice if the Court considers it appropriate to do so.

(2) Notice of an application under subsection (1) setting out the grounds of the application must be given to—

(a) the Court; and

(b) the informant; and

(c) if appropriate, the Secretary.

(3) On the adjourned hearing date, the Court must, in determining the appropriate sentence for a child, have regard to—

(a) the child's behaviour during the period of deferral; and

(b) any pre-sentence report ordered under section 414(2)(b); and

(c) if the child participated in a group conference, the fact of that participation; and

(d) any group conference report ordered under section 414(2)(c); and

(e) any other relevant matter.

Note

See section 362(3) for effect on sentence of participation in a group conference.

(4) If a child is found guilty of an offence during a period of deferral under section 414, or a group conference does not proceed, the Court may—

(a) re-list the adjourned case at short notice; and

(b) on the adjourned hearing make any order which the Court could have made if it had not deferred sentence.

(5) If a child does not appear before the Court on the date fixed for sentence, the Court may order that a warrant to arrest the child be issued.

Division 12—Orders in addition to sentence

417 Orders in addition to sentence

(1) The provisions of Part 4 of the **Sentencing Act 1991** apply to a proceeding in the Criminal Division with any necessary modification and as if in sections 85H(1), 86(2) and 87J(1) for "may" there were submitted "must" and as if in section 85C(1)(b)(iii)(B) the reference to the Magistrates' Court were a reference to the Criminal Division.

(2) The maximum amount that the Court may order an offender to pay under Part 4 of the **Sentencing Act 1991** is $1000.

418 Enforcement of orders in addition to sentence

(1) In this section, ***appropriate court*** means a court that has jurisdiction to enforce a debt of an amount equivalent to the amount required to be paid under an order made under section 417.

(2) A person in whose favour an order is made under section 417 may enforce the order, during the period of 5 years following the making of the order, by filing in the appropriate court—

(a) a copy of the order certified by the principal registrar of the Children's Court to be a true copy; and

(b) that person's affidavit as to the amount not paid under the order.

(3) Despite any requirement by or under any other Act, no charge is to be made for filing a copy of an order or an affidavit under this section.

(4) On filing, the order must be taken to be an order of the appropriate court and may be enforced accordingly subject to the following—

(a) no order may be made under section 19 of the **Judgment Debt Recovery Act 1984**; and

(b) no order of imprisonment may be made under the **Imprisonment of Fraudulent Debtors Act 1958**.

Division 13—General

S. 419 amended by No. 68/2009 s. 68(1)(l).

419 Provisions applicable to warrants

The provisions of sections 57 to 65 and 73 to 78 of the **Magistrates' Court Act 1989** apply, with any necessary modifications, to warrants issued in respect of sentences alleged to have been breached as if a reference to bringing a person before the Magistrates' Court as soon as practicable were a reference to bringing a person before the Court as soon as practicable but not later than the next working day after the person is arrested and in the meantime placing the person as provided by this Act.

420 Bail

S. 420(1) amended by Nos 68/2009 s. 68(1)(m)(ii), 37/2014 s. 10(Sch. item 18.12).

(1) If—

S. 420(1)(a) amended by No. 68/2009 s. 68(1)(m)(i).

(a) a person has been arrested in accordance with a warrant issued in respect of an alleged breach of a sentence and it is not possible for the Court to hear immediately an application for breach of the sentence; or

(b) a person has appeared before the Court in answer to a notice to appear served in respect of an alleged breach of a sentence and the Court adjourns the hearing of the application—

S. 420(1)(b) amended by No. 68/2009 s. 68(1)(m)(i).

the Court or a bail justice or a police officer may grant bail and, subject to section 346, the **Bail Act 1977** applies, with any necessary modifications, as if a reference to a person accused of an offence or an accused were a reference to the person.

(2) If a person is refused bail, the person must be remanded in custody for a period not exceeding 21 clear days.

S. 420(2) amended by No. 52/2013 s. 52.

421 Variation or revocation of order

(1) Subject to subsections (2), (3) and (4), the Secretary or a person in respect of whom a probation order or a youth supervision order is in force may apply to the Court for a variation or the revocation of the order.

(2) An application under subsection (1) may be made where—

(a) the circumstances of the person—

(i) have changed since the making of the order; or

(ii) were wrongly stated or were not accurately presented to the Court or the Secretary before sentence; or

(b) the person is in custody or is otherwise unable to comply with the order; or

(c) the person is no longer willing to comply with the order.

(3) If the Secretary is the applicant under subsection (1), the Secretary must, as soon as practicable after the making of the application, send by registered post to, or serve personally on, the person in respect of whom the order is in force a notice of the date set by the Court for the hearing of the application.

(4) If the person in respect of whom the order is in force is the applicant under subsection (1), the principal registrar must, as soon as practicable after the making of the application, send by registered post to, or cause to be served personally on, the Secretary a notice of the date set by the Court for the hearing of the application.

(5) In dealing with an application under subsection (1), the Court must take into account—

(a) a report on the person prepared by the Secretary; and

(b) the fact of the making of the probation order or youth supervision order (as the case requires); and

(c) the extent to and the manner in which the person has complied with the order—

and, subject to subsection (6), may make—

(d) an order varying the order, but not extending the period of the order, or revoking the order; or

(e) an order directing that the order continue in force; or

(f) any order in respect of the person which the Court could originally have made if it had not made the order.

(6) If a person in respect of whom an application is made under subsection (1) fails to appear before the Court at the time fixed for the hearing of the application, a warrant to arrest the person may be issued by the Court.

(7) Division 3 of Part 4 of the **Magistrates' Court Act 1989** applies, with any necessary modifications, to warrants under subsection (6), and in particular with the modification that a reference to the bringing of a person before the Magistrates' Court is to be construed as a reference to bringing the person as soon as practicable before the Children's Court.

S. 421(8) amended by No. 68/2009 s. 68(1)(n).

(8) If it is not possible for the Court to deal immediately with an application under subsection (1) in respect of which the person has been arrested under subsection (6), for the purposes of granting bail the provisions of this Act and the **Bail Act 1977** apply, with any necessary modifications, and in particular with the modification that a reference to a person accused of an offence or an accused is to be construed as a reference to the person.

422 Suspension of order

(1) If—

(a) a person in respect of whom a youth supervision order is in force is ill; or

(b) there are other exceptional circumstances—

the Secretary may suspend the operation of the order or any of the conditions of the order.

(2) Any period of suspension under subsection (1) is to be added to the period of the youth supervision order for the purpose of calculating the time of its expiry.

S. 423 (Heading) amended by No. 68/2009 s. 68(1)(o).

423 Proceedings for breach of sentence

S. 423(1) amended by No. 68/2009 s. 68(1)(p).

(1) In this section, ***breach of a sentence*** includes default in the payment of a fine or of any instalment under an instalment order.

S. 423(2) amended by No. 68/2009 s. 68(1)(q)(i).

(2) A proceeding for breach of a sentence must be commenced in the Children's Court—

S. 423(2)(a) amended by No. 68/2009 s. 68(1)(q)(ii).

(a) whether the sentence was imposed by the Children's Court or by the Supreme Court or the County Court, on appeal or otherwise; and

(b) whether the person against whom the proceeding is commenced is aged 19 years or more.

S. 423(3) amended by No. 68/2009 s. 68(1)(r)(i).

(3) If the proceeding for breach of a sentence is against a child who is under the age of 19 years when the proceeding for breach is commenced, the Children's Court must hear and determine the proceeding unless—

S. 423(3)(a) amended by No. 68/2009 s. 68(1)(r)(ii).

(a) the sentence was imposed by the Supreme Court or the County Court and the child does not consent to the Children's Court hearing the proceeding for breach; or

S. 423(3)(b) amended by No. 68/2009 s. 68(1)(r)(iii).

(b) the Court considers that in all the circumstances of the case it is appropriate to transfer the proceeding to the court that imposed the sentence.

S. 423(4) amended by No. 68/2009 s. 68(1)(s).

(4) If the proceeding for breach of a sentence is against a person who is aged 19 years or more when the proceeding for breach is commenced, the Children's Court must transfer the proceeding (other than a proceeding for breach of an

accountable undertaking) to the Magistrates' Court or to the court that imposed the sentence unless the Children's Court considers that in all the circumstances of the case it is appropriate for the Children's Court to hear and determine the proceeding, having regard to the matters referred to in subsection (5).

(5) For the purposes of subsection (4), the Court must have regard to—

(a) the age of the person;

(b) the nature and circumstances of the alleged breach;

(c) the stage of the proceeding for breach;

(d) whether the person is the subject of another proceeding in any other court;

(e) the availability of appropriate sentences in the other court if the breach were proved;

S. 423(5)(e) amended by No. 68/2009 s. 68(1)(t).

(f) whether the person prefers to be dealt with in the Children's Court or any other court;

(g) any other matter that the Court considers relevant.

(6) A proceeding must not be transferred on the sole ground that the sentence was imposed by another court.

S. 423(6) amended by No. 68/2009 s. 68(1)(u).

(7) If the person does not consent to the Children's Court hearing and determining the proceeding or the Court considers that the proceeding should be transferred, the Court must discontinue the proceeding and order that it be transferred to the Magistrates' Court or to the court that imposed the sentence, as the case may be, and in the meantime may—

S. 423(7) amended by No. 68/2009 s. 68(1)(v)(i).

(a) permit the person to go at large; or

(b) grant the person bail conditioned for the appearance of the person before the Supreme Court, the County Court or the Magistrates' Court, as the case may be, at the time and place at which the proceeding is to be heard; or

S. 423(7)(c) amended by No. 68/2009 s. 68(1)(v)(ii).

(c) remand the person in custody or deal with the person in accordance with section 333 of the **Criminal Procedure Act 2009** until the proceeding is heard by the Supreme Court, the County Court or the Magistrates' Court, as the case may be.

(8) If a proceeding is transferred to the Magistrates' Court under this section—

S. 423(8)(a) amended by No. 68/2009 s. 68(1)(w).

(a) the Magistrates' Court may sentence the person as if the Magistrates' Court had just been satisfied of the person's guilt of the offence in respect of which the sentence was imposed; and

(b) for that purpose, the Magistrates' Court has jurisdiction, whether or not the Magistrates' Court would otherwise have had jurisdiction to deal with the offence.

S. 423(9) substituted by No. 68/2009 s. 68(2).

(9) This section applies despite section 426(5).

Part 5.4—Appeals

Ch. 5 Pt 5.4 (Heading and ss 424–430) amended by No. 8/2008 s. 22(2)(b)(c), substituted as Ch. 5 Pt 5.4 (Headings and ss 424–430ZH) by No. 68/2009 s. 69.

Division 1—Appeal by offender to the County Court or Trial Division of the Supreme Court

424 Right of appeal

S. 424 substituted by No. 68/2009 s. 69, amended by Nos 3/2016 s. 52, 1/2022 s. 43.

A person convicted of an offence by the Children's Court in a summary proceeding in the Criminal Division may appeal to the County Court or, if the Children's Court was constituted by the President, to the Trial Division of the Supreme Court, or if constituted by the Chief Magistrate who is a dual commission holder, to the Court of Appeal, against—

(a) the conviction and sentence imposed by the Children's Court; or

(b) sentence alone.

Note

See the definitions of ***conviction*** and ***sentence*** in section 3.

425 How appeal is commenced

S. 425 substituted by No. 68/2009 s. 69.

(1) An appeal under section 424 is commenced by filing a notice of appeal with a registrar of the Children's Court at any venue of the Children's Court within 28 days after the day on which the sentence of the Children's Court is imposed.

(2) A copy of the notice of appeal must be served on the respondent in accordance with section 392 of the **Criminal Procedure Act 2009** within 7 days after the day on which the notice is filed.

(3) A notice of appeal must—

(a) state whether the appeal is against conviction and sentence, or sentence alone; and

(b) be in the form prescribed by the rules of the appellate court.

(4) A notice of appeal must include an undertaking signed by the appellant in the manner prescribed by the rules of the appellate court—

S. 425(4)(a) amended by No. 1/2022 s. 44.

(a) to appear at the appellate court to proceed with the appeal at a place and on a day fixed or to be fixed by the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires) and to appear at the appellate court for the duration of the appeal; and

S. 425(4)(b) amended by No. 1/2022 s. 44.

(b) to give written notice without delay to the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires) of any change of address of the appellant from that appearing in the notice of appeal.

(5) A notice of appeal filed under this section must be transmitted to the appellate court.

S. 426 substituted by No. 68/2009 s. 69.

426 Determination of appeal

(1) An appeal under section 424 must be conducted as a rehearing and the appellant is not bound by the plea entered in the Children's Court.

Note to s. 426(1) inserted by No. 28/2016 s. 11.

Note

Division 7A of Part 8.2 of the **Criminal Procedure Act 2009** provides for the admission of recorded evidence of complainants in proceedings for certain sexual offences heard summarily by the Children's Court.

(2) On the hearing of an appeal under section 424, the appellate court—

(a) must set aside the sentence of the Children's Court; and

(b) subject to this section, may impose any sentence which the appellate court considers appropriate and which the Children's Court imposed or could have imposed; and

(c) may exercise any power which the Children's Court exercised or could have exercised.

S. 426(3) amended by No. 30/2010 s. 44(2).

(3) On the hearing of an appeal under section 424 (other than an appeal referred to in subsection (6) of this section), the appellate court must warn the appellant, as early as possible during the hearing, that the appellant faces the possibility that a more severe sentence may be imposed than that imposed by the Children's Court.

(4) The appellate court may backdate a sentence imposed under subsection (2) to a date not earlier than the date of the sentence of the Children's Court that was set aside on the appeal.

(5) A sentence imposed under subsection (2) is for all purposes to be regarded as a sentence of the appellate court.

(6) If an appellant appeals against an order made under section 363, 365 or 367, the appellate court may—

(a) dismiss the charge against the appellant; or

(b) make an order in the same terms as the order of the Children's Court—

but must not impose any other sentence.

Note

Orders under sections 363, 365 and 367 are orders for non-accountable undertakings, accountable undertakings and good behaviour bonds respectively.

S. 426(7)(8) repealed by No. 30/2010 s. 32.

* * * * *

(9) On an appeal under this section, the appellate court may, despite anything to the contrary in this Act, make a probation order, youth supervision order or youth attendance order in respect of a person even though at the time of making that order the person is of or above the age of 19 years but under 21 years.

Division 2—Appeal by DPP against sentence

S. 427 substituted by No. 68/2009 s. 69.

427 DPP's right of appeal against sentence

S. 427(1) amended by Nos 3/2016 s. 53, 1/2022 s. 45.

(1) The DPP may appeal to the County Court or, if the Children's Court was constituted by the President, to the Trial Division of the Supreme Court, or if constituted by the Chief Magistrate who is a dual commission holder, to the Court of Appeal, against a sentence imposed by the Children's Court in a summary proceeding in the Criminal Division if satisfied that an appeal should be brought in the public interest.

(2) The DPP must not bring a further appeal against a sentence imposed by the appellate court.

S. 428 substituted by No. 68/2009 s. 69.

428 How appeal is commenced

(1) An appeal under section 427 is commenced by filing a notice of appeal with a registrar of the Children's Court at any venue of the Children's

Court within 28 days after the day on which the sentence of the Children's Court is imposed.

(2) A copy of the notice of appeal must be served on the respondent in accordance with section 593(1) within 7 days after the day on which the notice is filed.

(3) A notice of appeal must—

(a) state the general grounds of appeal; and

(b) be in the form prescribed by the rules of the appellate court.

(4) The DPP must provide a copy of the notice of appeal to the legal practitioner who last represented the respondent in the criminal proceeding to which the appeal relates, if that legal practitioner can reasonably be identified.

(5) A notice of appeal filed under this section must be transmitted to the appellate court.

429 Determination of DPP appeal

S. 429 substituted by No. 68/2009 s. 69.

(1) An appeal under section 427 must be conducted as a rehearing and the respondent is not bound by the plea entered in the Children's Court.

Note

Division 7A of Part 8.2 of the **Criminal Procedure Act 2009** provides for the admission of recorded evidence of complainants in proceedings for certain sexual offences heard summarily by the Children's Court.

Note to s. 429(1) inserted by No. 28/2016 s. 11.

(2) On the hearing of an appeal under section 427, the appellate court—

(a) must set aside the sentence of the Children's Court; and

(b) subject to this section, may impose any sentence which the appellate court considers appropriate and which the Children's Court imposed or could have imposed; and

(c) may exercise any power which the Children's Court exercised or could have exercised.

S. 429(3)–(5) repealed by No. 30/2010 s. 33(1).

* * * * *

S. 429(6) amended by No. 30/2010 s. 33(2).

(6) In imposing a sentence under subsection (2), the appellate court must not take into account the element of double jeopardy involved in the respondent being sentenced again, in order to impose a less severe sentence than the court would otherwise consider appropriate.

S. 429(7) amended by No. 30/2010 s. 33(2).

(7) The appellate court may backdate a sentence imposed under subsection (2) to a date not earlier than the date of the sentence of the Children's Court that was set aside on the appeal.

S. 429(8) amended by No. 30/2010 s. 33(2).

(8) A sentence imposed under subsection (2) is for all purposes to be regarded as a sentence of the appellate court.

(9) Despite anything to the contrary in this Act, on an appeal under section 427, the appellate court may make a probation order, youth supervision order or youth attendance order in respect of a person even though at the time of making that order the person is of or over the age of 19 years but under 21 years.

Division 2A—Appeal by DPP—Failure to fulfil undertaking

Ch. 5 Pt 5 Div. 2A (Heading and ss 429A–429C) inserted by No. 30/2010 s. 34.

429A DPP's right of appeal—failure to fulfil undertaking

S. 429A inserted by No. 30/2010 s. 34.

S. 429A(1) amended by Nos 3/2016 s. 54, 1/2022 s. 46.

(1) Without limiting any right of appeal under section 427, the DPP may appeal to the County Court or, if the Children's Court was constituted by the President, to the Trial Division of the Supreme Court, or if constituted by the Chief Magistrate who is a dual commission holder, to the Court of Appeal, against a sentence imposed on a child in respect of an indictable offence that was heard and determined summarily by the Children's Court if—

(a) the sentence was less severe because of an undertaking given by the child to assist, after sentencing, law enforcement authorities in the investigation or prosecution of an offence, whether or not proceedings for that offence had commenced at the time of sentencing; and

(b) the DPP considers that the child has failed, wholly or partly, to fulfil the undertaking.

(2) The DPP may bring an appeal under this section at any time, whether or not the sentence has been served.

S. 429B inserted by No. 30/2010 s. 34.

429B How appeal is commenced

(1) An appeal under section 429A is commenced by filing a notice of appeal, signed by the DPP personally, with a registrar of the Children's Court at any venue of the Children's Court.

(2) A copy of the notice of appeal must be served personally on the respondent within 14 days after the day on which the notice is filed.

(3) A notice of appeal must be in the form prescribed by the rules of the appellate court.

(4) The DPP must provide a copy of the notice of appeal to the legal practitioner who last represented the respondent in the criminal proceeding to which the appeal relates, if that legal practitioner can reasonably be identified.

(5) A notice of appeal filed under this section must be transmitted to the appellate court.

S. 429C inserted by No. 30/2010 s. 34.

429C Determination of DPP's appeal—failure to fulfil undertaking

(1) An appeal under section 429A must not be conducted as a rehearing.

(2) On an appeal under section 429A, if the appellate court considers that the respondent has failed, wholly or partly, to fulfil the undertaking referred to in section 429A(1)(a), the appellate court may—

(a) set aside the sentence imposed by the Children's Court; and

(b) impose the sentence that it considers appropriate, having regard to the failure of the respondent to fulfil the undertaking.

(3) In imposing a sentence under subsection (2), the appellate court must not take into account the element of double jeopardy involved in the

respondent being sentenced again, in order to impose a less severe sentence than the court would otherwise consider appropriate.

Division 3—Procedure on appeals from Children's Court

430 Late notice of appeal deemed to be application for leave to appeal

S. 430 substituted by No. 68/2009 s. 69.

(1) A notice of appeal filed after the end of the period referred to in section 425(1) or 428 is deemed to be an application for leave to appeal on the grounds stated in the notice.

(2) The appellate court may grant leave to appeal under subsection (1) and the appellant may proceed with the appeal if—

(a) the court considers that the failure to file a notice of appeal within the period referred to in section 425(1) or 428 was due to exceptional circumstances; and

(b) the court is satisfied that the respondent's case would not be materially prejudiced because of the delay.

S. 430(3) inserted by No. 48/2012 s. 33.

(3) If the appellate court does not grant leave to appeal under subsection (2), the appellate court must strike out the appeal.

S. 430(4) inserted by No. 48/2012 s. 33, amended by No. 1/2022 s. 47.

(4) If—

(a) the appellate court strikes out an appeal under subsection (3); and

(b) the appellant had been sentenced to a period of detention in a youth residential centre or a youth justice centre by the Children's Court—

the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires) may issue, in accordance with the **Magistrates' Court Act 1989**, a warrant to detain the person in a youth residential centre or a youth justice centre (as the case requires) and may recall and cancel that warrant.

S. 430(5) inserted by No. 48/2012 s. 33.

(5) If an appeal is struck out under subsection (3)—

(a) the sentence of the Children's Court is reinstated and may be enforced as if an appeal had not been commenced but, for the purposes of the enforcement of any penalty, time is deemed not to have run during the period of any stay; and

S. 430(5)(b) amended by No. 1/2022 s. 47.

(b) the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires) must give to the respondent or to the respondent's legal practitioner a copy of the order striking out the appeal; and

(c) the making of an order striking out an appeal discharges the undertaking of the appellant to proceed with the appeal.

S. 430A inserted by No. 68/2009 s. 69.

430A Stay of order

(1) If an appellant appeals against sentence and is not in custody because of that sentence, the appeal operates as a stay of the sentence (but not a conviction in respect of the sentence) when the appellant files the notice of appeal and signs the undertaking referred to in section 425(4).

(2) If an appellant appeals against sentence and is in custody because of that sentence, the appeal operates as a stay of the sentence (but not a conviction in respect of the sentence) when—

(a) the appellant files the notice of appeal and signs the undertaking referred to in section 425(4); and

(b) the appellant enters bail, if bail is granted under section 430B.

(3) This section is subject to section 29 of the **Road Safety Act 1986**.

430B Bail pending appeal

S. 430B inserted by No. 68/2009 s. 69.

(1) If an appellant is in custody because of the sentence appealed against and wishes to be released pending the appeal, the appellant—

(a) may apply to the Children's Court to be released on bail; and

(b) if he or she makes an application under paragraph (a), must give reasonable notice of the application to the respondent to the appeal.

(2) If an application is made under subsection (1), Division 1 of Part 5.2 applies as if the appellant were a child taken into custody.

430C Abandonment of appeal

S. 430C inserted by No. 68/2009 s. 69.

S. 430C(1) amended by No. 1/2022 s. 48(1).

(1) Subject to subsections (3) and (4), an appeal to the County Court or the Supreme Court may be abandoned by filing a notice of abandonment of appeal with the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals, as the case requires.

(2) A notice of abandonment of appeal must be in the form prescribed by the rules of the appellate court.

(3) If an appellant appeals against both conviction and sentence but does not pursue the appeal against conviction, the appellant must give written notice to the appellate court and the respondent that the appeal against conviction is abandoned.

(4) An appellant who has been sentenced to a term of detention in a youth residential centre or a youth justice centre but is not in custody may abandon the appeal by—

S. 430C(4)(a) amended by No. 1/2022 s. 48(2).

(a) surrendering to the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires); and

(b) immediately filing a notice of abandonment of appeal in accordance with subsections (1) and (2).

S. 430C(5) amended by No. 1/2022 s. 48(2).

(5) If a person surrenders to the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals in accordance with subsection (4), the registrar or the prothonotary (as the case requires) may issue a warrant to detain the person in a youth residential centre or a youth justice centre (as the case requires).

(6) If an appellant abandons an appeal, the appellate court must strike out the appeal.

S. 430C(6A) inserted by No. 30/2010 s. 35.

(6A) The appellate court may not set aside an order under subsection (6).

(7) If an appeal is struck out under subsection (6)—

(a) the sentence of the Children's Court is reinstated and may be enforced as if an appeal had not been made but, for the purposes of the enforcement of any penalty,

time is deemed not to have run during the period of any stay; and

(b) the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires) must give to the respondent or to the respondent's legal practitioner a copy of the order striking out the appeal; and

S. 430C(7)(b) amended by No. 1/2022 s. 48(2).

(c) the making of an order striking out an appeal discharges the undertaking of the appellant to proceed with the appeal.

430D Appellant's failure to appear

S. 430D inserted by No. 68/2009 s. 69.

(1) If an appellant (other than the DPP) fails to appear at the time listed for the hearing of the appeal, the appellate court may—

(a) strike out the appeal; or

(b) adjourn the proceeding on any terms that it considers appropriate.

(1A) If—

S. 430D(1A) inserted by No. 30/2010 s. 36(1), amended by No. 1/2022 s. 49(1).

(a) the appellate court strikes out an appeal under subsection (1)(a); and

(b) the appellant had been sentenced to a period of detention in a youth residential centre or a youth justice centre by the Children's Court—

the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires) may issue, in accordance with the **Magistrates' Court Act 1989**, a warrant to detain the person in a youth residential centre or a youth justice centre (as the case requires) and may recall and cancel that warrant.

(2) If an appeal is struck out under subsection (1)(a)—

(a) the sentence of the Children's Court is reinstated and may be enforced as if an appeal had not been commenced but, for the purposes of the enforcement of any penalty, time is deemed not to have run during the period of any stay; and

S. 430D(2)(b) amended by No. 1/2022 s. 49(1).

(b) the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires) must give to the respondent or to the respondent's legal practitioner a copy of the order striking out the appeal; and

(c) the making of an order striking out an appeal discharges the undertaking of the appellant to proceed with the appeal.

(3) The appellate court, at any time, may set aside an order striking out an appeal because of the failure of the appellant to appear, if the appellant satisfies the court that the failure to appear was not due to fault or neglect on the part of the appellant.

(4) An application under subsection (3) to set aside an order may be made at any time on notice in writing to the respondent served a reasonable time before the making of the application.

(5) Notice under subsection (4) must be served in the same way as a notice of appeal.

(6) If the appellate court grants an application under subsection (3), the court—

(a) must order the reinstatement of the appeal subject to the payment of any costs that the court considers appropriate; and

(b) may require the appellant to give a further undertaking to proceed with the appeal.

(6A) An application under section 430B for bail pending the reinstated appeal may be made to the County Court or the Supreme Court (as the case requires).

S. 430D(6A) inserted by No. 30/2010 s. 36(2), amended by No. 1/2022 s. 49(2).

(7) On the reinstatement of an appeal under subsection (6), the appeal operates as a stay of the sentence (but not a conviction in respect of the sentence) when—

(a) if required, the appellant signs the undertaking referred to in section 425(4); and

(b) if the appellant is in custody because of the sentence appealed against and bail is granted under section 430B, the appellant enters bail.

(8) Subsection (7) is subject to section 29 of the **Road Safety Act 1986**.

430E Respondent's failure to appear on appeal by DPP

S. 430E inserted by No. 68/2009 s. 69.

(1) If a respondent to an appeal under section 427 or 429A by the DPP fails to appear at the time listed for the hearing of the appeal, the appellate court—

S. 430E(1) amended by No. 30/2010 s. 37(1)(a).

(a) may adjourn the proceeding on any terms that it considers appropriate; or

(b) if satisfied that notice of the appeal has been given in accordance with section 428 or 429B (as the case requires), may hear and determine the appeal in the absence of the respondent.

S. 430E(1)(b) amended by No. 30/2010 s. 37(1)(b).

Note

The appellate court cannot impose a sentence that requires the consent of the respondent, for example a youth supervision order, in the absence of the respondent.

S. 430E(2) amended by No. 30/2010 s. 37(2).

(2) If the appellate court adjourns the proceeding and is satisfied that notice of the appeal has been given in accordance with section 428 or 429B (as the case requires), the court may issue a warrant to arrest the respondent and to bring the respondent before the judge who issued the warrant or any other judge of the court.

S. 430F inserted by No. 68/2009 s. 69.

430F One notice of appeal for 2 or more sentences

If 2 or more sentences are imposed in respect of charges that have been heard together, the appellant may give one notice of appeal for all or any of those sentences.

S. 430G (Heading) amended by No. 1/2022 s. 50(1).

S. 430G inserted by No. 68/2009 s. 69, amended by No. 1/2022 s. 50(2).

430G Appeal to County Court or Supreme Court authorised by other Acts

If a person is authorised by or under any other Act to appeal from an order of the Children's Court to the County Court or the Supreme Court, subject to that Act, the provisions of this Act with respect to appeals to those courts apply.

Division 4—Reports

S. 430H inserted by No. 68/2009 s. 69, amended by No. 30/2010 s. 38.

430H Application of Division

This Division applies to an appeal under Division 1, 2 or 2A.

Subdivision 1—Pre-sentence reports

S. 430I inserted by No. 68/2009 s. 69.

430I Court may order pre-sentence report

(1) If the appellate court finds a person guilty of an offence it may, before passing sentence, order the Secretary or the Secretary to the Department of

Justice to submit a pre-sentence report in respect of the person and adjourn the proceeding to enable the report to be prepared.

(2) The appellate court must order a pre-sentence report if it is considering making a youth residential centre order or a youth justice centre order.

(3) If it appears to the appellate court that a person found guilty of an offence is intellectually disabled, the appellate court must, before passing sentence, order a pre-sentence report in respect of the person and adjourn the proceeding to enable the report to be prepared.

(4) If the Secretary has issued a statement in respect of the person that the person has an intellectual disability within the meaning of the **Disability Act 2006**, a pre-sentence report prepared in accordance with an order under subsection (3) must—

(a) include a copy of the statement; and

(b) specify disability services which are—

(i) available under that Act and appropriate for the person; and

(ii) designed to reduce the likelihood of the person committing further offences.

(5) Sections 549 and 552 apply to pre-sentence reports under this Subdivision as if—

(a) a reference to a report to which Part 7.8 applies were a reference to a pre-sentence report under this Subdivision; and

(b) a reference to the child were a reference to the person; and

(c) a reference to the consent of the child's parent were omitted if the person is no longer a child at the time of the appeal.

Note

Section 549 requires a warning to be given to persons being interviewed in the course of the preparation of the report. Section 552 concerns the confidentiality of reports.

(6) Sections 573 and 575 apply to pre-sentence reports under this Division as if—

(a) a reference to the Court were a reference to the appellate court; and

(b) a reference to the child were a reference to the person; and

(c) the reference in section 575(1) to section 574 were a reference to section 430K.

Note

Section 573 specifies the contents of a pre-sentence report. Section 575 concerns access to a pre-sentence report.

S. 430J inserted by No. 68/2009 s. 69, amended by No. 1/2022 s. 51.

430J Notification of requirement to submit pre-sentence report

If the appellate court orders the Secretary or the Secretary to the Department of Justice to submit a pre-sentence report under section 430I, the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires) must, within one working day after the making of the order—

(a) orally notify him or her of the making of the order; and

(b) forward a copy of the order to him or her.

430K Pre-sentence report to be filed with court

S. 430K inserted by No. 68/2009 s. 69, amended by Nos 61/2014 s. 122, 1/2022 s. 52.

A pre-sentence report ordered under section 430I must be filed with the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires) at least 3 working days before the return date.

430L Attendance at appellate court of author of pre-sentence report

S. 430L inserted by No. 68/2009 s. 69.

(1) The author of a pre-sentence report under this Subdivision may be required to attend to give evidence at the hearing of the appeal to which the report is relevant by a notice given in accordance with subsection (2) by—

(a) the person in respect of whom the report has been prepared; or

(b) if the person is a child, a parent of that child; or

(c) the Secretary; or

(d) the appellate court.

(2) A notice under subsection (1) must be—

(a) in writing; and

(b) filed with the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires) as soon as possible and, if practicable, not later than 2 working days before the hearing.

S. 430L(2)(b) amended by No. 1/2022 s. 53.

(3) On the filing of a notice under subsection (1), the registrar of the County Court, the Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires) must immediately notify the author of the report that his or her attendance is required on the return date.

S. 430L(3) amended by No. 1/2022 s. 53.

(4) A person is guilty of contempt of court if, being the author of a report who has been required to attend the appellate court under subsection (1), he or she fails, without sufficient excuse, to attend as required.

(5) The author of a report who has been required under subsection (1) by the person or, if the person is a child, a parent of the child or the Secretary to attend at the hearing of an appeal must, if required by the person or the parent or the Secretary (as the case requires), be called as a witness and may be cross-examined on the contents of the report.

S. 430M inserted by No. 68/2009 s. 69.

430M Disputed pre-sentence report

(1) If any matter in a pre-sentence report under this Subdivision is disputed by the person who is the subject of the report, the appellate court must not take the disputed matter into consideration when determining the appeal unless satisfied that the matter is true beyond reasonable doubt.

(2) If—

(a) a pre-sentence report under this Subdivision, or any part of a report, is disputed by the person who is the subject of the report; and

(b) the author of the report does not attend the hearing of the appeal despite having been required to attend under section 430L(1)—

the appellate court must not take the report or the part in dispute into consideration when determining the proceeding unless the person consents to the report or the part in dispute being admitted into evidence.

Subdivision 2—Group conference reports

430N Group conference report

S. 430N inserted by No. 68/2009 s. 69.

(1) If the appellate court finds a person guilty of an offence and defers sentencing the person for the purposes of a group conference, it must order a group conference report.

(2) A group conference report must be prepared by the convenor of the group conference.

(3) Sections 549 and 552 apply to group conference reports under this Subdivision as if—

(a) a reference to a report to which Part 7.8 applies were a reference to a group conference report under this Subdivision; and

(b) a reference to the child were a reference to the person; and

(c) a reference to the consent of the child's parent were omitted if the person is no longer a child at the time of the appeal.

Note

Section 549 requires a warning to be given to persons being interviewed in the course of the preparation of the report. Section 552 concerns the confidentiality of reports.

(4) Sections 578 and 580 apply to group conference reports under this Subdivision as if—

(a) a reference to the child were a reference to the person; and

(b) a reference to the Court were a reference to the appellate court; and

(c) a reference to section 579 were a reference to section 430O.

Note

Section 578 specifies the content of a group conference report. Section 580 concerns access to a group conference report.

S. 430O inserted by No. 68/2009 s. 69, amended by Nos 61/2014 s. 123, 1/2022 s. 54.

430O Group conference report to be filed with court

A group conference report must be filed with the registrar of the County Court, Prothonotary of the Supreme Court or the Registrar of Criminal Appeals (as the case requires) at least 3 working days before the return date.

Division 5—Appeal to Supreme Court on a question of law

S. 430P inserted by No. 68/2009 s. 69.

430P Appeal to Supreme Court on a question of law

(1) A party to a proceeding (other than a committal proceeding) in the Criminal Division of the Children's Court may appeal to the Supreme Court on a question of law, from a final order of the Children's Court in that proceeding.

S. 430P(1A) inserted by No. 1/2022 s. 55.

(1A) If the Children's Court was constituted by the Chief Magistrate who is a dual commission holder, the appeal is to be made to the Court of Appeal.

S. 430P(2) amended by No. 37/2014 s. 10(Sch. item 18.12).

(2) If an informant who is a police officer wishes to appeal under subsection (1), the appeal may be brought only by the DPP on behalf of the informant.

(3) An appeal under subsection (1) is commenced by filing a notice of appeal in accordance with the rules of the Supreme Court within 28 days after the day on which the order complained of was made.

(4) A copy of the notice of appeal must be served on the respondent in accordance with subsection (5) within 7 days after the day on which the notice of appeal was filed.

(5) A copy of the notice of appeal must be served—

(a) personally on a respondent who was the accused; or

(b) on a respondent who was the informant in accordance with section 392 of the **Criminal Procedure Act 2009**.

(6) An appeal under subsection (1) does not operate as a stay of any order made by the Children's Court unless the Supreme Court otherwise orders.

(7) An appeal commenced after the end of the period referred to in subsection (3) is deemed to be an application for leave to appeal under subsection (1).

(8) The Supreme Court may grant leave under subsection (7) and the appellant may proceed with the appeal if the Supreme Court—

(a) is of the opinion that the failure to commence the appeal within the period referred to in subsection (3) was due to exceptional circumstances; and

(b) is satisfied that the case of any other party to the appeal would not be materially prejudiced because of the delay.

(9) After hearing and determining the appeal, the Supreme Court may make any order that it thinks appropriate, including an order remitting the case for rehearing to the Children's Court with or without any direction in law.

(10) An order made by the Supreme Court on an appeal under subsection (1), other than an order remitting the case for rehearing to the Children's Court, may be enforced as an order of the Supreme Court.

(11) The Supreme Court may provide for a stay of the order or for admitting any person to bail as it considers appropriate.

S. 430Q inserted by No. 68/2009 s. 69, amended by No. 1/2022 s. 56.

430Q Appeal on question of law precludes other appeals

If a person appeals under this Division to the Supreme Court on a question of law, that person abandons finally and conclusively any right under this or any other Act to appeal to the County Court or the Supreme Court in relation to that proceeding.

Ch. 5 Pt 5.4 Div. 6 (Heading) amended by No. 48/2012 s. 34.

Division 6—Appeal to Court of Appeal

S. 430R inserted by No. 68/2009 s. 69.

430R Right of appeal against sentence of detention imposed on appeal from Children's Court

(1) In this section—

detention means detention in a youth justice centre or youth residential centre.

S. 430R(2) amended by No. 30/2010 s. 39.

(2) A person sentenced to a term of detention by an appellate court under section 426, 429 or 429C may appeal to the Court of Appeal against the sentence if—

(a) in the proceeding that is the subject of the appeal, the Children's Court had not ordered that the person be detained; and

(b) the Court of Appeal gives the person leave to appeal.

S. 430R(3) inserted by No. 1/2022 s. 57.

(3) Subsection (2) does not apply if the Children's Court was constituted by the Chief Magistrate who is a dual commission holder.

430S How appeal is commenced

S. 430S inserted by No. 68/2009 s. 69.

(1) An application for leave to appeal under section 430R is commenced by filing a notice of application for leave to appeal in accordance with the rules of court within 28 days after the day on which the person is sentenced by the appellate court or any extension of that period granted under section 313 of the **Criminal Procedure Act 2009**.

(2) The Registrar of Criminal Appeals of the Supreme Court must provide to the respondent a copy of the notice of application for leave to appeal within 7 days after the day on which the notice of application is filed.

430T Determination of appeal

S. 430T inserted by No. 68/2009 s. 69.

(1) On an appeal under section 430R, the Court of Appeal must allow the appeal if the appellant satisfies the court that—

(a) there is an error in the sentence imposed; and

(b) a different sentence should be imposed.

(2) In any other case, the Court of Appeal must dismiss an appeal under section 430R.

(3) If the Court of Appeal is considering imposing a more severe sentence than the sentence imposed by the appellate court, the Court of Appeal must warn the appellant, as early as possible during the hearing of the appeal, that the appellant faces the possibility that a more severe sentence may be imposed than that imposed by the appellate court.

430U Orders etc. on successful appeal

S. 430U inserted by No. 68/2009 s. 69.

(1) If the Court of Appeal allows an appeal under section 430R, it must set aside the sentence imposed by the appellate court and either—

(a) impose the sentence, whether more or less severe, that it considers appropriate; or

(b) remit the matter to the appellate court.

(2) If the Court of Appeal remits a matter to the appellate court under subsection (1)(b)—

(a) it may give directions concerning the manner and scope of the further hearing by the appellate court, including a direction as to whether the hearing is to be conducted by the same judge or a different judge; and

(b) the appellate court, whether constituted by the same or a different judge, must hear and determine the matter in accordance with the directions, if any.

S. 430U(3)(4) repealed by No. 30/2010 s. 40.

* * * * *

(5) Despite anything to the contrary in this Act, on an appeal under section 430R, the Court of Appeal may make a probation order, youth supervision order or youth attendance order in respect of a person even though at the time of making that order the person is of or over the age of 19 years but under 21 years.

Note

Section 586 provides that the Supreme Court may exercise the sentencing powers of the Children's Court.

S. 430V inserted by No. 68/2009 s. 69.

430V Powers and procedure

Division 7 of Part 6.3 of Chapter 6 of the **Criminal Procedure Act 2009** applies as if a reference to that Part were a reference to this Division.

Division 6A—Case stated for Court of Appeal

Ch. 5 Pt 5.4 Div. 6A (Heading and ss 430VA–430VF) inserted by No. 48/2012 s. 35.

430VA Reservation of question of law

S. 430VA inserted by No. 48/2012 s. 35, amended by No. 1/2022 s. 58 (ILA s. 39B(1)).

(1) If on the hearing of an appeal to the County Court or the Trial Division of the Supreme Court from the Children's Court a question of law arises, the County Court or the Trial Division of the Supreme Court (as the case may be) may reserve the question for determination by the Court of Appeal if the County Court or the Trial Division of the Supreme Court is satisfied that it is in the interests of justice to do so, having regard to—

(a) the extent of any disruption or delay to the hearing that may arise if the question of law is reserved; and

(b) whether the determination of the question of law may—

(i) render the hearing unnecessary; or

(ii) substantially reduce the time required for the hearing; or

(iii) resolve a novel question of law that is necessary for the proper conduct of the hearing.

S. 430VA(2) inserted by No. 1/2022 s. 58.

(2) Subsection (1) does not apply if the Children's Court was constituted by the Chief Magistrate who is a dual commission holder.

S. 430VB inserted by No. 48/2012 s. 35.

430VB Adjournment if question of law reserved

If a court reserves a question of law under section 430VA, the court must adjourn the hearing, if reasonably practicable, until the question of law has been determined.

S. 430VC inserted by No. 48/2012 s. 35.

430VC Refusal to reserve question of law

(1) If the County Court or the Trial Division of the Supreme Court refuses an application under section 430VA to reserve a question of law, the applicant may apply to the Court of Appeal for an order calling on—

(a) the court that dismissed the application; and

(b) the respondent—

to show cause why the question of law should not be reserved for determination by the Court of Appeal.

(2) On an application under subsection (1), the Court of Appeal may order that the question of law be reserved for its determination or refuse the application with or without costs.

(3) If the Court of Appeal orders that the question of law be reserved, the court to which the order is directed must reserve the question for determination by the Court of Appeal.

S. 430VD inserted by No. 48/2012 s. 35.

430VD Case to be stated if question of law reserved

(1) If a court reserves a question of law under section 430VA or 430VC, it must state a case, setting out the question and the circumstances in which the question has arisen.

(2) The court must sign the case stated and transmit it within a reasonable time to the Court of Appeal.

(3) The Court of Appeal may return a case stated transmitted to it under subsection (2) for amendment and the court that stated the case must amend it as required.

430VE General powers of Court of Appeal on case stated

S. 430VE inserted by No. 48/2012 s. 35.

(1) The Court of Appeal may hear and finally determine a question of law set out in a case stated.

(2) The applicant is not required to attend the hearing under subsection (1).

430VF Judgment to be entered on record

S. 430VF inserted by No. 48/2012 s. 35.

The Registrar of Criminal Appeals of the Supreme Court must transmit the judgment and order (if any) of the Court of Appeal to the court that reserved the question of law and that court must enter the judgment and order (if any) on the court record.

430W DPP may refer point of law to Court of Appeal

S. 430W inserted by No. 68/2009 s. 69.

(1) If a person is acquitted in respect of all or any charges on an appeal to the County Court or the Trial Division of the Supreme Court from the Children's Court or, if the Children's Court was constituted by the Chief Magistrate who is a dual commission holder, the Court of Appeal, the DPP may refer to the Court of Appeal any point of law that has arisen in the proceeding.

S. 430W(1) amended by No. 1/2022 s. 59(1).

(1A) For the avoidance of doubt, if a point of law arises in an appeal proceeding, and that appeal is from the Children's Court constituted by the Chief Magistrate who is a dual commission holder, subsection (1) does not apply.

S. 430W(1A) inserted by No. 1/2022 s. 59(2).

(2) The Court of Appeal is to consider a point of law referred to it under subsection (1) and give its opinion on it.

(3) An acquitted person who appears in court in person or by a legal practitioner is entitled to reasonable costs as settled by the Costs Court.

(4) A reference under this section does not affect the hearing in relation to which the reference is made or an acquittal in that hearing.

S. 430WA inserted by No. 48/2012 s. 36.

430WA Powers and procedure

Division 7 of Part 6.3 of the **Criminal Procedure Act 2009** applies as if a reference to that Part were a reference to this Division.

Division 7—Status of sentence and orders during appeal period

S. 430X inserted by No. 68/2009 s. 69.

430X Sentence not stayed during appeal period

(1) A sentence is not stayed during the appeal period unless—

(a) this Act or any other Act otherwise provides; or

(b) an order is made under subsection (2).

(2) If a notice of application for leave to appeal is filed under section 430S, the Court of Appeal may stay a sentence if satisfied that it is in the interests of justice to do so.

Note

See the definitions of ***appeal period*** and ***sentence*** in section 3.

S. 430Y inserted by No. 68/2009 s. 69.

430Y Bail pending appeal

(1) A person detained in a youth residential centre or youth justice centre who appeals, or applies for leave to appeal, to the Court of Appeal may apply to the Court of Appeal to be granted bail.

(2) On an application under subsection (1), the Court of Appeal may grant the detained person bail pending the appeal.

Note

See section 323 of the **Criminal Procedure Act 2009** for bail following appeal.

430Z Stay of certain orders during appeal period

S. 430Z inserted by No. 68/2009 s. 69.

(1) This section applies to an order under section 84, 85B or 86 of the **Sentencing Act 1991** made by the Trial Division of the Supreme Court or the County Court.

Note

See section 83G(1) of the **Sentencing Act 1991** in relation to superannuation orders.

(2) Unless the Trial Division of the Supreme Court or the County Court otherwise directs, an order referred to in subsection (1) is stayed during the appeal period.

S. 430Z(3) amended by No. 30/2010 s. 44(3).

(3) If an order is stayed under subsection (2) and the conviction is set aside on appeal, the order does not take effect unless the Court of Appeal otherwise orders.

(4) The Court of Appeal may set aside or vary an order made by the Trial Division of the Supreme Court or the County Court under subsection (2).

(5) Rules of court may provide for securing the safe custody during the appeal period of any property the subject of an order referred to in subsection (1).

430ZA Execution of order for forfeiture or destruction of property

S. 430ZA inserted by No. 68/2009 s. 69.

(1) If a court orders the forfeiture or destruction of any property in relation to an offence, the property must not be forfeited or destroyed during the

appeal period unless earlier forfeiture or destruction is permitted by any other law.

(2) This section does not apply to orders made under the **Confiscation Act 1997**.

(3) Rules of court may provide for securing the safe custody during the appeal period of any property the subject of an order referred to in subsection (1).

Division 8—Miscellaneous

S. 430ZB inserted by No. 68/2009 s. 69.

430ZB Appeal by child under 15 years

If an appellant is a child under the age of 15 years, the appeal may be made on the child's behalf and in the name of the child by—

(a) the child's parent; or

(b) in the absence of the parent, the Secretary.

S. 430ZC inserted by No. 68/2009 s. 69.

430ZC Parent may enter into bail

S. 430ZC(1) amended by No. 28/2023 s. 65.

(1) If the child is granted bail with or without a bail guarantor (within the meaning of the **Bail Act 1977**) pending an appeal under this Part but it appears to the court granting bail that the child does not have the capacity or understanding to enter into bail, the child's parent or any other person may enter into bail as principal.

(2) The bail entered into under subsection (1) must be—

(a) in an amount determined by the court granting bail; and

(b) on condition that the person produce the child at the court to which the appeal is made at a place and on a day to be fixed by the

registrar of the County Court or as directed by the court to which the appeal is made (as the case requires).

430ZD Appeals to be heard in open court

S. 430ZD inserted by No. 68/2009 s. 69.

(1) Proceedings on an appeal under this Part are, subject to subsection (2), to be conducted in open court.

(2) The court hearing the appeal may order that—

(a) the whole or any part of a proceeding be heard in closed court; or

(b) only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.

(3) A court may make an order under subsection (2) on the application of a party or any other person who has a direct interest in the proceeding or on its own motion.

(4) Any party to the proceeding and any other interested person has standing to support or oppose an application under subsection (3).

(5) If an order has been made under this section, the court hearing the appeal must cause a copy of the order to be posted on a door of, or in another conspicuous place at, the place at which the court is sitting.

(6) An order posted under this section must not contain any particulars likely to lead to the identification of a child who is a party to the proceeding.

(7) A person must not contravene an order made and posted under this section.

Penalty:

(a) In the case of a person of or above the age of 18 years, 25 penalty units or 6 months imprisonment; or

(b) In the case of a child of or above the age of 15 years, 25 penalty units or detention in a youth justice centre for 6 months; or

(c) In the case of a child under the age of 15 years, 12 penalty units or detention in a youth residential centre for 3 months.

S. 430ZE inserted by No. 68/2009 s. 69.

430ZE Legal representation

Section 524 applies, with any necessary modifications, to appeals under this Part as if—

(a) a reference to the Court or the Criminal Division were a reference to the court hearing an appeal under this Part; and

(b) a reference to a proceeding referred to in section 525(2) were a reference to an appeal under this Part.

S. 430ZF inserted by No. 68/2009 s. 69.

430ZF Interpreters

If the court hearing an appeal under this Part is satisfied that a party to the appeal has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding, or participating in, the appeal, the court must not hear and determine the appeal without an interpreter interpreting it.

430ZG Explanation of and reasons for orders

S. 430ZG inserted by No. 68/2009 s. 69.

(1) If the court hearing an appeal makes an order in relation to bail or makes a final order in relation to the appeal, the court must explain the meaning and effect of the order as plainly and simply as possible and in a way which it considers the parties to the appeal will understand.

(2) An explanation under subsection (1) must be given through an interpreter to a party to the appeal who the court considers has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding the explanation given by the court.

Division 9—Costs on appeal

430ZH No costs on appeal or new hearing

S. 430ZH inserted by No. 68/2009 s. 69.

No costs are to be allowed to a party to—

(a) an appeal under this Part; or

(b) a new hearing; or

(c) a proceeding preliminary or incidental to an appeal or new hearing.

Part 5.5—Parole

* * * * *

Ch. 5 Pt 5.5 Div. 1 (Heading and ss 431–441) amended by Nos 48/2006 s. 22, 80/2006 s. 26(Sch. item 12.2), 69/2009 s. 54(Sch. Pt 2 item 10), 5/2013 s. 78, 67/2014 s. 147(Sch. 2 item 8.2), repealed by No. 61/2014 s. 105.

Division 2—Youth Parole Board

442 Establishment of Youth Parole Board

S. 442(1) amended by No. 48/2006 s. 23.

(1) There continues to be a board called the Youth Parole Board.

(2) The Board consists of—

S. 442(2)(a) substituted by No. 43/2020 s. 49.

(a) a chairperson appointed by the Governor in Council on the nomination of the Attorney-General who is one of the following—

(i) a judge of the County Court, a reserve judge of the County Court or a former judge of the County Court;

(ii) a magistrate within the meaning of section 3(1) of the **Magistrates' Court Act 1989**, a reserve magistrate within the meaning of that Act or a former magistrate;

(iii) an Australian lawyer of at least 10 years' standing; and

(b) the Secretary or an officer appointed by the Governor in Council on the nomination of the Secretary; and

(c) two other persons appointed by the Governor in Council, both of whom must have experience in matters relating to child welfare and at least one of whom must be a woman.

* * * * * S. 442(3) repealed by No. 61/2014 s. 106.

443 Terms and conditions of office

(1) A member of the Youth Parole Board appointed by the Governor in Council holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment, and is eligible for re-appointment.

(2) A member appointed by the Governor in Council may resign his or her office in writing delivered to the Governor in Council.

(3) The Governor in Council may remove from office a member appointed by the Governor in Council.

(4) A member is entitled to be paid—

(a) any remuneration that is fixed by the Governor in Council; and

(b) any travelling and other allowances that are fixed by the Governor in Council.

(5) A member is appointed subject to any other terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act.

S. 443(6) substituted by No. 43/2020 s. 50.

(6) If a member who is a judge of the County Court or a reserve judge of the County Court, a magistrate or a reserve magistrate is removed from judicial office under Part IIIAA of the **Constitution Act 1975**, that person ceases to hold office as a member.

S. 443(7) substituted by No. 80/2006 s. 26(Sch. item 12.3).

(7) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

(8) The appointment of a judge of the County Court as a member does not affect the tenure of office, rank, status, remuneration, rights or privileges of that person as a judge and, for all purposes, service as a member of the Youth Parole Board by a judge is to be regarded as service as a judge.

(9) If a person was immediately before becoming a member of the Youth Parole Board an officer within the meaning of the **State Superannuation Act 1988**, the member continues, subject to that Act, to be an officer within the meaning of that Act.

444 Alternate members

(1) The Governor in Council may appoint—

S. 444(1)(a) substituted by No. 43/2020 s. 51(1).

(a) up to 2 alternate members as alternate chairpersons for the Youth Parole Board on the nomination of the Attorney-General each of whom is one of the following—

(i) a judge of the County Court, a reserve judge of the County Court or a former judge of the County Court;

(ii) a magistrate within the meaning of section 3(1) of the **Magistrates' Court Act 1989**, a reserve magistrate within the meaning of that Act or a former magistrate;

(iii) an Australian lawyer of at least 10 years' standing; and

(b) an officer nominated by the Secretary as an alternate member for the member holding office under section 442(2)(b) and the person so appointed is required to act for that member if he or she is absent from duty.

S. 444(1A) inserted by No. 5/2013 s. 79, substituted by No. 43/2020 s. 51(2).

(1A) An alternate chairperson appointed under subsection (1)(a) is required to act as chairperson if—

(a) the chairperson is absent from duty; or

(b) the office of chairperson is vacant.

S. 444(1B) inserted by No. 5/2013 s. 79.

(1B) For the purposes of section 14(3A)(a) and (b) of the **County Court Act 1958**, the office of alternate member under subsection (1)(a) is not to be taken to be a judicial office or an office or place of profit under the Crown.

(2) The Governor in Council may appoint an alternate member for each member holding office under section 442(2)(c) and at least one of those alternate members must be a woman.

(3) In the absence from duty of a member holding office under section 442(2)(c) the alternate member for that member is entitled to attend a meeting of the Board.

(4) A person appointed under subsection (1) or (2), while acting for a member—

(a) has all the powers and may perform all the functions of the member; and

(b) is entitled to be paid—

(i) any remuneration that is fixed by the Governor in Council; and

(ii) any travelling and other allowances that are fixed by the Governor in Council.

445 Meetings of the Youth Parole Board

S. 445(1) amended by No. 43/2020 s. 52(1).

(1) The Youth Parole Board must meet at the times and places that are fixed by the regulations or, if no times or places are so fixed, at the times and places that are determined by the chairperson or an acting chairperson.

S. 445(2) amended by No. 43/2020 s. 52(2).

(2) The chairperson or, in the chairperson's absence, an acting chairperson, must preside at every meeting of the Youth Parole Board.

S. 445(3) amended by No. 43/2020 s. 52(3).

(3) Subject to subsections (4) and (5), a quorum of the Youth Parole Board consists of the chairperson or an acting chairperson and one other member.

S. 445(4) amended by No. 43/2020 s. 52(4).

(4) A female member (including as an acting chairperson) of the Youth Parole Board must be present at any meeting of the Board at which consideration is being given to the release on parole of a female person.

S. 445(5) substituted by No. 61/2014 s. 107, amended by No. 43/2020 s. 52(5).

(5) A quorum at any meeting of the Youth Parole Board consists of the chairperson or an acting chairperson and two other persons if consideration is being given to—

(a) the transfer to a prison of a person detained in a youth justice centre; or

(b) the transfer to a youth justice centre of a person detained in a youth residential centre.

(6) The following questions which may arise at a meeting of the Youth Parole Board are to be determined by the person presiding at the meeting alone—

(a) whether a question is a question of law;

(b) any question determined to be a question of law.

(7) A question (other than a question referred to in subsection (6)) arising at a meeting of the Youth Parole Board must be determined by a majority of votes and, if the votes are equal, the person presiding has a casting vote.

(8) Subject to this Act and the regulations, the Board may regulate its own procedure.

446 Validity of acts or decisions of the Youth Parole Board

An act or decision of the Youth Parole Board is not invalid only because—

(a) of a vacancy in the office of a member; or

(b) of a defect or irregularity in or in connection with the appointment of a member; or

(c) in the case of an alternate member, the occasion for that person acting for a member had not arisen or had ceased.

447 Secretary or member may act on behalf of Youth Parole Board

(1) If the Youth Parole Board has heard and determined a matter, the secretary or acting secretary or a member of the Board may, on behalf of the Board, sign and issue all necessary orders and documents relating to that matter.

(2) An order or document signed under subsection (1) has effect as if signed by all the members of the Youth Parole Board.

448 Evidentiary provisions

(1) All courts must take judicial notice of the signature on an order or document of the secretary or acting secretary or a member of the Youth Parole Board and, until the contrary is proved, must presume that the document was properly signed.

(2) A certificate purporting to be signed by the secretary or acting secretary of the Youth Parole Board and purporting to record any determination or decision of the Board on a matter is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the making of that determination or decision by the Board.

449 Powers etc. of Youth Parole Board

(1) The Youth Parole Board has the powers, duties and functions conferred or imposed on it by or under this or any other Act.

(2) In exercising its functions, the Youth Parole Board is not bound by the rules of natural justice.

S. 450 amended by Nos 69/2009 s. 54(Sch. Pt 2 item 10), 67/2014 s. 147(Sch. 2 item 8.3).

450 Powers to take evidence etc.

The Youth Parole Board has and may exercise the powers conferred by sections 17, 18, 19, 20, 20A, 21 and 21A of the **Evidence (Miscellaneous Provisions) Act 1958**, as in force immediately before their repeal, as if the Board were a body of persons to whom the Governor in Council has issued a commission and the person presiding at meetings of the Board were the president or chairman of the commission.

451 Saving of members of Youth Parole Board from liability

The members or secretary of the Youth Parole Board are not liable to any action or suit in respect of any act or thing done or omitted to be done in the exercise or purported exercise of any power or duty conferred or imposed on the Board or on any members or on the secretary of the Board by or under this or any other Act.

452 Reports by Youth Parole Board

(1) The Youth Parole Board must once in every year within the prescribed period give to the Minister a report on—

(a) the number of persons released on parole by the Board during the period to which the report relates and the number returned during that period to youth justice centres on cancellation of parole; and

(ab) the number of persons returned during the period to which the report relates to youth residential centres on cancellation of parole; and

S. 452(1)(ab) inserted by No. 61/2014 s. 108.

(b) the operation and activities of the Board and of youth parole officers generally during that period.

(2) The Youth Parole Board must, if required to do so by the Minister in writing, give to the Minister a report on a matter stated in the requirement and relating to the exercise by the Board of any power or function.

(3) The Minister must cause each report received by him or her under subsection (1) to be laid before the Legislative Council and the Legislative Assembly before the end of the fourteenth sitting day of the Council or the Assembly after the receipt of the report by the Minister.

(4) At the request of the Attorney-General for the Commonwealth, the Minister may authorise the Youth Parole Board or an officer—

(a) to make reports and recommendations to the Attorney-General for the Commonwealth, at the intervals or times requested by that Attorney-General, with respect to a person who is detained in a youth justice centre under any law of the Commonwealth; and

(b) to exercise any power or perform any function in relation to a person who is or has been detained in a youth justice centre in Victoria under any law of the Commonwealth, being a power or function that the Attorney-General for the Commonwealth might exercise or perform or cause to be exercised or performed in relation to that person.

Division 3—Youth parole officers

453 Youth parole officers

(1) There are to be employed under Part 3 of the **Public Administration Act 2004** as many youth parole officers as are necessary to be employed for the purposes of this Act.

(2) The Secretary may by instrument published in the Government Gazette appoint as an honorary youth parole officer any fit and proper person who is willing to exercise and perform the powers and duties given to honorary youth parole officers by or under this Act.

(3) An honorary youth parole officer is not in respect of the office of honorary youth parole officer subject to the **Public Administration Act 2004**.

S. 453(4) substituted by No. 61/2014 s. 109.

(4) A youth parole officer is, in relation to a parole order made by the Youth Parole Board, subject to the direction of the Youth Parole Board but is otherwise subject to the direction and control of the Secretary.

(5) A youth parole officer has the powers and duties prescribed by or under this Act.

Division 4—Information sharing

Ch. 5 Pt 5.5 Div. 4 (Heading and ss 454–457) amended by Nos 37/2014 s. 10(Sch. item 18.12), 55/2014 s. 132, repealed by No. 61/2014 s. 110, new Ch. 5 Pt 5.5 Div. 4 (Heading and new ss 454, 455) inserted by No. 43/2017 s. 39.

454 Information sharing by Secretary about incidents

New s. 454 inserted by No. 43/2017 s. 39.

(1) The Secretary to the Department of Justice and Regulation must notify the Youth Parole Board in writing within 48 hours of becoming aware that a person detained in a youth residential centre or a youth justice centre—

(a) has been involved in an incident that has threatened the safety or security of the centre; or

(b) has engaged in conduct that has threatened the safety of another person, or damaged property, at the centre.

(2) After receiving a notice under subsection (1), the Youth Parole Board may request further additional information about the incident or conduct and may specify a reasonable period within which the additional information is to be provided.

(3) If the Youth Parole Board requests further additional information under subsection (2), the Secretary must provide the additional information within the specified period.

(4) If the Secretary notifies the Youth Parole Board of a person's involvement in an incident or conduct under subsection (1)—

(a) the Secretary must notify the person that he or she has done so; and

(b) the Youth Parole Board must give the person an opportunity to comment on that involvement or conduct.

New s. 455 inserted by No. 43/2017 s. 39.

455 Information sharing by Youth Parole Board about release

(1) The Youth Parole Board must notify Victoria Police of—

(a) the release on parole, or scheduled release on parole, of a person detained in a youth residential centre or a youth justice centre, if the detention related to at least one Category A serious youth offence or Category B serious youth offence; and

(b) any conditions of the parole.

(2) The Youth Parole Board may notify Victoria Police of—

(a) the release on parole, or scheduled release on parole of any other person detained in a youth residential centre or a youth justice centre; and

(b) any conditions of the parole.

Division 5—Release on parole from youth residential centre or youth justice centre

Ch. 5 Pt 5.5 Div. 5 (Heading) substituted by No. 61/2014 s. 111.

457A Limitation on Youth Parole Board's consideration of terrorism risk information

S. 457A inserted by No. 32/2018 s. 105.

In considering whether to make a determination or order under this Division, the Youth Parole Board must not have regard to terrorism risk information regarding a person having, or having had, an association with another person or a group referred to in section 3B(3)(b)(i), (ii) or (iii) unless the Board is satisfied that the person knew—

(a) that the other person or group had expressed support for—

(i) the doing of a terrorist act; or

(ii) a terrorist organisation; or

(iii) the provision of resources to a terrorist organisation; or

(b) that the other person or group was directly or indirectly engaged in, preparing for, planning, assisting in or fostering the doing of a terrorist act; or

(c) that the group was a terrorist organisation.

457B Provision of terrorism risk information for purposes of this Division

S. 457B inserted by No. 32/2018 s. 105.

The Secretary to the Department of Justice and Regulation may, for the purposes of this Division, provide to the Youth Parole Board terrorism risk information in respect of a person about whom a determination or order may be made under this Division.

Notes

1 Other sections of this Division impose certain requirements as a consequence of the Secretary to the Department of Justice and Regulation providing information under this section. See sections 458(1AA) and 460C.

2 Section 492D also empowers the Secretary to the Department of Justice and Regulation, and persons employed in that Department, to disclose terrorism risk information to the Youth Parole Board. However, sections 458(1AA) and 460C only apply as a consequence of a disclosure under this section.

S. 458 (Heading) substituted by No. 61/2014 s. 112(1).

458 Release on parole from youth residential centre or youth justice centre

S. 458(1) amended by Nos 61/2014 s. 112(2), 32/2018 s. 106(1).

(1) Subject to this section, the Youth Parole Board may by order in writing direct that a person detained in a youth residential centre, a youth justice centre or otherwise subject to the jurisdiction of the Youth Parole Board be released on or granted parole at the time specified in the order and, unless the Youth Parole Board revokes the order under subsection (2), the person must be released on or granted parole accordingly.

S. 458(1AA) inserted by No. 32/2018 s. 106(2).

(1AA) If the Secretary to the Department of Justice and Regulation provides the Youth Parole Board with terrorism risk information under section 457B in respect of a person, the Board must not determine whether to release the person on parole until the Board has first determined whether or not the Board is satisfied that there is a risk that the person will commit a terrorism or foreign incursion offence.

S. 458(1AAB) inserted by No. 32/2018 s. 106(2).

(1AAB) Subsection (1AA) does not apply in relation to a determination of whether to release on parole a person who—

(a) has a terrorism record; or

(b) is charged with a terrorism or foreign incursion offence.

S. 458(1AAC) inserted by No. 32/2018 s. 106(2).

(1AAC) The presumption against parole set out in subsection (1AAD) applies to a person if—

(a) the person has a terrorism record; or

(b) the person is charged with a terrorism or foreign incursion offence; or

(c) the Youth Parole Board has determined, under subsection (1AA), that there is a risk that the person will commit a terrorism or foreign incursion offence.

S. 458(1AAD) inserted by No. 32/2018 s. 106(2).

(1AAD) The Youth Parole Board must not release on parole a person referred to in subsection (1AAC) unless satisfied that—

(a) in the case of a person who has been convicted of a terrorism or foreign incursion offence, there are exceptional circumstances that justify making the order; or

(b) in any other case, there are compelling reasons that justify making the order.

S. 458(1A) inserted by No. 69/2014 s. 9.

(1A) Despite subsection (1), the Youth Parole Board must not release on parole a person in respect of whom a youth justice centre order has been made in accordance with section 10AA(2) of the **Sentencing Act 1991** before the expiry of the minimum term applicable under that section.

(2) Before a person is released under a parole order the Youth Parole Board may revoke the parole order.

(3) If, before a person is released on parole, the Youth Parole Board determines that the person is to be released at a time other than that specified in the parole order, the person must be released at that other time.

S. 458(4) substituted by No. 43/2017 s. 28.

(4) Subject to any determination of the Youth Parole Board, a parole order is subject to—

(a) the prescribed terms and conditions; and

(b) any conditions imposed under section 458A.

(5) The Youth Parole Board may amend or vary the terms and conditions to which a parole order is subject.

(6) If the terms and conditions of a parole order require a person to be under the supervision of a youth parole officer, the Secretary must assign a youth parole officer to supervise the person and may from time to time assign another youth parole officer in place of the youth parole officer previously assigned.

(7) A person released on or granted parole must during the parole period comply with the terms and conditions of the parole order.

S. 458(8) inserted by No. 55/2014 s. 133, amended by No. 63/2016 s. 17.

(8) This section does not apply to a person detained in a youth residential centre or a youth justice centre in accordance with a custodial supervision order under Part 5A of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

S. 458A inserted by No. 43/2017 s. 29.

458A Certain conditions to be imposed in relation to certain offences

(1) The Youth Parole Board must impose the conditions referred to in subsection (3) on a parole order in relation to a person if—

(a) the person was detained in a youth justice centre or a youth residential centre or was otherwise subject to the jurisdiction of the Youth Parole Board; and

(b) the person was detained in respect of—

(i) a Category A serious youth offence committed when the person was aged 16 years or over; or

(ii) a Category B serious youth offence committed when the person was aged 16 years or over, if the person had previously been convicted of a Category A serious youth offence or a Category B serious youth offence.

(2) Despite subsection (1), the Youth Parole Board is not required to impose the conditions referred to in subsection (3) if the Youth Parole Board considers that the person has demonstrated a history of good behaviour and positive engagement with rehabilitation programs throughout the period of detention for the offence referred to in subsection (1)(b).

(3) For the purposes of subsection (1), the conditions that the Youth Parole Board must impose are as follows—

(a) the person must not break any law;

(b) the person must be supervised by a parole officer;

(c) the person must obey any lawful instructions of that parole officer;

(d) the person must report as and when reasonably directed by that parole officer;

(e) the person may be interviewed by that parole officer at any reasonable time and place directed by that parole officer;

(f) the person must, within 2 days of changing his or her address, advise that parole officer of the change of address;

(g) the person must not leave Victoria without the written permission of the Youth Parole Board;

(h) any other condition the Youth Parole Board considers necessary for the protection of any victim of an offence referred to in subsection (1)(b);

(i) if the Youth Parole Board considers it appropriate having regard to the circumstances of any offence referred to in subsection (1)(b), one or more of the following—

(i) that the person not visit particular places or areas, or only visit the places or areas at specified times;

(ii) that the person not contact specified persons or classes of person;

(iii) that the person undergo rehabilitation and treatment ordered by the Youth Parole Board;

(iv) that the person attend a day program specified by the Youth Parole Board.

459 Person still under sentence until end of parole period

(1) A person is to be regarded as having served his or her period of detention if—

(a) at the end of the parole period the Youth Parole Board has not made an order cancelling the person's parole under section 460(1); or

(b) during the parole period the person has not committed, whether in Victoria or elsewhere, an offence for which he or she could be sentenced to a term of imprisonment or period of detention in a youth justice centre

or youth residential centre for more than 3 months.

(2) Until the parole period ends or until the person is otherwise discharged from the sentence of detention, a person released on parole is to be regarded as being still under sentence and as not having served his or her period of detention.

460 Cancellation of parole

S. 460(1) amended by No. 32/2018 s. 107.

(1) Subject to this section and sections 460A, 460B and 460C, if a person is released on or granted parole under section 458, the Youth Parole Board may at any time before the end of the parole period by order cancel the parole.

(2) If the Youth Parole Board cancels a person's parole under subsection (1) the Youth Parole Board may at any time by further order revoke the cancellation and, on that revocation, the parole order revives.

(3) The Youth Parole Board must not make a revocation order under subsection (2) in any case where a warrant has been issued under subsection (5)(a) unless the Youth Parole Board is satisfied that the warrant will not be executed.

S. 460(4) amended by No. 61/2014 s. 113(1).

(4) If the person is sentenced to a term of imprisonment or to a period of detention in a youth residential centre for more than 3 months or to a period of detention in a youth justice centre for more than 3 months in respect of an offence committed during the parole period, whether in Victoria or elsewhere, the Youth Parole Board may cancel that person's parole, whether or not the parole period may already have ended.

(5) If a person's parole is cancelled, the Youth Parole Board or any member of the Board may—

S. 460(5)(a) amended by No. 37/2014 s. 10(Sch. item 18.12), substituted by No. 61/2014 s. 113(2).

(a) authorise any police officer or other officer by warrant signed by the secretary or a member of the Board—

(i) to search for and apprehend the person and for that purpose to—

(A) enter any premises where the person is believed to be located; and

(B) in the case of a police officer, use reasonable force to enter those premises; and

(ii) to return the person to the following place to serve the unexpired portion of the person's sentence of detention or to be otherwise dealt with by the Youth Parole Board—

(A) in the case of a person released from a youth justice centre, a youth justice centre; and

(B) in the case of a person released from a youth residential centre, a youth residential centre; or

S. 460(5)(b) amended by No. 37/2014 s. 10(Sch. item 18.12), substituted by No. 61/2014 s. 113(2).

(b) whether or not a warrant has been issued under paragraph (a), apply to a magistrate for a warrant authorising any police officer or other officer to do the things described in paragraph (a)(i) and (ii).

S. 460(6) substituted by No. 61/2014 s. 113(3).

(6) A warrant issued under subsection (5)(a) is sufficient authority for doing the things described in subsection (5)(a)(i) and (ii).

(6A) A police officer or other officer who, in executing a warrant issued under subsection (5)(a) or (b), intends to enter any premises where the person whose parole is cancelled is believed to be located must announce that the police officer or other officer is authorised by the warrant to enter the place.

S. 460(6A) inserted by No. 61/2014 s. 113(4).

(6B) If a police officer complies with subsection (6A) and is unable to obtain unforced entry to the premises, the police officer must give any person at the premises an opportunity to allow entry to the premises.

S. 460(6B) inserted by No. 61/2014 s. 113(4).

(6C) A police officer need not comply with subsection (6B) if the police officer believes on reasonable grounds that immediate entry to the place is required to ensure—

S. 460(6C) inserted by No. 61/2014 s. 113(4).

(a) the safety of any person; or

(b) that the effective execution of the warrant is not frustrated.

(7) If a person's parole is cancelled the original warrant or other authority for the person's detention revives and unless the Youth Parole Board otherwise orders, having regard to the extent to and the manner in which the person complied with the parole order, no part of the time between the person's release on parole and his or her recommencing to serve the unexpired portion of the period of detention is to be regarded as time served in respect of the period of detention.

(8) If section 467 applies, the warrant or other authority must in all respects be regarded as and taken to be a warrant to imprison the person in a youth justice centre.

(9) The Youth Parole Board may revoke any order for cancellation of parole at any time before the warrant to arrest is executed and, on revoking the order, must cause the warrant to be withdrawn.

S. 460A inserted by No. 32/2018 s. 108.

460A Requirement to consider cancelling parole of person charged with certain offences in certain circumstances

(1) Subject to subsection (2), the Youth Parole Board must consider whether to cancel a person's parole under section 460(1) if—

(a) the person is charged, while on parole, with a terrorism or foreign incursion offence that is alleged to have been committed while the person was on parole; and

(b) either the person—

(i) has a terrorism record; or

(ii) was released on parole following the Board determining, under section 458(1AA), that there was a risk that the person would commit a terrorism or foreign incursion offence.

(2) The Youth Parole Board must determine to cancel the person's parole unless satisfied that—

(a) if the person has been convicted of a terrorism or foreign incursion offence, there are exceptional circumstances that justify the continuation of the parole; or

(b) otherwise, there are compelling reasons that justify the continuation of the parole.

460B Requirement to consider cancelling parole of person who gains a terrorism record

S. 460B inserted by No. 32/2018 s. 108.

(1) Subject to subsection (2), the Youth Parole Board must consider whether to cancel a person's parole under section 460(1) if the person comes to have a terrorism record while on parole.

Example

A person becomes subject to a terrorism-related order while on parole.

(2) The Youth Parole Board must determine to cancel the person's parole unless satisfied that—

(a) if the person has been convicted of a terrorism or foreign incursion offence, there are exceptional circumstances that justify the continuation of the parole; or

(b) otherwise, there are compelling reasons that justify the continuation of the parole.

460C Requirement to consider cancelling parole if new terrorism risk information provided

S. 460C inserted by No. 32/2018 s. 108.

(1) Subject to subsections (2) and (3), the Youth Parole Board must consider whether to cancel a person's parole under section 460(1) if, while the person is on parole, the Secretary to the Department of Justice and Regulation provides the Board with terrorism risk information under section 457B in respect of the person that is new to the Board.

(2) The Youth Parole Board must determine to cancel the person's parole if satisfied that—

(a) in the case of a person released on parole following the Board determining, under section 458(1AA), that there was a risk that the person would commit a terrorism or foreign incursion offence, there has been

an increase in the risk in relation to which that determination was made; or

(b) in the case of a person who had a terrorism record when released on parole, the risk that the person will commit a terrorism or foreign incursion offence has increased since the person was released on parole; or

(c) in any other case, there is a risk that the person will commit a terrorism or foreign incursion offence.

(3) Despite subsection (2), the Youth Parole Board is not required to determine under that subsection to cancel the person's parole if satisfied that—

(a) if the person has been convicted of a terrorism or foreign incursion offence, there are exceptional circumstances that justify the continuation of the parole; or

(b) otherwise, there are compelling reasons that justify the continuation of the parole.

461 Youth Parole Board may release on parole more than once

The Youth Parole Board may again release a person on parole whether or not the person's parole has been cancelled on any prior occasion or occasions in respect of the same period of detention.

Part 5.6—Transfers

Division 1AA—Use of terrorism risk information

Ch. 5 Pt 5.6 Div 1AA (Heading and s. 461A) inserted by No. 32/2018 s. 102.

461A Limitation on Youth Parole Board's consideration of terrorism risk information

S. 461A inserted by No. 32/2018 s. 102.

In considering whether to exercise a power under this Part, the Youth Parole Board must not have regard to terrorism risk information regarding a person having, or having had, an association with another person or a group referred to in section 3B(3)(b)(i), (ii) or (iii) unless the Youth Parole Board is satisfied that the person knew—

(a) that the other person or group had expressed support for—

(i) the doing of a terrorist act; or

(ii) a terrorist organisation; or

(iii) the provision of resources to a terrorist organisation; or

(b) that the other person or group was directly or indirectly engaged in, preparing for, planning, assisting in or fostering the doing of a terrorist act; or

(c) that the group was a terrorist organisation.

Division 1—Jurisdiction over detainees

S. 462 (Heading) amended by No. 61/2014 s. 114(1).

462 Persons detained in youth residential centre subject to Youth Parole Board

S. 462 amended by No. 55/2014 s. 134 (ILA s. 39B(1)).

S. 462(1) amended by No. 61/2014 s. 114(2).

(1) Every person ordered by a court to be detained in a youth residential centre is subject to the jurisdiction of the Youth Parole Board.

S. 462(2) inserted by No. 55/2014 s. 134.

(2) This section does not apply to a child detained in a youth residential centre in accordance with a custodial supervision order under Part 5A of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

S. 463 amended by No. 55/2014 s. 135 (ILA s. 39B(1)).

463 Persons detained in youth justice centre subject to Youth Parole Board

(1) Every person ordered by a court to be detained in a youth justice centre is subject to the jurisdiction of the Youth Parole Board.

S. 463(2) inserted by No. 55/2014 s. 135.

(2) This section does not apply to a person detained in a youth justice centre in accordance with a custodial supervision order under Part 5A of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

Division 2—Transfer from youth residential centre to youth justice centre

464 Power of Youth Parole Board to transfer person to a youth justice centre

S. 464 (Heading) amended by No. 61/2014 s. 115(1).

S. 464 amended by No. 61/2014 s. 115(2).

On the application of the Secretary the Youth Parole Board may, subject to section 465, direct that a person sentenced to be detained in a youth residential centre by a court or a person transferred to a youth residential centre under this Division be transferred to a youth justice centre to serve the unexpired portion of the period of his or her sentence as detention in a youth justice centre if the Board considers the direction appropriate, having regard to the antecedents and behaviour of the person or the age and maturity of the person.

465 Restriction on transfer of under 14 year olds

S. 465 amended by No. 61/2014 s. 116.

The Youth Parole Board may only direct that a child under the age of 14 years be transferred to a youth justice centre if, in the opinion of the Board, exceptional circumstances justify the making of that direction.

466 Transfer to youth justice centre

(1) The Secretary must cause the physical removal of a person from a youth residential centre to a youth justice centre on the direction of the Youth Parole Board under section 464.

S. 466(1) amended by No. 61/2014 s. 117(1).

(2) A person directed to be transferred under section 464, while being removed from a youth residential centre to a youth justice centre, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Youth Parole Board and that officer must deliver that person into the custody of the officer in charge of the youth justice centre.

S. 466(2) amended by No. 61/2014 s. 117(1).

S. 466(3) amended by No. 37/2014 s. 10(Sch. item 18.12).

(3) A police officer may, if requested to do so by the Secretary, assist the officer referred to in subsection (2) in the discharge of his or her duties under that subsection and, in that case, the person being transferred is deemed to be in the legal custody of the police officer.

S. 466(4) repealed by No. 61/2014 s. 117(2).

* * * * *

(5) Despite section 458, the Youth Parole Board must not release a person who—

(a) has been sentenced to a period of imprisonment; and

(b) has been transferred from prison and is currently detained in a youth justice centre—

on parole before the expiry of any non-parole period fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(6) Despite section 458, the Youth Parole Board must not release a person on parole if—

(a) the person has been sentenced to a period of imprisonment of 12 months or more; and

(b) a non-parole period has not been fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(7) In determining whether to release a person on parole, the Youth Parole Board may take into account the periods which that person has spent in prison and in a youth residential centre.

Division 3—Transfer from youth justice centre to prison

467 Power of Youth Parole Board to transfer person to prison

(1) The Youth Parole Board may, on the application of the Secretary, direct a person aged 16 years or more sentenced as a child by the Children's Court or any other court to be detained in a youth justice centre be transferred to a prison to serve the unexpired portion of the period of his or her detention as imprisonment.

(2) The Youth Parole Board may only make a direction under subsection (1) in respect of a person if—

(a) it has had regard to the antecedents and behaviour of the person; and

(b) it has had regard to the age and maturity of the person; and

(c) it has taken into account a report from the Secretary; and

(d) it is satisfied that the person—

(i) has engaged in conduct that threatens the good order and safe operation of the youth justice centre; and

(ii) cannot be properly controlled in a youth justice centre.

(3) A report from the Secretary under subsection (2)(c) must set out the steps that have been taken to avoid the need to transfer the person concerned to prison.

(4) The Youth Parole Board may direct that a person aged 18 years or more sentenced by a court other than the Children's Court to be detained in a youth justice centre be transferred to a prison to serve the unexpired portion of the period of his or her detention as imprisonment if the Board considers the direction appropriate, having regard to the antecedents and behaviour of the person.

468 Detainee may request transfer to prison

(1) A person aged 16 years or more who is sentenced to be detained in a youth justice centre may apply to the Youth Parole Board for a direction that he or she be transferred to a prison to serve the unexpired portion of the period of his or her detention as imprisonment.

(2) A person who applies to the Youth Parole Board under subsection (1) must appear before the Board to support the application.

(3) The Youth Parole Board may make a direction under subsection (1) if the Board considers the direction appropriate, having taken into account a report from the Secretary and having regard to the antecedents and behaviour of the person.

469 Transfer to prison

(1) The Secretary must cause the physical removal of a person from a youth justice centre to a prison on the direction of the Youth Parole Board under section 467 or 468.

(2) A person directed to be transferred under section 467 or 468, while being removed from a youth justice centre to a prison, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Youth Parole Board and that officer must deliver that person into the legal custody of the Secretary to the Department of Justice.

(3) A police officer may, if requested to do so by the Secretary, assist the officer referred to in subsection (2) in the discharge of his or her duties under that subsection and, in that case, the person being transferred is deemed to be in the legal custody of the Chief Commissioner of Police.

S. 469(3) amended by No. 37/2014 s. 10(Sch. item 18.12).

(4) Subject to subsection (4A), a person transferred to a prison under section 467 or 468 becomes, on transfer, subject to the jurisdiction of the Adult Parole Board as if the period of detention served by that person prior to the transfer had been a non-parole period.

S. 469(4) amended by No. 69/2014 s. 10(1).

(4A) A person in respect of whom a youth justice centre order has been made in accordance with section 10AA(2) of the **Sentencing Act 1991** who is transferred to a prison under section 467 or 468 becomes, on transfer, subject to the jurisdiction of the Adult Parole Board as if the minimum term of that order applicable under section 10AA(2) of that Act had been a non-parole period.

S. 469(4A) inserted by No. 69/2014 s. 10(2).

(5) If—

(a) a person is transferred to a prison under section 467 or 468; and

(b) a warrant for the detention of the person in a youth justice centre in default of payment of a fine or sum of money is executed—

the Youth Parole Board may further direct that the person be imprisoned in default of payment of the fine or sum of money.

Division 4—Transfer from youth justice centre to youth residential centre

470 Persons in youth justice centre may be transferred to youth residential centre

(1) If the Youth Parole Board, having regard to the antecedents and behaviour of the child, considers it appropriate in the interests of a child under the age of 18 years detained in a youth justice centre to transfer that child to a youth residential centre, the Youth Parole Board may direct that that person be transferred to a youth residential centre.

(2) The Secretary must cause the physical removal of a person from a youth justice centre to a youth residential centre on the direction of the Youth Parole Board under subsection (1).

(3) A person directed to be transferred under subsection (1), while being removed from a youth justice centre to a youth residential centre, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Youth Parole Board and that officer must deliver that person into the custody of the officer in charge of the youth residential centre.

S. 470(4) amended by No. 37/2014 s. 10(Sch. item 18.12).

(4) A police officer may, if requested to do so by the Secretary, assist the officer referred to in subsection (3) in the discharge of his or her duties under that subsection and, in that case, the person being transferred is deemed to be in the legal custody of the Chief Commissioner of Police.

S. 470(5) substituted by No. 61/2014 s. 118(1).

(5) The sentence of a person transferred from a youth justice centre to a youth residential centre under subsection (1) is to be treated for all purposes, on transfer, as a sentence of detention in a youth residential centre.

(6) Despite section 458, the Youth Parole Board must not release a person who— S. 470(6) amended by No. 61/2014 s. 118(2).

(a) has been sentenced to a term of imprisonment; and

(b) has been transferred from prison and is currently detained in a youth residential centre—

on parole before the expiry of any non-parole period fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(7) Despite section 458, the Youth Parole Board must not release a person on parole if— S. 470(7) amended by No. 61/2014 s. 118(3).

(a) the person has been sentenced to a term of imprisonment of 12 months or more; and

(b) a non-parole period has not been fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(8) In determining whether to release a person on parole, the Youth Parole Board may take into account the periods which that person has spent in prison and in a youth justice centre. S. 470(8) amended by No. 61/2014 s. 118(4).

Division 5—Transfers to and from prison

471 Persons in prison may be transferred to youth justice centre

(1) If the Adult Parole Board considers it appropriate in the interests of a person under the age of 21 years imprisoned in a prison to transfer that person to a youth justice centre, the Adult Parole Board may if satisfied, after considering a report from the Secretary, that—

(a) that person is suitable for detention in a youth justice centre; and

(b) a place is available in a youth justice centre—

direct that that person be transferred to a youth justice centre.

(2) The Secretary to the Department of Justice must cause the physical removal of a person from a prison to a youth justice centre on the direction of the Adult Parole Board under subsection (1).

(3) A person directed to be transferred under subsection (1), while being removed from a prison to a youth justice centre, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Adult Parole Board and that officer must deliver that person into the custody of the officer in charge of the youth justice centre.

S. 471(4) amended by No. 37/2014 s. 10(Sch. item 18.12).

(4) A police officer may, if requested to do so by the Secretary to the Department of Justice, assist the officer referred to in subsection (3) in the discharge of his or her duties under that subsection and, in that case, the person being transferred is deemed to be in the legal custody of the Chief Commissioner of Police.

(5) Subsection (3) does not apply if the officer transferring a person under this section is an escort officer within the meaning of the **Corrections Act 1986** and the person being transferred is deemed under that Act to be in the legal custody of the Secretary to the Department of Justice.

(6) A person transferred from a prison to a youth justice centre under subsection (1) becomes, on transfer, subject to the jurisdiction of the Youth Parole Board for the unexpired portion of the term of his or her sentence and that sentence is to be

treated for all purposes as a sentence of detention in a youth justice centre.

(7) Despite section 458, the Youth Parole Board must not release a person who—

(a) has been sentenced to a term of imprisonment; and

(b) has been transferred from prison and is currently detained in a youth justice centre—

on parole before the expiry of any non-parole period fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(8) Despite section 458, the Youth Parole Board must not release a person on parole if—

(a) the person has been sentenced to a term of imprisonment of 12 months or more; and

(b) a non-parole period has not been fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(9) In determining whether to release a person on parole, the Youth Parole Board may take into account the periods which that person has spent in prison.

472 Person in prison may be transferred to youth residential centre

(1) If the Adult Parole Board considers it appropriate in the interests of a child under the age of 18 years imprisoned in a prison to transfer the child to a youth residential centre, the Adult Parole Board may direct that the child be transferred to a youth residential centre.

(2) The Adult Parole Board may only make a direction under subsection (1) if, after considering a report from the Secretary, the Board is satisfied that—

(a) the child is suitable for detention in a youth residential centre; and

(b) a place is available in a youth residential centre.

(3) The Secretary to the Department of Justice must cause the physical removal of a child from a prison to a youth residential centre on the direction of the Adult Parole Board under subsection (1).

(4) A child directed to be transferred under subsection (1), while being removed from a prison to a youth residential centre, is deemed to be in the legal custody of the officer having the custody of the child and acting under the direction of the Adult Parole Board and that officer must deliver the child into the custody of the officer in charge of the youth residential centre.

S. 472(5) amended by No. 37/2014 s. 10(Sch. item 18.12).

(5) A police officer may, if requested to do so by the Secretary to the Department of Justice, assist the officer referred to in subsection (4) in the discharge of his or her duties under that subsection and, in that case, the child being transferred is deemed to be in the legal custody of the Chief Commissioner of Police.

(6) Subsection (4) does not apply if the officer transferring a child under this section is an escort officer within the meaning of the **Corrections Act 1986** and the child being transferred is deemed under that Act to be in the legal custody of the Secretary to the Department of Justice.

(7) A child transferred from a prison to a youth residential centre under subsection (1) becomes, on transfer, subject to the jurisdiction of the Youth Parole Board for the unexpired portion of the term of his or her sentence and that sentence is to be treated for all purposes as a sentence of detention in a youth residential centre.

S. 472(7) amended by No. 61/2014 s. 119(1).

(8) Despite section 458, the Youth Parole Board must not release a person who—

S. 472(8) amended by No. 61/2014 s. 119(2).

(a) has been sentenced to a term of imprisonment; and

(b) has been transferred from prison and is currently detained in a youth residential centre—

on parole before the expiry of any non-parole period fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(9) Despite section 458, the Youth Parole Board must not release a person on parole if—

S. 472(9) amended by No. 61/2014 s. 119(3).

(a) the person has been sentenced to a term of imprisonment of 12 months or more; and

(b) a non-parole period has not been fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(10) In determining whether to release a person on parole, the Youth Parole Board may take into account the periods which that person has spent in prison.

S. 472(10) amended by No. 61/2014 s. 119(4).

473 Person transferred from prison to YJC or YRC may be transferred back to prison

(1) The Youth Parole Board may direct that a person aged 16 years or more who has been transferred to—

(a) a youth justice centre under section 471(1); or

(b) a youth residential centre under section 472(1)—

and is currently detained in a youth justice centre, be transferred to a prison to serve the unexpired portion of the period of his or her sentence.

(2) The Youth Parole Board may only make a direction under subsection (1) in respect of a person if the Board considers the direction appropriate, having regard to—

(a) the antecedents and behaviour of the person; and

(b) the length of the unexpired portion of the person's sentence; and

(c) the age and maturity of the person; and

(d) a report from the Secretary.

(3) A report from the Secretary under subsection (2)(d) must set out the steps that have been taken to avoid the need to transfer the person concerned to prison.

(4) The Secretary must cause the physical removal of a person from a youth justice centre to a prison on the direction of the Youth Parole Board under this section.

(5) A person directed to be transferred under this section, while being removed from a youth justice centre to a prison, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Youth Parole Board and that officer must deliver that person into the legal custody of the Secretary to the Department of Justice.

(6) A police officer may, if requested to do so by the Secretary, assist the officer referred to in subsection (5) in the discharge of his or her duties under that subsection and, in that case, the person being transferred is deemed to be in the legal custody of the Chief Commissioner of Police.

S. 473(6) amended by No. 37/2014 s. 10(Sch. item 18.12).

(7) A person transferred to a prison under this section becomes, on transfer, subject to the jurisdiction of the Adult Parole Board for the unexpired portion of the term of his or her sentence and that sentence is to be treated for all purposes as a sentence of imprisonment.

(8) In determining whether to release a person on parole, the Adult Parole Board may take into account the periods which the person has spent in a youth justice centre and a youth residential centre.

Division 6—General

474 Person in youth residential centre sentenced to detention in youth justice centre or imprisonment

(1) If a person—

S. 474(1) amended by No. 61/2014 s. 120.

(a) has been sentenced to detention in a youth residential centre; and

(b) before the end of that sentence is sentenced to a period of detention in a youth justice centre or to a term of imprisonment in respect of any offence—

the Youth Parole Board may direct that the person must serve the unexpired portion of the period of detention in a youth residential centre as detention in a youth justice centre or as imprisonment (as the case requires) and thereafter the person is subject to the jurisdiction of the Youth Parole Board or the Adult Parole Board (as the case requires).

(2) If a person—

(a) has been sentenced to detention in a youth residential centre; and

(b) before the end of that sentence is sentenced to a period of detention in a youth justice centre or to a term of imprisonment to be served cumulatively on the sentence of detention in a youth residential centre—

service of the sentence of detention in a youth residential centre must be suspended until that person has served the sentence of detention in a youth justice centre or the sentence of imprisonment (as the case requires).

(3) If a person undergoing a sentence of detention in a youth residential centre is brought before a court under section 490 or under any warrant or order of the Magistrates' Court, that person is, subject to subsection (2), deemed to be continuing to serve the sentence of detention which that person is then undergoing even if he or she is held in custody in a prison, police gaol, youth justice centre or other place that is not a youth residential centre.

(4) If a person who is sentenced to detention in a youth residential centre is at that time being held in custody in a prison, police gaol, youth justice centre or other place that is not a youth residential centre, that person is, subject to subsection (2), deemed to be serving that sentence of detention even if he or she is being held in custody otherwise than in a youth residential centre.

475 Person in youth justice centre sentenced to imprisonment

(1) If a person—

(a) has been sentenced to detention in a youth justice centre; and

(b) before the end of that sentence is sentenced to a term of imprisonment in respect of any offence—

the Youth Parole Board may direct that the person must serve the unexpired portion of the period of detention as imprisonment in a prison and thereafter the person is subject to the jurisdiction of the Adult Parole Board as if the period of detention served by him or her before that sentence of imprisonment or his or her release on parole by the Youth Parole Board had been a non-parole period.

(2) If a person—

(a) has been sentenced to detention in a youth justice centre; and

(b) before the end of that sentence is sentenced by a court to a term of imprisonment to be served cumulatively on the sentence of detention—

service of the sentence of detention must be suspended until that person has served the sentence of imprisonment.

(3) Despite anything to the contrary in any Act, every sentence of imprisonment imposed on a person by a court must, unless otherwise directed by the court at the time of pronouncing the sentence, be, as from the date of its commencement, served concurrently with any uncompleted sentence or sentences of detention in a youth justice centre

imposed on that person, whether before or at the time the relevant sentence was imposed.

(4) If a person undergoing a sentence of detention in a youth justice centre is brought before a court under section 490 or under any warrant or order of the Magistrates' Court, that person is, subject to subsection (2), deemed to be continuing to serve the sentence of detention which that person is then undergoing even if he or she is held in custody in a prison, police gaol or other place that is not a youth justice centre.

(5) If a person who is sentenced to detention in a youth justice centre is at that time being held in custody in a prison, police gaol or other place that is not a youth justice centre, that person is, subject to subsection (2), deemed to be serving that sentence of detention even if he or she is being held in custody otherwise than in a youth justice centre.

(6) If—

(a) a person is in a prison under subsection (1) serving the unexpired portion of a sentence of detention as imprisonment; and

(b) a warrant for the detention of the person in a youth justice centre in default of payment of a fine or sum of money is executed—

the Youth Parole Board may further direct that the person be imprisoned in default of payment of the fine or sum of money.

476 Person in youth justice centre sentenced to detention in youth residential centre

(1) If—

(a) a person is serving a sentence of detention in a youth justice centre; and

(b) before the end of that sentence of detention he or she is sentenced to a period of detention in a youth residential centre to be served cumulatively on the sentence of detention in a youth justice centre—

service of the period of detention in a youth residential centre is suspended until that person has served the sentence of detention in a youth justice centre.

S. 476(2) amended by No. 61/2014 s. 121(1).

(2) The Youth Parole Board may before the person is released from a youth justice centre, whether under a parole order made by the Youth Parole Board in respect of the sentence of detention in a youth justice centre or otherwise, direct that at the end of the sentence of detention in a youth justice centre, the person must serve the whole of the period of detention in a youth residential centre (if it was to be served cumulatively on the sentence of detention in a youth justice centre) or the unexpired portion (if any) of it (if it was to be served concurrently with the sentence of detention in a youth justice centre) as detention in a youth justice centre.

S. 476(3) amended by No. 61/2014 s. 121(2).

(3) If under subsection (2) the period of detention in a youth residential centre is to be served as detention in a youth justice centre, the Youth Parole Board may at any time release the person on parole.

(4) This section does not apply to or in relation to a person who is sentenced to a period of detention in a youth residential centre while that person is released from a youth justice centre on parole.

477 Person in prison sentenced to detention in youth justice centre

(1) If—

(a) a person is serving a sentence of imprisonment in a prison; and

(b) before the end of that sentence of imprisonment he or she is sentenced to a period of detention in a youth justice centre to be served cumulatively on the sentence of imprisonment—

service of the period of detention is suspended until that person has served the sentence of imprisonment.

(2) Despite anything to the contrary in any Act, every sentence of detention in a youth justice centre imposed on a person by a court must, unless otherwise directed by the court at the time of pronouncing the sentence, be, as from the date of its commencement, served concurrently with any uncompleted sentence or sentences of imprisonment imposed on that person, whether before or at the time the relevant sentence was imposed.

(3) The Youth Parole Board may, before a person is released from prison, whether under a parole order made by the Adult Parole Board in respect of the sentence of imprisonment or otherwise, direct that at the end of the sentence of imprisonment, the person must serve the whole of the period of detention (if it was to be served cumulatively on the sentence of imprisonment) or the unexpired portion (if any) of it (if it was to be served concurrently with the sentence of imprisonment) as imprisonment in a prison.

(4) If under subsection (3) the period of detention is to be served as imprisonment in a prison, the person is, in respect of that imprisonment, subject to the jurisdiction of the Adult Parole Board and, whether or not a non-parole period has been set in respect of that imprisonment, the Adult Parole Board may at any time release the person on parole.

(5) If—

(a) under subsection (3) a person is serving a period of detention as imprisonment in a prison; and

(b) a warrant for the detention of the person in a youth justice centre in default of payment of a fine or sum of money is executed—

the Youth Parole Board may direct that the person be imprisoned in default of payment of the fine or sum of money.

(6) This section does not apply to or in relation to a person who is sentenced to a period of detention in a youth justice centre while that person is released from prison on parole.

Part 5.7—Establishment of corrective services for children

478 Governor in Council may establish corrective services

For the purposes of this Act the Governor in Council may, by notice published in the Government Gazette, establish or abolish—

S. 478(a) amended by No. 68/2009 s. 70.

(a) remand centres for the detention of children awaiting trial or the hearing of a charge or awaiting sentence or in transit to or from a youth residential centre or youth justice centre; or

S. 478(b) amended by No. 55/2014 s. 136.

(b) youth residential centres for the care and welfare of children ordered under this Act, the **Sentencing Act 1991** or the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** to be placed in a youth residential centre and which provide special direction, support, educational opportunities and supervision; or

S. 478(c) amended by No. 55/2014 s. 136.

(c) youth justice centres for the care and welfare of persons ordered to be detained in youth justice centres under this Act, the **Sentencing Act 1991** or the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or

(d) youth justice units for persons—

(i) referred to them as a condition of a probation order, youth supervision order, youth attendance order or other order made by the Court; or

(ii) referred to them as a requirement of a parole order.

479 Approval of service as youth justice unit

(1) The Secretary may approve a service operated by any person or body of persons (other than the Department) as a youth justice unit.

(2) An approval under subsection (1)—

(a) may be of general or limited application; and

(b) is given by sending by post to the person or body of persons concerned a notice of approval; and

(c) may, if at any time the Secretary is satisfied that the unit is unable to provide services of an adequate standard, be withdrawn by sending by post to the person or body of persons concerned a notice of withdrawal of approval.

(3) The Secretary may out of money available for the purpose make a grant to an approved youth justice unit to assist the unit in carrying out its functions.

(4) A grant under subsection (3) may be made on any terms and conditions that are determined by the Secretary.

480 Approval of service as group conference program

(1) The Secretary may approve a service operated by any person or body of persons (other than the Department) as a group conference program.

(2) An approval under subsection (1)—

(a) may be of general or limited application; and

(b) is given by sending by post to the person or body of persons concerned a notice of approval; and

(c) may, if at any time the Secretary is satisfied that the group conference program is unable to provide services of an adequate standard, be withdrawn by sending by post to the person or body of persons concerned a notice of withdrawal of approval.

S. 480A inserted by No. 43/2017 s. 15.

480A Approval of service as a youth control order planning meeting program

(1) The Secretary to the Department of Justice and Regulation may—

S. 480A(1)(a) amended by No. 53/2021 s. 22.

(a) approve a service operated by any person or body of persons (other than the Department of Justice and Regulation or the Department of Health) as a youth control order planning meeting program; or

S. 480A(1)(b) amended by No. 53/2021 s. 22.

(b) authorise a service operated by a person or class of persons employed by the Department of Justice and Regulation or the Department of Health (other than a person working in an area of either Department that is responsible for youth justice or child protection)—

as a youth control order planning meeting program.

(2) An approval under subsection (1)—

(a) may be of general or limited application; and

(b) is given by sending by post to the person or body of persons concerned a notice of approval; and

(c) may, if at any time the Secretary is satisfied that a youth control order planning meeting program is unable to provide services of an adequate standard, be withdrawn by sending by post to the person or body of persons

concerned a notice of withdrawal of approval.

481 Standard of services

S. 481 amended by No. 43/2017 s. 16.

The Minister may issue directions relating to the standards of services established under section 478 or approved under section 479, 480 or 480A and may establish procedures that are appropriate to ensure that those directions are given effect.

482 Form of care, custody or treatment

(1) The Secretary must—

(a) determine the form of care, custody or treatment which he or she considers to be in the best interests of each person detained in a remand centre, youth residential centre or youth justice centre; and

(b) not detain in a community service or secure welfare service a person who is on remand or is serving a period of detention and is not released on parole; and

(c) separate persons who are on remand from those who are serving a period of detention by accommodating them separately in some part set aside for the purpose unless—

(i) the Secretary considers it appropriate not to separate them, having regard to the best interests, rights and entitlements of the persons on remand; and

(ii) either—

S. 482(1)(c)(ii) substituted by No. 43/2017 s. 32.

(A) the persons on remand consent; or

(B) the persons on remand have previously served a period of detention, it is in the best interests

of each person on remand to be accommodated with persons who are serving a period of detention and it is reasonably necessary to accommodate persons on remand with persons who are serving a period of detention; and

(d) separate persons held on remand who are under the age of 15 years from those held on remand who are of or above the age of 15 years unless exceptional circumstances exist.

(2) Persons detained in remand centres, youth residential centres or youth justice centres—

(a) are entitled to have their developmental needs catered for;

(b) subject to section 501, are entitled to receive visits from parents, relatives, legal practitioners, persons acting on behalf of legal practitioners and other persons;

(c) are entitled to have reasonable efforts made to meet their medical, religious and cultural needs including, in the case of Aboriginal children, their needs as members of the Aboriginal community;

(d) are entitled to receive information on the rules of the centre in which they are detained that affect them and on their rights and responsibilities and those of the officer in charge of the centre and the other staff;

(e) are entitled to complain to the Secretary or the Ombudsman about the standard of care, accommodation or treatment which they are receiving in the centre;

(f) are entitled to be advised of their entitlements under this subsection.

(3) It is the responsibility of the Secretary to make sure that subsection (2) is complied with and he or she must, at least once each year, report to the Minister on the extent of compliance with subsection (2).

Part 5.8—Persons in detention

Division 1AA—Preliminary

Ch. 5 Pt 5.8 Div. 1AA (Heading and ss 482A, 482B) inserted by No. 54/2011 s. 4.

482A Definitions

S. 482A inserted by No. 54/2011 s. 4.

In this Part—

S. 482A def. of *acknowledgement of sex application* inserted by No. 25/2019 s. 22.

acknowledgement of sex application means an application—

(a) under section 30A, 30B, 30E or 30EA of the **Births, Deaths and Marriages Registration Act 1996**; or

(b) under a corresponding section referred to in paragraph (a) of an equivalent law of another State or a Territory;

approved dog means a dog approved in accordance with the regulations for use by an officer;

S. 482A def. of *detainee* amended by No. 55/2014 s. 137.

detainee means a person detained in a youth justice facility, including a person detained under an order made under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** and a person detained under a preventative detention order (within the meaning of Part 2A of the **Terrorism (Community Protection) Act 2003**) or an order for his or her detention made under a corresponding preventative detention law (within the meaning of that Part);

* * * * *

S. 482A def. of *formal search* repealed by No. 29/2014 s. 9(a).

S. 482A def. of *frisk search* substituted by No. 29/2014 s. 9(b).

frisk search means a search of a person or of things in the possession or under the control of a person, other than a search conducted by use of an electronic or mechanical device, including—

(a) a search of a person conducted by quickly running the hands over the person's outer clothing; and

(b) for the purposes of paragraph (a), requiring the person to remove—

(i) his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat; and

(ii) anything else that is conveniently removed by the person;

officer means any person employed or engaged in a youth justice facility with duties in relation to ensuring the security or good order of the facility or the safety and security of any detainee in the facility;

officer in charge means the officer in charge of Victorian Youth Justice Custodial Services in the Department;

S. 482A def. of *Registrar* inserted by No. 25/2019 s. 22.

Registrar means—

(a) the Victorian Registrar; or

(b) an authority responsible under a law of another State or a Territory for the registration of births, deaths and marriages;

S. 482A def. of *screening search* inserted by No. 29/2014 s. 9(c).

screening search means a search of a person or of things in the possession or under the control of a person to detect the presence of unauthorised items, other than a search that may involve bodily contact, including—

(a) a search of a person conducted by passing or placing an electronic or mechanical device over, on or in close proximity to the person's outer clothing; and

(b) an examination (including an examination conducted by passing or placing an electronic or mechanical device over, on or in close proximity) of anything worn or carried by the person, including requiring the person to remove—

(i) his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat; and

(ii) anything else that is conveniently removed by the person; and

(c) a search conducted with the assistance of an approved dog;

seizure register means the register maintained under section 488F;

S. 482A def. of *unauthorised item* inserted by No. 29/2014 s. 9(c).

unauthorised item means any article or thing that may jeopardise the security of the youth justice facility or the safety of persons in the youth justice facility, including an article or thing referred to in section 488AD(3)(a);

S. 482A def. of *strip search* amended as *unclothed search* by No. 29/2014 s. 9(d).

unclothed search means a search of a person or of things in the possession or under the control of a person that may include—

(a) requiring the person to remove all of his or her clothes; and

(b) an examination of the person's body (but not of the person's body cavities) and of those clothes;

Victorian Registrar means the Registrar of Births, Deaths and Marriages under the **Births, Deaths and Marriages Registration Act 1996**;

S. 482A def. of *Victorian Registrar* inserted by No. 25/2019 s. 22.

visitor means any person, other than a detainee or an officer, who enters, leaves or remains in a youth justice facility;

youth justice facility means a remand centre, a youth residential centre, a youth justice centre or a youth justice unit.

482B Authorisation of an officer in charge

S. 482B inserted by No. 54/2011 s. 4.

The officer in charge of Victorian Youth Justice Custodial Services in the Department may authorise in writing a person or class of persons employed in the Department or engaged by the Department to exercise any power or perform any function of the officer in charge under this Part, other than—

(a) this power of authorisation; or

(b) in the case of a person not employed by the Department, a power under section 488AC or 488AD(4) or (5).

Division 1—Legal custody

Ch. 5 Pt 5.8 Div. 1 (Heading) inserted by No. 5/2006 s. 17(1)(a).

483 Legal custody

(1) A person who is detained in a remand centre, youth residential centre or youth justice centre is deemed to be in the legal custody of the Secretary while so detained.

S. 483(1A) inserted by No. 5/2006 s. 17(1)(b), substituted by No. 32/2018 s. 113.

(1A) A person who is detained in a remand centre, youth residential centre or youth justice centre under Part 2AA of the **Terrorism (Community Protection) Act 2003** under section 13AR of that Act pursuant to a police detention decision (within the meaning of that Act), or under an order referred to in section 13WA(5) of that Act, ceases to be in the legal custody of the Secretary—

(a) during any time when the person is in the legal custody of the Chief Commissioner of Police under section 6D of the **Corrections Act 1986**; or

(b) when the Secretary acting under lawful direction or authority, or in accordance with an Act, releases the person from the legal custody of the Secretary.

(2) As soon as possible after a person is received into a youth residential centre or youth justice centre to serve the whole or a part of a sentence of detention, the officer in charge of the centre may take photographs of the person for the purpose of identifying the person and compiling records of detainees.

484 Removal of person from remand centre etc.

(1) The Secretary may by warrant under his or her hand cause the removal of a person—

(a) from any remand centre to any other remand centre or to a youth residential centre or youth justice centre; or

(b) from a youth residential centre to any other youth residential centre or to a remand centre; or

(c) from a youth justice centre to any other youth justice centre or to a remand centre.

(2) On being removed under subsection (1) a person must be kept at the remand centre, youth residential centre or youth justice centre for the residue of the period of his or her detention in custody or until removed by legal authority.

(3) A person while being removed from or to a remand centre, youth residential centre or youth justice centre is deemed to be in the legal custody of the officer having the custody of the person and acting under the warrant.

(4) The officer acting under the warrant must in due course deliver or return the person into the custody of the officer in charge of the remand centre, youth residential centre or youth justice centre in accordance with the terms of the warrant.

S. 484(5) amended by No. 37/2014 s. 10(Sch. item 18.12).

(5) A police officer may, if requested to do so by the Secretary, assist the officer referred to in subsections (3) and (4) in the discharge of his or her duties under those subsections and, in that case, the person being removed is deemed to be in the legal custody of the police officer.

S. 484(6) inserted by No. 43/2017 s. 33.

(6) When making a decision under this section to cause the removal of a person under subsection (1)(a), (b) or (c), the Secretary to the Department of Justice and Regulation, in the Secretary's complete discretion, may have regard to the following—

(a) the availability and appropriateness of accommodation for the combination of all persons detained across all remand centres, youth residential centres and youth justice centres;

(b) the safety, security and good order of any remand centre, youth residential centre or youth justice centre;

(c) the safety, security and needs of any person detained at any remand centre, youth residential centre or youth justice centre;

(d) the safety of any person at any remand centre, youth residential centre or youth justice centre;

(e) any matter that the Secretary to the Department of Justice and Regulation considers relevant.

S. 484(7) inserted by No. 43/2017 s. 33.

(7) For the avoidance of doubt, the Secretary to the Department of Justice and Regulation is not required to afford procedural fairness in making any decision under this section.

485 Temporary leave from legal custody

(1) In relation to a person who is detained in a remand centre, youth residential centre or youth justice centre, the Secretary or the officer in charge of the centre with the authority in writing of the Secretary given either generally or in any particular case, may by writing under his or her hand permit a person in the centre to take temporary leave of absence, with or without escort or supervision, from the place where that person is detained for any purpose stated in the permit which may include, but is not limited to, any of the following purposes—

(a) to engage in employment, whether with or without remuneration;

(b) to attend an educational or training institution;

(c) to visit his or her family, relatives or friends;

(d) to participate in sport, recreation or entertainment in the community;

(e) to attend a hospital or a medical, dental or psychiatric clinic or like place for receiving treatment or for examination;

(f) to attend a funeral;

(g) to accompany police officers for a specified purpose or for assisting in the administration of justice;

S. 485(1)(g) amended by No. 37/2014 s. 10(Sch. item 18.13).

(h) to seek employment;

(i) to live in any other accommodation specified in the permit for any purpose specified in the permit.

(2) A permit under this section may be subject to any conditions, limitations and restrictions that the Secretary thinks fit to impose and may be issued to or in respect of an individual person or any group of persons engaged in common employment, education, instruction or activity.

(3) A person permitted temporary leave in accordance with this section is during the temporary leave deemed to continue to be in legal custody.

(4) The person issuing a permit under this section to an individual person must give that person a copy of the permit or cause that person to be given a copy.

(5) A person to whom a copy of a permit is given in accordance with subsection (4) must carry that copy at all times during the temporary leave.

(6) The Secretary may at any time before the end of a period of temporary leave cancel a permit issued under this section.

S. 485(7) substituted by No. 61/2014 s. 152.

(7) The cancellation of a permit takes effect at the earlier of the following times—

(a) the end of the day on which the person permitted temporary leave is informed of the cancellation of the permit; or

(b) the time at which the person returns to the place of custody from which the person was released on leave.

(8) A person who fails, before the end of a period of temporary leave, either to return to the place of custody from which he or she was released on leave or to report at some other place of custody specified in the permit is deemed to have escaped from the place of custody within the meaning of section 498.

(9) It is a defence to any proceedings brought under section 498 by virtue of the provisions of subsection (8) for the person charged to prove that the failure to return or report to any place was not attributable to any failure on his or her part but was due to circumstances beyond his or her control.

(10) A person must not contravene a condition, limitation or restriction to which a permit under this section is subject, not being a condition, limitation or restriction with respect to returning to or reporting to a place of custody as described in subsection (8).

Penalty:

(a) In the case of a child, detention in a youth residential centre for 2 months or in a youth justice centre for 3 months;

(b) In any other case, imprisonment or detention in a youth justice centre for 3 months.

Division 2—Management of detainees

Ch. 5 Pt 5.8 Div. 2 (Heading) inserted by No. 5/2006 s. 17(1)(c).

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S. 486 repealed by No. 54/2011 s. 5.

487 Prohibited actions

The following actions are prohibited in relation to a person detained in a remand centre, youth residential centre or youth justice centre or a child detained in a police gaol—

(a) the use of isolation (within the meaning of section 488) as a punishment;

(b) the use of physical force unless it is reasonable and—

(i) is necessary to prevent the person or child from harming himself or herself or anyone else or from damaging property; or

(ii) is necessary for the security of the centre or police gaol; or

(iii) is otherwise authorised by or under this or any other Act or at common law;

(c) the administering of corporal punishment, that is, any action which inflicts, or is intended to inflict, physical pain or discomfort on the person or child as a punishment;

(d) the use of any form of psychological pressure intended to intimidate or humiliate the person or child;

(e) the use of any form of physical or emotional abuse;

(f) the adoption of any kind of discriminatory treatment.

S. 487A inserted by No. 43/2017 s. 30.

487A Exemption from liability

Without affecting the liability of the Crown or any other body or person, an officer is not personally liable for injury or damage caused by the use of reasonable force in accordance with section 487.

488 Isolation

(1) The officer in charge of a remand centre, youth residential centre or youth justice centre may authorise the isolation of a person detained in the centre, that is, the placing of the person in a locked room separate from others and from the normal routine of the centre.

(2) Isolation may only be authorised under subsection (1) if—

(a) all other reasonable steps have been taken to prevent the person from harming himself or herself or any other person or from damaging property; and

(b) the person's behaviour presents an immediate threat to his or her safety or the safety of any other person or to property.

(3) The period of isolation must be approved by the Secretary.

(4) If necessary, reasonable force may be used to place a person in isolation under this section.

(5) A person placed in isolation must be closely supervised and observed at intervals of not longer than 15 minutes.

(6) The officer in charge of a remand centre, youth residential centre or youth justice centre must make sure that the prescribed particulars of every use of isolation under subsection (1) are recorded in a register established for the purpose.

(7) In addition to his or her powers under this section, the officer in charge of a remand centre, youth residential centre or youth justice centre may cause a person detained in the centre to be isolated in the interests of the security of the centre.

(8) This section (except subsection (4)) does not apply to the use of isolation under subsection (7).

488AA Reporting on use of reasonable force and isolation

S. 488AA inserted by No. 43/2017 s. 31.

(1) This section applies if an officer takes any of the following actions at a remand centre, youth justice centre or youth residential facility in relation to a detainee—

(a) uses physical force;

(b) places the detainee in isolation in accordance with section 488(7).

(2) As soon as possible after taking the action, the officer must report the taking of the action to the Officer in Charge of the remand centre, youth residential centre or youth justice centre in which the detainee is detained or to or from which the detainee is being transported.

(3) As soon as possible after receiving a report under subsection (2), the Officer in Charge must report the taking of the action by the officer to the Secretary to the Department of Justice and Regulation.

Ch. 5 Pt 5.8 Div. 3 (Heading) substituted by No. 54/2011 s. 6.

Ch. 5 Pt 5.8 Div. 3 (Heading and ss 488A–488G) inserted by No. 5/2006 s. 18 (as amended by No. 48/2006 s. 37(2)(3)).

Division 3—Searches of persons entering, leaving or within youth justice facilities and requirements on visitors

S. 488A inserted by No. 5/2006 s. 18 (as amended by No. 48/2006 s. 37(2)(3)), substituted by No. 54/2011 s. 7.

488A Search on entering or leaving a youth justice facility

(1) A person (whether a detainee, an officer, a visitor or any other person) who wishes to enter or leave a youth justice facility must, if asked, submit to—

S. 488A(1)(a) substituted by No. 29/2014 s. 10(1).

(a) a screening search; and

S. 488A(1)(b) substituted by No. 29/2014 s. 10(1).

(b) a frisk search.

(2) Subsection (1)(b) does not apply to a judge of the Supreme Court or County Court or a magistrate.

S. 488A(3) amended by No. 29/2014 s. 10(2).

(3) A person must not be asked under this section to submit to an unclothed search or a search of his or her body cavities.

488AB Officer in charge may order search

S. 488AB inserted by No. 54/2011 s. 7.

(1) The officer in charge may order at any time, if in his or her opinion it is necessary to do so in the interests of the security or good order of a youth justice facility or the detainees, that an officer—

(a) search any part of the youth justice facility; or

(b) search and examine any person in the youth justice facility other than a judge of the Supreme Court or County Court or a magistrate; or

(c) search and examine any thing in the youth justice facility.

S. 488AB(2) amended by No. 29/2014 s. 11.

(2) A person must not be asked under this section to submit to an unclothed search or a search of his or her body cavities.

488AC Unclothed search of detainee

S. 488AC (Heading) amended by No. 29/2014 s. 12(1).

S. 488AC inserted by No. 54/2011 s. 7.

S. 488AC(1) amended by No. 29/2014 s. 12(2).

(1) The officer in charge may cause a detainee to be subjected to an unclothed search if in his or her opinion it is necessary to do so—

(a) in the interests of the security or good order of a youth justice facility; or

(b) in the interests of the safety or security of the detainee or any other person in the facility.

(2) A search under subsection (1) must not include a search of the detainee's body cavities.

(3) If necessary, reasonable force may be used to carry out a search under subsection (1).

S. 488AD inserted by No. 54/2011 s. 7.

488AD Manner of conducting search

S. 488AD(1) amended by No. 29/2014 s. 13.

(1) In the case of a frisk search or an unclothed search, the officer in charge must ensure that the search is conducted only by an officer of the same sex as the person being searched.

(2) Before carrying out a search under this Division of a person other than a detainee, the officer who is to conduct the search must—

(a) inform the person of his or her authority to conduct the search; and

(b) inform the person that he or she may refuse the search; and

(c) inform the person of the consequences of refusal.

(3) If a person consents to a search, the officer who is to conduct the search must—

(a) ask the person if he or she has in his or her possession any article or thing which jeopardises or is likely to jeopardise the security of the youth justice facility or the safety of persons in the facility, including—

(i) any firearm, offensive weapon or other article that is capable of being used as a weapon; or

(ii) any form of drug without the consent of the Secretary; or

(iii) any form of alcoholic liquor or beverage; or

(iv) money; or

(v) any other article or thing not allowed by the regulations; and

(b) ask the person to produce any article or thing referred to in paragraph (a).

(4) In the case of an unclothed search, the officer in charge must ensure that the search is conducted in the presence of another officer.

S. 488AD(4) amended by No. 29/2014 s. 13.

(5) The other officer referred to in subsection (4)—

(a) must be positioned in such a way that the detainee being searched is not in the view of that other officer;

(b) must be of the same sex as the detainee being searched, unless—

(i) the search is, in the opinion of the officer in charge, urgently required; and

(ii) an officer of the same sex is not available.

(6) An officer carrying out a search of a person under this Division must do so—

(a) expeditiously; and

(b) with regard to the decency and self-respect of the person searched; and

(c) in compliance with any other prescribed requirement.

488AE Consequences of refusal to submit to search

S. 488AE inserted by No. 54/2011 s. 7.

(1) If, when asked, a person other than a detainee does not submit to a search authorised to be carried out under this Division, an officer may—

(a) prohibit the person from entering the youth justice facility; or

(b) if the person is in the youth justice facility, order the person to leave the facility immediately.

(2) A person must obey an order under subsection (1).

Penalty: 5 penalty units.

S. 488AF inserted by No. 54/2011 s. 7.

488AF Officer in charge may order search to be terminated

The officer in charge may at any time make an order terminating a search under this Division.

S. 488B inserted by No. 5/2006 s. 18 (as amended by No. 48/2006 s. 37(2)(3)).

488B Visitors required to comply with orders

(1) The officer in charge of the youth justice facility may give to a visitor such orders as are necessary for the management and good order and security of the youth justice facility.

(2) A visitor must not disobey an order given under subsection (1).

Penalty: 5 penalty units.

S. 488C inserted by No. 5/2006 s. 18 (as amended by No. 48/2006 s. 37(2)(3)).

488C Visitors to give prescribed information

(1) The officer in charge of the youth justice facility may require any person who wishes to enter, or who has entered, a youth justice facility as a visitor to give the officer information as to—

(a) the purpose of the visit or intended visit;

(b) the person's identity, address, occupation and age;

(c) the person's relationship (if any) to any detainee the person wishes to visit.

(2) A person who wishes to enter or has entered a youth justice facility as a visitor must not knowingly give to the officer in charge of the facility or any other officer information that is false or misleading.

Penalty: 5 penalty units.

(3) If, when asked, a person does not give the required information to the officer in charge of the youth justice facility or gives information to that officer or any other officer that is false or misleading, the officer in charge of the facility may—

(a) if the person has not entered the facility, by order prohibit the person from entering the facility; or

(b) if the person has entered the facility, order the person to leave the facility immediately.

(4) A person must not disobey an order under subsection (3).

Penalty: 5 penalty units.

(5) A person ordered to leave a youth justice facility under this section may only re-enter the facility with the permission of the officer in charge of the facility.

488D Officer in charge may refuse or terminate visits for security reasons

S. 488D inserted by No. 5/2006 s. 18 (as amended by No. 48/2006 s. 37(2)(3)).

(1) If the officer in charge of a youth justice facility believes on reasonable grounds that the security of the facility or the safety of a visitor is threatened, the officer may—

(a) by order prohibit a person from entering the facility as a visitor; or

(b) order the visitor to leave the facility immediately.

(2) Without limiting any other power of the Secretary under this Act, if the Secretary believes on reasonable grounds that the good order or security of youth justice facilities or the safety of detainees or visitors to youth justice facilities is threatened, the Secretary may by order prohibit a person from

entering all or any youth justice facilities in Victoria as a visitor.

(3) An order under subsection (2) in relation to a matter prevails over any order under subsection (1) in relation to that matter.

(4) A person must not disobey an order under this section.

Penalty: 5 penalty units.

Ch. 5 Pt 5.8 Div. 3AA (Heading and ss 488DA–488DE) inserted by No. 31/2017 s. 64.

Division 3AA—Offences relating to operation or possession of remotely piloted aircraft or helicopter

S. 488DA inserted by No. 31/2017 s. 64.

488DA Definitions

In this Division—

youth justice facility means a remand centre, a youth residential centre or a youth justice centre (other than a youth justice unit).

S. 488DB inserted by No. 31/2017 s. 64.

488DB Offences relating to operation or possession of remotely piloted aircraft or helicopter

(1) A person (other than a person referred to in subsection (2) or a prescribed person or a person belonging to a prescribed class of persons) must not intentionally or recklessly operate or attempt to operate a remotely piloted aircraft or a helicopter or possess a remotely piloted aircraft—

(a) in any direction in the airspace above a youth justice facility at or below 400 feet above ground level; or

(b) in or at a youth justice facility; or

(c) outside but near a youth justice facility—

in a manner that threatens or is likely to threaten the good order or security of the youth justice facility or any person in the youth justice facility, unless the person has a reasonable excuse.

Penalty: 2 years imprisonment.

(2) A person does not contravene subsection (1) if the person operates or attempts to operate a remotely piloted aircraft or a helicopter or is in possession of a remotely piloted aircraft—

(a) in accordance with this Act or the regulations; or

(b) in accordance with an authorisation given by the officer in charge under section 488DC; or

(c) in accordance with a law of the Commonwealth; or

(d) for the purposes of law enforcement by a law enforcement agency; or

(e) for the purposes of an emergency or recovery from an emergency under the **Emergency Management Act 2013**.

(3) If an officer believes on reasonable grounds that a person is committing or has committed an offence against subsection (1), the officer may order the person to leave the neighbourhood of the youth justice facility.

(4) Before ordering a person to leave in accordance with subsection (3), an officer must advise the person of the reason why that person is being ordered to leave.

(5) A person must not disobey an order to leave given under subsection (3).

Penalty: 5 penalty units.

(6) If an officer believes on reasonable grounds that a person has committed an offence against subsection (1), the officer may apprehend the person without warrant.

(7) An officer who has apprehended a person in accordance with subsection (6) must deliver as soon as possible the person into the custody of a police officer to be dealt with according to law.

(8) The **Crimes Act 1958** (except section 458(1) and 458(2)) applies to the apprehension of a person under this section as if the person were found committing an offence within the meaning of section 458(1)(a) of that Act.

(9) Where a provision of this section is inconsistent with a law of the Commonwealth, the law of the Commonwealth prevails to the extent of the inconsistency.

(10) For the purposes of subsection (9), a provision of this section is inconsistent with a law of the Commonwealth if it would be inconsistent within the meaning of section 109 of the Constitution of the Commonwealth.

(11) In this section—

law enforcement agency means—

(a) Victoria Police; or

(b) the Australian Federal Police;

remotely piloted aircraft includes the controls for the aircraft.

488DC Officer in charge may give authorisation

S. 488DC inserted by No. 31/2017 s. 64.

The officer in charge may, by instrument, authorise a person, or a class of persons, to operate or attempt to operate a remotely piloted aircraft or a helicopter or to possess a remotely piloted aircraft in, at or outside but near the youth justice facility.

488DD Search

S. 488DD inserted by No. 31/2017 s. 64.

(1) If the officer in charge believes on reasonable grounds that a person is committing or has committed an offence against section 488DB(1), the officer in charge may order an officer to conduct a search outside but near the youth justice facility.

(2) If an officer believes on reasonable grounds that a person is committing or has committed an offence against section 488DB(1), the officer may conduct a search outside but near the youth justice facility.

(3) In conducting a search under subsection (1) or (2), an officer may—

(a) search and examine a person who is reasonably believed to have committed the offence including any thing belonging to, in the possession of or under the control of, the person, including the person's vehicle; or

(b) search the location at which the offence is reasonably believed to have been committed; or

(c) require a person outside but near the youth justice facility to submit to a search if the officer reasonably believes that a thing on the person or in the person's possession will afford evidence of the commission of the offence; or

(d) search and examine any thing outside but near the youth justice facility, including a place where detainees are, if the officer reasonably believes that the thing will afford evidence of the commission of the offence; or

(e) seize any thing in accordance with section 488DE.

(4) Before carrying out a search under subsection (1) or (2), the officer who is to conduct the search must—

(a) inform the person of the officer's authority to conduct the search; and

(b) inform the person that the person may refuse the search.

(5) The officer in charge may at any time make an order terminating a search under subsection (1) or (2).

(6) A search under subsection (1) or (2) must be conducted in accordance with the regulations.

S. 488DE inserted by No. 31/2017 s. 64.

488DE Seizure

(1) In carrying out searches under section 488DD(1) or (2), an officer may seize any one or more of the following—

(a) any thing found on a person or in a person's possession;

(b) any thing found in, at or outside but near a youth justice facility—

which the officer believes on reasonable grounds will afford evidence of the commission of an offence against section 488DB(1).

(2) An officer who seizes any thing under subsection (1) must inform the officer in charge.

(3) The officer in charge must deal, in accordance with sections 488F, 488G, 488GA, 488GB, 488GC and 488GD, with any thing seized under this section.

Division 3A—Seizure

Ch. 5 Pt 5.8 Div. 3A (Heading) inserted by No. 54/2011 s. 8.

488E Seizure

S. 488E inserted by No. 5/2006 s. 18 (as amended by No. 48/2006 s. 37(2)(3)), substituted by No. 54/2011 s. 8.

(1) In carrying out a search of a person under Division 3 an officer may seize any article or thing of a kind referred to in section 488AD(3)(a) that is found in the person's possession or produced in response to a request under section 488AD(3)(b).

(2) An officer who seizes any article or thing under subsection (1) must inform the officer in charge.

(3) The officer in charge must deal, in accordance with this Division, with any article or thing seized under this section.

488F Seizure register

S. 488F inserted by No. 5/2006 s. 18 (as amended by No. 48/2006 s. 37(2)(3)), substituted by No. 54/2011 s. 8.

(1) The officer in charge must maintain a register of articles and things seized under section 488E(1).

(2) If an article or thing is seized during a search, the officer in charge must ensure that the prescribed information is entered in the seizure register.

S. 488G inserted by No. 5/2006 s. 18 (as amended by No. 48/2006 s. 37(2)(3)), substituted by No. 54/2011 s. 8.

488G Certain seized items to be handed to police

S. 488G(1) amended by No. 37/2014 s. 10(Sch. item 18.14).

(1) If any of the following articles or things is seized, it must be handed to a police officer—

(a) a weapon;

(b) an explosive substance;

(c) a drug of dependence;

(d) any other article or thing which the person conducting the search suspects—

(i) is stolen; or

(ii) has been used in, or obtained as the result of, the commission of an offence.

(2) In this section, ***drug of dependence*** has the same meaning as it has in the **Drugs, Poisons and Controlled Substances Act 1981**.

S. 488GA inserted by No. 54/2011 s. 8.

488GA Manner of dealing with seized things that may be used in a legal proceeding

Subject to section 488G, if an article or thing that may be used in a legal proceeding is seized at a youth justice facility, the officer in charge must ensure that—

(a) the article or thing is held securely until the end of that proceeding; and

(b) if the person from whom the article or thing was seized is not the owner of the article or thing—

(i) the person from whom it was seized is informed whether or not it will be returned to the owner; and

(ii) if the owner's name and address are known, the owner is informed whether or not it will be returned; and

(c) if the person from whom the article or thing was seized is the owner of the article or thing, the person is informed whether or not it will be returned; and

(d) the article or thing is otherwise dealt with in accordance with section 488GC.

488GB Manner of dealing with seized money

S. 488GB inserted by No. 54/2011 s. 8.

If money is seized at a youth justice facility and that money is not suspected of being stolen or used in, or obtained as the result of, the commission of an offence, the money must be returned to the person from whom it was seized when the person is released from the youth justice facility or the person leaves the youth justice facility.

Note

See section 488AD(3)(a)(iv).

488GC Manner of dealing with other seized articles or things

S. 488GC inserted by No. 54/2011 s. 8.

Subject to sections 488G, 488GA and 488GB, if an article or thing is seized at a youth justice facility, the officer in charge must ensure that—

(a) if the person from whom the article or thing was seized is not the owner of the article or thing—

(i) the person from whom it is seized is informed whether or not it will be returned to the owner; and

(ii) if the owner's name and address are known, the owner is informed whether or not it will be returned; and

(b) if the person from whom the article or thing was seized is the owner of the article or thing, the person is informed whether or not it will be returned; and

(c) the article is dealt with in any manner that is appropriate having regard to the nature of the article, including—

(i) disposing of the article or thing in accordance with section 488GD;

(ii) returning the article or thing;

(iii) dismantling the article or thing.

S. 488GD inserted by No. 54/2011 s. 8.

488GD Disposal

(1) The officer in charge must ensure that at least 2 officers carry out the disposal of an article or thing that has been seized at a youth justice facility.

(2) If an article or thing is disposed of, the officer in charge must ensure that the prescribed details are recorded in the seizure register.

Division 4—Change of name applications by detainees

Ch. 5 Pt 5.8 Div. 4 (Heading and ss 488H–488N) inserted by No. 48/2006 s. 24.

488H Application

S. 488H inserted by No. 48/2006 s. 24.

This Division applies despite anything to the contrary in the **Births, Deaths and Marriages Registration Act 1996**.

488I Definitions

S. 488I inserted by No. 48/2006 s. 24.

In this Division—

change of name application means an application by or on behalf of a detainee for registration of—

(a) a change of the detainee's name; or

(b) a change of the name of a child of the detainee;

detainee means a person who is undergoing a sentence of detention in a youth residential centre or youth justice centre.

S. 488I def. of *detainee* amended by No. 25/2019 s. 23(a).

* * * * *

S. 488I def. of *Victorian Registrar* repealed by No. 25/2019 s. 23(b).

S. 488J inserted by No. 48/2006 s. 24.

488J Applications for change of name by or on behalf of a detainee

(1) A detainee must not make a change of name application to a Registrar without having first obtained the written approval of the Secretary.

Penalty: For a detainee under the age of 15 years, 1 penalty unit;

In any other case, 5 penalty units.

(2) A person must not make a change of name application to a Registrar on behalf of a detainee unless the written approval of the Secretary is first obtained.

Penalty: For a person under the age of 15 years, 1 penalty unit;

In any other case, 5 penalty units.

S. 488J(3) repealed by No. 25/2019 s. 24.

* * * * *

S. 488K inserted by No. 48/2006 s. 24.

488K Approval by Secretary

(1) Subject to subsection (2), the Secretary may only approve a change of name application if he or she is satisfied that the change of name is in all the circumstances necessary or reasonable.

(2) The Secretary must not approve a change of name application if he or she is satisfied that the change of name would, if registered, be reasonably likely—

(a) to be a threat to the security of a youth residential centre or youth justice centre; or

(b) to jeopardise the safe custody or welfare of any detainee; or

(c) to be used to further an unlawful activity or purpose; or

(d) to be regarded as offensive by a victim of crime or an appreciable sector of the community.

488L Approval to be notified in writing

S. 488L inserted by No. 48/2006 s. 24.

If the Secretary approves a change of name application, the Secretary must—

(a) as soon as practicable, give written notice of the approval to the person who made the application; and

(b) if the detainee consents, give a copy of the written notice of approval to the Victorian Registrar.

488M Registration of name change

S. 488M inserted by No. 48/2006 s. 24.

The Victorian Registrar must not register a change of name under the **Births, Deaths and Marriages Registration Act 1996** if—

(a) the Victorian Registrar knows that—

(i) the application for the change of name is made by or on behalf of a detainee; and

(ii) the change of name relates to the name of the detainee or a child of the detainee; and

(b) the Victorian Registrar has not received a copy of the notice of approval of the Secretary to the application under section 488L.

S. 488N inserted by No. 48/2006 s. 24.

488N Registrar may correct Register

Without limiting section 43 of the **Births, Deaths and Marriages Registration Act 1996**, the Victorian Registrar may correct the Register under that section if—

(a) the name of a detainee or a child of a detainee on the Register was changed because of a change of name application; and

(b) the Secretary had not approved that change of name application under section 488K.

Ch. 5 Pt 5.8 Div 4A (Heading and ss 488O–488R) inserted by No. 25/2019 s. 25.

Division 4A—Approval of making of acknowledgement of sex applications by detainees

S. 488O inserted by No. 25/2019 s. 25.

488O Offence to make acknowledgement of sex application without approval

(1) A detainee must not make an acknowledgement of sex application to a Registrar without having first obtained the written approval of the Secretary.

Penalty: 5 penalty units.

(2) A person must not make an acknowledgement of sex application to a Registrar on behalf of a detainee unless the written approval of the Secretary is first obtained.

Penalty: 5 penalty units.

(3) A person must not make an acknowledgement of sex application on behalf of a detainee who is under the age of 18 years to a Registrar unless the written approval of the Secretary is first obtained.

Penalty: 5 penalty units.

Note

For the definition of ***detainee***, see section 482A.

488P Application by detainee or other person for approval of Secretary

S. 488P inserted by No. 25/2019 s. 25.

A detainee or other person who intends to make an acknowledgement of sex application may apply to the Secretary for approval of the making of the acknowledgement of sex application by the detainee or the person.

488Q Approval by Secretary of the making of acknowledgement of sex application

S. 488Q inserted by No. 25/2019 s. 25.

(1) Subject to subsection (2), on an application under section 488P, the Secretary may approve the making of an acknowledgement of sex application if the Secretary is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex is in all the circumstances reasonable.

(2) The Secretary must not approve the making of an acknowledgement of sex application if the Secretary is satisfied that the alteration of the record of sex or the issuing of a document acknowledging name and sex would be reasonably likely—

(a) to be a threat to the security of a youth residential centre or youth justice centre; or

(b) to jeopardise the safe custody or welfare of any detainees; or

(c) to be used to further an unlawful activity or purpose; or

(d) to be regarded as offensive by a victim of crime or an appreciable sector of the community.

S. 488R inserted by No. 25/2019 s. 25.

488R Copy of approval or refusal of Secretary

(1) If the Secretary approves the making of an acknowledgement of sex application, the Secretary as soon as practicable must give a copy of the approval to—

(a) the person who sought the approval; and

(b) the Victorian Registrar.

(2) If the Secretary refuses to approve the making of an acknowledgement of sex application, the Secretary must give a copy of that refusal to the person who sought the approval.

Ch. 5 Pt 5.8 Div. 5 (Heading) inserted by No. 5/2006 s. 17(1)(d) (as amended by No. 48/2006 s. 37(1)).

Division 5—General

489 Detention in default of payment of a fine

If a person is undergoing, or has been sentenced to, detention in a youth residential centre or youth justice centre and there is delivered to the Secretary a warrant to detain the person in a youth residential centre or youth justice centre or to imprison the person in default of payment of a fine or sum of money, the Secretary may direct that the period of the default be served in the youth residential centre or youth justice centre (as the case requires) instead of in the manner specified in the warrant.

490 Bringing of person before court or inquest

S. 490(1) amended by No. 77/2008 s. 129(Sch. 2 item 6.1).

(1) If a court or proper officer of a court requires by an order in the prescribed form that a person in a remand centre, youth residential centre or youth justice centre be brought before the court—

(a) the person may be brought before, or be brought to another place specified in the order where facilities exist to enable the person (by audio link or audio visual link) to appear before, the court as often as is necessary for the person to be dealt with according to law or to give evidence, without a writ of habeas corpus or other writ or an order for that purpose; and

S. 490(1)(a) amended by Nos 77/2008 s. 129(Sch. 2 item 6.2), 69/2009 s. 54(Sch. Pt 2 item 10), 11/2021 s. 196(1).

(b) the person must then be returned to the custody from which the person was brought.

(2) A person being removed from a remand centre, youth residential centre or youth justice centre under this section is, during the time of removal, deemed to be in the legal custody of the police officer, protective services officer or other officer having the custody of that person.

S. 490(2) amended by No. 37/2014 s. 10(Sch. item 18.14).

(3) No proceeding, either criminal or civil, may be maintained by a person against any police officer or against any other person on account of the removal.

S. 490(3) amended by No. 37/2014 s. 10(Sch. item 18.14).

491 Power of police to arrest person in youth justice centre

(1) Without limiting the generality of Subdivision (30) of Division 1 of Part III of the **Crimes Act 1958**, a police officer may at any time, on the request of the officer in charge of a youth justice centre, without warrant apprehend and take before a bail justice or the Magistrates' Court to be dealt with according to law, a person of or above the age of 18 years who—

S. 491(1) amended by No. 37/2014 s. 10(Sch. item 18.14).

(a) is serving a period of detention in the youth justice centre; and

(b) is being charged with an offence alleged to have been committed within the youth justice centre while serving the period of detention.

S. 491(2) amended by No. 68/2009 s. 71.

(2) Section 333 of the **Criminal Procedure Act 2009** and section 5A of the **Bail Act 1977** do not apply to an accused in a criminal proceeding who has been apprehended under subsection (1) of this section if the Magistrates' Court, County Court or Supreme Court, as the case may be, is satisfied that the accused—

(a) has engaged in conduct that threatens the good order and safe operation of the youth justice centre; and

(b) is unable to be properly controlled in the youth justice centre.

S. 491A inserted by No. 32/2024 s. 856.

491A Power of police to arrest person in remand centre

(1) Without limiting the generality of Subdivision (30) of Division 1 of Part III of the **Crimes Act 1958**, a police officer may at any time, on the request of the officer in charge of a remand centre, without warrant apprehend and take before a bail justice or the Magistrates' Court to be dealt with according to law, a person of or above the age of 18 years who—

(a) is remanded in custody in the remand centre; and

(b) is being charged with an offence alleged to have been committed within the remand centre while remanded in custody.

(2) Section 5A of the **Bail Act 1977** does not apply to an accused in a criminal proceeding who has been apprehended under subsection (1) if the Magistrates' Court, County Court or Supreme Court, as the case may be, is satisfied that the accused—

(a) has engaged in conduct that threatens the good order and safe operation of the remand centre; and

(b) is unable to be properly controlled in the remand centre.

492 Interstate transfer of young offenders

Schedule 2 sets out provisions relating to the interstate transfer of young offenders.

492A Secrecy of security arrangements at youth justice facilities

S. 492A inserted by No. 54/2011 s. 9.

(1) In this section—

confidential information means—

(a) information given to the Youth Parole Board that is not disclosed in a decision of the Board or in any reasons given by the Board for a decision of the Board; or

(b) information concerning procedures or plans to be adopted or followed in a youth justice facility in the event of an emergency; or

(c) information concerning the management of, or the operation of security measures in, or in relation to, a youth justice facility; or

(d) information concerning the investigation of a breach or possible breach of the law by—

(i) a detainee; or

(ii) an officer; or

(e) information contained in a report given to a court that is not disclosed in a decision of the court or in any reasons given by the court for a decision of the court; or

(f) information of a business, commercial or financial nature relating to the provision of services within a youth justice facility, if the disclosure of that information may threaten the good order or security of the youth justice facility or any person;

information includes photographs, fingerprints, samples and results of tests;

position means any of the following—

(a) an officer;

(b) a delegate of the Secretary;

(c) a provider of support services to a detainee or within a youth justice facility, including a provider of those services on a volunteer basis or under a contract of employment or otherwise;

(d) a person employed as a sheriff, deputy sheriff, sheriff's officer or appointed as a deputised person under Part 2 of the **Sheriff Act 2009**;

(e) a person appointed by the Department or an independent body—

(i) to investigate or review a youth justice facility or any aspect of a youth justice facility; or

(ii) to visit a youth justice facility or a detainee.

(2) A person who holds or has held a position must not record, disclose, communicate or make use of confidential information, except to the extent that is reasonably necessary to perform a duty or function of that position, or to exercise a power of that position, under this or any other Act.

Penalty: 5 penalty units.

(3) Subsection (2) does not prevent a person from—

(a) giving evidence or producing a document to a court in the course of criminal proceedings or proceedings under this Act, even though the evidence or document contains confidential information; or

(b) disclosing or communicating confidential information in accordance with the written authority of the Minister or the person to whom the information relates; or

(c) disclosing or communicating confidential information to the Ombudsman or the Ombudsman's officers; or

S. 492A(3)(ca) inserted by No. 45/2019 s. 47.

(ca) disclosing or communicating confidential information to the Commission for Children and Young People established under section 6 of the **Commission for Children and Young People Act 2012** if the disclosure is made to assist the Commission to perform official duties; or

S. 492A(3)(d) amended by No. 37/2014 s. 10(Sch. item 18.15(a)).

(d) disclosing confidential information that is a photograph to a person who holds a position or is a police officer or a member of the police force or service of another State or Territory, if the disclosure is made to assist the person to perform official duties; or

S. 492A(3)(e) amended by No. 37/2014 s. 10(Sch. item 18.15(b)).

(e) disclosing to a police officer, member of the police force or service of another State or Territory or an AFP member (within the meaning of Part 5.3 of the Criminal Code of the Commonwealth) information relating to a detainee, if the disclosure is made for the purpose of—

(i) implementing or enforcing a preventative detention order (within the meaning of Part 2A of the **Terrorism (Community Protection) Act 2003**) under which the detainee is being detained or an order for the person's detention made under a corresponding preventative detention law within the meaning of that Part; or

(ii) the security or good order of the youth justice facility or the safety or welfare of the detainee; or

(f) disclosing confidential information to the extent specifically authorised by another Act.

(4) Nothing in this section prevents the recording or accessing and using of health information within the meaning of the **Health Records Act 2001** in accordance with that Act.

Note

See also section 20A.

Part 5.9—Review of Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017

Ch. 5 Pt 5.9 (Heading and s. 492B) inserted by No. 43/2017 s. 65.

492B Review of Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017

S. 492B inserted by No. 43/2017 s. 65.

(1) The Minister must undertake a review of the amendments made to this Act and other Acts by the **Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017** to determine whether the policy objectives of the **Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017** remain valid and whether the amendments made by that Act remain appropriate to achieve those objectives.

(2) The review is to be undertaken as soon as possible after the third anniversary of the first day on which all the provisions of the **Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017** have commenced.

(3) Without limiting the matters that the review may consider, the review must cover the following matters—

(a) the effects of the amendments made by the **Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017**, whether adverse or otherwise, on the following—

(i) rates of offending and re-offending;

(ii) incarceration of young people;

(iii) community safety;

(iv) the long-term well-being of children and young people in contact with the justice system;

(b) the operation of youth control orders;

(c) the operation of youth diversion strategies and programs;

(d) the operation of the system known as the dual track system;

(e) the categorisation of certain offences as serious youth offences, and the effect of this categorisation on decisions about bail, non-custodial sentences and the placement of young adults in youth justice centres;

(f) whether the incarceration of Aboriginal or Torres Strait Islander children and young people has increased or decreased as a proportion of the total incarcerated population of young people in Victoria since the **Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017** received the Royal Assent;

(g) whether any additional legislative, administrative or policy reform is necessary to improve the operation of Victoria's youth justice system.

(4) The Minister must cause a report on the review to be laid before each House of the Parliament not later than 12 months after the third anniversary of the first day on which all the provisions of the **Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017** have commenced.

Part 5.10—Sharing of terrorism risk information

Ch. 5 Pt 5.10 (Heading and ss 492C–492E) inserted by No. 32/2018 s. 103.

492C What is the permitted purpose for sharing information under this Part?

S. 492C inserted by No. 32/2018 s. 103.

Terrorism risk information in respect of a person may be shared under this Part for the purpose of informing a decision relating to—

(a) parole of the person; or

(b) bail of the person; or

(c) the care, control or management of the person while they are remanded in custody or subject to a sentence.

492D Department of Justice and Regulation may disclose terrorism risk information

S. 492D inserted by No. 32/2018 s. 103.

(1) A person specified in subsection (2) may, for the purpose set out in section 492C, disclose terrorism risk information to—

(a) a risk assessment entity; or

(b) the Youth Parole Board.

(2) The specified persons are—

(a) the Secretary to the Department of Justice and Regulation; and

(b) a person employed in the Department of Justice and Regulation under Part 3 of the **Public Administration Act 2004**.

Note

Note to s. 492D inserted by No. 32/2018 s. 109.

Section 457B also empowers the Secretary to the Department of Justice and Regulation to provide terrorism risk information to the Youth Parole Board, but only for the purposes of Division 5 of Part 5.5.

S. 492E inserted by No. 32/2018 s. 103.

492E Youth Parole Board may disclose terrorism risk information

The following persons may, for the purpose set out in section 492C, disclose terrorism risk information to the Department of Justice and Regulation—

(a) a member of the Youth Parole Board;

(b) the secretary of the Youth Parole Board.

Chapter 6—Offences

Part 6.1—Offences relating to the protection of children

493 Offence to fail to protect child from harm

(1) A person who has a duty of care in respect of a child—

(a) who intentionally takes action that has resulted, or appears likely to result, in—

(i) the child suffering significant harm as a result of—

(A) physical injury; or

(B) sexual abuse; or

(ii) the child suffering emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged; or

(iii) the child's physical development or health being significantly harmed; or

(b) who intentionally fails to take action that has resulted, or appears likely to result, in the child's physical development or health being significantly harmed—

is guilty of an offence and liable to a penalty of not more than 50 penalty units or to imprisonment for a term of not more than 12 months.

(2) Proceedings for an offence under subsection (1) may only be brought by a person after consultation with the Secretary.

(3) A person may be guilty of an offence under subsection (1) even though the child was protected by the action of another person from harm of the type referred to in that subsection.

494 Offence to leave child unattended

S. 494(1) amended by No. 61/2014 s. 150.

(1) A person who has the control or charge of a child must not leave the child without making reasonable provision for the child's supervision and care for a time which is unreasonable having regard to all the circumstances of the case.

Penalty: 25 penalty units or imprisonment for 6 months or both.

(2) Proceedings for an offence under subsection (1)—

(a) must not be brought against a person who is under 16 years of age and is not the parent of the child; and

(b) may only be brought by a person after consultation with the Secretary.

S. 495 amended by Nos 37/2014 s. 10(Sch. item 18.16), 61/2014 ss 81, 150.

495 Offence to harbour or conceal child

A person must not in the knowledge that a child is absent without lawful authority or excuse from the place in which the child had been placed under an interim accommodation order or by the Secretary under section 173 or from the lawful custody of a police officer or other person—

(a) harbour or conceal or assist in harbouring or concealing the child; or

(b) prevent or assist in preventing the child from returning to that place or custody.

Penalty: 25 penalty units or imprisonment for 6 months or both.

496 Offence to counsel or induce child to be absent without lawful authority etc.

(1) A person must not directly or indirectly— S. 496(1) amended by No. 61/2014 s. 150.

(a) without lawful authority or excuse, withdraw a child from the place in which the child had been placed under an interim accommodation order or by the Secretary under section 173; or S. 496(1)(a) amended by No. 61/2014 s. 82(a).

(b) counsel, induce or assist a child placed as described in paragraph (a) to absent himself or herself from any such place; or

(c) without lawful authority or excuse, withdraw a child from the parental responsibility of any person who has parental responsibility for the child under a permanent care order; or S. 496(1)(c) amended by No. 61/2014 s. 82(b).

(d) without lawful authority or excuse, withdraw a child from the lawful custody of a police officer or other person; or S. 496(1)(d) amended by No. 37/2014 s. 10(Sch. item 18.16).

(e) counsel or induce a child to absent himself or herself from the lawful custody of a police officer or other person. S. 496(1)(e) amended by No. 37/2014 s. 10(Sch. item 18.16).

Penalty: 25 penalty units or imprisonment for 6 months or both.

(2) Subsection (1) applies whether the conduct is carried out wholly within or wholly outside Victoria or partly within and partly outside Victoria.

S. 496(3) amended by No. 61/2014 s. 150.

(3) A person must not, by any conduct carried out within Victoria, without lawful authority or excuse withdraw a child from the place in which the child had been placed under a child protection order, or an interim order, within the meaning of Schedule 1 excluding an order referred to in subsection (1)(a).

Penalty: 25 penalty units or imprisonment for 6 months or both.

(4) If conduct constitutes an offence under 2 or more laws, a person who is convicted or found guilty or acquitted of the offence under a law referred to in paragraph (b) or (c) of subsection (5) is not liable to be prosecuted for the offence under this section.

(5) In subsection (4) ***law*** means—

(a) this section; or

(b) a law of another State or a Territory of Australia; or

(c) a law of New Zealand.

(6) A prosecution can only be commenced for an offence under this section after the Secretary has been consulted about the matter.

S. 497 amended by Nos 61/2014 s. 150, 43/2017 s. 60 (ILA s. 39B(1)).

497 Offences in relation to community service etc.

(1) A person must not without lawful authority or excuse—

S. 497(1)(a) amended by No. 61/2014 s. 83.

(a) enter any place in which a child has been placed under an interim accommodation order or by the Secretary under section 173; or

(b) at any time or in any manner contrary to the regulations, convey to or cause to be conveyed to a child placed as described in paragraph (a) any article or thing; or

(c) contrary to the instructions of the Secretary, attempt to have contact with a child placed as described in paragraph (a); or

S. 497(1)(c) amended by No. 52/2013 s. 53.

(d) lurk or loiter about any place described in paragraph (a) for any of the purposes mentioned in this section.

Penalty: 25 penalty units or imprisonment for 6 months or both.

(2) For the purposes of subsection (1)(c), the Secretary may issue a written instruction to any person directing the person not to attempt to have contact with a child placed under an interim accommodation order or by the Secretary under section 173.

S. 497(2) inserted by No. 43/2017 s. 60.

(3) An instruction under subsection (2) must be served in accordance with section 593.

S. 497(3) inserted by No. 43/2017 s. 60.

Part 6.2—Offences relating to detained persons

498 Offence to escape or attempt to escape etc.

S. 498(1) amended by Nos 37/2014 s. 10(Sch. item 18.16), 43/2017 s. 53.

(1) A person who is lawfully detained in a remand centre, youth residential centre or youth justice centre must not escape, attempt to escape or be absent without lawful authority from the remand centre, youth residential centre or youth justice centre or from the custody of the Chief Commissioner of Police or of any police officer or other officer in whose custody the person may be.

Penalty:

(a) In the case of a child who is under the age of 15 years, detention in a youth residential centre for 6 months;

(b) In the case of a child who is of or above the age of 15 years, detention in a youth justice centre for 12 months;

(c) In any other case, imprisonment or detention in a youth justice centre for 12 months.

S. 498(2) amended by No. 37/2014 s. 10(Sch. item 18.16).

(2) Without limiting section 458 of the **Crimes Act 1958**, a person who is escaping or attempting to escape or who is unlawfully absent as described in subsection (1) may be apprehended without warrant by any police officer.

S. 498(3) amended by No. 6/2018 s. 68(Sch. 2 item 20.5).

(3) If it appears to a magistrate by evidence on oath or by affirmation or by affidavit that there is reasonable cause to suspect that a person so escaping or unlawfully absent is in any place, the magistrate may issue a search warrant.

(4) A child apprehended under this section may—

(a) be placed in a remand centre, youth residential centre or youth justice centre; or

(b) be placed in prison or a police gaol if it is not possible to place the child in a remand centre, youth residential centre or youth justice centre.

499 Offence to harbour or conceal person

S. 499 amended by No. 43/2017 s. 54.

A person must not, in the knowledge that a person—

(a) has escaped or is absent without lawful authority from a remand centre, youth residential centre or youth justice centre in which the person is lawfully detained; or

(b) has escaped from the custody of a police officer or other officer in whose legal custody the person is or is deemed to be under section 466(2), 469(2), 470(3) or 471(3)—

S. 499(b) amended by No. 37/2014 s. 10(Sch. item 18.16).

harbour or conceal or assist in harbouring or concealing the person or prevent or assist in preventing the person from returning to that centre or custody.

Penalty: 120 penalty units or imprisonment for 12 months.

500 Offence to counsel or induce person to escape

S. 500 amended by No. 43/2017 s. 55.

A person must not directly or indirectly withdraw a person without legal authority from, or counsel or induce or assist a person to escape from, a remand centre, youth residential centre or youth justice centre in which the person is lawfully detained.

Penalty: 120 penalty units or imprisonment for 12 months.

501 Offences in relation to persons held in centres

S. 501(1) amended by Nos 54/2011 s. 10(3), 43/2017 s. 56(1).

(1) A person must not without lawful authority or excuse—

S. 501(1)(aa) inserted by No. 54/2011 s. 10(1).

(aa) enter or attempt to enter a remand centre, youth residential centre, youth justice centre or youth justice unit; or

(a) communicate or attempt to communicate with a person held in a remand centre, youth residential centre, youth justice centre or youth justice unit in contravention of a clear instruction from the Secretary not to do so; or

S. 501(1)(ab) inserted by No. 54/2011 s. 10(2).

(ab) communicate or attempt to communicate with a person who is on temporary leave from a remand centre, youth residential centre, youth justice centre or youth justice unit accompanied by an officer if the communication threatens the security of the remand centre, youth residential centre, youth justice centre or youth justice unit or any person; or

(b) deliver, or in any manner attempt to deliver, to any such person or introduce or attempt to introduce or cause to be introduced into a remand centre, youth residential centre, youth justice centre or youth justice unit—

(i) any firearm, offensive weapon or other article which is capable of being used as a weapon; or

(ii) any form of drug without the consent of the Secretary; or

(iii) any form of alcoholic liquor or beverage; or

(iv) any other article or thing not allowed by the regulations; or

(c) in any manner take or receive from any such person for the purpose of conveying out of or taking away from a remand centre, youth residential centre, youth justice centre or youth justice unit any article or thing without the consent of the Secretary; or

(d) deliver or cause to be delivered to any other person any article or thing for the purpose of being introduced as mentioned in paragraph (b) or secrete or leave about or in any place where any such person is usually employed or detained any article or thing for the purpose of being found or received by any such person; or

(e) at any time or in any manner contrary to the regulations convey to or cause to be conveyed to any person any article or thing; or

(f) lurk or loiter about a remand centre, youth residential centre, youth justice centre or youth justice unit for any of the purposes mentioned in this subsection.

Penalty: In the case of a child, 120 penalty units or imprisonment for 12 months.

In any other case, imprisonment for 2 years.

(2) A person who has without lawful authority or excuse entered a remand centre, youth residential centre, youth justice centre or youth justice unit or any building, yard or ground belonging to that centre or unit must not refuse or fail to leave when

S. 501(2) amended by Nos 54/2011 s. 10(3), 43/2017 s. 56(2).

required to do so by any person for the time being in charge of that centre or unit.

Penalty: In the case of a child, 120 penalty units or imprisonment for 12 months.

In any other case, imprisonment for 2 years.

S. 501(3) amended by No. 37/2014 s. 10(Sch. item 18.16).

(3) A person guilty of an offence under this section may be apprehended by a police officer without warrant.

S. 501(4) inserted by No. 54/2011 s. 10(4).

(4) A person must not be charged with an offence against subsection (1)(ab) unless an officer accompanying the person on temporary leave has warned the first mentioned person that the person—

(a) is not authorised to communicate with the person on temporary leave; and

(b) may commit an offence if the person continues to communicate with or attempt to communicate with the person on temporary leave—

and the person continues to do so despite the warning.

S. 501(5) inserted by No. 43/2017 s. 61.

(5) For the purposes of subsection (1)(a), the Secretary may issue a written instruction to any person directing the person not to communicate or attempt to communicate with a person held in a remand centre, youth residential centre, youth justice centre or youth justice unit in contravention of the instruction.

S. 501(6) inserted by No. 43/2017 s. 61.

(6) An instruction under subsection (5) must be served in accordance with section 593.

Part 6.3—General offences

502 Offence to impersonate Secretary as protective intervener

A person must not impersonate the Secretary as a protective intervener.

Penalty: 60 penalty units.

503 Offence to obstruct Secretary or employee

S. 503 amended by No. 43/2017 s. 57.

A person must not obstruct or hinder the Secretary or any employee in the execution of his or her duties under this Act.

Penalty: 120 penalty units or imprisonment for 12 months.

Chapter 7—The Children's Court of Victoria

Part 7.1—The Children's Court

504 The Children's Court

(1) There continues to be a court called "The Children's Court of Victoria".

S. 504(2) amended by No. 34/2010 s. 37(1).

(2) The Court consists of a President, the magistrates, the judicial registrars and the registrars of the Court.

(3) The Court has the following Divisions—

(a) the Family Division;

(b) the Criminal Division;

S. 504(3)(c) amended by No. 51/2006 s. 12(a).

(c) the Koori Court (Criminal Division);

S. 504(3)(d) inserted by No. 51/2006 s. 12(b).

(d) the Neighbourhood Justice Division.

(4) Every proceeding in the Court must be commenced, heard and determined in one of those Divisions.

(5) The Court must not sit as more than one Division at the same time in the same room.

(6) Each Division has such of the powers of the Court as are necessary to enable it to exercise its jurisdiction.

(7) The Court, in any Division, shall be constituted by the President or a magistrate except in the case of any proceeding for which provision is made by any Act for the Court to be constituted by a registrar.

(8) Without limiting subsection (7), the Court may be constituted by a judicial registrar in the case of any proceeding for which provision is made by rules of court for—

S. 504(8) inserted by No. 34/2010 s. 37(2).

(a) the court to be so constituted; and

(b) the delegation to judicial registrars of powers of the court to hear and determine such a matter or proceeding.

505 Where and when Court to be held

S. 505 substituted by No. 11/2021 s. 37.

The Court may sit and act at any time and place.

505A Court may order place of hearing which is not a proper venue

S. 505A inserted by No. 11/2021 s. 37.

(1) Without limiting section 505, the Court may order that a hearing be held at an appropriate place that is not the proper venue for the hearing if the Court considers that—

(a) for any reason it is appropriate that the hearing not be held at the proper venue; and

(b) it is in the interests of justice that the hearing not be held at the proper venue.

(2) In determining an appropriate place to hold a hearing for the purposes of subsection (1), the Court must first have regard to—

(a) places closest to the proper venue for the hearing; and

(b) the views of the parties to the proceeding.

S. 506 (Heading) amended by No. 5/2013 s. 49(1).

S. 506 amended by No. 5/2013 s. 49(2).

506 President, magistrate or reserve magistrate to be in attendance

Except where the Court is to be constituted by the President, the President, after consulting the Chief Magistrate, must make arrangements for a magistrate or a reserve magistrate engaged under section 9C of the **Magistrates' Court Act 1989** to attend on the day and at the time and place at which the Court is to be held.

S. 507 (Heading) amended by No. 5/2013 s. 50(1).

507 Assignment of magistrates or reserve magistrates

S. 507(1) amended by No. 5/2013 s. 50(2).

(1) The President, after consulting the Chief Magistrate, may assign any person who is appointed as a magistrate under section 7 of the **Magistrates' Court Act 1989** or as a reserve magistrate to be a magistrate for the Court, whether exclusively or in addition to any other duties.

S. 507(2) amended by No. 5/2013 s. 50(3).

(2) In assigning a magistrate or reserve magistrate to be a magistrate for the Court, the President must have regard to the experience of the magistrate or reserve magistrate in matters relating to child welfare.

S. 507(3) amended by No. 5/2013 s. 50(4).

(3) The President, after consulting the Chief Magistrate, may at any time revoke the assignment of a magistrate or reserve magistrate.

S. 507(4) amended by No. 5/2013 s. 50(5).

(4) Unless his or her assignment is revoked under subsection (3), a magistrate or reserve magistrate who is assigned to be a magistrate for the Court continues to be a magistrate for the Court for so long as he or she holds the office of magistrate or reserve magistrate under the **Magistrates' Court Act 1989**.

(5) A reserve magistrate assigned under this section to be a magistrate for the Court may only exercise powers of a magistrate for the Court when the reserve magistrate is engaged under section 9C of the **Magistrates' Court Act 1989** to undertake the duties of a magistrate.

S. 507(5) repealed by No. 68/2009 s. 72, new s. 507(5) inserted by No. 5/2013 s. 50(6).

508 President

(1) There continues to be an office of President of the Children's Court.

(2) The President must be a judge of the County Court (other than a reserve judge) who is appointed by the Governor in Council on the recommendation of the Attorney-General made after consultation with the Chief Judge.

S. 508(2) amended by No. 5/2013 s. 51.

(3) Subject to this Act, the President holds office—

(a) for the term (not exceeding 5 years) that is specified in his or her instrument of appointment, and is eligible for re-appointment; and

(b) on any other terms and conditions that are specified in his or her instrument of appointment.

(4) The appointment of a judge of the County Court as President does not affect his or her tenure of office or status as a judge nor the payment of his or her salary or allowances as a judge nor any other rights or privileges that he or she has as a judge.

(5) Nothing in subsection (4) limits the power of the Governor in Council to specify in the instrument of appointment of the President terms and conditions of appointment (other than as to salary or allowances), whether or not inconsistent with rights or privileges that he or she has as a judge.

(6) Service in the office of President must be taken for all purposes to be service in the office of judge of the County Court.

(7) Nothing in this Act prevents a judge of the County Court appointed as President from constituting the County Court for the purpose of the exercise by the County Court of any of its functions.

(8) The President may exercise any power conferred on a magistrate by or under this or any other Act.

(9) The **Public Administration Act 2004** does not apply to the President in respect of the office of President.

(10) The office of President becomes vacant if he or she ceases to hold the office of judge of the County Court.

S. 508(11) inserted by No. 63/2013 s. 53.

(11) At the end of a term of office of the President, the person who was President may exercise the same power conferred on a magistrate by or under this or any other Act for 6 months immediately after the completion of that term of office, if the person continues to be a judge within the meaning of the **County Court Act 1958**.

509 Acting President

S. 509(1) amended by No. 5/2013 s. 52.

(1) The Governor in Council may appoint a magistrate (other than a reserve magistrate) nominated by the President to be Acting President during any period when—

(a) there is a vacancy in the office of President; or

(b) the President is absent on leave or for any reason is temporarily unable to perform the duties of the office of President.

(2) The Chief Magistrate or a magistrate nominated by the President shall act as President if there is—

(a) a vacancy in the office of the President; or

(b) a period when the President is absent on leave or for any reason is temporarily unable to perform the duties of the office of President—

and the Governor in Council has not appointed an Acting President under subsection (1).

(3) The Chief Magistrate or a magistrate nominated by the President shall not act under subsection (2) as President for a term exceeding 3 months.

(4) A magistrate who is appointed as Acting President under subsection (1) or who acts as President under subsection (2) has, during the period of the appointment or the period of acting as President, the same powers and duties as the President.

(5) Service in the office of Acting President must not be taken to be service in the office of judge of the County Court.

509A Administrative responsibility of President

S. 509A inserted by No. 16/2016 s. 187.

(1) The President is responsible for ensuring the effective, orderly and expeditious discharge of the business of the Court.

(2) The President has the power to do all things necessary or convenient to be done to perform the President's responsibilities under subsection (1).

(3) Nothing in this section limits the responsibilities, functions or powers of the President under this or any other Act.

510 Assignment of duties

S. 510(1) amended by No. 5/2013 s. 53.

(1) The President may assign duties to a magistrate for the Court, including a reserve magistrate engaged under section 9C of the **Magistrates' Court Act 1989** to undertake the duties of a magistrate and assigned to the Court.

(2) A magistrate for the Court must carry out the duties that are from time to time assigned to him or her by the President.

(3) Nothing in section 13 of the **Magistrates' Court Act 1989** gives the Chief Magistrate any power to assign duties to a magistrate for the Court in respect of his or her office as a magistrate for the Court.

S. 511 amended by No. 5/2013 s. 54 (ILA s. 39B(1)).

511 Delegation by the President

(1) The President, by instrument, may delegate to any magistrate for the Court any of his or her powers under section 506 or 510.

S. 511(2) inserted by No. 5/2013 s. 54.

(2) In this section, "magistrate for the Court" does not include a reserve magistrate.

512 Protection of President

The President has in the performance of his or her duties as President the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

S. 513 (Heading) amended by No. 5/2013 s. 55(1).

S. 513 amended by No. 5/2013 s. 55(2).

513 Protection of magistrates or reserve magistrates

A magistrate, or a reserve magistrate engaged under section 9C of the **Magistrates' Court Act 1989**, has in the performance of his or her duties as a magistrate for the Court the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

513A Constitution of Court if magistrate unable to continue

S. 513A inserted by No. 63/2013 s. 81.

Despite anything in any Act or the rules, any power, duty or act which might have been exercised or performed by the Court constituted by a magistrate may be exercised or performed by the Court constituted by any other magistrate if the Court cannot for any reason be constituted by that first mentioned magistrate.

513B Appeals from Court constituted by Chief Magistrate who is a dual commission holder

S. 513B inserted by No. 3/2016 s. 55, amended by Nos 1/2022 s. 60, 17/2023 s. 64.

Unless this Act or another Act otherwise provides, an appeal from the Court constituted by the Chief Magistrate who is a dual commission holder which would be an appeal to the County Court if the Chief Magistrate were not a dual commission holder, shall be an appeal to the Court of Appeal.

514 Annual report

As soon as practicable in each year but not later than 31 October, the President must submit to the Governor a report containing—

(a) a review of the operation of the Court during the 12 months ending on the preceding 30 June; and

(b) such other matters as are prescribed by regulations made under this Act.

Part 7.2—Jurisdiction

515 Jurisdiction of Family Division

(1) The Family Division has jurisdiction to hear and determine an application for—

(a) an interim accommodation order; or

(b) a finding that a child is in need of protection; or

S. 515(1)(c) amended by No. 61/2014 s. 84(1).

(c) a finding that there is a substantial and presently irreconcilable difference between the person who has parental responsibility for a child and the child to such an extent that the care and control of the child are likely to be seriously disrupted; or

S. 515(1)(ca) inserted by No. 8/2016 s. 22(4).

(ca) a care by Secretary order applied for under section 289(1A); or

S. 515(1)(cb) inserted by No. 8/2016 s. 22(4).

(cb) a long-term care order applied for under section 290(1A); or

(d) a permanent care order; or

(e) a therapeutic treatment order; or

(f) a therapeutic treatment (placement) order; or

(g) a temporary assessment order; or

(h) the variation or revocation of—

(i) a therapeutic treatment order; or

(ii) a therapeutic treatment (placement) order; or

(iii) a temporary assessment order; or

(i) the variation of an interim accommodation order; or

(j) the variation or revocation of— S. 515(1)(j) substituted by No. 61/2014 s. 84(2).

(i) a family preservation order; or

(ii) a family reunification order; or

(iii) a permanent care order; or

(k) the extension of— S. 515(1)(k) substituted by No. 61/2014 s. 84(2).

(i) a family preservation order; or

(ii) a family reunification order; or

(iii) a care by Secretary order; or

(l) the revocation of— S. 515(1)(l) substituted by No. 61/2014 s. 84(2).

(i) a care by Secretary order; or

(ii) a long-term care order; or

(m) an order in respect of a failure to comply with an interim accommodation order; or S. 515(1)(m) substituted by No. 61/2014 s. 84(2).

(n) an order regarding the exercise of any right, power or duty vested in a person as a person with joint parental responsibility for a child; or S. 515(1)(n) amended by No. 61/2014 s. 84(3).

(o) an order arising out of a child protection proceeding within the meaning of Schedule 1 transferred to the Court under an interstate law within the meaning of that Schedule; or S. 515(1)(o) amended by No. 47/2021 s. 25(2)(a).

(p) the making, variation, extension or revocation of a support and engagement order within the meaning of Part 4A of the **Terrorism (Community Protection) Act 2003** in respect of a child. S. 515(1)(p) inserted by No. 47/2021 s. 25(2)(b).

S. 515(2) amended by Nos 52/2008 s. 236, 68/2008 s. 65, 53/2010 s. 221(Sch. item 2.2), 42/2014 s. 109, 53/2016 s. 89.

(2) The jurisdiction given by subsection (1) is additional to the jurisdiction given to the Family Division by Schedule 1 or by an interstate law within the meaning of that Schedule or by the **Family Violence Protection Act 2008**, the **National Domestic Violence Order Scheme Act 2016** or the **Personal Safety Intervention Orders Act 2010** or by the **Vexatious Proceedings Act 2014** in relation to intervention order legislation within the meaning of that Act.

S. 515(3) inserted by No. 47/2021 s. 25(3).

(3) The Family Division also has jurisdiction with respect to review hearings under Subdivision 4 of Division 5 of Part 4A of the **Terrorism (Community Protection) Act 2003** in respect of a child.

S. 515(4) inserted by No. 1/2022 s. 122.

(4) The Family Division has any jurisdiction given to the Court by or under the Family Law Act 1975 of the Commonwealth.

516 Jurisdiction of Criminal Division

(1) The Criminal Division has jurisdiction—

(a) to hear and determine all charges against children for summary offences; and

S. 516(1)(b) amended by Nos 7/2008 ss 7(1)(b), 8(b), 63/2014 s. 5(1)(e), 16/2020 s. 13, 54/2025 s. 16(1).

(b) subject to section 356, to hear and determine summarily all charges against children for indictable offences, other than murder, attempted murder, manslaughter, child homicide, homicide by firearm, a designated offence committed when the child was aged 15 years or over, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death); and

Note to s. 516(1)(b) inserted by No. 54/2025 s. 16(2).

Note

Designated offence is defined by subsection (7).

(c) to conduct committal proceedings into all charges against children for indictable offences and either—

(i) direct the child to be tried and order that the child be remanded in custody until trial or grant bail; or

S. 516(1)(c)(i) amended by No. 68/2009 s. 73(1)(a).

(ii) discharge the child under section 126(4) of the **Criminal Procedure Act 2009**; and

S. 516(1)(c)(ii) amended by Nos 68/2009 s. 73(1)(a), 5/2025 s. 49.

(d) to grant or refuse bail to, or extend, vary or revoke the bail of, a child who is charged with an offence; and

(e) subject to Chapter 5, to deal with a breach of a sentence or variation of a sentence.

S. 516(1)(e) amended by No. 68/2009 s. 73(1)(b).

(2) The Criminal Division has the jurisdiction referred to in subsection (1) despite anything to the contrary in any other Act.

(3) The jurisdiction given by subsection (1) is additional to any other jurisdiction given to the Criminal Division by or under this or any other Act.

(4) If before or during the hearing of a charge for an offence it appears to the Children's Court that the accused is not a child, the Court must discontinue the proceeding and order that it be transferred to the Magistrates' Court and in the meantime it may—

S. 516(4) amended by No. 68/2009 s. 73(2)(a).

(a) permit the accused to go at large; or

S. 516(4)(a) amended by No. 68/2009 s. 73(2)(a).

S. 516(4)(b) amended by No. 68/2009 s. 73(2)(a).

(b) grant the accused bail conditioned for the appearance of the accused before the Magistrates' Court at the time and place at which the proceeding is to be heard; or

S. 516(4)(c) amended by No. 68/2009 s. 73(2).

(c) remand the accused in prison or a police gaol or deal with the accused in accordance with section 333 of the **Criminal Procedure Act 2009** until the proceeding is heard by the Magistrates' Court.

S. 516(5) amended by No. 68/2009 s. 73(3)(a).

(5) Despite subsection (4), if before or during the hearing of a charge for an offence it appears to the Children's Court that the accused is of or above the age of 19 years but was a child when the proceeding for the offence was commenced in the Court, the Court must hear and determine the charge unless at any stage the Court considers that exceptional circumstances exist, having regard to—

S. 516(5)(a) amended by No. 68/2009 s. 73(3)(a).

(a) the age of the accused;

(b) the nature and circumstances of the alleged offence;

(c) the stage of the proceeding;

S. 516(5)(d) amended by No. 68/2009 s. 73(3)(a).

(d) whether the accused is the subject of another proceeding in any other court;

(e) any delay in the hearing of the charge and the reason for the delay;

S. 516(5)(f) amended by No. 68/2009 s. 73(3)(b).

(f) whether the sentences available to the Court are appropriate;

(g) whether the accused prefers the charge to be heard in the Children's Court or the Magistrates' Court;

S. 516(5)(g) amended by No. 68/2009 s. 73(3)(a).

(h) any other matter that the Court considers relevant.

(6) If the Court considers that exceptional circumstances exist under subsection (5), the Court must discontinue the proceeding and order that it be transferred to the Magistrates' Court and in the meantime it may—

(a) permit the accused to go at large; or

S. 516(6)(a) amended by No. 68/2009 s. 73(4)(a).

(b) grant the accused bail conditioned for the appearance of the accused before the Magistrates' Court at the time and place at which the proceeding is to be heard; or

S. 516(6)(b) amended by No. 68/2009 s. 73(4)(a).

(c) remand the accused in prison or a police gaol or deal with the accused in accordance with section 333 of the **Criminal Procedure Act 2009** until the proceeding is heard by the Magistrates' Court.

S. 516(6)(c) amended by No. 68/2009 s. 73(4).

(7) In this section—

S. 516(7) inserted by No. 54/2025 s. 16(3).

designated offence means an offence against any of the following sections of the **Crimes Act 1958**—

(a) section 15A (causing serious injury intentionally in circumstances of gross violence);

(b) section 15B (recklessly causing serious injury in circumstances of gross violence);

(c) section 77A (home invasion);

(d) section 77B (aggravated home invasion);

(e) section 79A (aggravated carjacking).

S. 516A inserted by No. 7/2009 s. 430 (as amended by No. 68/2009 ss 48, 54(p)).

516A Joint committal proceedings

S. 516A(1) amended by No. 11/2021 s. 38.

(1) The jurisdiction given by section 516(1)(c) may be exercised concurrently with the jurisdiction of the Magistrates' Court to conduct a committal proceeding if—

(a) the charges against each accused could properly be joined in the same indictment; and

(b) the accused who is a child—

(i) is of or over the age of 15 years at the time the criminal proceeding against the child for the offence is commenced; and

S. 516A (1)(b)(ii) amended by Nos 63/2014 s. 5(1)(f), 16/2020 s. 14, 54/2025 s. 17.

(ii) is charged with murder, attempted murder, manslaughter, child homicide, homicide by firearm, a designated offence (within the meaning of section 516) committed when the child was aged 15 years or over, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death); and

(c) the Court makes an order under subsection (2) in relation to the accused who is a child and the Magistrates' Court makes an order under section 25(4) of the

Magistrates' Court Act 1989 in relation to the other accused.

(2) The Court may order that joint committal proceedings in relation to a particular accused are appropriate having regard to—

(a) the age of the child; and

(b) the ability of the child to participate in the joint committal proceedings and to provide instructions to his or her legal practitioner; and

(c) the effect on victims of the offence charged if the committal proceedings were not conducted jointly; and

(d) the estimated duration of the committal proceedings if conducted jointly; and

(e) the number of witnesses that would be cross-examined by both accused; and

(f) any other matter considered relevant.

(3) The Court may make an order under subsection (2) on the application of a party or on its own motion.

(4) Each party is entitled to be present and may address the Court when the Court is considering the making of an order under subsection (2).

(5) If the Court makes an order under subsection (2), the Court may adjourn the proceeding for a period not exceeding 28 days to enable the Magistrates' Court to determine whether joint committal proceedings are appropriate in the particular case.

(6) If joint committal proceedings are conducted under subsection (1)—

(a) this Act applies as far as practicable to the child; and

(b) the **Criminal Procedure Act 2009** applies as far as practicable to the other accused—

with any necessary modifications to ensure that the joint committal proceedings are conducted fairly and efficiently.

517 Koori Court (Criminal Division)

(1) The Koori Court (Criminal Division) has all of the powers of the Court that are necessary to enable it to exercise its jurisdiction.

(2) Despite anything to the contrary in this Act, the Koori Court (Criminal Division) may only sit and act at a venue of the Court specified by the President, after consulting the Chief Magistrate, by notice published in the Government Gazette.

(3) The Koori Court (Criminal Division) must exercise its jurisdiction with as little formality and technicality, and with as much expedition, as the requirements of this Act and the proper consideration of the matters before the Court permit.

(4) The Koori Court (Criminal Division) must take steps to ensure that, so far as practicable, any proceeding before it is conducted in a way which it considers will make it comprehensible to—

(a) the child; and

(b) a family member of the child; and

(c) any member of the Aboriginal community who is present in court.

(5) Subject to this Act, the regulations and the rules, the Koori Court (Criminal Division) may regulate its own procedure.

(6) Nothing in this section limits Part 7.3.

(7) In this section ***family member*** of a child means—

(a) the spouse or domestic partner of the child; or

(b) a person who has or has had an intimate personal relationship with the child; or

(c) a parent of the child; or

(d) a person who is or has been a relative of the child; or

(e) another child who normally or regularly resides with the child; or

(f) a person who is or has been ordinarily a member of the household of the child.

518 Jurisdiction of Koori Court (Criminal Division)

The Koori Court (Criminal Division) has—

(a) the jurisdiction to deal with a proceeding for an offence given to it by section 519; and

(b) jurisdiction to deal with a breach of a sentence imposed by it (including any offence constituted by such a breach) or variation of such a sentence, in the circumstances set out in section 518A; and

S. 518(b) amended by Nos 68/2009 s. 74(a), 26/2012 s. 8(1).

(ba) jurisdiction to deal with a breach of a sentence imposed by the Children's Court (including any offence constituted by such a breach), or a variation of such a sentence, in the circumstances set out in section 518A; and

S. 518(ba) inserted by No. 26/2012 s. 8(2).

(c) any other jurisdiction given to it by or under this or any other Act.

S. 518A inserted by No. 26/2012 s. 9.

518A Circumstances in which Koori Court (Criminal Division) may deal with breach of a sentence imposed by it or by another Division of the Children's Court

For the purposes of section 518(b) and (ba), the circumstances are—

(a) the child is Aboriginal; and

(b) the offence to which the sentence relates is within the jurisdiction of the Criminal Division, other than a sexual offence as defined in section 6B(1) of the **Sentencing Act 1991**; and

(c) in the case of an offence constituted by a breach of a sentence referred to in section 518(b) or (ba), the child—

(i) intends to plead guilty to the offence; or

(ii) pleads guilty to the offence; or

S. 518A(c)(iii) amended by No. 43/2017 s. 62(1).

(iii) has been found guilty of the offence by the Criminal Division; or

S. 518A(c)(iv) inserted by No. 43/2017 s. 62(2).

(iv) intends to consent to the adjournment of the proceeding under section 356D to enable the child to participate in a diversion program; and

(d) the child consents to the proceeding being dealt with by the Koori Court (Criminal Division).

519 Circumstances in which Koori Court (Criminal Division) may deal with certain offences

S. 519(1) amended by No. 68/2009 s. 74(b).

(1) The Koori Court (Criminal Division) only has jurisdiction to deal with a proceeding for an offence (other than an offence constituted by a breach of a sentence imposed by it) if—

(a) the child is Aboriginal; and

(b) the offence is within the jurisdiction of the Criminal Division, other than a sexual offence as defined in section 6B(1) of the **Sentencing Act 1991**; and

(c) the child—

(i) intends to plead guilty to the offence; or

(ii) pleads guilty to the offence; or

(iii) has been found guilty of the offence by the Criminal Division; or

S. 519(1)(c)(iii) amended by No. 43/2017 s. 63(1).

(iv) intends to consent to the adjournment of the proceeding under section 356D to enable the child to participate in a diversion program; and

S. 519(1)(c)(iv) inserted by No. 43/2017 s. 63(2).

(d) the child consents to the proceeding being dealt with by the Koori Court (Criminal Division).

(2) Subject to and in accordance with the rules—

(a) a proceeding may be transferred to the Koori Court (Criminal Division), whether sitting at the same or a different venue; and

(b) the Koori Court (Criminal Division) may transfer a proceeding (including a proceeding transferred to it under paragraph (a)) to the Criminal Division, whether sitting at the same or a different venue.

(3) Despite anything to the contrary in this Act, if a proceeding is transferred from one venue of the Court to another, the transferee venue is the proper venue of the Court for the purposes of this Act.

520 Sentencing procedure in Koori Court (Criminal Division)

S. 520(1) amended by No. 68/2009 s. 74(c).

(1) This section applies to the Koori Court (Criminal Division) when it is considering which sentence to impose in respect of a child.

(2) The Koori Court (Criminal Division) may consider any oral statement made to it by an Aboriginal elder or respected person.

(3) The Koori Court (Criminal Division) may inform itself in any way it thinks fit, including by considering a report prepared by, or a statement or submission prepared or made to it by, or evidence given to it by—

(a) a Children's Koori Court officer; or

(b) a youth justice worker employed under Part 3 of the **Public Administration Act 2004**; or

(c) a health service provider; or

(d) a victim of the offence; or

(e) a family member of the child; or

(f) anyone else whom the Koori Court (Criminal Division) considers appropriate.

(4) Nothing in this section affects the requirement to observe the rules of natural justice.

(5) This section does not limit—

(a) any other power conferred on the Court by or under this or any other Act; or

(b) any other specific provision made by or under this or any other Act for the making of any report, statement or submission, or the giving of any evidence, to the Court for the purpose of assisting it in determining sentence.

(6) Nothing in section 358 operates to limit this section.

(6A) To avoid doubt, Part 3.10 of the **Evidence Act 2008** does not apply to the Koori Court (Criminal Division) in considering the sentence to impose on an offender under this section, unless the Koori Court (Criminal Division) directs, in accordance with section 4(2) of the **Evidence Act 2008**, that that Act applies.

S. 520(6A) inserted by No. 69/2009 s. 54(Sch. Pt 1 item 7.5).

(7) In this section ***family member*** has the same meaning as it has in section 517.

520A Neighbourhood Justice Division

S. 520A inserted by No. 51/2006 s. 13.

(1) The Neighbourhood Justice Division has all of the powers of the Court that are necessary to enable it to exercise its jurisdiction.

(2) Despite anything to the contrary in this Act, the Neighbourhood Justice Division may only be constituted by a magistrate who has been assigned to that Division by the President by notice published in the Government Gazette.

(2A) Nothing in subsection (2) prevents the Neighbourhood Justice Division being constituted by a registrar for the determination of an application under Division 4 of Part 7 of the **National Domestic Violence Order Scheme Act 2016**.

S. 520A(2A) inserted by No. 53/2016 s. 90.

(3) In assigning a magistrate to the Neighbourhood Justice Division, the President must—

(a) have regard to the magistrate's knowledge of, or experience in the application of, the principles of therapeutic jurisprudence and restorative justice; and

(b) consult with the Chief Magistrate of the Magistrates' Court.

(4) The Neighbourhood Justice Division must exercise its jurisdiction with as little formality and technicality, and with as much expedition, as the requirements of this Act and the proper consideration of the matters before the Court permit.

(5) Subject to this Act, the regulations and the rules, the Neighbourhood Justice Division may regulate its own procedure.

(6) Nothing in this section limits Part 7.3.

S. 520B inserted by No. 51/2006 s. 13.

520B Places where Neighbourhood Justice Division may sit and act

Despite anything to the contrary in this Act, the Neighbourhood Justice Division may only sit and act—

(a) at a venue of the Court specified by the President by notice published in the Government Gazette; and

(b) if the Minister specifies a municipal district by notice published in the Government Gazette, at any place within that municipal district.

S. 520C inserted by No. 51/2006 s. 13.

520C Jurisdiction of Neighbourhood Justice Division

(1) In this section—

close connection means connection involving regular congregation for the purpose of social or community support;

municipal district means a municipal district specified under section 520B(b).

(2) The Neighbourhood Justice Division only has jurisdiction under this section if the child consents to the proceeding being dealt with by the Division.

(3) The Neighbourhood Justice Division has the jurisdiction referred to in this section if—

(a) in the case of a criminal proceeding, the child—

(i) resides in the municipal district; or

(ii) is a homeless person who is alleged to have committed the offence in the municipal district; or

(iii) is a homeless person who is alleged to have committed the offence outside the municipal district but who is living in the municipal district in accommodation of the kind referred to in paragraph (a) of the definition of ***homeless person*** in section 3(1); or

(iv) is an Aboriginal person with a close connection to the municipal district and is alleged to have committed the offence in that district;

S. 520C(3)(b) amended by Nos 52/2008 s. 237, 53/2016 s. 91(1).

(b) in the case of a proceeding under the **Family Violence Protection Act 2008** or the **National Domestic Violence Order Scheme Act 2016**—

(i) at least one of the parties resides in the municipal district; or

(ii) at least one of the parties is—

(A) a homeless person; or

(B) an Aboriginal person with a close connection to the municipal district—

and the Court considers that it is appropriate to deal with the matter in the Neighbourhood Justice Division; or

S. 520C(3)(b)(iii) amended by No. 68/2008 s. 66(1).

(iii) the whole or a material part of the allegations of family violence occurred in the municipal district;

S. 520C(3)(c) inserted by No. 68/2008 s. 66(2), amended by No. 53/2010 s. 221(Sch. item 2.3).

(c) in the case of a proceeding under the **Personal Safety Intervention Orders Act 2010**—

(i) at least one of the parties resides in the municipal district; or

(ii) at least one of the parties is—

(A) a homeless person; or

(B) an Aboriginal person with a close connection to the municipal district—

and the Court considers that it is appropriate to deal with the matter in the Neighbourhood Justice Division; or

S. 520C(3)(c)(iii) amended by No. 53/2010 s. 221(Sch. item 2.4).

(iii) the whole or a material part of the alleged stalking or prohibited behaviour occurred in the municipal district.

(4) Subject to subsection (5), the Neighbourhood Justice Division has—

(a) the jurisdiction of the Court given by section 516; and

(b) the jurisdiction given to the Criminal Division by or under this or any other Act; and

S. 520C(4)(c) amended by No. 68/2009 s. 75(a).

(c) jurisdiction to deal with a breach of a sentence imposed by it (including any offence constituted by such a breach) or variation of such a sentence; and

(d) the jurisdiction of the Court given by the **Family Violence Protection Act 2008**, the **National Domestic Violence Order Scheme Act 2016** or the **Personal Safety Intervention Orders Act 2010**; and

S. 520C(4)(d) amended by Nos 52/2008 s. 237, 68/2008 s. 66(3), 53/2010 s. 221(Sch. item 2.3), 42/2014 s. 110(a), 53/2016 s. 91(2).

(e) the jurisdiction of the Court given by the **Vexatious Proceedings Act 2014** in relation to intervention order legislation within the meaning of that Act.

S. 520C(4)(e) inserted by No. 42/2014 s. 110(b).

(5) The Neighbourhood Justice Division does not have jurisdiction to deal with—

(a) a committal proceeding into an indictable offence; or

(b) a proceeding for a sexual offence as defined in section 6B(1) of the **Sentencing Act 1991**.

520D Transfer of proceedings

S. 520D inserted by No. 51/2006 s. 13.

(1) Subject to and in accordance with the rules—

(a) a proceeding may be transferred to the Neighbourhood Justice Division, whether sitting at the same or a different venue, but only if the child consents to the proceeding being dealt with by the Division; and

(b) the Neighbourhood Justice Division may transfer a proceeding (including a proceeding transferred to it under paragraph (a)) to the Court, sitting other than as the Neighbourhood Justice Division, at the same or a different venue.

(2) Despite anything to the contrary in this Act, if a proceeding is transferred from one venue of the Court to another, the transferee venue is the

proper venue of the Court for the purposes of this Act.

S. 520E inserted by No. 51/2006 s. 13.

520E Sentencing procedure in Neighbourhood Justice Division

S. 520E(1) amended by No. 68/2009 s. 75(b).

(1) This section applies to the Neighbourhood Justice Division when it is considering which sentence to impose in respect of a child.

(2) Despite anything to the contrary in this Act, the Neighbourhood Justice Division may inform itself in any way it thinks fit, including by considering a report prepared by, or a statement or submission prepared or made to it by, or evidence given to it by—

(a) a Children's Neighbourhood Justice officer; or

(b) a youth justice officer; or

(c) a health service provider; or

(d) a community service provider; or

(e) a victim of the offence; or

(f) a family member of the child; or

(g) anyone else whom the Division considers appropriate.

(3) Nothing in this section affects the requirement to observe the rules of natural justice.

(4) This section does not limit—

(a) any other power conferred on the Court by or under this or any other Act; or

(b) any other specific provision made by or under this or any other Act for the making of any report, statement or submission, or the giving of any evidence, to the Court for the

purpose of assisting it in determining sentence.

(5) Nothing in section 358 operates to limit this section.

(6) To avoid doubt, Part 3.10 of the **Evidence Act 2008** does not apply to the Neighbourhood Justice Division in considering the sentence to impose on an offender under this section, unless the Neighbourhood Justice Division directs, in accordance with section 4(2) of the **Evidence Act 2008**, that that Act applies.

S. 520E(6) inserted by No. 69/2009 s. 54(Sch. Pt 1 item 7.6).

521 Application of Act to other Courts

Except for the purposes of appeals this Act applies, with any necessary modifications, in relation to an order made by the Supreme Court or the County Court of a type that could be made by the Children's Court under this Act, whether the order was made on appeal or under section 586 or otherwise, as if it were an order made by the Children's Court.

Part 7.3—Procedure

522 Procedural guidelines to be followed by Court

(1) As far as practicable the Court must in any proceeding—

(a) take steps to ensure that the proceeding is comprehensible to—

(i) the child; and

(ii) the child's parents; and

(iii) all other parties who have a direct interest in the proceeding; and

(b) seek to satisfy itself that the child understands the nature and implications of the proceeding and of any order made in the proceeding; and

(c) allow—

(i) the child; and

(ii) in the case of a proceeding in the Family Division, the child's parents and all other parties who have a direct interest in the proceeding—

to participate fully in the proceeding; and

(d) consider any wishes expressed by the child; and

(e) respect the cultural identity and needs of—

(i) the child; and

(ii) the child's parents and other members of the child's family; and

(f) minimise the stigma to the child and his or her family.

(2) If at any time there are proceedings in more than one Division of the Court relating to the same child, the Court must, unless it otherwise orders, hear and determine the proceeding in the Family Division first.

(3) If the Court makes an order under subsection (2), it must state orally the reasons for the order.

S. 522(4) amended by No. 68/2009 s. 76.

(4) An order made by the Court in a proceeding is not invalidated by, nor liable to be challenged, appealed against, reviewed, set aside, quashed or called in question in any court on account of the failure of the Court to comply with subsection (3) in the proceeding.

S. 522A inserted by No. 43/2017 s. 6.

522A Consistent magistrate to oversee criminal proceedings

(1) If—

(a) criminal proceedings are brought in the Court against a child; and

(b) the child has previously been brought before the Criminal Division of the Court constituted by a particular magistrate—

the Court is to be constituted by that magistrate, unless—

(c) that magistrate does not still hold office as a magistrate; or

(d) it is otherwise impracticable for that magistrate to constitute the Court; or

(e) the child consents to another magistrate constituting the Court.

(2) If a child is before the Criminal Division of the Court in relation to more than one proceeding, the Court must, as far as practicable, ensure that the Court is constituted by the same magistrate for all the proceedings.

(3) This section does not apply to contested proceedings.

523 Proceedings to be heard in open court

S. 523(1) amended by No. 50/2009 s. 17.

(1) Proceedings in the Court are, subject to subsection (2) and section 527A, to be conducted in open court.

(2) The Court may, on the application of a party or of any other person who has a direct interest in the proceeding or without any such application—

(a) order that the whole or any part of a proceeding be heard in closed court; or

(b) order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.

(3) Any party to the proceeding and any other interested person has standing to support or oppose an application under subsection (2).

(4) If an order has been made under this section, the Court must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the Court is being held.

(5) An order posted under this section must not contain any particulars likely to lead to the identification of the child who is a party to the proceeding.

(6) A person must not contravene an order made and posted under this section.

Penalty:

(a) In the case of a person of or above the age of 18 years, 25 penalty units or committal for a term of not more than six months to prison; or

(b) In the case of a child of or above the age of 15 years, 25 penalty units or detention for a period of not more than six months in a youth justice centre; or

(c) In the case of a child under the age of 15 years, 12 penalty units or detention for a period of not more than three months in a youth residential centre.

524 Legal representation

(1) If at any stage—

(a) in a proceeding in the Family Division, a child aged 10 years or more is not separately legally represented; or

S. 524(1)(a) amended by No. 15/2013 s. 10(1).

(b) in a proceeding in the Criminal Division, a child is not legally represented; or

(c) in a proceeding in the Family Division, a child's parents are not legally represented; or

(d) in a proceeding in the Family Division for the making, variation or revocation of a permanent care order, an applicant for the order or a person named in the application as suitable to have parental responsibility for a child or a person who was granted parental responsibility for a child under the order is not legally represented—

S. 524(1)(d) amended by No. 61/2014 s. 85.

the Court may adjourn the hearing of the proceeding to enable the child or the child's parents or the person referred to in paragraph (d) (as the case requires) to obtain legal representation.

(1A) If a child aged 10 years or more is not, subject to section 216, separately legally represented in a proceeding referred to in section 525(1), the Court must adjourn the hearing of the proceeding to enable the child to obtain legal representation

S. 524(1A) inserted by No. 15/2013 s. 10(2).

unless the Court makes a determination under subsection (1B).

S. 524(1B) inserted by No. 15/2013 s. 10(2).

(1B) The Court may determine that a child aged 10 years or more is not mature enough to give instructions to a legal practitioner, considering—

(a) the child's ability to form and communicate the child's own views; and

(b) the child's ability to give instructions in relation to the primary issues in dispute; and

(c) any other matter the Court considers relevant.

S. 524(2) amended by No. 15/2013 s. 10(3).

(2) If a child is not legally represented in a proceeding referred to in section 525(2), the Court must adjourn the hearing of the proceeding to enable the child to obtain legal representation and, subject to subsection (3), must not resume the hearing unless the child is legally represented.

S. 524(3) amended by No. 15/2013 s. 10(4).

(3) The Court may resume a hearing that was adjourned by it in accordance with subsection (2) even though the child is not legally represented if satisfied that the child has had a reasonable opportunity to obtain legal representation and has failed to do so.

S. 524(4) amended by No. 15/2013 s. 10(5).

(4) If, in exceptional circumstances, the Court determines that it is in the best interests of a child aged under 10 years or a child aged 10 years or more whom the Court determines under subsection (1B) is not mature enough to give instructions, for the child to be legally represented in a proceeding in the Family Division, the Court may adjourn the hearing of the proceeding to enable that legal representation to be obtained.

S. 524(4A) inserted by No. 15/2013 s. 10(6).

(4A) If the Court has adjourned the hearing of a proceeding in the Family Division to enable a child to obtain legal representation, the Court may

resume the hearing whether or not the child has obtained legal representation.

(5) With the leave of the Court, more than one child in the same proceeding may be represented by the same legal practitioner.

(6) The Court may only grant leave under subsection (5) if satisfied that no conflict of interest will arise.

(7) If after having granted leave under subsection (5) the Court is satisfied in the course of the proceeding that a conflict of interest has arisen, the Court may withdraw the leave previously granted.

(8) With the leave of the Court, a child (other than a child to whom a determination under subsection (4) applies) may be represented in a proceeding in the Family Division by a person who is not—

(a) a legal practitioner; or

(b) a parent of the child.

(9) A person referred to in subsection (8) who is granted leave to represent a child in a proceeding in the Family Division must act in accordance with any instructions given or wishes expressed by the child so far as it is practicable to do so having regard to the maturity of the child.

(10) A legal practitioner representing a child in any proceeding in the Court must act in accordance with any instructions given or wishes expressed by the child so far as it is practicable to do so having regard to the maturity of the child.

S. 524(11) amended by No. 15/2013 s. 10(7).

(11) Despite subsection (10), a legal practitioner representing, in the Family Division, a child aged under 10 years or a child aged 10 years or more whom the Court determines under subsection (1B) is not mature enough to give instructions must—

(a) act in accordance with what he or she believes to be in the best interests of the child; and

(b) to the extent that it is practicable to do so, communicate to the Court the instructions given or wishes expressed by the child.

(12) Any process served on a child or the parent of a child requiring the child or parent (as the case requires) to attend the Court in a proceeding referred to in section 525(1) or 525(2) must contain or be accompanied by a notice—

(a) setting out the circumstances in which a child is required to be legally represented; and

(b) stating the desirability of obtaining legal representation; and

(c) explaining how legal representation may be obtained.

S. 524(13) inserted by No. 47/2021 s. 25(4).

(13) Nothing in this section applies to—

(a) a proceeding on an application for the making, variation, extension or revocation of a support and engagement order within the meaning of Part 4A of the **Terrorism (Community Protection) Act 2003** in respect of a child; or

(b) a review hearing under Subdivision 4 of Division 5 of Part 4A of the **Terrorism (Community Protection) Act 2003** in respect of a child.

Note

See Subdivision 11 of Division 5 of Part 4A of the **Terrorism (Community Protection) Act 2003**.

525 Proceedings in which child is required to be legally represented

(1) Subject to section 524, a child aged 10 years or more must be legally represented in the following proceedings in the Family Division—

S. 525(1) amended by No. 15/2013 s. 11.

(a) application for an interim accommodation order;

(b) protection application;

(c) irreconcilable difference application;

(d) application for a temporary assessment order, (unless the Court grants leave for the application to proceed without notice to the other parties);

(e) application for—

(i) a therapeutic treatment order; or

(ii) a therapeutic treatment (placement) order;

(ea) application under section 289(1A) for a care by Secretary order; or

S. 525(1)(ea) inserted by No. 8/2016 s. 22(5).

(eb) application under section 290(1A) for a long-term care order; or

S. 525(1)(eb) inserted by No. 8/2016 s. 22(5).

(f) application for a permanent care order;

(g) application for the variation of an interim accommodation order;

(h) application for the variation or revocation of—

S. 525(1)(h) substituted by No. 61/2014 s. 86(1).

(i) a temporary assessment order; or

(ii) a therapeutic treatment order; or

(iii) a therapeutic treatment (placement) order; or

(iv) a family preservation order; or

(v) family reunification order; or

(vi) a permanent care order;

S. 525(1)(i) substituted by No. 61/2014 s. 86(1).

(i) application in respect of a failure to comply with—

(i) an interim accommodation order; or

(ii) a family preservation order;

S. 525(1)(j) substituted by No. 61/2014 s. 86(1).

(j) application for the extension of—

(i) a family preservation order; or

(ii) a family reunification order; or

(iii) a care by Secretary order;

S. 525(1)(k) substituted by No. 61/2014 s. 86(1).

(k) application for the revocation of—

(i) a care by Secretary order; or

(ii) a long-term care order;

S. 525(1)(l) amended by No. 61/2014 s. 86(2).

(l) application for an order regarding the exercise of any right, power or duty vested in a person with joint parental responsibility for a child;

(m) application for an order transferring a child protection order within the meaning of Schedule 1 to a participating State within the meaning of that Schedule;

(n) application for an order transferring a child protection proceeding within the meaning of Schedule 1 to the Children's Court in a participating State within the meaning of that Schedule;

(o) application for the revocation of the registration of a document filed under clause 19 of Schedule 1.

(2) Subject to section 524, a child must be legally represented in the following proceedings in the Criminal Division—

(a) proceeding with respect to bail if the informant or prosecutor or any person appearing on behalf of the Crown intends to oppose the grant of bail;

(b) proceeding under section 24 of the **Bail Act 1977**;

S. 525(2)(ba) inserted by No. 55/2014 s. 138.

(ba) proceeding or investigation under Part 5A of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;

S. 525(2)(bb) inserted by No. 21/2016 s. 20.

(bb) proceeding under Part 4A of the **Sex Offenders Registration Act 2004**;

(c) hearing of a charge for an offence punishable, in the case of an adult, by imprisonment;

(d) review of a monetary penalty imposed by the Court in respect of an offence punishable, in the case of an adult, by imprisonment;

S. 525(2)(da) inserted by No. 43/2017 s. 17(1).

(da) proceedings in respect of varying a youth control order to make the order more restrictive or revoking a youth control order;

S. 525(2)(e) amended by No. 43/2017 s. 17(2).

(e) application in respect of a breach of an accountable undertaking, bond, probation order, youth supervision order, youth attendance order or youth control order imposed by the Court in respect of an offence punishable, in the case of an adult, by imprisonment.

526 Interpreter

If the Court is satisfied that a child, a parent of a child or any other party to a proceeding has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding, or participating in, the proceeding, it must not hear and determine the proceeding without an interpreter interpreting it.

527 Explanation of and reasons for orders

(1) If the Court makes an order, it must explain the meaning and effect of the order as plainly and simply as possible and in a way which it considers the child, the child's parents and the other parties to the proceeding will understand.

(2) An explanation under subsection (1) must be given through an interpreter to any person referred to in that subsection whom the Court considers has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding the explanation given by the Court.

S. 527(3) amended by No. 26/2023 s. 49.

(3) Immediately after the Court makes an order to which this subsection applies, the Court must provide a written copy of the order in the prescribed form to—

(a) the child; and

(b) if the order is made by the Family Division—

(i) unless the Court otherwise orders, the child's parents; and

(ii) if the Court so orders, any other person with whom the child is living; and

(c) if the order is made by the Criminal Division—

(i) unless the Court otherwise orders, the child's parents if the child is under the age of 15 years; or

(ii) if the Court so orders, the child's parents if the child is of or above the age of 15 years; and

(d) the Secretary, in appropriate cases; and

(e) in the case of a permanent care order, the person who has, or persons who have, been granted parental responsibility under the order.

S. 527(3)(e) amended by No. 61/2014 s. 87(1).

(4) Subsection (3) applies to the following orders—

(a) an interim accommodation order;

(b) a protection order;

(c) a temporary assessment order, (unless the Court made the order without notice being given to the child and the parent of the child);

(d) a therapeutic treatment order or a therapeutic treatment (placement) order;

(e) an order varying or revoking a family preservation order;

S. 527(4)(e) substituted by No. 61/2014 s. 87(2).

(f) an order varying or revoking—

(i) a temporary assessment order; or

(ii) a therapeutic treatment order; or

(iii) a therapeutic treatment (placement) order;

S. 527(4)(f) substituted by No. 61/2014 s. 87(2).

S. 527(4)(g) substituted by No. 61/2014 s. 87(2).

(g) an order varying a family reunification order;

S. 527(4)(h) substituted by No. 61/2014 s. 87(2).

(h) an order extending—

(i) a family preservation order; or

(ii) a family reunification order; or

(iii) a care by Secretary order;

S. 527(4)(i) substituted by No. 61/2014 s. 87(2).

(i) an order revoking—

(i) a family reunification order; or

(ii) a care by Secretary order; or

(iii) a long-term care order;

(j) a permanent care order;

(k) an order granting or refusing bail;

S. 527(4)(l) amended by No. 68/2009 s. 77(a).

(l) a sentence;

S. 527(4)(m) amended by Nos 68/2009 s. 77(a), 43/2017 s. 18(a).

(m) an order made in respect of a breach of a sentence;

S. 527(4)(n) inserted by No. 43/2017 s. 18(b).

(n) an order varying a youth control order.

(5) The Secretary must provide a written copy of a temporary assessment order made without notice to the child and the parent of the child, to the child and the parent of the child immediately on exercising any power given to the Secretary under the order.

(6) If the Family Division makes a final order in a proceeding, it must—

(a) state in writing the reasons for the order; and

(b) cause the statement of reasons to be entered in the court register; and

(c) unless the Court otherwise orders, cause a copy of the written statement of reasons to be given or sent by post within 21 days after the making of the order to the child, the child's parents and the other parties to the proceeding.

(7) A person who receives a document under subsection (3), (5) or (6) may lodge with the Court a statement to the effect that he or she has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding the document but that he or she could understand it if it were written in another language specified in the statement.

(8) The Court must, within one working day after a person lodges a statement under subsection (7), cause a copy of the document to be sent by post to a translator for translation into the language specified in the statement.

(9) The Court must, within 21 days after a person lodges a statement under subsection (7), cause a copy of the document written in the specified language to be given or sent by post to that person.

(10) Neither the explanation given of an order nor the statement of reasons for an order is part of the order.

(11) The explanation given of an order is not part of the reasons for the order.

S. 527(12) amended by No. 68/2009 s. 77(b).

(12) An order made by the Court in a proceeding is not invalidated by, nor liable to be challenged, appealed against, reviewed, set aside, quashed or called in question in any court on account of the failure of the Court to comply with a provision of this section in the proceeding.

S. 527A inserted by No. 50/2009 s. 18.

527A Judicial resolution conference

(1) If, in any proceeding in the Family Division of the Court, the court orders or directs that a judicial resolution conference be conducted, no evidence is admissible at the hearing of any proceeding in that Division of anything said or done by any person in the course of the conduct of the judicial resolution conference unless the court otherwise orders, having regard to the interests of justice and fairness.

S. 527A(2) amended by No. 34/2010 s. 38(1).

(2) Without limiting section 16 of the **Evidence Act 2008**, the President, a magistrate or a judicial registrar is not compellable to give evidence in any proceeding, whether civil or criminal, of anything said or done or arising from the conduct of the judicial resolution conference.

S. 527B inserted by No. 50/2009 s. 18, amended by No. 34/2010 s. 38(2).

527B Protection of conduct of judicial resolution conference

Without limiting any other law, whether written or unwritten, the President, a magistrate or a judicial registrar performing duties in connection with any judicial resolution conference has the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

Part 7.4—Powers

528 Court to have powers of Magistrates' Court

(1) The Court has and may exercise in relation to all matters over which it has jurisdiction all the powers and authorities that the Magistrates' Court has in relation to the matters over which it has jurisdiction.

S. 528(2) substituted by No. 68/2009 s. 78.

(2) Unless the contrary intention appears in this Act or any other Act—

(a) the **Magistrates' Court Act 1989** (except section 58 and Part 5); and

S. 528(2)(b) amended by No. 30/2010 s. 41(1).

(b) the **Criminal Procedure Act 2009** in relation to proceedings in the Magistrates' Court (other than section 54(2), Division 2 of Part 2.3 and Chapter 6); and

(c) subject to any rules of court made under this Act, the regulations and rules of court made under those Acts—

apply with any necessary modifications to the Children's Court and proceedings in the Court and, without limiting the application of section 419, to the issue of process in the same manner and to the same extent as they apply to the Magistrates' Court, the proceedings of that Court and the issue of process.

S. 528(2A) inserted by No. 30/2010 s. 41(2).

(2A) Despite section 39(1A) of the **Criminal Procedure Act 2009** (as applied by subsection (2) of this section), a request under section 39(1) of that Act may be made at any time after the criminal proceeding has commenced.

(3) In punishing a person for a contempt of court under section 133 or 134 of the **Magistrates' Court Act 1989** (as applied by subsection (2) of this section) the Court must not order that a person under the age of 18 years be committed to prison but instead be committed to—

(a) in the case of a child of or above the age of 15 years, a youth justice centre; or

(b) in the case of a child under the age of 15 years, a youth residential centre.

S. 528A inserted by No. 52/2013 s. 54.

528A Enforcement of costs orders made in the Family Division

(1) In this section—

appropriate court means a court that has jurisdiction to enforce an amount of costs equivalent to that required to be paid under an order for costs;

order for costs means an order for costs made by the Court—

(a) in proceedings in the Family Division; or

(b) under section 154 of the **Family Violence Protection Act 2008**; or

(c) under section 111 of the **Personal Safety Intervention Orders Act 2010**.

(2) A person in whose favour an order for costs is made may enforce the order by filing in the appropriate court a copy of the order certified by the principal registrar of the Court to be a true copy.

(3) On filing, the order must be taken to be an order of the appropriate court for payment of costs and may be enforced accordingly.

528B Issue of warrants in electronic form

S. 528B inserted by No. 3/2016 s. 8.

S. 528B(1) substituted by No. 33/2018 s. 55.

(1) A warrant may be issued electronically by the person issuing the warrant causing the warrant, or the prescribed particulars of the warrant, to be transmitted electronically to the person to whom the warrant is issued in accordance with the regulations, if any.

(2) A warrant issued in accordance with subsection (1)—

(a) directs and authorises the person to whom it is issued to do all things that the person would have been directed or authorised to do if a warrant containing the particulars referred to in subsection (1) had been issued in paper form by the person issuing the warrant; and

(b) must not be amended, altered or varied after its issue, unless the amendment, alteration or variation is authorised by or under this Act or any other Act.

529 Recall and cancellation of warrant

S. 529(1) amended by No. 17/2023 s. 33(a).

(1) A warrant issued by a registrar, judicial registrar, magistrate or bail justice may be recalled and cancelled by—

S. 529(1)(a) amended by No. 17/2023 s. 33(a).

(a) that registrar, judicial registrar, magistrate or bail justice; or

S. 529(1)(ab) inserted by No. 17/2023 s. 33(b).

(ab) if issued by a judicial registrar, any other judicial registrar; or

(b) if issued by a registrar, the registrar for the time being at the venue of the Court at which it was issued or except in the case of—

(i) a warrant issued in accordance with an order under section 378(1)(e); or

S. 529(1)(b)(ii) substituted by No. 48/2006 s. 25, amended by No. 8/2008 s. 22(2)(d).

(ii) a warrant to seize property issued in respect of an order under Schedule 3—

any other registrar; or

(c) a magistrate.

(2) If a warrant has been recalled and cancelled under subsection (1), a fresh warrant may be issued for the same purpose as that for which the recalled warrant was issued.

(3) A warrant to imprison or detain in a youth justice centre for non-payment of a fine (whether issued before or after the commencement of this section) or a warrant referred to in subsection (1)(b)(i) or (1)(b)(ii) is null and void if it has not been executed within the period of 3 years after a warrant of that type was first issued against the person named in the warrant for the purpose specified in the warrant.

(4) If a warrant referred to in subsection (3) becomes null and void under that subsection, the fine in respect of which it was issued, together with any associated fees and costs, ceases to be enforceable or recoverable if no part of the fine had been paid before the date on which the warrant became null and void.

(5) Nothing in subsection (3) or (4) prevents the issue, with the leave of the Court, of a fresh warrant for the same purpose as that for which a warrant that has become null and void under subsection (3) was issued.

(6) Despite subsection (3), if under subsection (5) a fresh warrant is issued, the fine in respect of which it was issued, together with any associated fees and costs, again becomes enforceable or recoverable as if there had been no cessation.

530 Power to adjourn proceeding

(1) Subject to this section, the Court may, on the application of a party to a proceeding or without any such application, adjourn the hearing of the proceeding—

(a) to such times and places; and

(b) for such purposes; and

(c) on such terms as to costs or otherwise—

as it considers necessary or just in the circumstances.

(2) Without limiting subsection (1), the Court may, on adjourning the hearing of a proceeding in the Family Division, require the child or his or her parent to enter into (whether orally or in writing) an undertaking to appear, or to produce the child, before the Court on the resumption of the hearing of the proceeding.

(3) If the Court has adjourned the hearing of a proceeding to a particular time, it may order that the hearing be held or resumed before that time.

(4) The Court may only make an order under subsection (3) with the consent of all the parties or on the application of a party who has given reasonable notice of the application to the other party or parties.

S. 530(5) amended by Nos 69/2009 s. 54(Sch. Pt 2 item 10), 11/2021 ss. 39, 196(2).

(5) If the Court has adjourned the hearing of a proceeding to a particular time and, in the case of a proceeding in the Criminal Division, has remanded the child in custody or, in the case of a proceeding in the Family Division, has placed the child in a secure welfare service, it may by order direct that the child be brought before, or be brought to another place specified in the order where facilities exist to enable the child (by audio visual link or audio link) to appear before, the Court at any time before then in order that the hearing may be held or resumed.

(6) The officer in charge of the remand centre or secure welfare service or other officer in whose custody the child is must obey an order under subsection (5).

S. 530(7) amended by No. 37/2014 s. 10(Sch. item 18.16).

(7) A child being removed from a remand centre or a secure welfare service to be brought before the Court or to another place in compliance with an order under subsection (5) is, during the time of removal, deemed to be in the legal custody of the police officer, protective services officer or other officer having the custody of the child.

(8) The Court must proceed with as much expedition as the requirements of this Act and a proper hearing of the proceeding permit.

(9) The Court should avoid the granting of adjournments in Family Division proceedings to the maximum extent possible.

(10) The Court must not grant an adjournment of a proceeding in the Family Division unless it is of the opinion that—

(a) it is in the best interests of the child to do so; or

(b) there is some other cogent or substantial reason to do so.

(11) In deciding whether and for how long to adjourn a proceeding under this section, the Court must have regard to the requirements in subsections (8) to (10).

531 Power to dispense with service

(1) The Secretary may apply to the Family Division for an order dispensing with service on a specified individual of an application, document or order or all applications, documents and orders—

(a) that is or are required, or that may be required, under Chapter 4 or Schedule 1 to be served on that person in respect of a specified child; or

(b) that is or are required, or that may be required, under this Chapter to be served on that person in relation to proceedings in the Family Division in respect of a specified child.

S. 531(2) amended by Nos 52/2013 s. 60, 6/2018 s. 68(Sch. 2 item 20.6).

(2) The Court may make the order sought if it is satisfied by evidence on oath or by affirmation or by affidavit of the Secretary that—

(a) the individual specified in the application cannot be located after the Secretary has made reasonable efforts to discover his or her location; or

(b) there are exceptional circumstances.

532 Witness summonses

(1) The Family Division (on the application of a party or without that application) or a registrar may issue the following witness summonses—

(a) summons to give evidence;

(b) summons to produce documents or things;

(c) summons to give evidence and produce documents or things.

(2) Any party to a proceeding in the Family Division may apply for the issue of a witness summons.

(3) A witness summons may be directed to any person who appears to the Court or registrar issuing the summons to be likely—

(a) to be able to give material evidence for any party to the proceeding or the Court; or

(b) to have in the person's possession or control any documents or things which may be relevant on the hearing of the proceeding; or

(c) both to be able to give material evidence and to have in the person's possession or control any relevant documents or things.

(4) A witness summons must require the person to whom it is directed to attend at a specified venue of the Court on a certain date and at a certain time—

(a) to give evidence in the proceeding; or

(b) to produce for examination at the hearing any documents or things described in the summons that are in the person's possession or control; or

(c) both to give evidence and produce for examination any documents or things described in the summons that are in the person's possession or control.

(5) A witness summons must be served on a person a reasonable time before the return date by—

S. 532(5)(a) amended by No. 11/2021 s. 40.

(a) delivering a copy of the summons to the person personally; or

(b) leaving a copy of the summons for the person at the person's last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.

S. 532(5)(b) amended by No. 11/2021 s. 40.

(6) If it appears to the Court, by evidence on oath or by affirmation or by affidavit, that service cannot be promptly effected, the Court may make an order for substituted service.

S. 532(6) amended by No. 6/2018 s. 68(Sch. 2 item 20.7).

(7) If the person to be served with the witness summons is a company or registered body (within the meaning of the Corporations Act), the summons may be served on that person in accordance with section 109X or 601CX of that Act, as the case requires.

(8) A person to whom a witness summons is directed is, subject to subsection (9), excused from complying with the summons unless conduct money is given or tendered to the person at the time of service of the summons or a reasonable time before the return date.

(9) It is not necessary to give or tender conduct money to a person to whom a witness summons is directed if the person will not reasonably incur any expenses in complying with the summons.

(10) Unless the Court or the registrar issuing the summons otherwise directs, a summons to produce documents or things or a summons to give evidence and produce documents or things permits the person to whom the summons is directed, instead of producing the document or thing at the hearing, to produce it, together with a copy of the summons, to the Court not later than 2 days before the first day on which production is required.

S. 532(10) amended by No. 26/2023 s. 50(1).

S. 532(11) substituted by No. 26/2023 s. 50(2).

(11) If requested to do so, the Court must give a receipt to a person who produces a document or thing to the Court under subsection (10).

S. 532(12) amended by No. 26/2023 s. 50(3).

(12) The production of a document or thing to the Court under subsection (10) in answer to a summons to give evidence and produce documents or things does not remove the requirement on the person to whom the summons is directed to attend for the purpose of giving evidence.

(13) The Court may direct that a witness who has attended before the Court in answer to a witness summons is entitled to receive from the party who applied for the issue of the witness summons conduct money for each day of attendance.

(14) Nothing in this section—

S. 532(14)(a) repealed by No. 69/2009 s. 54(Sch. Pt 1 item 7.7).

* * * * *

(b) derogates from the power of the Court to certify that a witness be paid his or her expenses of attending before the Court.

533 Court may reserve question of law for determination by Supreme Court

(1) If a question of law arises in a proceeding before the Court, the Court, of its own motion or on the application of any person who is a party to the proceeding, may, with the consent of the President, reserve the question in the form of a special case stated for the opinion of the Supreme Court.

(2) If a question of law has been reserved for the opinion of the Supreme Court under subsection (1), the Court cannot—

(a) finally determine the matter until the opinion of the Supreme Court has been given; or

(b) proceed in a manner or make a determination that is inconsistent with the opinion of the Supreme Court on the question of law.

533A Court may issue or transmit court documents electronically

S. 533A inserted by No. 33/2018 s. 56.

(1) Without limiting any other power of the Court, any order, process or other document that the Court, the President, a magistrate for the Court, a bail justice or a court official may issue or transmit under this Act or any other Act, statutory rule or other enactment or law may be issued or transmitted by electronic communication.

(2) If any provision of an Act, a statutory rule or other enactment or law in Victoria permits or requires any order, process or other document to be issued or transmitted by manual means, that requirement is taken to be met if the issuing or transmission occurs by electronic communication.

Example

If an Act or other law requires or permits the Court to sign or seal a document, the Court could use an electronic signature or electronic seal and the requirement is met in the same way as if the document had been signed or sealed by hand.

(2A) Without limiting subsections (1) and (2), the issuing or transmission of any order, process or document by electronic communication may include the use of an information system.

S. 533A(2A) inserted by No. 26/2023 s. 51.

(3) Nothing in this section—

(a) limits the Court, the President, a magistrate for the Court, a bail justice or a court official from issuing or providing any order, process or other document in paper form; or

(b) affects or limits any practice, procedure or rules of court that provide for electronic processes in the Court; or

(c) affects or limits the power to make rules of court; or

(d) limits any other power of the Court, the President, a magistrate for the Court, a bail justice or a court official.

S. 533B inserted by No. 26/2023 s. 52.

533B Court may receive documents electronically

Any document to be filed in the Court may be filed by electronic communication, including by using an information system.

Part 7.5—Restriction on publication of proceedings

534 Restriction on publication of proceedings

(1) A person must not publish or cause to be published—

(a) except with the permission of the President or of a magistrate under subsection (1A), a report of a proceeding in the Court or of a proceeding in any other court arising out of a proceeding in the Court that contains any particulars likely to lead to the identification of—

S. 534(1)(a) amended by No. 1/2016 s. 21(1).

(i) the particular venue of the Children's Court, other than the Koori Court (Criminal Division) or the Neighbourhood Justice Division, in which the proceeding was heard; or

S. 534(1)(a)(i) amended by No. 51/2006 s. 14.

(ii) a child or other party to the proceeding; or

(iii) a witness in the proceeding; or

(b) except with the permission of the President or of a magistrate under subsection (1A), a picture as being or including a picture of a child or other party to, or a witness in, a proceeding referred to in paragraph (a); or

S. 534(1)(b) amended by No. 1/2016 s. 21(1).

(c) except with the permission of the President or of a magistrate under subsection (1A), or of the Secretary under subsection (3), any matter that contains any particulars likely to lead to the identification of a child as being the subject of an order made by the Court.

S. 534(1)(c) amended by No. 1/2016 s. 21(1).

Penalty:

(a) In the case of a body corporate—500 penalty units;

(b) In any other case—100 penalty units or imprisonment for 2 years.

S. 534(1A) inserted by No. 1/2016 s. 21(2).

(1A) On application to the Court, a magistrate may grant permission for the publication if the magistrate is satisfied that—

(a) the circumstances giving rise to the request for permission to publish are an emergency; and

(b) publication is reasonably necessary for the safety of—

(i) the child, other party or witness referred to in subsection (1); or

(ii) any other person or the community.

(2) The Court in making an order may direct the Secretary not to grant permission under subsection (3) with respect to the order.

S. 534(3) amended by No. 61/2014 s. 88.

(3) The Secretary may, in special circumstances, grant permission for the publication in relation to a child who is the subject of a family reunification order, care by Secretary order or long-term care order of any matter that contains any particulars likely to lead to the identification of a child as being the subject of an order made by the Court.

S. 534(3A) inserted by No. 43/2017 s. 40(1).

(3A) The Secretary to the Department of Justice and Regulation may grant permission for the publication of any identifying particular of any person who has escaped from a remand centre, a youth residential centre or a youth justice centre if the Secretary is satisfied that publication—

(a) is reasonably necessary for the safety of the person who has escaped or any other person; or

(b) will assist in apprehending the person or protecting the community.

S. 534(3B) inserted by No. 43/2017 s. 40(1).

(3B) In making a decision under subsection (3A), the Secretary must—

(a) have regard to the desirability of minimising the stigma to the person and the child's family; and

(b) grant permission for publication only to the extent necessary to apprehend the person.

S. 534(4) amended by Nos 43/2017 s. 40(2), 5/2018 s. 23(1).

(4) Without limiting the generality of subsections (1), (3), (3A) and (3B) or section 534A(2), the following particulars are deemed to be particulars likely to lead to the identification of a person—

S. 534(4)(a) substituted by No. 11/2019 s. 13(1).

(a) the name of the person;

S. 534(4)(b) substituted by No. 11/2019 s. 13(1).

(b) the names of—

(i) any relative of the person; or

(ii) any other person having the care of the person; or

(iii) in addition to subparagraphs (i) and (ii), in the case of an Aboriginal person, a member of the Aboriginal community of the person;

S. 534(4)(c) substituted by No. 11/2019 s. 13(1).

(c) the name or address of any place of residence of the person, or the locality in which the residence is situated;

S. 534(4)(d) substituted by No. 11/2019 s. 13(1).

(d) the name or address of any place of education, training or employment attended by the person, or the locality in which the place is situated.

S. 534(4)(e)–(h) repealed by No. 11/2019 s. 13(1).

* * * * *

S. 534(5) amended by No. 48/2006 s. 26.

(5) Subsection (1) does not apply to the publication of accounts of proceedings of the Court, where those accounts have been approved by the President.

S. 534(6) inserted by No. 42/2014 s. 111.

(6) Subsection (1) does not apply to the publication under section 85 of the **Vexatious Proceedings Act 2014** by the Attorney-General of a copy of an order that relates to intervention order legislation within the meaning of that Act.

S. 534(7) inserted by No. 23/2017 s. 32(5).

(7) Subsection (1) does not prevent a disclosure that is made for the purposes of Part 5A of the **Family Violence Protection Act 2008** by an information sharing entity (within the meaning of that Act).

Note to s. 534 inserted by No. 5/2018 s. 23(2), substituted by No. 11/2019 s. 13(2).

Note

See sections 534A and 534B for further exceptions to section 534(1).

S. 534A inserted by No. 5/2018 s. 24.

534A Certain publications exempted from the restriction on publication of proceedings

(1) Subject to subsection (2), section 534(1) does not apply to the publication of—

(a) a report of a proceeding in the Criminal Division of the Court, or of a proceeding in any other court arising out of a proceeding in that Division, that contains particulars likely to lead to the identification

of a witness in the proceeding, if the witness—

(i) is a victim or alleged victim; and

(ii) is of or above the age of 18 years at the time of publication; or

(b) a picture as being or including a picture of a witness referred to in paragraph (a).

(2) Subsection (1) does not apply if the publication would be likely to lead to the identification of—

(a) the particular venue of the Children's Court, other than the Koori Court (Criminal Division) or the Neighbourhood Justice Division, in which the proceeding was heard; or

(b) a child or other party to the proceeding; or

(c) a witness in the proceeding, other than a witness referred to in subsection (1)(a).

(3) For the purposes of this section, ***alleged victim*** means a person who would be a victim in relation to an offence if the offence were proven.

534B Certain publications exempted if publication is in relation to sentencing of an adult

S. 534(B) inserted by No. 11/2019 s. 14.

(1) For the avoidance of doubt, subject to subsection (2), section 534(1) does not apply to the publication of a report of a proceeding in the Criminal Division of the Court if—

(a) the publication is made by the County Court constituted by a judge or the Supreme Court constituted by a Judge of the Court for the purpose of sentencing an adult in the County Court or Supreme Court for an offence committed as an adult; and

(b) the adult, as a child, was found guilty or convicted in that proceeding in the Criminal Division of the Court.

(2) The County Court constituted by a judge or the Supreme Court constituted by a Judge of the Court may publish the information referred to in subsection (1) if—

(a) the offence for which the adult was found guilty or convicted as a child is the same or of sufficient similarity to the offence for which the adult is being sentenced; and

(b) the offence for which the adult is being sentenced is serious; and

(c) the Court considers that publication is appropriate given—

(i) the adult's prospect of rehabilitation; and

(ii) the number, seriousness, date, relevance and nature of any previous findings of guilt or convictions.

(3) Section 534(1) does not apply to the further publication by any person of information that has been published by the County Court constituted by a judge or the Supreme Court constituted by a Judge of the Court in accordance with this section.

(4) Nothing in this section affects the operation of section 584.

Part 7.6—Court officers

535 Principal registrar, registrars and deputy registrars

(1) There continues to be the following officers of the Court—

(a) a principal registrar employed under Part 3 of the **Public Administration Act 2004**;

(b) registrars;

(c) deputy registrars.

(2) Any person who for the time being holds the office of registrar or deputy registrar of the Magistrates' Court also holds the office of registrar or deputy registrar (as the case requires) of the Children's Court.

(3) The principal registrar, registrars and deputy registrars have the duties, powers and functions provided by this Act and the regulations.

(4) The principal registrar may, by instrument, delegate to any registrar or class of registrar any function or power of the principal registrar under this Act or the regulations, except this power of delegation.

(5) A deputy registrar may, subject to this Act and the regulations and to any directions of a registrar, exercise any of the powers or perform any of the functions of a registrar.

536 Appointment of Aboriginal elders or respected persons

(1) The Chief Executive Officer may appoint a person who is a member of the Aboriginal community as an Aboriginal elder or respected person for the purpose of performing functions in relation to the Koori Court (Criminal Division) as set out in this Act.

S. 536(1) amended by No. 3/2016 s. 9(1)(a).

S. 536(2) amended by No. 3/2016 s. 9(1)(b).

(2) An Aboriginal elder or respected person holds office for the period, and on the terms and conditions, determined by the Chief Executive Officer and specified in the instrument of appointment.

S. 536(3) amended by No. 3/2016 s. 9(1)(b).

(3) An Aboriginal elder or respected person may resign from office by writing signed by him or her and delivered to the Chief Executive Officer.

S. 536(4) inserted by No. 3/2016 s. 9(2).

(4) In this section—

Chief Executive Officer means the Chief Executive Officer of Court Services Victoria appointed under section 22 of the **Court Services Victoria Act 2014**.

537 Court register

(1) The principal registrar must cause a court register to be kept of all the orders of the Court and of such other matters as are directed by this Act to be entered in the court register.

(2) An order made by the Court must be authenticated by the person who constituted the Court.

(3) Any person may, with the approval of a magistrate and on payment of the prescribed fee, inspect that part of the court register that contains the final orders of the Court.

(4) A party to a proceeding or such a party's legal practitioner may inspect without charge that part of the court register that relates to that proceeding.

(5) A document purporting to be an extract from the register and purporting to be signed by a registrar who certifies that in his or her opinion the extract is a true extract from the court register is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters appearing in the extract.

538 Process

(1) Process may only be issued out of the Court by a registrar, except where otherwise provided by or under this or any other Act.

(2) The principal registrar must, subject to the regulations, keep the original of all process issued out of the Court and must issue or cause to be issued as many copies as are necessary.

S. 538(3) substituted by No. 26/2023 s. 53.

(3) Process issued by a registrar may be recalled and cancelled by—

(a) the principal registrar; or

(b) a judicial registrar; or

(c) any other registrar; or

(d) a magistrate.

S. 538(4) amended by No. 68/2009 s. 79.

(4) Service of any process issued out of the Court may be proved in any manner in which service of a summons to answer to a charge may be proved under section 399 of the **Criminal Procedure Act 2009**.

539 Powers of registrar

(1) A registrar has the following powers in addition to those conferred on him or her by this or any other Act—

(a) power to issue any process out of the Court;

S. 539(1)(b) amended by No. 6/2018 s. 68(Sch. 2 item 20.8).

(b) power to administer an oath or affirmation;

(c) with the consent of the parties to a proceeding in the Family Division, power to extend an interim accommodation order of a kind referred to in section 263(1)(a) or 263(1)(b) made in respect of a child

appearing on a return date in relation to the proceeding;

S. 539(1)(d) substituted by No. 11/2021 s. 41(1)(a).

(d) power to abridge or extend the bail of a person who has been granted bail in relation to a criminal proceeding;

S. 539(1)(e) amended by No. 53/2016 s. 92(a).

(e) power to endorse a warrant to arrest in accordance with section 62 of the **Magistrates' Court Act 1989**;

S. 539(1)(f) inserted by No. 53/2016 s. 92(b), amended by No. 11/2021 s. 41(1)(b).

(f) power to make a declaration under Division 4 of Part 7 of the **National Domestic Violence Order Scheme Act 2016**;

S. 539(1)(g) inserted by No. 11/2021 s. 41(1)(c).

(g) power to adjourn a criminal proceeding or a proceeding under the **Family Violence Protection Act 2008**, the **Personal Safety Intervention Orders Act 2010** or the **National Domestic Violence Order Scheme Act 2016**;

S. 539(1)(h) inserted by No. 11/2021 s. 41(1)(c).

(h) power to abridge or extend the adjournment of a criminal proceeding or a proceeding under the **Family Violence Protection Act 2008**, the **Personal Safety Intervention Orders Act 2010** or the **National Domestic Violence Order Scheme Act 2016**;

S. 539(1)(i) inserted by No. 11/2021 s. 41(1)(c).

(i) power to otherwise change the time or place at which a criminal proceeding or a proceeding under the **Family Violence Protection Act 2008**, the **Personal Safety Intervention Orders Act 2010** or the **National Domestic Violence Order Scheme Act 2016** is listed before the Court.

S. 539(2) amended by No. 11/2021 s. 41(2).

(2) Nothing in this section empowers a registrar to vary the amount or conditions of bail.

(3) The power under subsection (1)(d) to abridge or extend the bail of a person may be exercised—

S. 539(3) inserted by No. 11/2021 s. 41(3).

(a) at any time, including on the day on which the person's proceeding is listed before the Court; and

(b) either in the presence or absence of the person.

(4) The powers under subsection (1)(g), (h) and (i) in respect of a proceeding may be exercised—

S. 539(4) inserted by No. 11/2021 s. 41(3).

(a) at any time, including on the day on which the proceeding is listed before the Court; and

(b) either in the presence or absence of the parties.

(5) The powers under subsection (1)(d), (g), (h) and (i) may be exercised—

S. 539(5) inserted by No. 11/2021 s. 41(3).

(a) on the application of a party; or

(b) on the registrar's own initiative.

540 Fees

A registrar must demand and receive the prescribed fees.

541 Extortion by and impersonation of court officials

(1) A court official must not extort, demand, take or accept from any person any unauthorised fee or reward.

Penalty: 60 penalty units.

(2) A court official must not pretend to be the holder of an office or position in or in relation to the Court which he or she does not hold.

Penalty: 60 penalty units.

(3) A person who is not a court official must not pretend to be a court official.

Penalty: 60 penalty units.

S. 542 amended by No. 64/2010 s. 60.

542 Protection of registrars

The principal registrar, a registrar and a deputy registrar have in the performance of their duties in good faith the same protection and immunity as a magistrate has in the performance of his or her duties.

Part 7.6A—Judicial registrars

Ch. 7 Pt 7.6A (Heading and ss 542A–542K) inserted by No. 34/2010 s. 39.

542A Assignment of duties

S. 542A inserted by No. 34/2010 s. 39.

(1) The President may assign duties to a judicial registrar.

(2) A judicial registrar must—

(a) carry out the duties that are from time to time assigned to him or her by the President; and

(b) subject to section 504(8), perform the duties and exercise the powers and authorities imposed or conferred on him or her by or under this Act or any other Act or by the rules of court.

542B Guidelines relating to the appointment of judicial registrars

S. 542B inserted by No. 34/2010 s. 39.

(1) The President, in consultation with the Attorney-General may—

S. 542B(1)(a) amended by No. 62/2014 s. 96.

(a) prepare guidelines relating to the appointment (including re-appointment) of judicial registrars of the Court; and

(b) from time to time amend or revoke any guidelines prepared under paragraph (a).

(2) As soon as practicable after preparing, amending or revoking any guidelines under subsection (1), the President must cause a copy of the guidelines or the amendment or notice of the revocation (as the case requires) to be given to the Attorney-General.

S. 542C inserted by No. 34/2010 s. 39.

542C Recommendations for appointment of judicial registrars

(1) The President may, at any time, recommend to the Attorney-General that a judicial registrar, or more than one judicial registrar, of the Court be appointed by the Governor in Council.

(2) In making a recommendation under subsection (1), the President must have regard to any guidelines in force under section 542B(1).

(3) On receiving a recommendation under subsection (1), the Attorney-General may recommend to the Governor in Council that a judicial registrar, or more than one judicial registrar, of the Court be appointed under section 542D.

S. 542D inserted by No. 34/2010 s. 39.

542D Appointment by Governor in Council

(1) On the recommendation of the Attorney-General under section 542C, the Governor in Council may appoint a person as a judicial registrar of the Court for the period, not exceeding 5 years, specified in his or her instrument of appointment.

(2) A person is not eligible for appointment as a judicial registrar unless he or she—

(a) is either—

S. 542D(2)(a)(i) amended by No. 17/2014 s. 160(Sch. 2 item 14.2).

(i) an Australian lawyer; or

(ii) enrolled as a legal practitioner of the High Court of Australia; and

(b) has been admitted to legal practice in Victoria or another State or a Territory, or has been enrolled as a legal practitioner of the High Court of Australia, for not less than 5 years.

(3) A judicial registrar may be appointed on a full-time or part-time basis.

(4) A judicial registrar, although not appointed on a part-time basis, may, by agreement in writing entered into with the President, undertake the duties of a judicial registrar on a part-time basis.

(5) A judicial registrar is eligible for re-appointment in accordance with section 542C and this section if the President recommends to the Attorney-General that the person be re-appointed.

S. 542D(5) amended by No. 62/2014 s. 97.

(6) The **Public Administration Act 2004** does not apply to a judicial registrar in respect of the office of judicial registrar.

542E Remuneration and terms and conditions of appointment

S. 542E inserted by No. 34/2010 s. 39.

(1) A judicial registrar is entitled to the terms and conditions including remuneration and allowances that are fixed in respect of him or her from time to time by the Governor in Council.

S. 542E(1) amended by No. 29/2015 s. 48(1).

* * * * *

S. 542E(2) repealed by No. 29/2015 s. 48(2).

(3) Except with the approval of the Attorney-General, a judicial registrar must not—

(a) engage in legal practice; or

(b) undertake paid employment; or

(c) conduct a business, trade or profession of any kind.

(4) A judicial registrar must disclose to the President in writing any direct or indirect pecuniary interest that he or she has or acquires that could conflict with the proper performance of the duties of the office of judicial registrar.

(5) Despite any provision to the contrary made by or under any other Act, a person who has held the office of judicial registrar is entitled to have his or her service in that office taken into account in computing the period of service which entitles public officials (within the meaning of the **Public Administration Act 2004**) to be granted long service leave or other leave entitlements, whether his or her service in the office of judicial registrar is before or after any period of service as such a public official.

S. 542E(6) inserted by No. 29/2015 s. 48(3).

(6) The following are to be paid out of the Consolidated Fund, which is appropriated to the necessary extent—

(a) the amounts (including the amount of any non-salary benefits) payable to or for any judicial registrar; and

(b) premiums and other amounts payable under the **Workplace Injury Rehabilitation and Compensation Act 2013** in respect of any judicial registrar; and

(c) payroll tax payable under the **Payroll Tax Act 2007** in respect of wages paid or payable to any judicial registrar; and

(d) tax payable under the Fringe Benefits Tax Act 1986 of the Commonwealth in respect of fringe benefits provided to any judicial registrar; and

(e) superannuation contributions within the meaning of the **Payroll Tax Act 2007** payable in respect of any judicial registrar.

(7) In this section, ***non-salary benefits*** has the same meaning as it has in clause 3(5) and (6) of Schedule 1A to the **Public Administration Act 2004**.

S. 542E(7) inserted by No. 29/2015 s. 48(3).

(8) Nothing in this section authorises the salary or the aggregate value of the allowances payable to a judicial registrar to be reduced.

S. 542E(8) inserted by No. 62/2014 s. 98.

542EA Oath or affirmation of office

S. 542EA inserted by No. 62/2014 s. 99.

(1) A judicial registrar must take an oath or affirmation of office in the prescribed form and manner.

(2) Subsection (1) only applies to a person who is appointed or re-appointed as a judicial registrar on or after the commencement of section 99 of the **Courts Legislation Miscellaneous Amendments Act 2014**.

(3) A failure by a person to take an oath or affirmation of office in accordance with this section does not invalidate anything done by that person as a judicial registrar.

542F Resignation from office

S. 542F inserted by No. 34/2010 s. 39.

A judicial registrar may resign from office by delivering to the Governor a signed letter of resignation.

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Ss 542G–542I inserted by No. 34/2010 s. 39, repealed by No. 16/2016 s. 188.

542J Performance of duties by judicial registrar

S. 542J inserted by No. 34/2010 s. 39.

(1) A judicial registrar—

(a) must not hear, or continue to hear, a proceeding that the judicial registrar considers for any reason inappropriate for

hearing and determination by the Court constituted by a judicial registrar; and

(b) must make appropriate arrangements for the proceeding to be heard and determined by the Court constituted by a magistrate.

(2) Subject to this Act and the rules of court, in the performance of his or her duties as a judicial registrar, a judicial registrar is not subject to the direction or control of any person or body.

(3) In the performance of his or her duties as a judicial registrar, a judicial registrar has the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

S. 542J(4) inserted by No. 17/2023 s. 34.

(4) A judicial registrar has any of the powers, duties and functions of a registrar under this Act and any other Act or the rules of court.

S. 542K inserted by No. 34/2010 s. 39, substituted by No. 62/2014 s. 100.

542K Appeal from or review of determination of Court constituted by judicial registrar

(1) The rules of court may provide for appeals from or reviews of a determination of the Court constituted by a judicial registrar—

(a) whether in respect of—

(i) the hearing and determination of any proceeding; or

(ii) any interlocutory application; and

(b) whether in respect of specified kinds of application or proceeding or generally; and

(c) by specifying whether the procedure is by way of appeal or review or both; and

(d) by specifying the way in which the Court may be constituted for those appeals or reviews.

(2) The powers in subsection (1) are in addition to and do not limit any power to make rules of court under section 588.

(3) Unless the rules of court otherwise provide, a determination of the Court constituted by a judicial registrar may be appealed from or reviewed—

(a) on application of a party to the proceeding; or

(b) on the Court's own motion.

(4) If the rules of court do not provide for an appeal from or a review of a decision of the Court constituted by a judicial registrar, the decision is to be subject to a review or an appeal conducted—

(a) by way of hearing de novo by the court constituted by a magistrate for the Court; and

(b) otherwise in accordance with the rules of court, if any.

Part 7.7—Court services

543 Youth justice officers

(1) The Secretary—

(a) has the duty of generally supervising all probation work under this Act; and

(b) has the powers and duties prescribed by or under this Act.

(2) There are to be employed under Part 3 of the **Public Administration Act 2004** as many youth justice officers for the Court as are necessary to be employed.

(3) A youth justice officer employed under subsection (2) has the powers and duties prescribed by or under this Act.

(4) The Secretary may, by instrument published in the Government Gazette, appoint as an honorary youth justice officer any fit and proper person who is willing to exercise and perform the powers and duties given to honorary youth justice officers by or under this Act.

(5) An honorary youth justice officer is not in respect of the office of honorary youth justice officer subject to the **Public Administration Act 2004**.

(6) A youth justice officer is, in relation to a probation order, subject to the direction of the Court but otherwise he or she is subject to the direction and control of the Secretary.

(7) The Secretary must co-ordinate the activities of youth justice officers.

544 Duties of youth justice officers

(1) It is the duty of a youth justice officer if required by the Criminal Division or the Secretary—

S. 544(1)(a) amended by No. 55/2014 s. 139(1).

(a) to give the Court any assistance that it requires in relation to a child who has been found guilty of an offence, including preparing and furnishing it with a pre-sentence report prepared in accordance with section 572 or a report prepared under Division 6 of Part 5A of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or

(b) to visit and supervise any child as directed by the Court and in consultation and co-operation with the child's parents; or

(c) to perform such other duties as are prescribed by or under this or any other Act.

S. 544(2) amended by No. 37/2014 s. 10(Sch. item 18.17).

(2) All registrars of the Court and all police officers must, in the prescribed manner, supply the Secretary or a youth justice officer nominated by the Secretary with any information concerning charges before the Criminal Division that are necessary for the purposes of this Act.

(3) A youth justice officer must carry out any inquiries required under this section in such manner as to cause as little prejudice as possible to the reputations of the child concerned and of his or her parents.

S. 544(4) amended by No. 55/2014 s. 139(2).

(4) A written report prepared under this section must not be tendered to or received by the Court until the Court is satisfied that the child is guilty of the offence charged or is declared liable to supervision under Division 5 of Part 5A of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

545 Children's Court Liaison Office

(1) There continues to be a Children's Court Liaison Office.

(2) Subject to the **Public Administration Act 2004**, there are to be appointed to the Children's Court Liaison Office as many court liaison officers and other persons as are necessary for the proper functioning of the Office.

(3) The Children's Court Liaison Office has the following functions—

(a) to provide information and advice about the Court to children, families and the community;

(b) to co-ordinate the provision to the Court of any reports that are required;

(c) to collect and keep general information and statistics on the operation of the Court;

(d) to provide general advice and assistance to the Court;

(e) to undertake any research that is required to enable it to carry out its functions.

546 Children's Court Clinic

(1) The Secretary to the Department of Justice may continue and maintain a Children's Court Clinic.

(2) The Children's Court Clinic has the following functions—

(a) to make clinical assessments of children;

(b) to submit reports to courts and other bodies;

(c) to provide clinical services to children and their families.

(3) In addition to the functions mentioned in subsection (2) the Children's Court Clinic has any other functions that are prescribed.

Part 7.8—Reports to the Court

Division 1—General

547 Reports to which Part applies

This Part applies to the following types of reports—

(a) protection reports;

(b) disposition reports;

(c) additional reports;

(d) therapeutic treatment application reports;

(e) therapeutic treatment (placement) reports;

(f) pre-sentence reports;

(g) group conference reports;

S. 547(h) amended by No. 43/2017 s. 19(a).

(h) progress reports;

S. 547(i) inserted by No. 43/2017 s. 19(b).

(i) youth control order planning meeting reports;

S. 547(j) inserted by No. 43/2017 s. 19(b).

(j) reports under section 409L(3) (child's compliance with youth control order).

548 Notification of requirement to submit report

If the Court orders the Secretary or the Secretary to the Department of Justice or any other person to submit a report to which this Part applies, the registrar at the venue of the Court at which the order is made must, within one working day after the making of the order—

(a) orally notify him or her of the making of the order; and

(b) forward a copy of the order to him or her.

549 Warning to be given to persons being interviewed

The author of a report to which this Part applies must at the beginning of any interview being conducted by him or her in the course of preparing the report inform the person being interviewed that any information that he or she gives may be included in the report.

550 Attendance at Court of author of report

(1) The author of a report to which this Part applies may be required to attend to give evidence at the hearing of the proceeding to which the report is relevant by a notice given in accordance with subsection (2) by—

(a) the child in respect of whom the report has been prepared; or

(b) a parent of that child; or

(c) the Secretary; or

(d) the Court.

(2) A notice under subsection (1) must be—

(a) in writing; and

(b) filed in the Court as soon as possible and, if practicable, not later than 2 working days before the hearing.

S. 550(2)(b) amended by No. 26/2023 s. 54(1).

(3) On the filing of a notice under subsection (1), the Court must immediately notify the author of the report that the author's attendance is required on the return date.

S. 550(3) amended by No. 26/2023 s. 54(2).

(4) A person is guilty of contempt of court if, being the author of a report who has been required to attend the Court under subsection (1), he or she fails, without sufficient excuse, to attend as required.

(5) The author of a report who has been required under subsection (1) by the child or a parent of the child or the Secretary to attend at the hearing of a proceeding must, if required by the child or the parent or the Secretary (as the case requires), be called as a witness and may be cross-examined on the contents of the report.

551 Disputed report

(1) If any matter in a report to which this Part applies is disputed by the child who is the subject of the report or, if the proceeding is in the Family Division, by a parent of the child, the Court must not take the disputed matter into consideration when determining the proceeding unless satisfied that the matter is true—

(a) in the case of a proceeding in the Family Division, on the balance of probabilities; or

(b) in the case of a proceeding in the Criminal Division, beyond reasonable doubt.

(2) If—

(a) a report to which this Part applies, or any part of it, is disputed by the child who is the subject of the report or, if the proceeding is in the Family Division, by a parent of the child; and

(b) the author of the report does not attend the hearing of the proceeding despite having been required to attend under section 550(1)—

the Court must not take the report or the part in dispute into consideration when determining the proceeding unless the child or parent (as the case requires) consents to the report or the part in dispute being admitted into evidence.

552 Confidentiality of reports

(1) A person who prepares or receives or otherwise is given or has access to a report to which this Part applies, or any part of such a report, must not, without the consent of the child who is the subject of the report or that child's parent, disclose any information contained in that report or part report (as the case requires) to any person who is not entitled to receive or have access to that report or that part (as the case requires).

Penalty: 10 penalty units.

(2) Subsection (1) is subject to any contrary direction by the Court.

(3) Subsection (1) does not prevent—

(a) the Secretary; or

(b) a legal practitioner representing the Secretary or a protective intervener; or

(c) an employee representing the Secretary or his or her delegate in accordance with section 215(3)(c); or

(d) an honorary youth justice officer or an honorary youth parole officer to the extent necessary in connection with the exercise of his or her powers or the performance of his or her duties—

from being given or having access to a report to which this Part applies, or any part of such a report.

(4) A reference in subsection (1) to a report includes a reference to a copy of a report.

Division 2—Protection reports

553 Protection reports

If the Family Division requires further information to enable it to determine a protection application, it may order the Secretary to submit to the Court a protection report concerning the child who is the subject of the application.

S. 554 amended by No. 61/2014 s. 124.

554 Secretary to forward report to Court

If the Court orders the Secretary to submit a protection report to the Court, he or she must do so not less than 3 working days before the hearing.

555 Content of protection report

A protection report must only deal with matters that are relevant to the question of whether the child is in need of protection.

556 Access to protection report

(1) If the Court orders the Secretary to prepare a protection report, the Secretary must, subject to subsection (2), cause a copy of a protection report to be given before the hearing of the proceeding to each of the following—

(a) the child who is the subject of the report;

(b) that child's parent;

(c) the legal practitioners representing that child;

(d) the legal practitioners representing that child's parent;

(e) the protective intervener who made the protection application, if the protective intervener is not the Secretary;

(f) a party to the proceeding;

(g) any other person specified by the Court.

(2) The Court may by order restrict access to the whole of a protection report, or a part of the report specified in the order, by a person mentioned in subsection (1)(a), (1)(b), (1)(f) or (1)(g) and specified in the order, if the Court is satisfied that information in the report, or the part of the report, may be prejudicial to the physical or mental health of the child or a parent of the child.

(3) An application for an order under subsection (2) may be made by—

(a) the Secretary; or

(b) a person mentioned in subsection (1); or

(c) with the leave of the Court, any other person—

and must be made not less than 2 working days before the hearing of the proceeding.

(4) If the Court makes an order under subsection (2), it must cause a copy of the order to be served on the persons mentioned in subsection (1).

(5) A person who receives a copy of a protection report or of part of a protection report under this section (part or all of which was not given to the child who is the subject of the report or to that child's parent on account of an order made under subsection (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report or the part of it (as the case requires) that was not given to that child or parent.

Penalty: 10 penalty units.

Division 3—Disposition reports and additional reports

557 Disposition reports

S. 557(1) substituted by No. 61/2014 s. 89.

(1) The Secretary must prepare and submit to the Family Division a disposition report if—

(a) the Court becomes satisfied that—

(i) a child is in need of protection; or

(ii) there is a substantial and presently irreconcilable difference between the person who has parental responsibility for a child and the child to such an extent that the care and control of the child are likely to be seriously disrupted; or

(iii) there has been a failure to comply with a family preservation order; or

S. 557(1)(ab) inserted by No. 8/2016 s. 22(6).

(ab) the Secretary applies under section 289(1A) for a care by Secretary order; or

S. 557(1)(ac) inserted by No. 8/2016 s. 22(6).

(ac) the Secretary applies under section 290(1A) for a long-term care order; or

(b) the Secretary applies for a permanent care order; or

(c) the Secretary applies, or is notified that a person has applied—

(i) for the variation or revocation of a family preservation order, a family reunification order or a permanent care order; or

(ii) for the extension of a family preservation order, a family reunification order or a care by Secretary order; or

(iii) for the revocation of a care by Secretary order or a long-term care order; or

(d) the Court orders the Secretary to do so.

(2) Unless the Court otherwise orders, the Secretary is not required under subsection (1)(a)(i) or (1)(a)(ii) to prepare and submit to the Court a disposition report if the Court states that it does not propose to make a protection order or that it only proposes to make an order requiring a person to give an undertaking.

558 Content of disposition report

A disposition report must include—

(a) the case plan, if any, prepared for the child; and

S. 558(a) amended by No. 61/2014 s. 90(1).

(b) recommendations, where appropriate, concerning the order which the Secretary believes the Court ought to make; and

S. 558(b) substituted by No. 61/2014 s. 90(2).

S. 558(c) substituted by No. 61/2014 s. 90(2).

(c) if the report recommends that the child be removed from the care of the child's parent, a statement setting out the steps taken by the Secretary to provide the services necessary to enable the child to remain in the care of the parent; and

S. 558(ca) inserted by No. 61/2014 s. 90(2).

(ca) the advice of the Secretary on the matters set out in section 276A, where they are applicable to the circumstances of the child; and

(d) any other information—

(i) that the Court directs to be included; or

(ii) that the regulations require to be included.

559 Access to disposition report

(1) If a disposition report is required under section 557(1) or the Court orders a disposition report, the Secretary must, subject to subsection (2), cause a copy of the disposition report to be given before the hearing of the proceeding to each of the following—

(a) the child who is the subject of the report;

(b) that child's parent;

(c) the legal practitioners representing that child;

(d) the legal practitioners representing that child's parent;

(e) the protective intervener who made the protection application, if the protective intervener is not the Secretary;

(f) a party to the proceeding;

(g) any other person specified by the Court.

(2) The Court may by order restrict access to the whole of a disposition report, or a part of the report specified in the order, by a person mentioned in subsection (1)(a), (1)(b), (1)(f) or (1)(g) and specified in the order, if the Court is satisfied that information in the report, or the part of the report, may be prejudicial to the physical or mental health of the child or a parent of the child.

(3) An application for an order under subsection (2) may be made by—

(a) the Secretary; or

(b) a person mentioned in subsection (1); or

(c) with the leave of the Court, any other person—

and must be made not less than 2 working days before the hearing of the proceeding.

(4) If the Court makes an order under subsection (2), it must cause a copy of the order to be served on the persons mentioned in subsection (1).

(5) A person who receives a copy of a disposition report or of part of a disposition report under this section (part or all of which was not given to the child who is the subject of the report or to that child's parent on account of an order made under subsection (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report or the part of it (as the case requires) that was not given to that child or parent.

Penalty: 10 penalty units.

560 Additional report

If in any proceeding in which a disposition report is required under section 557(1) the Family Division is of the opinion that an additional report is necessary to enable it to determine the

proceeding, it may order the preparation and submission to the Court of an additional report by—

(a) the Secretary; or

(b) the Secretary to the Department of Justice; or

(c) another person specified by the Court.

561 Access to additional report

S. 561(1) amended by No. 61/2014 s. 125.

(1) If the Court orders an additional report from a person other than the Secretary to the Department of Justice, the author of the report must, subject to subsection (2), not less than 3 working days before the hearing forward the report to the proper venue of the Court and a copy to each of the following—

(a) the child who is the subject of the report; and

(b) that child's parent; and

(c) the legal practitioners representing that child; and

(d) the legal practitioners representing that child's parent; and

(e) the Secretary, if the Secretary is not the author of the report; and

(f) a party to the proceeding; and

(g) any other person specified by the Court.

(2) The author of a report is not under subsection (1) required to forward copies of the report in accordance with paragraph (a), (b), (f) or (g) of that subsection if—

(a) he or she is of the opinion that information contained in the report may be prejudicial to the physical or mental health of the child or a parent of the child; or

(b) the child or a parent of the child or another party to the proceeding notifies him or her of his or her objection to the forwarding of copies of the report.

(3) If because of subsection (2) the author of a report is not required to forward a copy of the report to a person in accordance with subsection (1), he or she may forward to that person a copy of part of the report.

(4) If because of subsection (2) the author of a report does not forward copies of the report in accordance with subsection (1)(a), (1)(b), (1)(f) or (1)(g)—

(a) he or she must inform the appropriate registrar or the other persons referred to in that subsection of that fact; and

(b) the Court may by order direct the appropriate registrar to forward a copy of the report or of a specified part of the report, together with a copy of the order, to a person named or described in the order as soon as possible and before the hearing.

(5) A person who receives a copy of a report or of part of a report under this section (part or all of which was not forwarded to the child who is the subject of the report or to that child's parent because of subsection (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report or the part of it (as the case requires) that was not forwarded to that child or parent.

Penalty: 10 penalty units.

562 Access to additional reports prepared by Secretary to Department of Justice

S. 562(1) amended by No. 61/2014 s. 126.

(1) If the Court orders an additional report from the Secretary to the Department of Justice, the Secretary to the Department of Justice must not less than 3 working days before the hearing forward the report to the proper venue of the Court.

(2) If the Secretary to the Department of Justice is of the opinion that information contained in the report will be or may be prejudicial to the physical or mental health of the child or a parent of the child, the Secretary to the Department of Justice may forward a statement to the Court to that effect with the report.

(3) Subject to subsection (4), the Court must release a copy of the report to each of the following—

(a) the child who is the subject of the report; and

(b) that child's parent; and

(c) the Secretary; and

(d) the legal practitioners representing that child; and

(e) the legal practitioners representing that child's parent; and

(f) the legal representative of the Secretary or an employee authorised by the Secretary to appear in proceedings before the Family Division; and

(g) a party to the proceeding; and

(h) any other person specified by the Court.

(4) Despite subsection (3), if after having regard to the views of the parties to the proceedings, and any statement of the Secretary to the Department of Justice under subsection (2)—

(a) in the case of the release of the report to the Secretary, the Court is satisfied that the release of the report or a particular part of the report to the Secretary may cause significant psychological harm to the child, the Court may—

(i) refuse to release the report or part of the report to the Secretary; or

(ii) determine a later time for the release of the report or part of the report to the Secretary; or

(iii) release the report to the Secretary;

(b) in the case of the release of the report to any other person, the Court is satisfied that the release of the report or a particular part of the report to the person will be prejudicial to the development or mental health of the child, the physical or mental health of the parent or the physical or mental health of that person or any other party, the Court may—

(i) refuse to release the report or part of the report to the person; or

(ii) determine a later time for the release of the report or part of the report to the person; or

(iii) release the report to the person.

(5) The Court may impose conditions in respect of the release of a report under this section.

Division 4—Therapeutic treatment application reports

563 Therapeutic treatment application reports

If the Family Division requires further information to enable it to determine an application for a therapeutic treatment order or an application for a variation, revocation or extension of a therapeutic treatment order, it may order the Secretary to submit to the Court a therapeutic treatment application report concerning the child who is the subject of the application.

564 Content of therapeutic treatment application report

A therapeutic treatment application report must include—

(a) information sufficient to assist the Court to determine whether the order should be made; and

(b) recommendations concerning the order that the Secretary believes the Court ought to make, including, if appropriate, the conditions of that order; and

(c) except in the case of an application for revocation of a therapeutic treatment order, a statement by the Secretary that therapeutic treatment is available for the child; and

(d) any other information that the Court directs to be included.

S. 565 amended by No. 61/2014 s. 127.

565 Secretary to forward report to Court

If the Court orders the Secretary to submit a therapeutic treatment application report to the Court, he or she must do so not less than 3 working days before the hearing.

566 Access to therapeutic treatment application report

(1) If the Court orders the Secretary to prepare a therapeutic treatment application report, the Secretary must, subject to subsection (2), cause a copy of a therapeutic treatment application report to be given before the hearing of the proceeding to each of the following—

(a) the child who is the subject of the report;

(b) that child's parent;

(c) the legal practitioner representing that child;

(d) the legal practitioner representing that child's parent;

(e) a party to the proceeding;

(f) any other person specified by the Court.

(2) The Court may by order restrict access to the whole of a therapeutic treatment application report, or a part of the report specified in the order, by a person mentioned in subsection (1)(a), (1)(b), 1(e) or (1)(f) and specified in the order, if the Court is satisfied that information in the report, or the part of the report, may be prejudicial to the physical or mental health of the child or a parent of the child.

(3) An application for an order under subsection (2) may be made by—

(a) the Secretary; or

(b) a party to the proceeding; or

(c) a person mentioned in subsection (1); or

(d) with the leave of the Court, any other person—

and must be made not less than 2 working days before the hearing of the proceeding.

(4) If the Court makes an order under subsection (2), it must cause a copy of the order to be served on the persons mentioned in subsection (1).

(5) A person who receives a copy of a therapeutic treatment application report or of part of a therapeutic treatment application report under this section (part or all of which was not given to the child who is the subject of the report or to that child's parent on account of an order made under subsection (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report or the part of it (as the case requires) that was not given to that child or parent.

Penalty: 10 penalty units.

Division 5—Therapeutic treatment (placement) reports

567 Therapeutic treatment (placement) reports

If the Family Division requires further information to enable it to determine an application for a therapeutic treatment (placement) order or an application for a variation, revocation or extension of a therapeutic treatment (placement) order, it may order the Secretary to submit to the Court a therapeutic treatment (placement) report concerning the child who is the subject of the application.

S. 568 amended by No. 61/2014 s. 142.

568 Content of therapeutic treatment (placement) report

A therapeutic treatment (placement) report must include—

(a) information sufficient to assist the Court to determine whether the order should be made; and

(b) recommendations concerning the order that the Secretary believes the Court ought to make, including, if appropriate, the conditions of that order; and

(c) any other information that the Court directs to be included.

569 Secretary to forward report to Court

S. 569 amended by No. 61/2014 s. 128.

If the Court orders the Secretary to submit a therapeutic treatment (placement) report to the Court, he or she must do so not less than 3 working days before the hearing.

570 Access to therapeutic treatment (placement) report

(1) If the Court orders the Secretary to prepare a therapeutic treatment (placement) report, the Secretary must, subject to subsection (2), cause a copy of a therapeutic treatment (placement) report to be given before the hearing of the proceeding to each of the following—

(a) the child who is the subject of the report;

(b) that child's parent;

(c) the legal practitioners representing that child;

(d) the legal practitioners representing that child's parent;

(e) a party to the proceeding;

(f) any other person specified by the Court.

(2) The Court may by order restrict access to the whole of a therapeutic treatment (placement) report, or a part of the report specified in the order, by a person mentioned in subsection (1)(a), (1)(b), (1)(e) or (1)(f) and specified in the order, if the Court is satisfied that information in the report, or the part of the report, may be prejudicial to the physical or mental health of the child or a parent of the child.

(3) An application for an order under subsection (2) may be made by—

(a) the Secretary; or

(b) a party to the proceeding; or

(c) a person mentioned in subsection (1); or

(d) with the leave of the Court, any other person—

and must be made not less than 2 working days before the hearing of the proceeding.

(4) If the Court makes an order under subsection (2), it must cause a copy of the order to be served on the persons mentioned in subsection (1).

(5) A person who receives a copy of a therapeutic treatment (placement) report or of part of a therapeutic treatment (placement) report under this section (part or all of which was not given to the child who is the subject of the report or to that child's parent on account of an order made under subsection (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report or the part of it (as the case requires) that was not given to that child or parent.

Penalty: 10 penalty units.

Division 6—Pre-sentence reports

571 Court may order pre-sentence report

(1) If the Criminal Division finds a child guilty of an offence it may, before passing sentence, order a pre-sentence report in respect of the child and adjourn the proceeding to enable the report to be prepared.

(2) The Criminal Division must order a pre-sentence report if it is considering making a youth residential centre order or a youth justice centre order.

(3) If it appears to the Court that a child found guilty of an offence is intellectually disabled, the Court must, before passing sentence, order a pre-sentence report in respect of the child and adjourn the proceeding to enable the report to be prepared.

S. 571(4) substituted by No. 23/2006 s. 234(7).

(4) If the Secretary has issued a statement in respect of the child that the child has an intellectual disability within the meaning of the **Disability Act 2006**, a pre-sentence report prepared in accordance with an order under subsection (3) must—

(a) include a copy of the statement; and

(b) specify disability services which are—

(i) available under that Act and appropriate for the child; and

(ii) designed to reduce the likelihood of the child committing further offences.

572 Who prepares pre-sentence reports?

A pre-sentence report must be prepared by—

(a) the Secretary; or

(b) the Secretary to the Department of Justice.

573 Contents of pre-sentence report

(1) A pre-sentence report may set out all or any of the following matters but no others—

(a) the sources of information on which the report is based;

(b) the circumstances of the offence of which the child has been found guilty;

S. 573(1)(c) amended by No. 68/2009 s. 80(a).

(c) any previous sentences in respect of the child involving the Secretary;

(d) the family circumstances of the child;

(e) the education of the child;

(f) the employment history of the child;

(g) the recreation and leisure activities of the child;

(h) medical and health matters relating to the child.

(2) Any statement made in a pre-sentence report must be relevant—

(a) to the offence of which the child has been found guilty in the proceeding before the Court; and

S. 573(2)(b) amended by No. 68/2009 s. 80(b).

(b) to the sentence (if any) recommended in the report.

S. 573(3) amended by No. 68/2009 s. 80(b).

(3) The author of a pre-sentence report may, in his or her report, recommend an appropriate sentence for the child who is the subject of the report.

(4) If a recommendation is made under subsection (3) for a probation order, a youth supervision order or a youth attendance order, it must state—

(a) whether, and if so where, the recommended service or program is available; and

(b) the proposed date of commencement of the child's participation in the recommended service or program; and

(c) the child's suitability for the recommended service or program; and

(d) the child's attitude towards the recommended service or program.

574 Pre-sentence report to be filed in the Court

S. 574 (Heading) amended by No. 26/2023 s. 55(1).

A pre-sentence report must be filed in the Court at least 3 working days before the return date.

S. 574 substituted by No. 61/2014 s. 129, amended by No. 26/2023 s. 55(2).

575 Access to pre-sentence reports

S. 575(1) amended by No. 61/2014 s. 130.

(1) The author of a pre-sentence report must, at least 3 working days before the return date referred to in section 574, send a copy of the report to—

(a) the child who is the subject of the report; and

(b) the legal practitioners representing the child; and

(c) any other person whom the Court has ordered is to receive a copy of the report.

(2) The author of a pre-sentence report is not under subsection (1) required to send copies of the report in accordance with paragraph (a) or (c) of that subsection if—

(a) he or she is of the opinion that information contained in the report may be prejudicial to the physical or mental health of the child; or

(b) the child notifies him or her of the child's objection to the forwarding of copies of the report.

(3) If because of subsection (2) the author of a pre-sentence report is not required to send a copy of the report to a person in accordance with subsection (1), he or she may forward to that person a copy of part of the report.

(4) If because of subsection (2) the author of a pre-sentence report does not send copies of the report in accordance with paragraph (a) or (c) of subsection (1)—

(a) he or she must inform the appropriate registrar of that fact; and

(b) the Court may by order direct the appropriate registrar to forward a copy of the report or of a specified part of the report, together with a copy of the order, to a person named or described in the order as soon as possible and before the hearing.

(5) A person who receives a copy of a pre-sentence report or of part of a pre-sentence report under this section (part or all of which was not sent to the child who is the subject of the report because of subsection (2)) must not, unless otherwise directed by the Court, disclose to that child any information contained in the report or the part of it (as the case requires) that was not sent to that child.

Penalty: 10 penalty units.

Division 7—Group conference reports

576 Group conference report

If the Criminal Division finds a child guilty of an offence and defers sentencing the child for the purposes of a group conference, it must order a group conference report.

577 Who prepares group conference reports?

A group conference report must be prepared by the convenor of the group conference.

578 Content of group conference report

A group conference report must set out the following matters—

(a) the child's participation in the group conference;

(b) the results of the group conference including the outcome plan (if any) agreed to by the child;

(c) any other matters that the Court specified to be addressed in the group conference.

579 Group conference report to be filed in the Court

S. 579 (Heading) amended by No. 26/2023 s. 56(1).

A group conference report must be filed in the Court at least 3 working days before the return date.

S. 579 substituted by No. 61/2014 s. 131, amended by No. 26/2023 s. 56(2).

580 Access to group conference report

S. 580 amended by No. 61/2014 s. 132.

The author of a group conference report must, at least 3 working days before the return date referred to in section 579 send a copy of the report to—

(a) the child who is the subject of the report; and

(b) the legal practitioner representing the child; and

(c) any other person whom the Court has ordered is to receive a copy of the report.

Part 7.9—Children and Young Persons Infringement Notice System

S. 581 substituted by No. 48/2006 s. 27.

581 CAYPINS procedure

(1) The procedure set out in Schedule 3 may be used instead of commencing a proceeding against a child for an offence for which an infringement notice within the meaning of Schedule 3 could be issued.

S. 581(2) amended by No. 47/2014 s. 252.

(2) If a child may be prosecuted for an offence in respect of which an infringement notice may be issued, a reference in an Act to enforcement under the **Fines Reform Act 2014** includes a reference to enforcement under Schedule 3 to the **Children, Youth and Families Act 2005**.

582 Certain agencies may give information for enforcement purposes

(1) In this section, ***specified agency*** means a person or body—

(a) that holds information that may be of use in the enforcement of court orders and fines; and

(b) that is stated by regulations made for the purposes of this section to be a specified agency—

but does not include a person or body listed in section 90A(1) of the **Melbourne City Link Act 1995**.

(2) Words and expressions used in this section have the same meanings as in section 124A of the **Magistrates' Court Act 1989** and Schedule 3 to this Act.

(3) A registrar of the Court, the sheriff and any contractor or sub-contractor supporting the functions of the sheriff may, for the purpose of the enforcement of court orders and fines, request information that may assist in carrying out that purpose from any person or body.

(4) On the written request of a registrar of the Court, the sheriff or any contractor or sub-contractor supporting the functions of the sheriff, a specified agency may give the person or body making the request access to any information held by the agency that may be of use in the enforcement of court orders and fines.

(5) A person who obtains access to any information as a result of a request made under this section—

(a) may use the information to enforce court orders and fines; but

(b) is otherwise subject to all the requirements and restrictions concerning the use and disclosure of the information that apply to the person who provided, or granted access to, the information in response to the request.

Part 7.10—General

583 Witness who has previously appeared in Children's Court

S. 583(1) amended by Nos 68/2009 s. 81(a), 69/2009 s. 54(Sch. Pt 2 item 10).

(1) If a person is called as a witness in any legal proceeding within the meaning of section 3 of the **Evidence (Miscellaneous Provisions) Act 1958** (other than a proceeding in the Children's Court) and the person—

(a) has appeared before the Court charged with an offence; or

(b) has been the subject of an application to the Family Division for a protection order—

no question regarding—

(c) that charge or any order made in respect of that charge; or

(d) that application or any appearance of the person before the Court in respect of, or consequent on, that application—

is to be asked of the person after the end of 3 years from the date of the charge-sheet charging the offence or the application or appearance (whichever last happens).

(2) Subsection (1) does not apply if—

(a) the question is relevant to the facts in issue in the proceeding or to matters necessary to be known in order to determine whether or not those facts existed; or

(b) the Court considers that the interests of justice require that the question be asked.

(3) A person referred to in subsection (1) must not be asked any question about any application made to the Family Division other than an application for a protection order.

584 Accused or other person who has previously appeared in Children's Court

S. 584 (Heading) amended by No. 68/2009 s. 81(b).

S. 584(1) amended by Nos 68/2009 s. 81(c), 69/2009 s. 54(Sch. Pt 2 item 10).

(1) If—

(a) a person has appeared before the Court charged with an offence; or

(b) an application has been made to the Family Division for a protection order in respect of the person—

the fact of the charge or of any order made in respect of the charge or of the application or of any appearance of the person before the Court in respect of, or consequent on, the application must not be given in evidence against the person in any legal proceeding within the meaning of section 3 of the **Evidence (Miscellaneous Provisions) Act 1958** (other than a proceeding in the Children's Court) after the end of 3 years from the date of the charge-sheet charging the offence or the application or appearance (whichever last happens).

(2) Subsection (1) does not apply if that fact is relevant—

(a) to the facts in issue in the proceeding; or

(b) to matters necessary to be known in order to determine whether or not those facts existed.

(3) Despite subsection (1), if a person is found guilty by a court of an offence, evidence may be given to the court of an order of the Criminal Division in relation to an offence committed by the person, if the order was made not more than 10 years before the hearing at which it is sought to be proved.

585 Transfer of proceedings from Magistrates' Court to Children's Court

S. 585(1) amended by No. 68/2009 s. 82.

(1) If before or during the hearing of a charge for an offence it appears to the Magistrates' Court that the accused is a child or was a child when the proceeding for the offence was commenced in the Magistrates' Court, the Magistrates' Court must discontinue the proceeding and order that it be transferred to the Children's Court and in the meantime it may—

S. 585(1)(a) amended by No. 68/2009 s. 82.

(a) permit the accused to go at large; or

S. 585(1)(b) amended by No. 68/2009 s. 82.

(b) grant the accused bail conditioned for the appearance of the accused before the Children's Court at the time and place at which the proceeding is to be heard; or

S. 585(1)(c) amended by No. 68/2009 s. 82.

(c) remand the accused in a remand centre until the proceeding is heard by the Children's Court.

(2) In exercising a power conferred by subsection (1)(b) or (1)(c) the Magistrates' Court must exercise the power in accordance with this Act as if it were the Children's Court.

S. 586 amended by Nos 68/2009 s. 83, 48/2018 s. 3 (ILA s. 39B(1)).

586 Supreme Court or County Court may exercise sentencing powers of Children's Court

(1) The powers that the Supreme Court or the County Court may exercise in sentencing a child for an indictable offence include the power to impose any sentence which the Children's Court may impose under this Act but an order that the child be detained in a youth residential centre or youth justice centre must be made in accordance with Subdivision (4) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(2) In sentencing a child aged 16 years or more but under 18 years at the time of the commission of an indictable offence, the Supreme Court or the County Court must have regard to any requirement in the **Sentencing Act 1991** that a specified minimum non-parole period of imprisonment be fixed or a specified minimum term of imprisonment be imposed, had the offence been committed by an adult.

S. 586(2) inserted by No. 48/2018 s. 3.

587 Notice to be filed if child is placed in emergency care or apprehended without warrant

S. 587 substituted by Nos 52/2013 s. 55, 26/2023 s. 57.

As soon as possible after a person places a child in emergency care or apprehends a child without a warrant under this Act (other than under section 172(3)), and before an application is made to the Court in respect of that child, the person must file a notice in the Court setting out the grounds for placing the child in emergency care or apprehending the child.

Part 7.11—Rules

588 Rules

S. 588(1) substituted by No. 50/2009 s. 19.

(1) The President together with 2 or more magistrates for the Court may jointly make rules of court for or with respect to—

(a) the prescription of forms for the purposes of the Family Division of the Court;

S. 588(1)(b) amended by No. 8/2016 s. 17(1).

(b) judicial resolution conferences, including, but not limited to the practice and procedure of the Court in relation to judicial resolution conferences;

S. 588(1)(ba) inserted by No. 1/2022 s. 123.

(ba) any matter relating to the jurisdiction of the Family Division of the Court given by section 515(4);

S. 588(1)(c) inserted by No. 8/2016 s. 17(2).

(c) generally any matter relating to the practice and procedure of the Family Division of the Court.

S. 588(1A) inserted by No. 68/2009 s. 84(1).

(1A) The President together with 2 or more magistrates for the Court may jointly make Rules for or with respect to—

(a) prescribing forms for the purposes of the Criminal Division of the Court;

S. 588(1A)(ab) inserted by No. 32/2024 s. 787(1).

(ab) providing for specialist lists for classes of proceedings in the Criminal Division of the Court;

(b) generally any matter relating to the practice and procedure of the Criminal Division of the Court.

(1AAB) The President together with 2 or more magistrates for the Court may jointly make rules of court for or with respect to—

S. 588(1AAB) inserted by No. 8/2016 s. 17(3).

(a) the form in which process may be issued out of the Court and the manner in which it may be authenticated, stored, transmitted or otherwise dealt with;

(b) the manner in which orders may be authenticated;

(ba) electronic communication and electronic processes, including, but not limited to—

S. 588 (1AAB)(ba) inserted by No. 33/2018 s. 57.

(i) applications by electronic means, electronic filing and electronic service of documents in any proceeding; and

(ii) the transmission and issuing of orders, processes and other documents by electronic communication; and

(iii) use of electronic signatures and seals;

(c) the storage, disposal or destruction of documents—

(i) filed or lodged in proceedings in the Court; or

S. 588 (1AAB)(c)(i) amended by No. 26/2023 s. 58.

(ii) issued out of the Court in proceedings in the Court and kept by the principal registrar.

(1AB) The President together with 2 or more magistrates for the Court may jointly make rules of court for or with respect to—

S. 588(1B) inserted by No. 34/2010 s. 40, renumbered as s. 588(1AB) by No. 29/2011 s. 3(Sch. 1 item 9.1), amended by No. 8/2016 s. 17(4).

(a) the prescription of the proceedings or class of proceedings which may be dealt with by the Court constituted by a judicial registrar;

(b) delegating to the judicial registrars all or any of the powers of the Court specified by the rules of court in relation to proceedings prescribed under paragraph (a), including, but not limited to, the exercise by judicial registrars of the jurisdiction of the Court other than the power—

(i) to impose a sentence of detention in a youth justice centre or youth residential centre; or

(ii) to make a youth attendance order;

S. 588(1AB)(ba) inserted by No. 17/2023 s. 35.

(ba) providing for a judicial registrar to exercise any power of a magistrate under this Act with respect to the issue of a search warrant for the purpose of having a child placed in emergency care;

(c) the transfer or referral of proceedings between the Court constituted by a judicial registrar and the Court constituted by a magistrate of the Court;

(d) reviews of, and appeals from, the Court constituted by a judicial registrar.

S. 588(1AC) inserted by No. 42/2014 s. 112.

(1AC) The President together with 2 or more magistrates for the Court may jointly make Rules for or with respect to any matter or thing required or permitted by or under the **Vexatious Proceedings Act 2014** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act.

S. 588(1B) inserted by No. 30/2010 s. 42.

(1B) The President together with 2 or more magistrates for the Court may jointly make Rules for or with respect to—

(a) prescribing forms for the purposes of the procedure set out in Schedule 3;

(b) generally any matter relating to the procedure set out in Schedule 3.

(2) A rule made under this section must not be inconsistent with a provision made by or under this or any other Act, whether the provision was made before or after the making of the rule.

S. 588(2) amended by No. 68/2009 s. 84(2).

(3) In this section, "magistrate" or "magistrate for the Court" does not include a reserve magistrate.

S. 588(3) inserted by No. 5/2013 s. 56.

(4) The Rules may—

S. 588(4) inserted by No. 32/2024 s. 787(2).

(a) be of general or limited application;

(b) differ according to differences in time, place or circumstance;

(c) confer a discretionary authority or impose a duty on—

(i) the President, a magistrate, a judicial registrar or a specified court official; or

(ii) a specified class of magistrate, judicial registrar or court official;

(d) provide in a specified case or class of case for the exemption of proceedings or a class of proceeding from any of the provisions of the Rules—

(i) whether unconditionally or on specified conditions; and

(ii) either wholly or to the extent specified in the Rules.

589 Rules of court

The President together with 2 or more magistrates for the Court may jointly make rules of court for or with respect to—

S. 589(a) amended by No. 69/2009 s. 54(Sch. Pt 2 item 10).

(a) requirements for the purposes of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958** for or with respect to—

(i) the form of audio visual or audio link;

(ii) the equipment, or class of equipment, used to establish the link;

(iii) the layout of cameras;

(iv) the standard, or speed, of transmission;

(v) the quality of communication;

(vi) any other matter relating to the link;

S. 589(b) amended by No. 69/2009 s. 54(Sch. Pt 2 item 10).

(b) applications to the Court under Division 2 or 3 of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**;

S. 589(c) amended by Nos 69/2009 s. 54(Sch. Pt 2 item 10), 21/2016 s. 21(a).

(c) any matter relating to the practice and procedure of the Court under Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**;

S. 589(ca) inserted by No. 38/2017 s. 64.

(ca) the return to the Court of warrants issued under this Act or issued by the Court under section 57 of the **Magistrates' Court Act 1989** as applied by this Act;

S. 589(d) inserted by No. 21/2016 s. 21(b).

(d) any other matter or thing required or permitted by or under Part 4A of the **Sex Offenders Registration Act 2004** to be dealt with by rules of court or otherwise necessary or required for the purposes of Part 4A of that Act.

590 Rules of court—Koori Court (Criminal Division)

The President together with 2 or more magistrates for the Court may jointly make rules of court for or with respect to—

(a) any matter relating to the practice and procedure of the Koori Court (Criminal Division); and

(b) the transfer of proceedings to and from the Koori Court (Criminal Division).

590A Rules of court—Neighbourhood Justice Division

S. 590A inserted by No. 51/2006 s. 15.

The President, together with 2 or more magistrates for the Court, may jointly make rules of court for or with respect to—

(a) any matter relating to the practice and procedure of the Neighbourhood Justice Division of the Court; and

(b) the transfer of proceedings to and from the Neighbourhood Justice Division of the Court.

591 Disallowance

The power of the President together with 2 or more magistrates for the Court to jointly make rules of court, whether that power is conferred by this or any other Act, is subject to the rules being disallowed by a House of the Parliament in accordance with section 23 of the **Subordinate Legislation Act 1994**.

592 Practice notes

(1) The President may from time to time issue practice directions, statements or notes for the Court in relation to proceedings in the Family Division or the Criminal Division or any class of proceeding in the Family Division or the Criminal Division or in relation to the exercise by a

registrar of any jurisdiction, power or authority vested in the registrar as registrar under Schedule 3.

S. 592(1A) inserted by No. 42/2014 s. 113(1).

(1A) The President may from time to time issue practice directions, statements or notes for the Court in relation to proceedings in the Court under the **Vexatious Proceedings Act 2014**.

S. 592(2) amended by No. 42/2014 s. 113(2).

(2) Practice directions, statements or notes issued under subsection (1) or (1A) must not be inconsistent with any provision made by or under this or any other Act.

Chapter 7A—Relevant historical care and protection orders

Ch. 7A (Headings and ss 592A–592J) inserted by No. 42/2018 s. 35.

Part 7A.1—Recognition of matters relating to relevant historical care and protection orders

Ch. 7A Pt 1 (Heading) renumbered as Ch. 7A Pt 7A.1 by No. 8/2019 s. 90(4).

Ch. 7A Pt 1 (Heading and ss 592A–592J) inserted by No. 42/2018 s. 35.

592A Statement of recognition

S. 592A inserted by No. 42/2018 s. 35.

Historically, the child welfare and criminal justice systems in Victoria were not clearly differentiated. As a result, children often experienced historical care and protection applications made by the State as criminal proceedings, and care and protection orders made by courts were recorded by the State on criminal records.

The recording of relevant historical care and protection orders on criminal records occurred in cases where the child had not committed a crime, or been convicted or found guilty of a criminal offence, and in many instances before the child had reached the age of criminal responsibility. In many cases, crimes were committed against a child and instead of the perpetrator being held to account, the child was subject to a historical care and protection order, despite the child not having committed any crime. This has led to adverse life-long consequences for many of those children.

The Parliament recognises that Aboriginal children were disproportionately impacted by historical State welfare policies. As a result, Aboriginal children were also disproportionately affected by recording practices of the State.

S. 592B inserted by No. 42/2018 s. 35.

592B Definitions

In this Part—

conviction, in respect of a criminal record, includes a finding of guilt by a court, whether or not a conviction is recorded;

criminal record, in relation to a person, means a document that sets out—

(a) all the person's previous convictions; and

(b) in relation to each previous conviction—

(i) the date of the conviction; and

(ii) the court in which the conviction took place; and

(iii) the place of sitting of that court; and

(iv) the offence committed; and

(v) the sentence imposed;

official record means—

(a) a relevant historical care and protection order; or

(b) a criminal record that contains a relevant historical care and protection order; or

(c) a record held by a responsible agency containing information about an order or record specified in paragraph (a) or (b);

relevant historical care and protection order has the meaning given by section 592C;

responsible agency means any of the following with the care and control of official records or secondary records—

S. 592B def. of *responsible agency* amended by No. 6/2024 s. 99.

(a) a public authority within the meaning of the **Charter of Human Rights and Responsibilities Act 2006**;

(b) a community service provider;

(c) a non-Government organisation that provides support or advocacy services to persons who were placed in Victorian orphanages, children's homes or foster care;

(d) a prescribed entity;

secondary record means an official record that is a copy, duplicate or reproduction of, or extract from, another existing official record.

592C Meaning of *relevant historical care and protection order*

S. 592C inserted by No. 42/2018 s. 35.

(1) A ***relevant historical care and protection order***, in relation to a person, means an order, however expressed or described, in the nature of an order made by a court as a result of an application for an order for the care and protection of the person when the person was a child.

(2) For the purposes of subsection (1)—

(a) an order of the kind described in that subsection includes, but is not limited to, an order of a kind described in that subsection under any of the following—

(i) the **Neglected and Criminal Children's Act 1864**;

(ii) An Act to provide for the Protection and Management of Aboriginal Natives of Victoria (no. CCCXLIX (349) also known as the **Aborigines Protection Act 1869**;

(iii) the **Children's Court Act 1986**;

(iv) the **Children's Welfare Act 1928**;

(v) the **Community Welfare Services Act 1970**;

(vi) the **Children and Young Persons Act 1989**;

(vii) a prescribed Act; and

(b) a ***relevant historical care and protection order*** does not include an order, however expressed or described, for the care and protection of the person when the person was a child, or an order in relation to the welfare of the person when the person was a child, if—

(i) the child was found guilty of a criminal offence by the court; and

(ii) the order was made as part of the sentence imposed by the court for that offence.

592D Application of this Part

S. 592D inserted by No. 42/2018 s. 35.

This Part applies to a relevant historical care and protection order made by any court, including the several children's courts that existed immediately before the commencement of section 8 of the **Children and Young Persons Act 1989**.

592E Effect of relevant historical care and protection order in relation to matters concerning convictions, findings of guilt or criminal history

S. 592E inserted by No. 42/2018 s. 35.

(1) On and after the commencement of this section, the following have effect in relation to a relevant historical care and protection order.

(2) A relevant historical care and protection order is not to be treated as a conviction or finding of guilt for any purpose.

(3) A question about a person's criminal history (including one put in a legal proceeding and required to be answered under oath) is to be taken not to refer to a relevant historical care and protection order in respect of the person.

(4) A person is not required to disclose to any other person for any purpose (including when giving evidence under oath in a legal proceeding) information concerning a relevant historical care and protection order in respect of the person.

(5) In the application to a person of an Act, subordinate instrument or agreement—

(a) a reference to a conviction or a finding of guilt, however expressed, is to be taken not to refer to a relevant historical care and protection order in respect of the person; and

(b) a reference to the person's character or fitness, however expressed, is not to be taken as allowing or requiring account to be taken

of a relevant historical care and protection order in respect of the person.

S. 592F inserted by No. 42/2018 s. 35.

592F Effect of relevant historical care and protection order in relation to an appointment, post, status or privilege

(1) On and after the commencement of this section, a relevant historical care and protection order, or disclosure of the existence of, or information included in, a relevant historical care and protection order, in respect of a person, is not proper ground for—

(a) refusing the person any appointment, post, status or privilege; or

(b) revoking any appointment, status or privilege held by the person; or

(c) dismissing the person from any post.

(2) If, before the commencement of this section, a person referred to in subsection (1)—

(a) was refused any appointment, post, status or privilege; or

(b) had any appointment, status or privilege revoked; or

(c) was dismissed from any post—

the person may re-apply, at any time, for the appointment, post, status or privilege irrespective of any minimum waiting period that would otherwise be required.

592G Obligations of responsible agencies, other than Victoria Police, in relation to the release of official records and secondary records

S. 592G inserted by No. 42/2018 s. 35.

A responsible agency, other than Victoria Police, must take all reasonable steps to ensure that an official record or a secondary record released by the responsible agency is accompanied with information that—

(a) addresses and corrects the apparent criminal nature of a relevant historical care and protection order; and

(b) states that a relevant historical care and protection order is not a conviction or a finding of guilt.

592H Obligations of Victoria Police in relation to the release of official records and secondary records

S. 592H inserted by No. 42/2018 s. 35.

Victoria Police must take all reasonable steps to ensure that an official record or a secondary record released by Victoria Police pursuant to a request under the **Freedom of Information Act 1982** is accompanied with information that—

(a) addresses and corrects the apparent criminal nature of a relevant historical care and protection order; and

(b) states that a relevant historical care and protection order is not a conviction or a finding of guilt.

592I Destruction of official records and secondary records

S. 592I inserted by No. 42/2018 s. 35.

(1) Subject to subsection (2), this Part does not authorise the destruction by or on behalf of a responsible agency of an official record or a secondary record.

(2) For the purpose of preventing a relevant historical care and protection order being recorded on a criminal record, Victoria Police may remove secondary records that are relevant historical care and protection orders from any Victoria Police database, whether computerised or not, that contains criminal records.

S. 592J inserted by No. 42/2018 s. 35.

592J No effect on entitlement to compensation or creation of entitlement to compensation

The amendments made by this Part are not intended to alter or affect an existing entitlement to compensation or create an entitlement to compensation arising from the circumstances in which a relevant historical care and protection order was made or carried out or the existence of a relevant historical care and protection order.

Chapter 8—General

Part 8.1—Service of documents

593 Service of documents

(1) If by or under this Act a person is required to serve a document and no provision is made, other than in this section, as to how the document is to be served, the document must be served on the person to be served—

(a) by delivering a copy of the document to that person personally; or

S. 593(1)(a) amended by No. 11/2021 s. 42(1)(a).

(b) by sending by registered post a copy of the document addressed to that person at that person's last known place of residence or business; or

S. 593(1)(b) amended by No. 11/2021 s. 42(1)(a).

(c) by leaving a copy of the document for that person at that person's last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age; or

S. 593(1)(c) amended by No. 11/2021 s. 42(1)(b).

(d) by delivering a copy of the document to the person by means of an electronic communication that is confirmed as having been received by the person; or

S. 593(1)(d) inserted by No. 11/2021 s. 42(1)(c).

(e) by sending by registered post a copy of the document, addressed to the person's authorised legal representative, to the place of business of the person's authorised legal representative; or

S. 593(1)(e) inserted by No. 11/2021 s. 42(1)(c).

S. 593(1)(f) inserted by No. 11/2021 s. 42(1)(c).

(f) by leaving a copy of the document for that person—

(i) at the place of business of the person's authorised legal representative; and

(ii) with a person who apparently works there and who apparently is not less than 16 years of age; or

S. 593(1)(g) inserted by No. 11/2021 s. 42(1)(c).

(g) by delivering a copy of the document, addressed to the person's authorised legal representative, to the person's authorised legal representative personally; or

S. 593(1)(h) inserted by No. 11/2021 s. 42(1)(c).

(h) by delivering a copy of the document to the person's authorised legal representative by means of an electronic communication that is confirmed as having been received by the person's authorised legal representative.

S. 593(1A) inserted by No. 11/2021 s. 42(2).

(1A) For the purposes of subsection (1), a person may deliver a copy of a document to another person personally by placing a copy of the document on a surface in the presence of the other person.

S. 593(2) amended by No. 6/2018 s. 68(Sch. 2 item 20.9).

(2) If it appears to the Court, by evidence on oath or by affirmation or by affidavit, that service cannot be promptly effected, the Court may make an order for substituted service.

(3) If the person to be served is a company or registered body (within the meaning of the Corporations Act), the document may be served on that person in accordance with section 109X or 601CX of that Act, as the case requires.

S. 593(4) inserted by No. 11/2021 s. 42(3).

(4) Subsections (1)(d), (e), (f), (g) and (h) and (1A) apply to any other provision under this Act that requires service to be by registered post or personally or otherwise.

(5) In this section—

S. 593(5) inserted by No. 11/2021 s. 42(3).

authorised legal representative of a person means a legal representative of the person who has been instructed by the person to receive documents on the person's behalf.

594 Service on parent or child or other person

S. 594 amended by No. 11/2021 s. 43(2) (ILA s. 39B(1)).

(1) If this Act requires a notice of an application or hearing to be served on a child or a parent of a child or other person in accordance with this section, the notice may be served—

(a) by posting, not less than 14 days before the hearing date stated in the notice, a copy of the notice addressed to the parent or the child or the person (as the case requires) at the last known place of residence or business of the parent or the child or the person; or

S. 594(1)(a) amended by No. 11/2021 s. 43(1)(a).

(b) by delivering, not less than 5 days before the hearing date stated in the notice, a copy of the notice to the parent or the child or the person (as the case requires); or

S. 594(1)(b) amended by No. 11/2021 s. 43(1)(a).

(c) by leaving, not less than 5 days before the hearing date stated in the notice, a copy of the notice for the parent or the child or the person (as the case requires) at the last known place of residence or business of the parent or the child or the person with a person who apparently resides or works there and who apparently is not less than 16 years of age; or

S. 594(1)(c) amended by No. 11/2021 s. 43(1)(b).

(d) by delivering, not less than 5 days before the hearing date stated in the notice, a copy of the document to the parent or the child or the person (as the case requires), by means of an electronic communication that is confirmed as having been received by the parent or the child or the person; or

S. 594(1)(d) inserted by No. 11/2021 s. 43(1)(c).

S. 594(1)(e) inserted by No. 11/2021 s. 43(1)(c).

(e) by sending by registered post, not less than 14 days before the hearing date stated in the notice, a copy of the notice, addressed to the authorised legal representative of the parent or the child or the person (as the case requires), to the place of business of the authorised legal representative of the parent or the child or the person; or

S. 594(1)(f) inserted by No. 11/2021 s. 43(1)(c).

(f) by leaving, not less than 5 days before the hearing date stated in the notice, a copy of the notice for the parent or the child or the person (as the case requires)—

(i) at the place of business of the authorised legal representative of the parent or the child or the person; and

(ii) with a person who apparently works there and who apparently is not less than 16 years of age; or

S. 594(1)(g) inserted by No. 11/2021 s. 43(1)(c).

(g) by delivering, not less than 5 days before the hearing date stated in the notice, a copy of the notice, addressed to the authorised legal representative of the parent or the child or the person (as the case requires), to the authorised legal representative personally; or

S. 594(1)(h) inserted by No. 11/2021 s. 43(1)(c).

(h) by delivering, not less than 5 days before the hearing date stated in the notice, a copy of the notice to the authorised legal representative of the parent or the child or the person (as the case requires) by means of an electronic communication that is confirmed as having been received by the authorised legal representative.

S. 594(2) inserted by No. 11/2021 s. 43(2).

(2) In this section—

authorised legal representative of a child or a parent of a child or other person means a legal representative of the child or the parent

or other person who has been instructed by the child or parent or other person to receive documents on behalf of the child or the parent or other person.

595 Proof of service

(1) Service of a document may be proved by—

(a) evidence on oath or by affirmation; or

S. 595(1)(a) amended by No. 6/2018 s. 68(Sch. 2 item 20.10(a)).

(b) affidavit; or

(c) statutory declaration.

S. 595(1)(c) amended by No. 6/2018 s. 68(Sch. 2 item 20.10(b)).

(2) Evidence of service must identify the document served and state the time and manner in which service was effected.

(3) A document purporting to be an affidavit or statutory declaration under subsection (1)(b) or (1)(c) is admissible in evidence and, in the absence of evidence to the contrary, is proof of the statements in it.

S. 595(3) amended by No. 6/2018 s. 68(Sch. 2 item 20.10(c)).

596 Person may cause document to be served

If by or under this Act a person is required or permitted to serve a document, the person may serve the document by causing it to be served by another person.

Part 8.2—Powers of Secretary in relation to medical services

597 Powers of Secretary in relation to medical services and operations

(1) The Secretary may at any time order that a person—

S. 597(1)(a) amended by No. 61/2014 s. 91(1).

(a) for whom the Secretary has parental responsibility as the result of—

S. 597(1)(a)(i) repealed by No. 8/2016 s. 18(1).

* * * * *

S. 597(1)(a)(ii) substituted by No. 8/2016 s. 18(2).

(ii) a family reunification order; or

S. 597(1)(a)(iii) substituted by No. 61/2014 s. 91(2).

(iii) a care by Secretary order; or

S. 597(1)(a)(iv) substituted by No. 61/2014 s. 91(3).

(iv) a long-term care order; or

(v) a therapeutic treatment (placement) order;

(b) in the legal custody of the Secretary as provided by section 483; or

S. 597(1)(c) amended by No. 48/2006 s. 28(1), substituted by No. 8/2016 s. 18(3).

(c) placed, as the result of an interim accommodation order—

(i) with a suitable person or suitable persons; or

(ii) in an out of home care service; or

(iii) in a secure welfare service; or

(iv) in a declared hospital; or

(v) with a disability service provider within the meaning of the **Disability Act 2006**; or

(vi) in a declared parent and baby unit; or

(vii) with a registered NDIS provider; or

S. 597(1)(c)(vii) inserted by No. 19/2019 s. 254(5).

(d) in emergency care under section 241, 268(5), 269(3), 269(4), 270(5), 270(6), 291(4), 313 or 314—

S. 597(1)(d) amended by No. 52/2013 s. 56(1).

be examined to determine his or her medical, physical, intellectual or mental condition.

(2) The Minister and the Minister administering Division 1 of Part II of the **Health Act 1958** may make arrangements for the provision of any necessary medical, dental, psychiatric, psychological or pharmaceutical services to persons referred to in subsection (1) or to any class or classes of those persons or to any other persons placed in an out of home care service.

(3) On the advice of a registered medical practitioner that medical treatment or a surgical or other operation or admission to hospital is necessary in the case of a child referred to in subsection (1)(a)(ii), (1)(a)(iii), (1)(a)(iv), (1)(a)(v) or (1)(b), the Minister, the Secretary or any person (other than an officer or employee) authorised by the Secretary to do so may consent to the medical treatment or the surgical or other operation or the admission to hospital even if the child's parent objects.

(4) The Minister, the Secretary or any person (other than an employee) authorised by the Secretary to do so may consent to medical treatment or a surgical or other operation or admission to hospital in the case of a child who is not referred to in subsection (1)(a)(ii), (1)(a)(iii), (1)(a)(iv), (1)(a)(v) or (1)(b) if—

S. 597(4)(a) amended by Nos 48/2006 s. 28(2), 19/2019 s. 254(6), 30/2019 s. 14(1).

(a) the child is placed in an out of home care service, secure welfare service, declared hospital or declared parent and baby unit or with a registered NDIS provider, disability service provider (within the meaning of the **Disability Act 2006**) or a suitable person or suitable persons as the result of—

S. 597(4)(a)(i) amended by Nos 52/2013 s. 56(2), 30/2019 s. 14(2).

(i) having been placed in emergency care under section 241, 268(5), 269(3), 269(4), 270(5), 270(6), 313 or 314; or

(ii) an interim accommodation order; and

(b) a registered medical practitioner has advised that the medical treatment or operation or admission to hospital is necessary to avoid a serious threat to the health of the child; and

(c) the child's parent—

(i) refuses to give his or her consent; or

(ii) cannot be found within a time which is reasonable in the circumstances.

(5) An authorisation under subsection (3) or (4)—

(a) must be made by instrument; and

(b) may be made to the holder of an office or position or to any person for the time being acting in or performing the duties of an office or position.

Part 8.3—Placing child in emergency care

Ch. 8 Pt 8.3 (Heading) substituted by No. 52/2013 s. 57.

598 Circumstances in which child may be placed in emergency care

S. 598 (Heading) amended by No. 52/2013 s. 58(1).

(1) If a magistrate is satisfied by evidence on oath or by affirmation or by affidavit by the Secretary or by a police officer that—

S. 598(1) amended by Nos 52/2013 s. 58(2), 37/2014 s. 10(Sch. item 18.18), 6/2018 s. 68(Sch. 2 item 20.11).

(a) an undertaking entered into under section 530(2) has not been complied with; or

(b) a child is absent without lawful authority or excuse from the place in which the child had been placed under an interim accommodation order or by the Secretary under section 173 or from the lawful custody of a police officer or other person; or

S. 598(1)(b) amended by Nos 37/2014 s. 10(Sch. item 18.18), 61/2014 s. 92.

(c) a child or a child's parent or the person who has the care of a child is refusing to comply with a lawful direction of the Secretary under section 173 as to the placement of the child—

the magistrate may issue a search warrant for the purpose of having the child placed in emergency care.

(2) A child placed in emergency care under a warrant issued under subsection (1)(a) must be brought before the Court as soon as practicable and, in any event, within one working day after the child was placed in emergency care.

S. 598(2) amended by No. 52/2013 s. 58(3).

S. 598(3) amended by Nos 26/2012 s. 10, 52/2013 s. 58(4), 37/2014 s. 10(Sch. item 18.18).

(3) Despite anything to the contrary in this Act but subject to subsection (2), a child placed in emergency care under this section must be taken by the police officer who executed the warrant or another police officer to the place specified in the warrant or, if no place is so specified, to a place determined by the Secretary or, in the absence of any such determination, to any place referred to in section 173.

Part 8.3A—Power of protective services officers to execute search warrants

Ch. 8 Pt 8.3A (Heading and s. 598A) inserted by No. 45/2017 s. 4.

598A Circumstances in which a protective services officer may apprehend a child under a search warrant

S. 598A inserted by No. 45/2017 s. 4.

(1) If a search warrant has been issued under a provision of this Act specified in subsection (3), a protective services officer on duty at a designated place may apprehend the child named in the search warrant if the child is at, or in the vicinity of, the designated place.

(2) If a protective services officer apprehends a child under subsection (1), the protective services officer must hand the child into the custody of a police officer as soon as practicable after the child is apprehended.

(3) For the purposes of subsection (1) the following provisions are specified—

(a) section 237;

(b) section 241;

(c) section 243;

(d) section 247;

(e) section 261;

(f) section 268;

(g) section 269;

(h) section 270;

(i) section 313;

(j) section 314;

(k) section 598.

(4) This section applies despite the search warrant not being directed to a named protective services officer or generally all protective services officers.

Part 8.4—Jurisdiction of Supreme Court

599 Supreme Court—limitation of jurisdiction

S. 599 amended by No. 68/2009 s. 85 (ILA s. 39B(1)).

(1) It is the intention of sections 328 and 424 to alter or vary section 85 of the **Constitution Act 1975**.

S. 599(2) inserted by No. 68/2009 s. 85.

(2) It is the intention of section 430Q to alter or vary section 85 of the **Constitution Act 1975**.

S. 599(3) inserted by No. 1/2022 s. 61.

(3) It is the intention of section 328(5), as amended by section 41 of the **Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 599(4) inserted by No. 1/2022 s. 61.

(4) It is the intention of section 430Q, as amended by section 56 of the **Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 599(5) inserted by No. 1/2022 s. 61.

(5) It is the intention of section 430R(3), as inserted by section 57 of the **Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 599(6) inserted by No. 1/2022 s. 61.

(6) It is the intention of section 430VA(2), as inserted by section 58 of the **Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 599(7) inserted by No. 1/2022 s. 61.

(7) It is the intention of section 430W(1A), as inserted by section 59 of the **Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022**, to alter or vary section 85 of the **Constitution Act 1975**.

Part 8.5—Regulations

600 Regulations

(1) The Governor in Council may make regulations for or with respect to—

(a) reports for the purposes of this Act; and

(b) the earnings of a person detained in a youth residential centre or youth justice centre; and

(c) the remission of sentences of detention in a youth residential centre or youth justice centre; and

(d) the appointment, powers, duties and functions of persons responsible for youth supervision programs; and

(e) the appointment, powers, duties and functions of youth justice officers; and

(f) the appointment, powers, duties and functions of youth parole officers; and

(g) prescribing the terms and conditions to be included in parole orders; and

(h) prescribing standards to be observed—

S. 600(1)(h)(i) substituted by No. 61/2014 s. 93(a).

(i) for the protection, care or accommodation of persons placed in the care of the Secretary or under the control or supervision of the Secretary or for whom the Secretary has parental responsibility; and

(ii) in performing any function, supplying any service or otherwise carrying out the objects of this Act; and

S. 600(1)(i) repealed by No. 17/2023 s. 52.

* * * * *

(j) the care, control and management of persons placed in out of home care services or for whom the Secretary has parental responsibility; and

S. 600(1)(j) substituted by No. 61/2014 s. 93(b).

(ja) prescribing classes of community service that may be specified in an Order under section 44(2); and

S. 600(1)(ja) inserted by No. 6/2024 s. 100.

(k) the conduct, management and supervision of community services, youth residential centres, youth justice centres, remand centres, youth justice units and any other institutions or places established under this Act or under the control of the Secretary; and

(l) the care, control and management of persons in youth residential centres, youth justice centres, remand centres and youth justice units or otherwise in the legal custody of the Secretary; and

(m) the entitlements of persons detained in remand centres, youth residential centres or youth justice centres or of children detained in police gaols or other places prescribed for the purposes of section 347 and the responsibility of the Secretary, the Chief Commissioner of Police or any other person with respect to those entitlements; and

(n) the management, good order and security of remand centres, youth residential centres or youth justice centres in which persons are detained or of police gaols or other places prescribed for the purposes of section 347 in which children are detained; and

* * * * *

S. 600(1)(o) amended by No. 5/2006 s. 17(2)(a), repealed by No. 54/2011 s. 11.

(p) the particulars of the use of isolation to be recorded under section 488(6); and

S. 600(1)(pa) inserted by No. 5/2006 s. 17(2)(b).

(pa) visits to remand centres, youth residential centres or youth justice centres and searches of visitors; and

(q) providing for the admission of ministers of religion to community services, youth residential centres, youth justice centres, remand centres, youth justice units and any other institutions or places established under this Act or under the control of the Secretary for the purpose of the spiritual welfare and pastoral care of persons accommodated or detained in those places; and

(r) prescribing regions of the State for the purpose of Division 1 of Part 5.2 and Division 7 of Part 5.3; and

(s) all matters necessary for the good order, discipline, safe custody and health of children in respect of whom a youth attendance order is in force; and

(t) the variation by the Secretary under section 402 of details relating to the dates and times of attendance at a youth justice unit; and

(u) the conduct, management and supervision of youth supervision programs; and

(v) the conduct and management of group conference programs; and

(w) prescribing the nature of reasonable directions which may be given by the Secretary in relation to youth attendance orders; and

* * * * *

S. 600(1)(x) repealed by No. 61/2014 s. 149.

(y) prescribing institutions or places in which children remanded in custody by a court or a bail justice may be placed; and

(z) Division 5 of Part 5.3 generally including—

(i) the matters to be specified in applications or orders made or notices given under that Division; and

(ii) the manner of making applications under section 377; and

(iii) the procedure of the Court and of the appropriate registrar under that Division; and

(iv) securing the attendance of a child before the Court and the production of documents by a child to the Court under that Division; and

(v) the functions of the appropriate registrar under that Division; and

(za) prescribing forms; and

(zb) prescribing fees for the purposes of section 537(3); and

(zc) prescribing the fees, costs and charges payable in respect of the exercise by a registrar of any jurisdiction, power or authority vested in the registrar as registrar under Schedule 3; and

(zd) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) Regulations made under this Act may be made—

(a) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—

(i) wholly or partially or as amended by the regulations; or

(ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; and

(b) so as to apply—

(i) at all times or at a specified time; or

(ii) throughout the whole of the State or in a specified part of the State; or

(iii) as specified in both subparagraphs (i) and (ii); and

(c) so as to confer a discretionary authority on a specified court official or a specified class of court official; and

(d) so as to provide for the exemption of persons or proceedings or a class of persons or proceedings from any of the regulations providing for the imposition of fees; and

(e) so as to impose a penalty not exceeding 10 penalty units for a contravention of the regulations.

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Ch. 8 Pt 8.5A (Headings and ss 600A–600ZC) inserted by No. 11/2020 s. 25, amended by Nos 96/2005 s. 600ZC (as amended by Nos 27/2020 s. 10, 11/2021 s. 204, 11/2022 s. 5), 27/2020 ss 7–10, 11/2021 ss 196(3), 203, 204, 53/2021 ss 23, 24, 11/2022 s. 5, repealed by No. 26/2023 s. 59.

Part 8.6—Repeals and transitional provisions

Ss 601–604 repealed by No. 29/2011 s. 3(Sch. 1 item 9.2).

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S. 605 repealed by No. 25/2009 s. 38(3).

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606 Transitional and saving provisions

Schedule 4 has effect.

S. 607 inserted by No. 8/2008 s. 19.

607 Transitional provision—Criminal Procedure Legislation Amendment Act 2008

Section 362A as inserted by section 4 of the **Criminal Procedure Legislation Amendment Act 2008** applies to a sentence imposed on or after the commencement of section 4 of that Act if the plea hearing commences on or after that commencement.

S. 607A inserted by No. 69/2009 s. 54(Sch. Pt 1 item 7.8).

607A Transitional provisions—Statute Law Amendment (Evidence Consequential Provisions) Act 2009

(1) Section 215, as amended by the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, does not apply to a hearing in the Family Division that commenced before the day that Act commenced and that—

(a) continued on or after that day; or

(b) was adjourned until that day or a day after that day.

(2) Sections 520(6A) and 520E(6) do not apply to a sentencing hearing that commenced before the day the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009** commenced and that—

(a) continued on or after that day; or

(b) was adjourned until that day or a day after that day.

608 Transitional provision—Crimes Amendment (Identity Crime) Act 2009

S. 608 inserted by No. 22/2009 s. 9.

Section 362A, as amended by section 8 of the **Crimes Amendment (Identity Crime) Act 2009**, applies to a sentence imposed on or after the commencement of section 8 of that Act irrespective of when the sentencing hearing commenced.

609 Transitional provision—Criminal Procedure Act 2009

S. 609 inserted by No. 68/2009 s. 86.

(1) Part 5.1A as inserted by section 429 of the **Criminal Procedure Act 2009** applies to a proceeding for a summary offence if the offence is alleged to have been committed on or after the commencement of section 429 of that Act.

(2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one on or after the commencement of section 429 of the **Criminal Procedure Act 2009**, the offence is alleged to have been committed after that commencement.

(3) Section 516A as inserted by section 430 of the **Criminal Procedure Act 2009** applies to a committal proceeding if the criminal proceeding commenced on or after the commencement of section 430 of that Act.

S. 610 inserted by No. 68/2009 s. 86.

610 Transitional provision—Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009

(1) Section 328 as amended by section 60 of the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009** applies to an appeal in relation to—

(a) an order referred to in section 328(1) made on or after the commencement of section 60 of that Act; or

(b) the dismissal of an application referred to in section 328(1) on or after the commencement of section 60 of that Act.

(2) Divisions 1, 2 and 3 of Part 5.4, as inserted by section 69 of the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009**, apply to an appeal in relation to a sentence imposed by the Children's Court on or after the commencement of section 69 of that Act.

(3) Division 6 of Part 5.4 (other than section 430W), as inserted by section 69 of the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009**, applies to an appeal from a final order of the Children's Court made on or after the commencement of section 69 of that Act.

(4) Section 430W, as inserted by section 69 of the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009**, applies to an acquittal recorded on or after the commencement of section 69 of that Act, irrespective of when the proceeding commenced.

(5) Division 7 of Part 5.4, as inserted by section 69 of the **Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009**, applies to an appeal where the sentence is imposed on or after the commencement of section 69 of that Act.

611 Order specifying land, leases, licences and interests in land to be transferred to Secretary

S. 611 inserted by No. 29/2010 s. 16.

(1) The Governor in Council, on the recommendation of the Minister, may by order published in the Government Gazette, specify—

(a) the land to be vested in fee simple in the Secretary; and

(b) the leases for which the Secretary is taken to be the lessee; and

(c) the licences for which the Secretary is taken to be the licensee; and

(d) the legal and equitable interests in land (whether protected by caveat under the **Transfer of Land Act 1958** or not) to be vested in the Secretary—

under section 612.

(2) The Minister, before making a recommendation to the Governor in Council under subsection (1), must be satisfied that—

(a) the land to be vested in fee simple in the Secretary is vested in fee simple in the body corporate known as the Secretary to the Department of Human Services; and

(b) the leases for which the Secretary is taken to be the lessee are held by the body corporate known as the Secretary to the Department of Human Services as lessee; and

(c) the licences for which the Secretary is taken to be the licensee are held by the body corporate known as the Secretary to the Department of Human Services as licensee; and

(d) the interests in land to be vested in the Secretary are vested in the body corporate known as the Secretary to the Department of Human Services.

S. 612 inserted by No. 29/2010 s. 17.

612 Vesting of property in Secretary

(1) Despite section 246A of the **Public Health and Wellbeing Act 2008**, on the commencement of section 6 of the **Health and Human Services Legislation Amendment Act 2010**—

(a) all land vested in fee simple in the body corporate known as the Secretary to the Department of Human Services and specified in an order made under section 611(1)(a) vests in fee simple in the Secretary, whether the land is registered—

(i) in the name of "Secretary to the Department of Human Services"; or

(ii) in the name of "Secretary to the Department of Health and Community Services"; or

(iii) in the name of "Department of Human Services"; or

(iv) in the name of "Secretary, the Department of Human Services"; or

(v) in the name of "Chief General Manager of the Department of Health"; or

(vi) in the name of "Health Commission of Victoria"; or

(vii) in a name that is substantially the same as any name referred to in subparagraphs (i) to (vi); and

(b) the Secretary is taken to be the lessee under the leases specified in an order made under section 611(1)(b); and

(c) the Secretary is taken to be the licensee under the licences specified in an order made under section 611(1)(c); and

(d) all interests in land specified in an order made under section 611(1)(d) vest in the Secretary.

(2) All land that vests in fee simple in the Secretary under this section is taken to have been acquired by the Secretary on behalf of the Crown for the purposes of this Act.

(3) All leases referred to in subsection (1) are taken to be held by the Secretary on behalf of the Crown for the purposes of this Act.

(4) All licences referred to in subsection (1) are taken to be held by the Secretary on behalf of the Crown for the purposes of this Act.

(5) All interests in land referred to in subsection (1) are taken to have been acquired by the Secretary on behalf of the Crown for the purposes of this Act.

(6) Nothing effected by this section is to be regarded as placing any person in breach of or as constituting a default under any provision of a lease or licence, including any provision prohibiting, restricting or regulating the assignment of a lease or licence.

(7) For the avoidance of doubt, the Secretary, on behalf of the Crown, is the successor in law to the body corporate known as the Secretary to the Department of Human Services in relation to any lease, licence or other interest given by the body corporate over land referred to in subsection (1).

S. 613 inserted by No. 29/2010 s. 17.

613 Action by Registrar of Titles

On being requested to do so and on delivery of any relevant instrument or document, the Registrar of Titles must make any recordings in the Register that are necessary because of the operation of section 612.

S. 614 inserted by No. 29/2010 s. 17.

614 Taxes

No duty or other tax is chargeable under any Act in respect of anything done under section 612 or in respect of any act or transaction connected with or necessary to be done by reason of section 612, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with, the transfer of property to the Secretary.

S. 615 inserted by No. 29/2010 s. 17.

615 Land etc. vests subject to encumbrances

(1) If land vests in fee simple in the Secretary under section 612, the land so vested is subject to the encumbrances (if any) to which the land was subject immediately before so vesting.

(2) If leases are taken to be held by the Secretary under section 612, the leases are subject to the same encumbrances (if any) to which the leases were subject immediately before they were held by the Secretary.

(3) If licences are taken to be held by the Secretary under section 612, the licences are subject to the same encumbrances (if any) to which the licences were subject immediately before they were held by the Secretary.

(4) If an interest in land vests in the Secretary under section 612, the interest so vested is subject to the encumbrances (if any) to which the interest was subject immediately before so vesting.

616 Transitional provision—Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010

S. 617 inserted by No. 18/2010 s. 46, amended by No. 18/2010 s. 6 (ILA s. 39B(1)), renumbered as s. 616 by No. 29/2011 s. 3(Sch. 1 item 9.5).

(1) This Act as amended by Division 2 of Part 4 of the **Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010** applies to a summary offence alleged to have been committed—

(a) on or after the commencement of Division 2 of Part 4 of that Act; or

(b) on or after 1 January 2010 and not more than 6 months before the commencement of Division 2 of Part 4 of that Act.

S. 617(2) inserted by No. 18/2010 s. 6.

(2) This Act as amended by sections 3, 4 and 5 of the **Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010** applies to a sentencing hearing of a child for an offence irrespective of when the offence was committed, provided the sentencing hearing commences after those sections come into operation.

617 Transitional provision—Justice Legislation Amendment Act 2010

S. 616 inserted by No. 30/2010 s. 43, renumbered as s. 617 by No. 29/2011 s. 3(Sch. 1 item 9.3).

(1) Section 429 as amended by section 33 of the **Justice Legislation Amendment Act 2010** applies to the determination of an appeal in relation to a sentence imposed by the Children's Court on or after the commencement of section 33 of that Act.

(2) Division 2A of Part 5.4, as inserted by section 34 of the **Justice Legislation Amendment Act 2010**, applies to a sentence imposed by the Children's Court on or after the commencement of section 34 of that Act.

(3) Section 430U as amended by section 40 of the **Justice Legislation Amendment Act 2010** applies to an appeal in relation to a sentence imposed by the Children's Court on or after the commencement of section 40 of that Act.

S. 618 (Heading) amended by No. 63/2016 s. 18.

S. 616A inserted by No. 64/2010 s. 57, renumbered as s. 618 by No. 29/2011 s. 3(Sch. 1 item 9.4).

618 Transitional provision—Justice Legislation Further Amendment Act 2010 (CAYPINS)

(1) This Act as amended by Part 9 of the **Justice Legislation Further Amendment Act 2010** applies to a summary offence alleged to have been committed—

(a) on or after 1 January 2010; and

(b) if a child has applied for internal review under Division 3 of Part 2 of the **Infringements Act 2006**, on or after 1 January 2010 and the date of service of the advice of the outcome under section 24(3) of that Act is on or after 1 July 2010.

(2) Without limiting subsection (1), the repeal of section 40AA of the **Infringements Act 2006** by the **Justice Legislation Further Amendment Act 2010**—

(a) does not affect the registration or purported registration of an infringement penalty under Schedule 3 to this Act in accordance with a time period referred to in section 40AA in respect of an infringement notice which has been subject to an internal review under Division 3 of Part 2 of the **Infringements Act 2006** that would have been validly registered if Schedule 3 to this Act, as

amended by the **Justice Legislation Further Amendment Act 2010**, had been in operation at the time the relevant infringement penalty was registered or purported to have been registered; and

(b) such an infringement penalty has, and is taken always to have had, the same force and effect as it would have had if clause 17(1)(ba) of Schedule 3 had then been in operation.

619 Transitional provision—Children, Youth and Families Amendment (Security of Youth Justice Facilities) Act 2011

S. 619 inserted by No. 54/2011 s. 12.

A seizure register maintained under this Act immediately before the commencement of section 8 of the **Children, Youth and Families Amendment (Security of Youth Justice Facilities) Act 2011** is taken on and from the commencement of section 8 of that Act to be the register maintained under section 488F.

620 Transitional provision—Courts and Sentencing Legislation Amendment Act 2012

S. 620 inserted by No. 26/2012 s. 11.

Despite the commencement of sections 3 and 4 of the **Courts and Sentencing Legislation Amendment Act 2012**, an order made and in force under section 346 or 348 immediately before that commencement continues in force on and from that commencement as if sections 346 and 348 had not been amended by sections 3 and 4 of that Act.

S. 621 inserted by No. 26/2012 s. 11.

621 Transitional provision—Courts and Sentencing Legislation Amendment Act 2012

This Act as amended by sections 8 and 9 of the **Courts and Sentencing Legislation Amendment Act 2012** applies to a proceeding for an offence or a breach of sentence (including any offence constituted by such a breach) irrespective of whether the offence or breach is alleged to have been committed, or the sentence was imposed, before or on or after the commencement of those sections.

S. 622 inserted by No. 48/2012 s. 37.

622 Transitional provision—Criminal Procedure Amendment Act 2012

Division 6A of Part 5.4 applies to a question of law that arises in a proceeding on or after the commencement of section 35 of the **Criminal Procedure Amendment Act 2012**, irrespective of when the proceeding commenced.

S. 623 inserted by No. 15/2013 s. 12.

623 Transitional provision—Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013

(1) Sections 524 and 525, as amended by sections 10 and 11 of the **Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013**, apply to a proceeding in the Family Division that—

(a) commences on or after the commencement of sections 10 and 11 of that Act; or

(b) had been commenced but not determined immediately before the commencement of sections 10 and 11 of that Act.

(2) Sections 328 and 524, as amended by sections 9 and 10 of the **Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013**, apply to an appeal under section 328 that—

(a) is made on or after the commencement of sections 9 and 10 of that Act; or

(b) had been made but not determined immediately before the commencement of section 10 of that Act.

(3) The amendment of sections 328, 524 and 525 by sections 9, 10 and 11 of the **Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013** does not affect the rights of the parties in the proceedings known as *A & B v Children's Court of Victoria & Ors* [2012] VSC 589.

624 Transitional provision—Children, Youth and Families Amendment Act 2013

S. 624 inserted by No. 52/2013 s. 61.

(1) Part 4.1 and Division 1 of Part 4.7 as amended by sections 6 and 10 of the **Children, Youth and Families Amendment Act 2013**, apply to a proceeding that commences on or after the commencement of sections 6 and 10 of that Act.

(2) Part 4.1 and Division 1 of Part 4.7 of this Act as in force immediately before the commencement of sections 6 and 10 of the **Children, Youth and Families Amendment Act 2013** apply to a proceeding that had been commenced but not determined before the commencement of sections 6 and 10 of that Act.

(3) Each person who holds the office of convenor immediately before the commencement of section 24 of the **Children, Youth and Families Amendment Act 2013**, continues on and from that commencement to hold office as a convenor for the purposes of Division 2 of Part 4.7.

(4) Division 2 of Part 4.7 as amended by section 14 of the **Children, Youth and Families Amendment Act 2013** applies to an application referred by the Court under section 217 of this Act on or after the commencement of section 14 of that Act.

(5) Division 2 of Part 4.7 as in force immediately before the commencement of section 14 of the **Children, Youth and Families Amendment Act 2013** continues to apply to a conference that had been commenced but not completed before the commencement of section 14 of that Act.

(6) Subject to subsections (8) and (11), this Act as in force on or after the commencement of section 12 of the **Children, Youth and Families Amendment Act 2013** applies to a proceeding that—

(a) commences on or after that commencement; or

(b) had been commenced but not determined before that commencement.

(7) If a notice under section 243, 268, 269, 270 or 312 had been served but not returned to the Court before the commencement of section 12 of the **Children, Youth and Families Amendment Act 2013**, on and from that commencement the notice is taken to be a notice stating that an application will be made on the date specified in the notice, unless the child is the subject of an application for a therapeutic treatment order.

(8) This Act as in force immediately before the commencement of section 12 of the **Children, Youth and Families Amendment Act 2013** continues to apply to the issue and execution of a search warrant for the purpose of taking a child into safe custody that had been issued but not executed before that commencement.

(9) On the execution of a search warrant referred to in subsection (8), this Act as in force on or after the commencement of section 12 of the **Children, Youth and Families Amendment Act 2013** applies to the child taken into safe custody and the making of an interim accommodation order as if the child had been placed in emergency care—

(a) under section 247A(4), if the child is the subject of an application for a therapeutic treatment order; or

(b) under section 242(5), in any other case.

(10) If a child was taken into safe custody before the commencement of section 12 of the **Children, Youth and Families Amendment Act 2013** (with or without a warrant) and had not been brought before the Court or a bail justice before that commencement, this Act as in force on that commencement applies to the child taken into safe custody and the making of an interim accommodation order as if the child had been placed in emergency care—

(a) under section 247A(4), if the child is the subject of an application for a therapeutic treatment order; or

(b) under section 242(5), in any other case.

(11) Section 291 as in force immediately before the commencement of section 41 of the **Children, Youth and Families Amendment Act 2013** continues to apply to an interim protection order in force immediately before the commencement of section 41 of that Act.

S. 625 inserted by No. 52/2013 s. 61, repealed by No. 96/2005 s. 626, new s. 625 inserted by No. 3/2016 s. 10.

625 Transitional provision—Justice Legislation Further Amendment Act 2016

Each person who holds the office of Aboriginal elder or respected person immediately before the commencement of section 9 of the **Justice Legislation Further Amendment Act 2016** continues, on and from that commencement, to hold that office on the same terms and conditions as applied to the person immediately before that commencement, as if the person had been appointed by the Chief Executive Officer.

S. 626 inserted by No. 52/2013 s. 61, repealed by No. 96/2005 s. 626.

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S. 627 inserted by No. 61/2014 s. 153.

627 Transitional provisions—Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014

Schedule 5 has effect.

S. 628 inserted by No. 3/2018 s. 26(2).

628 Transitional provisions—Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017

Schedule 6 has effect.

S. 629 inserted by No. 3/2018 s. 26(4).

629 Transitional provision—Bail Amendment (Stage Two) Act 2018

The amendment made to this Act by section 26(1) of the **Bail Amendment (Stage Two) Act 2018** applies to the hearing of a charge for an offence alleged to have been committed on or after the commencement of that section.

630 Transitional and savings provisions—Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018

S. 630 inserted by No. 33/2018 s. 58.

(1) The amendments to section 528B made by the **Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018** do not affect the validity of any warrant issued in accordance with section 528B as in force immediately before its amendment or any action taken under such a warrant.

(2) The amendment made to section 588 by the **Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018** does not affect the validity or operation of any rules of court made under that section as in force immediately before that amendment.

630A Transitional provisions—Justice Legislation Amendment (Terrorism) Act 2018

S. 630 inserted by No. 32/2018 s. 110, renumbered as s. 630A by No. 44/2019 s. 18.

(1) On and after the commencement of Division 2 of Part 4 of the **Justice Legislation Amendment (Terrorism) Act 2018**, Part 5.5 as amended by that Division applies to the making of a determination or order under Part 5.5 regardless of whether—

(a) the Youth Parole Board had begun to consider whether to make that determination or order before that commencement; or

(b) the Youth Parole Board had jurisdiction to make that determination or order before that commencement.

(2) On and after the commencement of section 108 of the **Justice Legislation Amendment (Terrorism) Act 2018**, sections 460, 460A, 460B and 460C apply to the parole of a person regardless of whether the parole was granted before that commencement.

S. 631 inserted by No. 48/2018 s. 4.

631 Transitional provision—Justice Legislation Miscellaneous Amendment Act 2018

Section 586(2) as inserted by section 3 of the **Justice Legislation Miscellaneous Amendment Act 2018** applies to an offence committed on or after the commencement of section 3 of that Act.

S. 632 inserted by No. 43/2020 s. 53.

632 Transitional provisions—Justice Legislation Amendment (Drug Court and Other Matters) Act 2020

(1) On and from the commencement of Part 6 of the **Justice Legislation Amendment (Drug Court and Other Matters) Act 2020**, the Youth Parole Board is taken to be the same body as it was immediately before that commencement, despite the changes to the constitution or quorum of the Youth Parole Board made by that Act and no decision, matter or thing is to be affected because of those changes.

(2) The members of the Youth Parole Board (including the chairperson and any alternate members) holding office immediately before the commencement of Part 6 of the **Justice Legislation Amendment (Drug Court and Other Matters) Act 2020** continue to hold office as members after that commencement on the same terms and conditions on which they held office as members immediately before that commencement.

S. 632A inserted by No. 1/2022 s. 62.

632A Transitional—Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022—proceedings

(1) An appeal from a final order of the Court in a proceeding in which the Court was constituted by the Chief Magistrate who, at the time the proceeding commenced was a dual commission holder as a judge of the County Court and who, at the time at which the final order was made was a

dual commission holder as a Judge of the Supreme Court, is to be made to the Court of Appeal.

(2) For the avoidance of doubt, an appeal from a final order of the Court in a proceeding in which the Court was constituted by the Chief Magistrate who, at the time the final order was made was a dual commission holder as a judge of the County Court and who, on or after the commencement day is a dual commission holder as a Judge of the Supreme Court, is to be made to the Trial Division of the Supreme Court.

(3) In this clause, ***commencement day*** means the day on which Part 3 of the **Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022** comes into operation.

632B Transitional provision—Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022—power to make orders to resolve difficulty

S. 632B inserted by No. 1/2022 s. 62.

(1) If any difficulty arises because of the operation of Part 3 of the **Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022** in relation to a proceeding under this Act, a court may make any order it considers appropriate to resolve the difficulty.

(2) An order made under subsection (1)—

(a) may be made on the application of a party to the proceeding or on the court's own motion, as the case requires; and

(b) has effect despite any provision to the contrary made by or under any Act (other than the **Charter of Human Rights and Responsibilities Act 2006**).

S. 633 inserted by No. 17/2023 s. 14.

633 Transitional provision—Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023—saving of authorisations of principal officers

(1) This section applies if, immediately before the commencement day, a principal officer of an Aboriginal agency was authorised under section 18.

(2) On and after the commencement day—

(a) the principal officer is taken to have been authorised under section 18 as substituted by the **Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023**; and

(b) the authorisation continues in effect, subject to its terms and conditions, as if made under section 18 as substituted by the **Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023** until the earliest of the following—

(i) it is revoked by the Secretary under section 18AAA; or

(ii) the protection order in respect of the child to whom the authorisation relates ceases to be in force.

(3) Any instrument of delegation made under section 18B (as in force immediately before the commencement day) in respect of powers or functions specified in the authorisation and in effect immediately before the commencement day continues in effect on and after the commencement day, subject to its terms and conditions, and may be revoked accordingly.

(4) In this section—

commencement day means the day on which section 7 of the **Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023** comes into operation.

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S. 634 inserted by No. 17/2023 s. 14, repealed by No. 96/2005 s. 634(4).

635 Transitional provision—Regulatory Legislation Amendment (Reform) Act 2024

S. 635 inserted by No. 6/2024 s. 101.

(1) This section applies if, immediately before the commencement day, an Order under section 44(a)(i) or (ii) is in force.

(2) On and from the commencement day, the person providing the community service established by the Order is taken—

(a) in the case of a person providing a community service other than a secure welfare service, to be the provider of an out of home care service established under section 44(1)(a)(ia); and

(b) in the case of a person providing a secure welfare service, to be the provider of a secure welfare service established under section 44(1)(a)(ii); and

(c) to be registered under Part 3 of the **Social Services Regulation Act 2021** in respect of that out of home care service or secure welfare service (as appropriate).

(3) In this section—

commencement day means the day on which Division 1 of Part 14 of the **Regulatory Legislation Amendment (Reform) Act 2024** comes into operation.

S. 635A inserted by No. 5/2025 s. 50.

635A Transitional provision—Justice Legislation Amendment (Committals) Act 2025

The amendment made to section 516(1)(c)(ii) by the **Justice Legislation Amendment (Committals) Act 2025** applies only to a committal proceeding commenced on or after the commencement of that amendment.

S. 637 inserted by No. 14/2025 s. 11.

637 Transitional provision—Regulatory Legislation Amendment (Reform) Act 2025

(1) This section applies if, immediately before the commencement day, a principal officer of an Aboriginal agency was authorised under section 18.

(2) On and after the commencement day—

(a) the principal officer is taken to have been authorised under section 18 as amended by the **Regulatory Legislation Amendment (Reform) Act 2025**; and

(b) the authorisation continues in effect, subject to its terms and conditions, as if made under section 18 as amended by the **Regulatory Legislation Amendment (Reform) Act 2025** until the earliest of the following—

(i) it is revoked by the Secretary under section 18AAA; or

(ii) the protection order in respect of the child who is the subject of the authorisation ceases to be in force; or

(iii) the person who is the subject of the authorisation is no longer a child.

(3) In this section—

commencement day means the day on which section 10 of the **Regulatory Legislation Amendment (Reform) Act 2025** comes into operation.

638 Transitional provision—Children, Youth and Families Amendment (Stability) Act 2026

S. 638 inserted by No. 6/2026 s. 16.

(1) Subject to section 639, on and after the commencement day, this Act as amended by the **Children, Youth and Families Amendment (Stability) Act 2026** applies to a proceeding that—

(a) had been commenced but not determined before the commencement day; or

(b) commences on or after the commencement day.

(2) In this section—

commencement day means the day on which the **Children, Youth and Families Amendment (Stability) Act 2026** comes into operation.

639 Transitional provision—Children, Youth and Families Amendment (Stability) Act 2026—extension of existing family reunification order where child in out of home care less than 24 months

S. 639 inserted by No. 6/2026 s. 16.

(1) This section applies if a child who is the subject of an existing family reunification order has been in out of home care for a cumulative period of less than 24 months under any one or more orders specified in section 287A(1) including the existing family reunification order.

(2) Despite the amendment of sections 294, 294A and 296 by the **Children, Youth and Families Amendment (Stability) Act 2026**, on an application for extension of the existing family reunification order, the Court may extend that order for a period that will have the effect of the child being placed in out of home care for a cumulative period of not more than 24 months if the Court is satisfied that the extension is in the best interests of the child.

(3) Subsection (2) applies whether the application was made before, on or after the commencement day.

(4) An existing family reunification order may be extended only once under subsection (2) and this Act as amended by the **Children, Youth and Families Amendment (Stability) Act 2026** applies to any subsequent application for extension of the existing family reunification order.

(5) For the purposes of this section—

(a) the period of time in out of home care commences on the date the child is or was first placed in out of home care under the existing family reunification order or another order specified in section 287A(1); and

(b) section 287A(4) applies to the determination of the cumulative period.

(6) In this section—

commencement day means the day on which the **Children, Youth and Families Amendment (Stability) Act 2026** comes into operation;

existing family reunification order means a family reunification order in force immediately before the commencement day.

640 Transitional provision—Justice Legislation Amendment (Community Safety) Act 2025

S. 640 inserted by No. 54/2025 s. 26.

(1) The amendments made to section 362 by Division 1 of Part 3 of the **Justice Legislation Amendment (Community Safety) Act 2025** apply to the sentencing of an offender on or after the commencement of that Division, regardless of whether the offence was committed before that commencement.

(2) The amendments made by Division 1 of Part 4 of the **Justice Legislation Amendment (Community Safety) Act 2025** apply only in relation to an offence alleged to have been committed on or after the commencement of that Division.

(3) For the purposes of subsection (2), if an offence is alleged to have been committed between 2 dates, one before and one on or after the commencement of Division 1 of Part 4 of the **Justice Legislation Amendment (Community Safety) Act 2025**, the offence is alleged to have been committed before that commencement.

Schedules

Schedule 1—Transfer of child protection orders and proceedings

Sections 338, 515, 525, 531

Part 1—Introductory

1 Purpose of Schedule

The purpose of this Schedule is to provide for the transfer of child protection orders and proceedings between Victoria and another State or a Territory of Australia or between Victoria and New Zealand—

(a) so that children who are in need of protection may be protected despite moving from one jurisdiction to another; and

(b) so as to facilitate the timely and expeditious determination of court proceedings relating to the protection of a child.

2 Definitions

(1) In this Schedule—

Children's Court—

(a) in relation to Victoria, means the Children's Court of Victoria; and

(b) in relation to a State other than Victoria, means the court with jurisdiction to hear and determine a child protection proceeding at first instance;

child protection order, in relation to a child, means a final order made under a child welfare law or an interstate law that gives—

(a) a Minister of the Crown in right of a State; or

(b) a government department or statutory authority; or

(c) a person who is the head of a government department or statutory authority or otherwise holds an office or position in, or is employed in, a government department or statutory authority; or

(d) an organisation or the chief executive (by whatever name called) of an organisation—

responsibility in relation to the guardianship, custody or supervision of the child, however that responsibility is described;

child protection proceeding means any proceeding brought in a court under a child welfare law for—

(a) the making of a finding that a child is in need of protection or any other finding (however described) the making of which 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) the making of a child protection order or an interim order or for the variation or revocation or the extension of the period of such an order;

child welfare law means—

(a) Chapter 4 of this Act; or

(b) a law of another State that, under an Order in force under subclause (2), is declared to be a child welfare law for the purposes of this Schedule; or

(c) a law of another State that substantially corresponds to Chapter 4 of this Act;

interim order means—

(a) an order made under clause 17; or

(b) an equivalent order made under an interstate law;

interstate law means—

(a) a law of another State that, under an Order in force under subclause (3), is declared to be an interstate law for the purposes of this Schedule; or

(b) a law of another State that substantially corresponds to this Schedule;

interstate officer, in relation to a State other than Victoria, means—

(a) the holder of an office or position that, under an Order in force under subclause (4), is declared to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Schedule; or

(b) the person holding the office or position to which there is given by or under the child welfare law of that State principal responsibility for the protection of children in that State;

participating State means a State in which an interstate law is in force;

sending State means the State from which a child protection order or proceeding is transferred under this Schedule or an interstate law;

State means—

(a) a State or a Territory of Australia; or

(b) New Zealand;

working day—

(a) in relation to a court, means a day on which the offices of the court are open; and

(b) in relation to the Secretary, means a day on which the principal office of the Department is open.

(2) The Governor in Council, by Order published in the Government Gazette, may declare a law of a State (other than Victoria) to be a child welfare law for the purposes of this Schedule if satisfied that the law substantially corresponds to Chapter 4 of this Act.

(3) The Governor in Council, by Order published in the Government Gazette, may declare a law of a State (other than Victoria) to be an interstate law for the purposes of this Schedule if satisfied that the law substantially corresponds to this Schedule.

(4) The Governor in Council, by Order published in the Government Gazette, may declare an office or position in a State (other than Victoria) to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Schedule.

Part 2—Transfer of child protection orders

Division 1—Administrative transfers

3 When Secretary may transfer order

(1) The Secretary may transfer a child protection order (the ***home order***) to a participating State if—

(a) in his or her opinion a child protection order to the same or a similar effect as the home order could be made under the child welfare law of that State; and

(b) the home order is not subject to an appeal to the Supreme Court or the County Court; and

(c) the relevant interstate officer has consented in writing to the transfer and to the proposed terms of the child protection order to be transferred (the ***proposed interstate order***); and

(d) any person whose consent to the transfer is required under clause 4 has so consented; and

(e) the child who is the subject of the order has not given written notice of opposition to the decision to transfer the order in accordance with clause 6(3)(b) and the Secretary certifies in writing that he or she made all reasonable efforts to ensure that the child had an opportunity to seek legal advice in relation to the decision.

(2) The Secretary may include in the proposed interstate order any conditions that could be included in a child protection order of that type made in the relevant participating State.

(3) In determining whether a child protection order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the Secretary must not take into account the period for which it is possible to make such an order in that State.

(4) The Secretary must determine, and specify in the proposed interstate order—

(a) the type of order under the child welfare law of the participating State that the proposed interstate order is to be; and

(b) the period for which it is to remain in force.

(5) The period must be—

(a) if the same period as that of the home order is possible for the proposed interstate order under the child welfare law of the participating State commencing on, and including, the date of the registration of the interstate order in that State, that period; or

(b) in any other case, as similar a period as is possible under that law but in no case longer than the period of the home order.

4 Persons whose consent is required

(1) For the purposes of clause 3(1)(d) but subject to subclause (2), if the home order is a family preservation order or a family reunification order, consent to a transfer under this Division is required from the child's parents and any other person who is granted contact with the child under the order.

Sch. 1 Pt 2 cl. 4(1) amended by Nos 52/2013 s. 59, 8/2016 s. 19.

(2) If a parent of the child or any other person who is granted contact with the child under the order is residing in, or is intending to reside in, the relevant participating State, consent to the transfer is not required from that parent or other person or

Sch. 1 Pt 2 cl. 4(2) amended by No. 52/2013 s. 59.

from any other parent or other person who is granted contact with the child under the order who consents to the child residing in that State.

5 Secretary to have regard to certain matters

In determining whether to transfer a child protection order to a participating State under this Division, the Secretary must—

Sch. 1 Pt 2 cl. 5(a) amended by No. 17/2023 s. 13.

(a) as far as possible, make decisions having regard to the principles in Parts 1.1B and 1.2 of Chapter 1 and the following principles—

(i) the best interests of the child must be given paramount importance;

(ii) the child (except if his or her participation would be detrimental to his or her safety or wellbeing) must be encouraged and (through consultation and discussion) given adequate opportunity to participate fully in the decision-making process and must be given a copy of any proposed case plan relating to the transfer and sufficient notice of any meeting proposed to be held;

(iii) the family of the child (except if its participation would be detrimental to the safety or wellbeing of the child) must be encouraged and (through consultation and discussion) given adequate opportunity to participate fully in the decision-making process and must be given a copy of any proposed case plan relating to the transfer and sufficient notice of any meeting proposed to be held; and

(b) have regard to whether the Secretary or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child; and

(c) have regard to the fact that it is preferable that a child is subject to a child protection order made under the child welfare law of the State where the child resides; and

(d) have regard to any sentence under any Act, other than a fine, in force in respect of the child or any criminal proceeding pending against the child in any court.

Sch. 1 Pt 2 cl. 5(d) amended by No. 68/2009 s. 87(1)(a).

6 Notification to child and his or her parents

(1) If the Secretary has decided to transfer a child protection order to a participating State under this Division, the Secretary must cause—

(a) the parent of the child who is the subject of the order; and

(b) if the child is of or above the age of 7 years, the child—

to be served with a notice of the decision as soon as practicable but in any event no later than 3 working days after making it.

(2) A notice under subclause (1) served on a parent of the child must, in addition to providing notice of the decision, inform the parent that—

(a) the decision may be reviewed on its merits by the Victorian Civil and Administrative Tribunal or on certain grounds by the Supreme Court; and

(b) the application for review must be made, and the relevant documents served on the Secretary, within 28 days after the date of the decision or, in the case of an application to the Victorian Civil and Administrative Tribunal, the later day on which a statement of reasons for the decision is given or refused to be given under the **Victorian Civil and Administrative Tribunal Act 1998**; and

(c) a request under section 45(1) of the **Victorian Civil and Administrative Tribunal Act 1998** for a written statement of reasons for the decision must be made in writing within 28 days after the date of the decision; and

(d) the parent may make an application for review and provide details of how such an application may be made.

(3) A notice under subclause (1) served on the child must, in addition to providing notice of the decision, inform the child that—

(a) the child may seek legal advice in relation to the decision; and

(b) the child may oppose the decision by writing, or by a legal practitioner writing on his or her behalf, to the employee nominated in the notice within 28 days after service of the notice and stating the fact that the child opposes the decision; and

(c) if notice of opposition is given to the nominated employee in accordance with paragraph (b), the order cannot be transferred by the Secretary under this Division.

(4) The Secretary must make all reasonable efforts to ensure that a child on whom a notice is served under subclause (1) has an opportunity to seek legal advice in relation to the decision to transfer the child protection order.

(5) Service of a notice on a person is not required under subclause (1) if it cannot be effected after making all reasonable efforts.

7 Limited period for judicial review of decision

(1) A proceeding in the Supreme Court for judicial review of a decision of the Secretary to transfer a child protection order to a participating State under this Division must be instituted, and written notice of it must be served on the Secretary, within 28 days after the date of the decision of the Secretary.

(2) Subject to subclause (1), a proceeding referred to in that subclause must be brought in accordance with the rules of the Supreme Court.

(3) The Supreme Court cannot extend the time limit fixed by subclause (1).

(4) The institution of a proceeding referred to in subclause (1) and service of written notice of it on the Secretary stays the operation of the decision pending the determination of the proceeding.

Division 2—Judicial transfers

8 When Court may make order under this Division

The Court may make an order under this Division transferring a child protection order to a participating State if—

(a) an application for the making of the order is made by the Secretary; and

(b) the child protection order is not subject to an appeal to the Supreme Court or the County Court; and

(c) the relevant interstate officer has consented in writing to the transfer and to the proposed terms of the child protection order to be transferred.

9 Service of application

The Secretary must as soon as possible cause a copy of an application for an order transferring a child protection order to a participating State to be sent by post or given to any person to whom he or she would have been required under Chapter 4 of this Act to send or give a copy of an application made by him or her for the variation of the order sought to be transferred.

10 Type of order

(1) If the Court determines to transfer a child protection order (the ***home order***) under this Division, the proposed terms of the child protection order to be transferred (the ***proposed interstate order***) must be terms that could be the terms of a child protection order made under the child welfare law of the participating State and that the Court believes to be—

(a) to the same or a similar effect as the terms of the home order; or

(b) otherwise in the best interests of the child.

(2) The Court may include in the proposed interstate order any conditions that could be included in a child protection order of that type made in the relevant participating State.

(3) In determining whether an order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the Court must not take into account the period for which it is possible to make such an order in that State.

(4) The Court must determine, and specify in the proposed interstate order, the period for which it is to remain in force.

(5) The period must be any period that is possible for a child protection order of the type of the proposed interstate order under the child welfare law of the participating State commencing on, and including, the date of its registration in that State and that the Court considers to be appropriate.

11 Court to have regard to certain matters

(1) The Court must not make an order under this Division unless it has received and considered a report by the Secretary that contains the matters required by section 558 to be included in a disposition report.

(2) In determining what order to make on an application under this Division the Court must have regard to—

(a) whether the order is in the best interests of the child; and

(b) whether the Secretary or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child; and

(c) the fact that it is preferable that a child is subject to a child protection order made under the child welfare law of the State where the child resides; and

(d) any information given to the Court by the Secretary under clause 12.

(3) Section 559 applies to a report referred to in subclause (1) as if it were a disposition report required under section 557(1).

Sch. 1 Pt 2 cl. 12 amended by No. 68/2009 s. 87(1)(b).

12 Duty of the Secretary to inform the Court of certain matters

If the Secretary is aware that—

Sch. 1 Pt 2 cl. 12(a) amended by No. 68/2009 s. 87(1)(b).

(a) a sentence under any Act, other than a fine, is in force in respect of the child who is the subject of an application under this Division; or

(b) a criminal proceeding is pending against that child in any court—

the Secretary must, as soon as possible, inform the Court of that fact and of the details of the sentence or pending criminal proceeding.

13 Appeals

(1) A party to an application for an order under this Division or the Attorney-General, if he or she appeared or was represented in the proceeding under section 215(2), may appeal to the Supreme Court, on a question of law, from a final order made in that proceeding transferring, or refusing to transfer, a child protection order to a participating State.

(2) An appeal under subclause (1)—

(a) must be instituted, and (except where instituted by the Secretary) written notice of it must be served on the Secretary, within 10 working days after the day on which the order complained of was made; and

(b) operates as a stay of an order transferring the child protection order to a participating State.

(3) Subject to subclause (2), an appeal under subclause (1) must be brought in accordance with the rules of the Supreme Court.

(4) The Supreme Court cannot extend the time limit fixed by subclause (2)(a).

(5) The Supreme Court must hear and determine the appeal as expeditiously as possible.

(6) After hearing and determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court with or without any direction in law.

(7) An order made by the Supreme Court on an appeal under subclause (1), other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.

(8) Pending the hearing of the appeal the Supreme Court may—

(a) make any interim accommodation order that the Children's Court has jurisdiction to make; or

(b) make any variation of the child protection order that the Children's Court would have jurisdiction to make on an application made under Chapter 4 of this Act.

(9) Section 330 applies to an appeal under subclause (1) as if—

(a) a reference to section 328 or 329 were a reference to this clause; and

(b) references to the County Court were omitted.

Part 3—Transfer of child protection proceedings

14 When Court may make order under this Part

(1) The Court may make an order under this Part transferring a child protection proceeding pending in the Court to the Children's Court in a participating State if—

(a) an application for the making of the order is made by the Secretary; and

(b) the relevant interstate officer has consented in writing to the transfer.

(2) The proceeding is discontinued in the Court on the registration in the Children's Court in the participating State in accordance with the interstate law of an order referred to in subclause (1).

15 Service of application

The Secretary must as soon as possible cause a copy of an application for an order transferring a child protection proceeding to the Children's Court in a participating State to be served on—

(a) the child's parent or other person with whom the child is living; and

(b) if the child is of or above the age of 12 years, the child.

16 Court to have regard to certain matters

(1) In determining whether to make an order transferring a proceeding under this Part the Court must have regard to—

(a) whether the order is in the best interests of the child; and

(b) whether any other proceedings relating to the child are pending, or have previously been heard and determined, under the child welfare law in the participating State; and

(c) the place where any of the matters giving rise to the proceeding in the Court arose; and

(d) the place of residence, or likely place of residence, of the child, his or her parents and any other people who are significant to the child; and

(e) whether the Secretary or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child; and

(f) the fact that it is preferable that a child is subject to a child protection order made under the child welfare law of the State where the child resides; and

(g) any information given to the Court by the Secretary under subclause (2).

(2) If the Secretary is aware that—

Sch. 1 Pt 3 cl. 16(2) amended by No. 68/2009 s. 87(1)(c).

(a) a sentence under any Act, other than a fine, is in force in respect of the child who is the subject of the proceeding to which an application under this Part relates; or

Sch. 1 Pt 3 cl. 16(2)(a) amended by No. 68/2009 s. 87(1)(c).

(b) a criminal proceeding is pending against that child in any court—

the Secretary must, as soon as possible, inform the Court of that fact and of the details of the sentence or pending criminal proceeding.

17 Interim order

(1) If the Court makes an order transferring a proceeding under this Part, the Court may also make an interim order.

(2) An interim order—

(a) may release the child or place the child into the care of any person, subject to any conditions that the Court considers to be appropriate; and

(b) may give responsibility for the supervision of the child to the interstate officer in the participating State or any other person in that State to whom responsibility for the supervision of a child could be given under the child welfare law of that State; and

(c) remains in force for the period (not exceeding 30 days) specified in the order.

(3) The Children's Court in the participating State may revoke an interim order in accordance with the relevant interstate law.

18 Appeals

(1) A party to an application for an order under this Part or the Attorney-General, if he or she appeared or was represented in the proceeding under section 215(2), may appeal to the Supreme Court, on a question of law, from a final order made in that proceeding transferring, or refusing to transfer, a child protection proceeding to the Children's Court in a participating State.

(2) An appeal under subclause (1)—

(a) must be instituted, and (except where instituted by the Secretary) written notice of it must be served on the Secretary, within 3 working days after the day on which the order complained of was made; and

(b) operates as a stay of an order transferring the child protection proceeding to a participating State but not of any interim order made at the same time as the order.

(3) Subject to subclause (2), an appeal under subclause (1) must be brought in accordance with the rules of the Supreme Court.

(4) The Supreme Court cannot extend the time limit fixed by subclause (2)(a).

(5) The Supreme Court must hear and determine the appeal as expeditiously as possible.

(6) After hearing and determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court with or without any direction in law.

(7) An order made by the Supreme Court on an appeal under subclause (1), other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.

(8) The Supreme Court may—

(a) make an order staying the operation of any interim order made at the same time as the order that is the subject of the appeal or may, by order, vary or revoke, or extend the period of, that interim order; and

(b) make any interim accommodation order pending the hearing of the appeal that the Children's Court has jurisdiction to make.

(9) Section 330 applies to an appeal under subclause (1) as if—

(a) a reference to section 328 or 329 were a reference to this clause; and

(b) references to the County Court were omitted.

Part 4—Registration

19 Filing and registration of interstate documents

(1) Subject to subclause (3), the Secretary must as soon as possible file in the Court for registration a copy of a child protection order transferred to Victoria under an interstate law.

(2) Subject to subclause (3), the Secretary must as soon as possible file in the Court for registration a copy of an order under an interstate law to transfer a child protection proceeding to Victoria, together with a copy of any interim order made in relation to that order.

(3) The Secretary must not file in the Court a copy of a child protection order or of an order to transfer a child protection proceeding if—

(a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is subject to appeal or review or a stay; or

(b) the time for instituting an appeal or seeking a review has not expired—

under the interstate law.

20 Notification by appropriate registrar

The appropriate registrar must immediately notify the appropriate officer of the Children's Court in the sending State and the interstate officer in that State of—

(a) the registration of any document filed under clause 19; or

(b) the revocation under clause 22 of the registration of any document so filed.

21 Effect of registration

(1) A child protection order registered in the Court under this Part must be taken for all purposes (except for the purposes of appeal) to be a protection order of the relevant type made by the Court on the day on which it is registered and it may be varied or revoked, or the period of the order extended, or a breach of it dealt with, under Chapter 4 of this Act accordingly.

(2) An interim order registered in the Court under this Part must be taken for all purposes (except for the purposes of appeal) to be an interim accommodation order made by the Court on the day on which it is registered, even if it includes terms that could not be terms of an interim accommodation order.

(3) An interim order registered in the Court under this Part cannot be varied, or the period of the order extended, under Division 5 of Part 4.8 of this Act but nothing in this subclause prevents the Court from making a new interim accommodation order under section 270 (without being limited to the circumstances for an application for a new order set out in that section) and revoking the interim order.

(4) Despite subclause (3), a breach of an interim order registered in the Court under this Part may be dealt with under Chapter 4 of this Act in the same way as a breach of any other interim accommodation order.

(5) If an order under an interstate law to transfer a child protection proceeding to Victoria is registered under this Part, the proceeding must be taken to have been commenced in the Court on the day on which the order is registered.

22 Revocation of registration

(1) An application for the revocation of the registration of any document filed under clause 19 may be made to the Court by—

(a) the Secretary; or

(b) the child concerned; or

(c) a parent of the child concerned; or

(d) a party to the proceeding in the Children's Court in the sending State in which the decision to transfer the order or proceeding (as the case requires) was made.

(2) The appropriate registrar must cause a copy of an application under subclause (1) to be sent by post or given as soon as possible to—

(a) the relevant interstate officer; and

(b) any person by whom such an application could have been made.

(3) The Court may only revoke the registration of a document filed under clause 19 if satisfied that it was inappropriately registered because—

(a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) was at the time of registration subject to appeal or review or a stay; or

(b) the time for instituting an appeal or seeking a review had not expired—

under the interstate law.

(4) The appropriate registrar must cause any document filed in the Court under clause 19 to be sent to the Children's Court in the sending State if the registration of the document is revoked.

(5) The revocation of the registration of a document does not prevent the later re-registration of that document.

Part 5—Miscellaneous

23 Effect of registration of transferred order

(1) On an order being registered in a participating State under an interstate law, the child protection order made by the Court under Chapter 4 of this Act ceases to have effect.

(2) Despite subclause (1), an order that has ceased to have effect by force of that subclause is revived if the registration of the child protection order transferred from Victoria is revoked in the participating State under the interstate law.

(3) The period for which a child protection order is revived is the balance of the period for which it would have remained in force but for the registration of the transferred order.

24 Transfer of Court file

The appropriate registrar must cause all documents filed in the Court in connection with a child protection proceeding, and an extract from any part of the court register that relates to a child protection proceeding, to be sent to the Children's Court in a participating State if—

(a) the child protection order or proceeding is transferred to the participating State; and

(b) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is not subject to appeal or review or a stay; and

(c) the time for instituting an appeal or seeking a review has expired—

under this Schedule.

25 Hearing and determination of transferred proceeding

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

(a) is not bound by any finding of fact made in the proceeding in the Children's Court in the sending State before its transfer; and

(b) may have regard to the transcript of, or any evidence adduced in, the proceeding referred to in paragraph (a).

26 Disclosure of information

(1) Despite anything to the contrary in this Act, the Secretary may disclose to an interstate officer any information that has come to his or her notice in the performance of duties or exercise of powers under this Act if the Secretary considers that it is necessary to do so to enable the interstate officer to perform duties or exercise powers under a child welfare law or an interstate law.

(2) Any information disclosed to the Secretary under a provision of a child welfare law or an interstate law that substantially corresponds to subclause (1) must be taken for the purposes of any provision of this Act relating to the disclosure of information to have been information given directly to a protective intervener in Victoria instead of to an interstate officer.

27 Discretion of Secretary to consent to transfer

(1) If, under an interstate law, there is a proposal to transfer a child protection order to Victoria, the Secretary may consent or refuse to consent to the transfer and the proposed terms of the child protection order to be transferred.

(2) If, under an interstate law, there is a proposal to transfer a child protection proceeding to the Children's Court in Victoria, the Secretary may consent or refuse to consent to the transfer.

28 Evidence of consent of relevant interstate officer

A document, or a copy of a document, purporting—

(a) to be the written consent of the relevant interstate officer to—

(i) the transfer of a child protection order to a participating State and to the proposed terms of the child protection order to be transferred; or

(ii) the transfer of a child protection proceeding pending in the Court to the Children's Court in a participating State; and

(b) to be signed by the relevant interstate officer or his or her delegate—

is admissible in evidence in any proceeding under this Schedule and, in the absence of evidence to the contrary, is proof that consent in the terms appearing in the document was duly given by the relevant interstate officer.

Schedule 2—Interstate transfer of young offenders

Section 492

1 Definitions

In this Schedule—

agreement means an agreement between the Minister and a Minister of another State under clause 2;

arrangement means an arrangement made under clause 3 for the transfer of a young offender from Victoria to another State, or to Victoria from another State;

Minister, in relation to a State other than Victoria, means—

(a) except where the other State is the Australian Capital Territory or the Northern Territory of Australia—a Minister of the Crown of that State; and

(b) where the other State is the Australian Capital Territory—a Minister of the Crown of the Commonwealth; and

(c) where the other State is the Northern Territory of Australia—a person holding Ministerial office, as defined in section 4(1) of the Northern Territory (Self-Government) Act 1978 of the Commonwealth;

receiving State means the State to which a young offender is transferred;

sending State means the State from which a young offender is transferred;

State means any State or Territory of the Commonwealth;

young offender means a person—

(a) in another State who—

(i) is under the age of 18 years; or

(ii) is of or above the age of 18 years but under the age of 21 years and who has committed or is alleged to have committed an offence when the person was under the age of 18 years—

and who has been dealt with under a law which applies in that State and which relates to the welfare or punishment of such a person; or

(b) in Victoria who—

(i) is subject to an order made under paragraph (f), (g), (h), (i) or (j) of section 360(1), whether the order was made by the Children's Court or by some other court; or

(ii) is under the age of 21 years and is serving a sentence of detention in a youth justice centre; or

(iii) is under the age of 21 years and has been released on parole under this Act; or

(c) who is in Victoria and is subject to an arrangement for the transfer of the person to Victoria or is being transferred through Victoria from one State to another under an agreement.

2 Minister may enter into general agreement

The Minister may enter into a general agreement with a Minister of another State for the transfer of young offenders—

(a) into or out of Victoria; and

(b) through Victoria from one State to another.

3 Secretary may make arrangements

If the Minister enters into an agreement with a Minister of another State, the Secretary may make an arrangement with the Minister of the other State, or with a person authorised by that Minister as provided in the agreement, for the transfer of a particular young offender—

(a) to that State from Victoria; or

(b) to Victoria from that State.

4 Arrangement for transfer out of Victoria

(1) The Secretary must not make an arrangement for the transfer of a young offender from Victoria to another State unless—

(a) the young offender or a parent of the young offender applies for the transfer to be made; and

(b) the Secretary is of the opinion that the transfer is appropriate in all the circumstances including—

(i) the place or intended place of residence of the parents; and

(ii) the education, further education, training or employment; and

(iii) the medical or other needs—

of the young offender; and

(c) the young offender has been given independent legal advice as to the effect of the arrangement and consents to it; and

(d) the Secretary is satisfied that there is no appeal pending against an order of a court to which the young offender is subject.

(2) For the purposes of deciding whether or not to arrange for the transfer of a young offender from Victoria to another State, the Secretary may ask—

(a) the young offender; or

(b) the parents of the young offender—

for any necessary information, and the young offender or parents must supply the information within the time specified by the Secretary.

5 Arrangement for transfer to Victoria

The Secretary must not make an arrangement for the transfer of a young offender from another State to Victoria unless the Secretary is satisfied that there are adequate facilities in Victoria for the young offender to be accepted and dealt with as provided in the arrangement.

6 Provisions to be made in each arrangement

(1) An arrangement for the transfer of a young offender to or from Victoria must—

(a) provide for the acceptance and means of dealing with the young offender in the receiving State; and

(b) specify each order of a court of the sending State to which the young offender is subject (including an order deemed by a previous arrangement with Victoria or with another State to have been made by a court of the sending State); and

(c) for each order specified under paragraph (b)—

(i) specify the way in which it is to operate in the receiving State, which must be as similar as possible to the way in which it would operate in the sending State if the arrangement were not made; and

(ii) specify the maximum time for which it is to operate, which must not be longer than the maximum time for which it would operate in the sending State if the arrangement were not made.

(2) An arrangement made by the Secretary for the transfer of a young offender from Victoria to another State must provide for the escort under clause 7(1)(b) to be authorised in that State to hold, take and keep custody of the young offender for the purpose of transferring the young offender to the place and the custody specified in the arrangement.

(3) A reference in subclause (1) to an order of a court of a sending State is a reference to any sentence, period of detention, probation, parole or other order which could be made or imposed by that court.

7 Transfer order made under an arrangement

(1) If the Secretary makes an arrangement under this Schedule for the transfer of a person to another State, he or she must make a transfer order which—

(a) directs the person who has the custody of the young offender to deliver the young offender to the custody of the escort; and

(b) authorises the escort to take and keep custody of the young offender for the purpose of transferring the young offender to the place in the receiving State and to the custody specified in the arrangement.

(2) A reference in subclause (1) to a person having the custody of a young offender is a reference to—

(a) a person in charge of a remand centre, youth residential centre, youth justice centre or youth justice unit; or

(b) a person in charge of any other establishment conducted and managed by the Department; or

(c) any other person who has custody of the young offender.

(3) A reference in subclause (1) to an escort is a reference to a youth justice officer, a member of the police force or a person appointed by the Secretary by an instrument in writing to be an escort for the purposes of this Schedule, or any two or more of them.

8 Transfer to Victoria in custody of escort

If under an arrangement for the transfer of a young offender to Victoria an escort authorised under the arrangement brings the young offender to Victoria, the escort, while in Victoria, is authorised to hold, take and keep custody of the young offender for the purpose of transferring the young offender to the place in Victoria and to the custody specified in the arrangement.

9 Reports

(1) For the purpose of forming an opinion or exercising a discretion under this Schedule, the Secretary may be informed as he or she thinks fit and, in particular, may have regard to reports from any person who has or has had the custody or supervision of a young offender in Victoria or in another State.

(2) Reports of any person who has or has had the custody or supervision of a young offender may be sent to a Minister of another State who has entered into an agreement or to a person authorised under an agreement to make arrangements with the Secretary.

10 Transfer of sentence or order with transferee

If under an arrangement a young offender is transferred from Victoria to another State, then from the time the young offender arrives in that State any sentence imposed on, or order made in relation to, the young offender in Victoria before that time ceases to have effect in Victoria except—

(a) in relation to any period of detention served by the young offender before that time; or

(b) in relation to any part of the order carried out in respect of the young offender before that time; or

(c) in relation to the remittance of money to the Minister which is paid in discharge or partial discharge of a sentence of default detention or default imprisonment originally imposed on the young offender by a court in Victoria.

11 Sentence etc. deemed to have been imposed in this State

If under an arrangement a young offender is transferred to Victoria from another State, then from the time the young offender arrives in Victoria—

(a) any sentence imposed on, or order made in relation to, the young offender by a court of the sending State and specified in the arrangement is deemed to have been imposed or made; and

(b) any sentence or order deemed by a previous arrangement with Victoria or with another State to have been imposed or made by a court of the sending State and specified in the arrangement under which the young offender is transferred to Victoria is deemed to have been imposed or made; and

(c) any direction or order given or made by a court of the sending State concerning the time when anything to be done under an order made by a court of that State commences is, so far as practicable, deemed to have been given or made—

by the court in Victoria specified in the arrangement and, except as otherwise provided in this Schedule, has effect in Victoria as specified in the arrangement in accordance with clause 6, and the laws of Victoria apply, as if that court had had power to impose the sentence and give or make the directions or orders, and did in fact impose the sentence and give or make the directions or orders.

12 Lawful custody for transit through Victoria

(1) The Secretary may authorise the person in charge of a remand centre, youth residential centre, youth justice centre or youth justice unit or any other person to receive young offenders being transferred through Victoria from one State to another.

(2) If under an agreement for the transfer of young offenders through Victoria from one State to another, a young offender is brought into Victoria by an escort authorised as provided in the agreement—

(a) while in Victoria, the escort is authorised to take, hold and keep custody of the young offender for the purposes of the transfer; and

(b) a person authorised under subclause (1) may at the request of the escort and on receiving from the escort written authority for the transfer as provided in the agreement—

(i) receive and detain the young offender in the custody and for the time the escort requests, if it is reasonably necessary for the purposes of the transfer; and

(ii) at the end of that time deliver the young offender into the custody of the escort.

13 Escape from custody of person being transferred

(1) A young offender being transferred through Victoria from one State to another in the custody of an escort and who escapes from that custody may be apprehended without warrant by the escort, any member of the police force or any other person.

(2) If a young offender being transferred through Victoria from one State to another in the custody of an escort—

(a) has escaped and been apprehended; or

(b) has attempted to escape—

the young offender may be taken before a magistrate who may by warrant under his or her hand order the young offender to be detained in custody at a remand centre, youth residential centre or youth justice centre.

(3) A warrant issued under subclause (2) may be executed according to its tenor.

(4) A young offender who is the subject of a warrant under subclause (2) must as soon as possible be brought before the Magistrates' Court or the Children's Court (as the case requires) which may order—

(a) that the young offender be delivered to the custody of an escort; or

(b) that the young offender be detained for no longer than 7 days until an escort is available from the sending State to carry out the arrangement or any orders made by a court of that State.

(5) If a young offender who is the subject of an order under subclause (4)(b) is not, in accordance with the order, delivered into the custody of an escort within a period of 7 days from the making of the order, the order has no further effect.

(6) A reference in this clause to an escort in relation to a young offender being transferred through Victoria from one State to another under an agreement is a reference to—

(a) the escort authorised in the manner provided for in the agreement; or

(b) if the young offender has escaped or attempted to escape—

(i) that escort; or

(ii) a member of the police force of the sending State; or

(iii) a person appointed by the Minister of the sending State by instrument in writing to be an escort for the purposes of carrying out any orders of a court of the sending State—

or any two or more of them.

14 Escape from custody—penalty

(1) A young offender—

(a) who is in custody under an arrangement made for his or her transfer from Victoria to another State; and

(b) who was subject before the arrangement to detention in Victoria; and

(c) who escapes or attempts to escape from that custody while he or she is not within Victoria or the receiving State—

is guilty of an offence and is liable to imprisonment for a term not exceeding six months or to detention in a youth residential centre or youth justice centre for a term not exceeding six months, to be served after the end of any term of detention to which he or she was subject at the time of the escape or attempt to escape.

(2) Without limiting the generality of section 483, that section applies to a person—

(a) who is in custody under an arrangement for the transfer of the person from Victoria to another State; and

(b) who escapes from that custody while he or she is not within Victoria or the receiving State—

in the same way as it applies to a person who escapes, attempts to escape or is absent without lawful authority from a remand centre, youth residential centre or youth justice centre in which he or she is lawfully detained or from the custody of any person in whose custody the person may be.

15 Revocation of order of transfer on escape from custody

The Magistrates' Court or Children's Court may revoke an order made under an arrangement for the transfer of a young offender from Victoria to another State on application made to it under this clause by the Secretary that the young offender has, while being transferred, committed—

(a) the offence of escaping or attempting to escape; or

(b) any other offence—

whether—

(c) the offence was an offence against the law of Victoria or of the receiving State or of a State through which the young offender was being transferred; or

(d) a charge-sheet has been filed or a conviction secured in respect of the offence or not.

Sch. 2 cl. 15(d) amended by No. 68/2009 s. 87(2).

16 Revocation of order of transfer by consent

(1) The Secretary may revoke an order for the transfer of a young offender from Victoria to another State—

(a) at any time before the young offender is delivered in the receiving State into the custody specified in the arrangement; and

(b) only with the consent of the young offender and of the Minister or other person in the receiving State with whom the Secretary made the arrangement.

(2) If the Secretary revokes an order under subclause (1), the Secretary may make a further arrangement with the receiving State for the return of the young offender to Victoria.

Schedule 3—Children and Young Persons Infringement Notice System

Sch. 3 substituted by No. 48/2006 s. 29.

Sections 529, 581, 582, 592, 600

Part 1—Introductory

1 Application of Schedule

(1) The procedures set out in this Schedule may be used for the enforcement of infringement penalties.

(2) If the procedures set out in this Schedule are used, they apply without prejudice to the application of so much of any other procedure as is consistent with this Schedule.

(3) The procedures set out in Part 2 may be used in relation to any infringement notice, whenever issued.

2 Definitions

In this Schedule—

appropriate officer, in relation to an infringement notice or an infringement penalty, means—

(a) a person who is the enforcement agency; or

(b) a person appointed by the enforcement agency as an appropriate officer for the purposes of the notice or the class of notice; or

(c) a prescribed person or a person who is a member of a prescribed class of person;

certificate means a certificate under clause 3(1)(b);

Sch. 3 Pt 1 cl. 2 def. of *child* amended by No. 32/2024 s. 788.

child means a person who at the time of the alleged commission of an infringement offence was under the age of 18 years but of or above the age of 12 years but does not include any person who is of or above the age of 19 years when an application for registration is made in respect of the person under clause 3;

enforcement agency, in relation to an infringement notice or an infringement penalty, means—

(a) a person or body authorised by or under an Act to take proceedings for the offence in respect of which the notice was issued; or

(b) a person by whom, or body by which, a person or body referred to in paragraph (a) is employed or engaged to provide services if the taking of the proceedings referred to in that paragraph would occur in the course of that employment or in the course of providing those services; or

(c) a prescribed person or body or a person who, or body that, is a member of a prescribed class of person or body; or

(d) a prescribed administrative unit; or

(e) a prescribed group of people;

enforcement order means an order under clause 8(3)(c), 8(3)(d), 8(3)(e), 8(3)(f) or 10(5);

infringement notice has the same meaning as it has in the **Infringements Act 2006**;

Sch. 3 Pt 1 cl. 2 def. of *infringement notice* repealed by No. 59/2017 s. 109(1), new def. of *infringement notice* inserted by No. 59/2017 s. 109(2).

infringement offence has the same meaning as it has in the **Infringements Act 2006**;

Sch. 3 Pt 1 cl. 2 def. of *infringement offence* inserted by No. 59/2017 s. 109(2).

infringement penalty means the amount specified in an infringement notice as payable in respect of the offence for which the infringement notice was issued;

penalty reminder notice has the same meaning as it has in the **Infringements Act 2006**;

penalty reminder notice fee has the same meaning as it has in the **Infringements Act 2006**;

Sch. 3 Pt 1 cl. 2 def. of *penalty reminder notice fee* inserted by No. 59/2017 s. 109(2).

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Sch. 3 Pt 1 cl. 2 def. of *prescribed costs* repealed by No. 59/2017 s. 109(1).

registered amount means the amount registered by the registrar pursuant to clause 4 or if that amount is reduced by an enforcement order, that reduced amount;

Sch. 3 Pt 1 cl. 2 def. of *registrar* substituted by No. 26/2012 s. 12, amended by No. 29/2016 s. 107(1)(a).

registrar means principal registrar or registrar;

Sch. 3 Pt 1 cl. 2 def. of *work and development permit* inserted by No. 29/2016 s. 107(1)(b), amended by No. 29/2016 s. 107(2).

work and development permit has the same meaning as it has in the **Fines Reform Act 2014**.

Part 2—Enforcement of infringement notices

3 Application for registration of infringement penalty

(1) An enforcement agency may apply to have an infringement penalty registered by providing to a registrar—

(a) a document in the form required by the regulations containing the details required by the regulations in relation to a child—

(i) who has not paid an infringement penalty; or

Sch. 3 Pt 2 cl. 3(1)(a)(ii) substituted by No. 47/2014 s. 253(1)(a).

(ii) who has agreed to pay an infringement penalty by a payment plan under the **Infringements Act 2006** or a payment arrangement under the **Fines Reform Act 2014**, but who has subsequently defaulted on payment of that plan or that payment arrangement; or

(iii) who has made a part payment of an infringement penalty otherwise than under a payment plan under the **Infringements Act 2006** or a payment arrangement under the **Fines Reform Act 2014**, and has subsequently defaulted in making any further payment; or

Sch. 3 Pt 2 cl. 3(1)(a)(iii) amended by Nos 29/2016 s. 108(a), 47/2014 s. 253(1)(b).

(iv) who is not subject to a work and development permit; or

Sch. 3 Pt 2 cl. 3(1)(a)(iv) inserted by No. 29/2016 s. 108(b).

(v) who was subject to a work and development permit but is no longer and the work and development permit is only partially completed; and

Sch. 3 Pt 2 cl. 3(1)(a)(v) inserted by No. 29/2016 s. 108(b).

(b) a certificate in the prescribed form signed by an appropriate officer and certifying that in respect of each child referred to in the document the requirements set out in subclause (2), and any other prescribed requirements, have been satisfied.

(2) A certificate under subclause (1)(b) must certify that—

(a) an infringement notice has been served on the child; and

(b) a penalty reminder notice has been served on the child after the end of the time specified in the infringement notice as the time within which the infringement penalty may be paid; and

(c) a period of at least 28 days has passed since the penalty reminder notice was served; and

Sch. 3 Pt 2 cl. 3(2)(d) amended by No. 59/2017 s. 109(3).

(d) the infringement penalty and any penalty reminder notice fee had not been paid, whether in full or in part, before the certificate was issued; and

Sch. 3 Pt 2 cl. 3(2)(e) substituted by No. 47/2014 s. 253(2).

(e) if a payment plan under the **Infringements Act 2006** or a payment arrangement under the **Fines Reform Act 2014** applies to the child in relation to the infringement penalty, the child has defaulted in making a payment under the payment plan or payment arrangement and a specified amount still remains to be paid under that payment plan or payment arrangement; and

Sch. 3 Pt 2 cl. 3(2)(f) amended by Nos 59/2017 s. 109(3), 47/2014 s. 253(3).

(f) if a part payment of the infringement penalty and penalty reminder notice fee has been made (otherwise than under a payment plan under the **Infringements Act 2006** or a payment arrangement under the **Fines Reform Act 2014**) but no further payment has been made and a specified amount still remains to be paid; and

(g) the child has not, under Part 2 of the **Infringements Act 2006** elected to have the matter of the infringement offence heard and determined in the Court; and

Sch. 3 Pt 2 cl. 3(2)(h) amended by No. 68/2009 s. 87(3)(a).

(h) a charge-sheet in relation to the offence has not been filed; and

Sch. 3 Pt 2 cl. 3(2)(i) amended by Nos 68/2009 s. 87(3)(a), 64/2010 s. 55.

(i) a charge-sheet may still be filed in relation to the offence; and

Sch. 3 Pt 2 cl. 3(2)(j) substituted by No. 81/2006 s. 31(2).

(j) if the infringement notice was served under section 87 of the **Road Safety Act 1986**, the child was at the time of the alleged offence

the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the vehicle involved in the offence; and

(k) if the infringement notice was issued in respect of an offence to which section 66 of the **Road Safety Act 1986** applies, the child was at the time of the alleged offence the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the motor vehicle or trailer involved in the offence; and

Sch. 3 Pt 2 cl. 3(2)(k) substituted by No. 81/2006 s. 31(2).

(l) if the infringement notice was issued in respect of an offence against section 73(1) of the **Melbourne City Link Act 1995**, the child was at the time of the alleged offence the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the vehicle involved in the offence; and

Sch. 3 Pt 2 cl. 3(2)(l) substituted by Nos 81/2006 s. 31(2), 9/2008 s. 41.

(m) if the infringement notice was issued in respect of an offence under section 204 of the **EastLink Project Act 2004**, the child was at the time of the alleged offence the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the vehicle involved in the offence; and

Sch. 3 Pt 2 cl. 3(2)(m) substituted by No. 9/2008 s. 41, amended by No. 8/2019 s. 88(1).

(n) if the infringement notice was issued in respect of an offence under section 32(1) of the **West Gate Tunnel (Truck Bans and Traffic Management) Act 2019**, the child was at the time of the alleged offence the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the vehicle involved in the offence; and

Sch. 3 Pt 2 cl. 3(2)(n) inserted by No. 8/2019 s. 88(2), amended by No. 18/2020 s. 124(1)(a).

Sch. 3 Pt 2 cl. 3(2)(o) inserted by No. 18/2020 s. 124(1)(b).

(o) if the infringement notice was issued in respect of an offence against section 69(1) of the **North East Link Act 2020**, the child was at the time of the alleged offence the responsible person (within the meaning of Part 6AA of the **Road Safety Act 1986**) in relation to the vehicle involved in the offence.

4 Registration of infringement penalty

Sch. 3 Pt 2 cl. 4(1) amended by No. 59/2017 s. 109(4).

(1) If it appears to the registrar from the certificate provided under clause 3(1)(b) that the requirements listed in clause 3(2) and any other prescribed requirements have been satisfied in relation to a child referred to in the document provided with the certificate, the registrar may register the infringement penalty or the part of the infringement penalty together with any penalty reminder notice fee for the purpose of enforcement under this Part.

(2) The amount registered by the registrar pursuant to subclause (1) in respect of a child must not exceed the amount of a fine that the Court may impose under section 373.

(3) Despite subclause (1), the registrar must not register an infringement penalty that is for an amount less than the amount, if any, specified by the regulations for the purposes of this subclause.

Sch. 3 Pt 2 cl. 4A inserted by No. 29/2016 s. 109(1).

4A Extended period for registration

Sch. 3 Pt 2 cl. 4A(1) amended by Nos 59/2017 s. 109(5), 29/2016 s. 109(2).

(1) If a work and development permit to which a child who was served with an infringement notice was subject has been cancelled under section 10E of the **Fines Reform Act 2014**, the time period within which the registrar may register the infringement penalty or part of the infringement

penalty together with any penalty reminder notice fee is no more than 6 months after the date on which the work and development permit is cancelled under that section.

(2) Subclause (1) has effect despite section 7(1) of the **Criminal Procedure Act 2009** or any other provision of any Act or other instrument providing for the period during which any proceeding must be commenced for an offence alleged to have been committed.

5 Enforcement agency may request cancellation of registration

(1) The enforcement agency may, by notice in the prescribed form filed with the registrar at any time before the registrar makes an order under clause 8 in respect of an infringement penalty or part of an infringement penalty, request the registrar to cancel the registration of the infringement penalty or part.

(2) A registrar must comply with a request made in accordance with subclause (1).

6 Child's options

(1) On registering an amount in relation to a child under clause 4, the registrar must cause to be sent by post to the child at the address contained in the document provided under clause 3(1)(a) or any other address given by that child a notice in writing setting out the matters referred to in subclauses (2), (3) and (4).

(2) A child may—

(a) pay to the Court the registered amount on or before the date specified in the notice; or

(b) make an application referred to in clause 7; or

(c) apply for an order under clause 8 that payment of the registered amount not be enforced; or

(d) appear before the registrar on the date specified in the notice; or

(e) request that consideration of the matter be deferred to another date so that the child may appear before the registrar; or

Sch. 3 Pt 2 cl. 6(2)(ea) inserted by No. 26/2009 s. 12(1), amended by No. 6/2010 s. 203(1) (Sch. 6 item 6.1).

(ea) in the case of an offence against the **Transport (Compliance and Miscellaneous) Act 1983** or the regulations under that Act, request that consideration of the matter be deferred to another date so that the child may undertake a program approved under section 227A(2) of that Act; or

(f) decline to be dealt with by the registrar and request that the matter of the alleged offence in respect of which the infringement notice was issued be heard and determined by the Court; or

(g) do nothing and leave the matter of the infringement notice to be dealt with by the registrar on the date specified in the notice.

(3) In addition to subclause (2), a child may provide to the registrar information in writing by or on behalf of the child in relation to—

(a) the child's employment or school attendance;

(b) the child's personal and financial circumstances.

(4) If a child wishes to exercise the option referred to in subclause (2)(c), the child must make the application to the registrar in the prescribed form.

(5) If a child wishes to exercise the option referred to in subclause (2)(f)—

(a) the child must notify the registrar on or before the date specified in the notice under subclause (1); and

(b) on receipt of the child's notification, the registrar must cancel the registration of the infringement penalty and remit the infringement notice to the enforcement agency.

(6) Nothing in this Schedule prohibits an enforcement agency from filing a charge-sheet with the Court in respect of an infringement notice that has been remitted to it under subclause (5)(b).

Sch. 3 Pt 2 cl. 6(6) amended by No. 68/2009 s. 87(3)(b).

7 Applications concerning time to pay registered amount

(1) A child in respect of whom an amount has been registered under clause 4 may apply to the registrar personally or in writing or in any other manner approved by the registrar for one or more of the following—

(a) an order that the time within which the registered amount is to be paid be extended; or

(b) an order that the registered amount be paid by instalments; or

(c) an order for the variation of an instalment order.

(2) On receipt of an application under subclause (1), the registrar may do one or more of the following—

(a) allow additional time for the payment of the registered amount or the balance of the registered amount;

(b) direct payment of the registered amount to be made by instalments;

(c) direct payment of the registered amount or instalments to be made at the time or times specified by the registrar;

(d) vary the amount of instalments.

8 Enforcement order

(1) Subject to subclause (2), if an infringement penalty or part of an infringement penalty has been registered in respect of a child under clause 4, the registrar must consider the matter on the day specified in the notice under clause 6 if—

(a) the child has not paid the infringement penalty or the part of the infringement penalty; and

(b) the child has not declined to be dealt with by the registrar; and

(c) an order has not been made under clause 7 in respect of the infringement penalty.

(2) Subject to any application made by the child, the registrar may adjourn or abridge the time for considering the matter.

(3) After hearing the child, if the child appears before the registrar, and after considering any information provided to the registrar under clause 6(3), the registrar may—

(a) cancel the registration of the infringement penalty or the part of the infringement penalty and remit the infringement notice to the enforcement agency if—

(i) the child contests the matter of the alleged offence in respect of which the infringement notice was issued; or

(ii) the child declines to be dealt with by the registrar; or

(iii) the registrar is otherwise satisfied that it is appropriate to do so; or

(b) defer making a decision to a later date on which the child is to appear before the registrar; or

(ba) in the case of an offence against the **Transport (Compliance and Miscellaneous) Act 1983** or the regulations under that Act, defer making a decision to a later date so that the child may attend a program approved under section 227A(2) of that Act; or

Sch. 3 Pt 2 cl. 8(3)(ba) inserted by No. 26/2009 s. 12(2), amended by No. 6/2010 s. 203(1) (Sch. 6 item 6.2).

(c) make an order confirming the infringement penalty or part and order that the child pay to the Court the registered amount; or

(d) make an order reducing the registered amount and order that the child pay to the Court the registered amount as so reduced; or

(e) if the registrar is satisfied that the child has paid the registered amount, make an order confirming the infringement penalty or part; or

(ea) in the case of an offence against the **Transport (Compliance and Miscellaneous) Act 1983** or the regulations under that Act, if the registrar is satisfied that the child has undertaken a program approved under section 227A(2) of that Act, order that payment of the registered amount that remains unpaid not be enforced; or

Sch. 3 Pt 2 cl. 8(3)(ea) inserted by No. 26/2009 s. 12(3), amended by No. 6/2010 s. 203(1) (Sch. 6 item 6.2).

(f) if the registrar is satisfied on an application under clause 6(4) or otherwise, that it is appropriate to do so, order that payment of the registered amount that remains unpaid not be enforced.

(4) In exercising his or her discretion under subclause (3), the registrar must have regard to—

(a) the child's employment or school attendance; and

(b) the child's personal and financial circumstances.

(5) An order made under subclause (3) must not require payment of an amount exceeding the amount of a fine that the Court may impose under section 373.

(6) An enforcement order is deemed to be an order of the Court—

(a) in the case of an order made under subclause (3)(c) or (3)(d), on the expiry of 28 days after the making of the order unless an application is made under clause 10 within that period;

(b) in the case of an order made under subclause (3)(e), on the day that it is made;

(c) in the case of an order made under subclause (3)(f), on the expiry of 14 days after the making of the order unless an application is made under clause 10 within that period.

(7) A child in relation to whom an enforcement order is made may apply for an order under clause 7.

9 Notice of enforcement order

(1) Not later than 3 working days after the making of an enforcement order, the registrar must cause a notice in the prescribed form to be sent by post to the child against whom the order is made at the address contained in the document provided under clause 3(1)(a) or any other address given by the child.

(2) If the registrar orders that payment of a registered amount that remains unpaid not be enforced, the registrar must give notice of the order and a copy of any information provided by the child under clause 6(3) to the enforcement agency not later than 3 working days after the making of the order.

10 Court review of enforcement order

(1) If the registrar makes an order under clause 8(3)(c) or 8(3)(d), the child may, by notice in writing to the Court within 28 days after the registrar's decision, apply to the Court for a review of the registrar's order.

(2) If the registrar makes an order under clause 8(3)(f), the enforcement agency may, by notice in writing to the Court within 14 days after the date of the order, apply to the Court for a review of the registrar's order.

(3) On receipt of a notice under subclause (1) or (2), the registrar must cause notice of the time and place of hearing of the review to be given or sent to the child and the enforcement agency.

(4) On a review under this clause, the child and the enforcement agency are entitled to appear.

(5) On a review under this clause, the Court may make an order—

(a) confirming the registrar's order; or

(b) requiring the child to pay an amount not exceeding the amount of a fine that the Court may impose under section 373; or

(c) that payment of the registered amount that remains unpaid not be enforced.

11 Enforcement hearing

(1) If—

(a) an order is made under clause 7, 8(3)(c), 8(3)(d) or 10(5) in respect of a person; and

(b) for a period of more than one month the person defaults in the payment of an amount ordered to be paid or of any instalment under an instalment order—

the Court may, by notice in writing served on the person, require the person to appear before the Court at a specified time and place for an enforcement hearing.

(2) On an enforcement hearing, the Court may make any order that it could make under section 378.

12 Effect of enforcement order

(1) If an enforcement order is made in relation to an offence alleged to have been committed by a child—

(a) the child is not thereby to be taken to have been convicted of the offence; and

(b) the child is not liable to any further proceedings for the alleged offence; and

(c) the making of the order does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence; and

(d) payment in accordance with the order is not an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(2) Any amount recovered as a result of the making of an enforcement order is to be dealt with in the same way as an amount recovered as a result of a conviction.

(3) Despite anything to the contrary in this clause, the making of an enforcement order in relation to an offence which is a traffic infringement within the meaning of the **Road Safety Act 1986** does not prevent the incurring of demerit points under Part 4 of that Act in relation to that infringement.

Sch. 3 Pt 2 cl. 12(3) amended by No. 74/2013 s. 8.

* * * * *

Sch. 3 Pt 2 cl. 12(4) repealed by No. 30/2013 s. 60(Sch. item 3).

13 Expiry of enforcement order

(1) An enforcement order expires—

(a) if an order is made under clause 7 in relation to the enforcement order—

(i) on the payment in full of the registered amount; or

(ii) if one or more payments are made under the order but the registered amount is not paid in full, 3 years after the receipt of the last payment; or

(iii) in any other case, 3 years after the making of the order under clause 7;

(b) if a warrant to seize property has been issued in respect of the order, on that warrant becoming void under section 529;

(c) if an order is made under clause 8(3)(f), on the making of that order;

(d) in any other case, 3 years after the order was made.

(2) If both subclauses (1)(a) and (1)(b) apply, the enforcement order expires on the warrant to seize property becoming void.

(3) If an enforcement order expires as a result of this clause, any registered amount still outstanding in respect of which the order was made ceases to be enforceable or recoverable.

(4) On the expiry of an enforcement order, any warrant to seize property that was issued in respect of that order is void.

(5) An enforcement order that has expired may be reinstated by the registrar on the application of the enforcement agency.

(6) Despite subclause (3), if an enforcement order is reinstated, the registered amount in respect of which it was made again becomes enforceable or recoverable as if there had been no cessation.

(7) Subclause (1) does not apply to a reinstated enforcement order.

(8) A reinstated enforcement order expires 3 years after it was reinstated.

(9) This clause does not apply to an enforcement order in respect of which a warrant has been issued under the Service and Execution of Process Act 1992 of the Commonwealth.

14 Service of documents

(1) All documents required or permitted by this Schedule to be given or served, may be served personally or by post or in any other prescribed manner.

(2) Any document served by post under this Part must be addressed—

(a) to the address for service given by the person on whom the document is to be served; or

(b) if no address for service has been given, to the address contained in the document provided under clause 3(1)(a).

Part 3—Cancellation of infringement notice

15 Cancellation of infringement notice if person not aware

(1) A child or a person on that child's behalf may apply to a registrar to have an infringement notice cancelled if—

(a) the service of the infringement notice was not by personal service on the child; and

(b) the child was not in fact aware that an infringement notice had been served on the child.

(2) An application under subclause (1) must—

(a) be made within 14 days of the child becoming aware of the infringement notice; and

(b) be accompanied by a written statement setting out the grounds on which the cancellation is sought.

(3) If an application is made under subclause (1), a registrar must—

(a) stay the operation of the infringement notice; and

(b) refer the application to the Court for hearing and determination.

(4) On the referral to the Court under subclause (3), the Court must cause a notice of the time and place of the hearing of the application to be given or sent to the enforcement agency and to the applicant.

16 Powers of Court to cancel

(1) On the referral of an application under clause 15 to the Court, any of the procedures set out in this Schedule that are being used for the enforcement of the infringement penalty are, by force of this subclause, suspended pending the determination of the application.

(2) The Court may only cancel an infringement notice if it is satisfied that, more than 14 days before making an application under subclause (1), the person was not in fact aware that the infringement notice had been served.

(3) If the Court cancels an infringement notice under this clause—

Sch. 3 Pt 3 cl. 16(3)(a) amended by No. 59/2017 s. 109(6).

(a) any infringement penalty and penalty reminder notice fee that have been paid in relation to the notice must be refunded and the Consolidated Fund or any other fund specified by the relevant Act or other instrument into which the penalty and fee have been paid is, to the necessary extent, appropriated accordingly; and

Sch. 3 Pt 3 cl. 16(3)(b) amended by No. 59/2017 s. 109(7).

(b) any of the procedures set out in this Schedule that are being used for the enforcement of any infringement penalty and penalty reminder notice fee (if any) in relation to the notice must be discontinued; and

Sch. 3 Pt 3 cl. 16(3)(c) amended by No. 59/2017 s. 109(7).

(c) any enforcement order in relation to the infringement penalty and penalty reminder notice fee (if any) is revoked; and

(d) any warrant issued in relation to the infringement penalty and penalty reminder notice fee is cancelled.

Sch. 3 Pt 3 cl. 16(3)(d) amended by No. 59/2017 s. 109(7).

(4) The cancellation of an infringement notice under this clause does not prevent the service of a new infringement notice in respect of the offence for which the cancelled infringement notice was served.

Part 4—Extension of time for commencing proceeding

Sch. 3 Pt 4 (Heading and cl. 17) inserted by No. 18/2010 s. 47.

17 Decision to go to Court

Sch. 3 Pt 4 cl. 17 inserted by No. 18/2010 s. 47.

(1) A proceeding in respect of a summary offence for which an infringement notice was issued may be commenced—

(a) in accordance with section 344A; or

(ab) in accordance with section 41A of the **Infringements Act 2006**; or

Sch. 3 Pt 4 cl. 17(1)(ab) inserted by No. 29/2016 s. 110.

(b) in accordance with section 53 of the **Infringements Act 2006**; or

Sch. 3 Pt 4 cl. 17(1)(b) amended by No. 64/2010 s. 56(1).

(ba) if an infringement notice is reviewed under Division 3 of Part 2 of the **Infringements Act 2006**, within 6 months after the date of service of the advice of the outcome on the applicant under section 24(3) of that Act or 12 months after the date of the alleged offence (whichever is the earlier); or

Sch. 3 Pt 4 cl. 17(1)(ba) inserted by No. 64/2010 s. 56(2).

(c) if, under clause 6(5)(b) or 8(3)(a), the registrar cancels the registration of an infringement penalty and remits the relevant infringement notice to the enforcement agency, within 6 months after the date of cancellation of the registration of the infringement penalty or 12 months after the date of the alleged offence (whichever is the earlier); or

Sch. 3 Pt 4 cl. 17(1)(d) amended by No. 27/2011 s. 9.

(d) if the Court cancels an infringement notice under Part 3 of this Schedule and a new infringement notice is served on the child, within 6 months after the date of cancellation of the cancelled infringement notice or 12 months after the date of the alleged offence (whichever is the earlier); or

Sch. 3 Pt 4 cl. 17(1)(e) amended by Nos 8/2019 s. 89(1), 18/2020 s. 124(2)(a).

(e) if a person has nominated the child for an offence committed under the **Road Safety Act 1986**, the **Melbourne City Link Act 1995**, the **EastLink Project Act 2004**, the **West Gate Tunnel (Truck Bans and Traffic Management) Act 2019** or the **North East Link Act 2020**, within 6 months after the date of service of the infringement notice on the child or 12 months after the date of the alleged offence (whichever is the earlier); or

Sch. 3 Pt 4 cl. 17(1)(f) substituted by No. 8/2019 s. 89(2).

(f) if a nomination of a kind specified in paragraph (e) is made and subsequently cancelled under section 84BF(1) of the **Road Safety Act 1986** so that liability reverts to the person who made the nomination—

(i) for an offence committed under the **Road Safety Act 1986**, within 6 months after the date of cancellation of the nomination or 12 months after

the date of the alleged offence (whichever is the earlier); or

(ii) for an offence committed under section 204 of the **EastLink Project Act 2004**, section 73 of the **Melbourne City Link Act 1995**, section 32 of the **West Gate Tunnel (Truck Bans and Traffic Management) Act 2019** or section 69 of the **North East Link Act 2020**, within 6 months after the date of cancellation of the nomination or 15 months after the date of the alleged offence (whichever is the earlier); or

Sch. 3 Pt 4 cl. 17(1)(f)(ii) amended by No. 18/2020 s. 124(2)(b).

(g) subject to paragraph (e), if the offence is against section 204 of the **EastLink Project Act 2004**, within 6 months after the date of service of the infringement notice under section 210(1) of that Act or 15 months after the date of the alleged offence (whichever is the earlier); or

Sch. 3 Pt 4 cl. 17(1)(g) amended by No. 8/2019 s. 89(3).

(h) subject to paragraph (e), if the offence is against section 73 of the **Melbourne City Link Act 1995**, within 6 months after the date of service of the infringement notice under section 80(1) of that Act or 15 months after the date of the alleged offence (whichever is the earlier); or

Sch. 3 Pt 4 cl. 17(1)(h) amended by No. 8/2019 s. 89(4).

(i) subject to paragraph (e), if the offence is against section 32(1) of the **West Gate Tunnel (Truck Bans and Traffic Management) Act 2019**, within 6 months after the date of service of the infringement notice under section 45(1) of that Act or 15 months after the date of the alleged offence (whichever is the earlier); or

Sch. 3 Pt 4 cl. 17(1)(i) inserted by No. 8/2019 s. 89(5), amended by No. 18/2020 s. 124(2)(c).

Sch. 3 Pt 4 cl. 17(1)(j) inserted by No. 18/2020 s. 124(2)(d).

(j) subject to paragraph (e), if the offence is against section 69(1) of the **North East Link Act 2020**, within 6 months after the date of service of the infringement notice under section 83(1) of that Act or 15 months after the date of the alleged offence (whichever is the earlier).

(2) Subclause (1) has effect despite section 344A or any other provision of any Act or other instrument providing for the period during which a proceeding may be commenced for an offence alleged to have been committed.

Schedule 4—Transitional and saving provisions

Sch. 4 substituted by No. 48/2006 s. 30.

Section 606

Part 1—Introduction

1 Definitions

In this Schedule—

commencement day means the day on which section 601 of the new Act comes into operation;

old Act means **Children and Young Persons Act 1989**;

new Act means **Children, Youth and Families Act 2005**.

2 General transitional provisions

(1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.

(2) Without limiting subclause (1), in declaring that certain provisions of the new Act are to be treated as re-enacting with modifications certain provisions of the old Act or the **Community Services Act 1970**, this Schedule must not be taken to—

(a) limit the operation of any provision of the **Interpretation of Legislation Act 1984** relating to the re-enactment; or

(b) be an exhaustive list of the provisions of the old Act or the **Community Services Act 1970** re-enacted by the new Act.

(3) This Schedule applies despite anything to the contrary in any other provision of the new Act.

3 Saving of references

If a provision of an Act that is repealed by the new Act required a reference in an Act, subordinate instrument or other instrument or document to a person or body to be construed as a reference to another person or body, the repeal of that provision does not affect the construction of that reference in that Act, instrument or document, unless the contrary intention appears.

Part 2—Children And Young Persons Act 1989

Division 1—General

4 Superseded reference

On and from the commencement day unless the context otherwise requires, in any Act (other than the new Act), or in any instrument made under any Act or in any other document of any kind, a reference to the old Act must be read as a reference to the new Act.

5 Re-enacted provisions

A provision or provisions of the old Act specified in Column 1 of the Table are deemed to be re-enacted (with modifications) by the provision or provisions of the new Act appearing opposite in Column 2 of the Table.

Old Provision	*New Provision*
Division 1 of Part 2	Part 7.1
Division 2 of Part 2	Part 7.2
Division 3 of Part 2	Part 7.3
Division 4 of Part 2	Part 7.4
Division 5 of Part 2	Part 7.5
Division 6 of Part 2	Part 7.6

Old Provision	*New Provision*
Division 7 of Part 2	Part 7.7
Division 8 of Part 2	Part 7.8
Section 62	Part 3.6
Sections 63 and 63A	Part 4.1
Section 64	Division 2 of Part 4.4
Sections 65(2), 66 and 67	Division 1 of Part 4.6
Sections 68, 69 and 70	Division 2 of Part 4.8
Division 3 of Part 3	Division 4 of Part 4.8
Division 4 of Part 3	Division 5 of Part 4.8
Sections 81, 82 and 83	Division 1 of Part 4.7
Division 6 of Part 3	Part 4.9
Division 7 of Part 3	Part 4.10
Division 7A of Part 3	Section 533
Division 8 of Part 3	Division 1 of Part 4.11
Sections 121 and 122	Division 2 of Part 4.11
Sections 123 and 124	Sections 172, 173 and 174
Section 126	Division 1 of Part 4.12
Division 10 of Part 3	Division 2 of Part 4.12
Division 1 of Part 4	Part 5.1
Division 2 of Part 4	Division 1 of Part 5.2
Division 3 of Part 4	Division 2 of Part 5.2
Division 4 of Part 4	Division 3 of Part 5.2
Division 5 of Part 4	Division 4 of Part 5.2
Division 6 of Part 4	Division 5 of Part 5.2
Division 7 of Part 4	Part 5.3
Division 7A of Part 4	Section 533
Division 8 of Part 4	Part 5.4
Division 9 of Part 4	Part 5.5
Division 10 of Part 4	Part 5.6

Old Provision	*New Provision*
Division 11 of Part 4	Part 5.7
Division 12 of Part 4	Part 5.8
Division 13 of Part 4	Part 7.9
Division 1 of Part 5 (except section 265)	Part 6.1
Section 265	Part 8.3
Division 2 of Part 5	Part 6.2
Section 271	Part 8.2
Section 272	Section 503
Sections 273, 274, 275, 276 and 279	Part 7.10
Section 277	Section 593
Section 278	Section 595
Division 5 of Part 5	Part 8.5
Division 5A of Part 5	Part 7.11
Schedule 1	Schedule 2
Schedule 2	Schedule 1
Schedule 2A	Schedule 3

Division 2—The Children's Court of Victoria

6 The Children's Court of Victoria

The Children's Court of Victoria continued by the new Act is deemed to be the same court as The Children's Court of Victoria existing immediately before the commencement day.

7 President and Acting President

(1) The person who holds office as President of The Children's Court of Victoria immediately before the commencement day holds office as President under and subject to the new Act without further appointment.

(2) Any person who holds office as Acting President of The Children's Court of Victoria immediately before the commencement day holds office as Acting President under and subject to the new Act for the duration of his or her appointment as Acting President without further appointment.

8 Magistrates and acting magistrates

(1) Any person who holds office as magistrate for the Court immediately before the commencement day holds office as magistrate for the Court under and subject to the new Act without further appointment.

(2) Any person who holds office as acting magistrate for the Court immediately before the commencement day holds office as magistrate for the Court under and subject to the new Act for the duration of his or her appointment as acting magistrate without further appointment.

9 Aboriginal elders or respected persons

Any person who holds office as an Aboriginal elder or respected person under section 27A of the old Act immediately before the commencement day holds office as an Aboriginal elder or respected person under section 536 of, and subject to, the new Act for the duration of his or her appointment as an Aboriginal elder or respected person without further appointment.

10 Principal registrar, registrars and deputy registrars

Any person who holds office as principal registrar, registrar or deputy registrar under the old Act immediately before the commencement day holds office as principal registrar, registrar or deputy registrar under and subject to the new Act.

11 Probation officer and honorary probation officers

(1) Any person who holds office as a probation officer under the old Act immediately before the commencement day holds office as a youth justice officer under and subject to the new Act.

(2) Any person who holds office as an honorary probation officer under the old Act immediately before the commencement day holds office as an honorary youth justice officer under and subject to the new Act.

12 Court liaison officers

Any person who holds office as a court liaison officer under the old Act immediately before the commencement day holds office as a court liaison officer under and subject to the new Act.

13 The Children's Court Clinic

The Children's Court Clinic continued by the new Act is deemed to be the same clinic as the Children's Court Clinic existing under the old Act immediately before the commencement day.

Division 3—Protection of children

14 Approved community services

(1) A body that was an approved community service under section 58 of the old Act immediately before the commencement day and was in receipt of funding from the Secretary for the provision of out of home care services is deemed on the commencement day to be a registered out of home care service under the new Act.

(2) A body that was an approved community service under section 58 of the old Act immediately before the commencement day and was in receipt of funding from the Secretary for the provision of family services other than out of home care services is deemed on the commencement day to be a registered community-based child and family service under the new Act.

(3) A body that was an approved community service under section 58 of the old Act immediately before the commencement day and was in receipt of funding from the Secretary for the provision of out of home care services and other family services is deemed on the commencement day to be a registered out of home care service and a registered community-based child and family service under the new Act.

(4) Despite section 49 of the new Act, a body referred to in subclause (1), (2) or (3) is deemed to be registered for 12 months from the commencement day.

(5) The Secretary, by notice in writing given to a body referred to in subclause (1), (2) or (3) within 12 months after the commencement day, may extend the period of deemed registration of the body to a period not exceeding 3 years from the commencement day.

(6) Nothing in this clause prevents a body referred to in subclause (1), (2) or (3) from applying for a renewal of registration under section 50 of the new Act.

15 Departmental community services and secure welfare services

(1) A community service established under section 57 of the old Act is deemed to be a community service established under section 44 of the new Act.

(2) A secure welfare service established under section 57 of the old Act is deemed to be a secure welfare service established under section 44 of the new Act.

16 Notifications

On the commencement day—

(a) a notification made under section 64(1) of the old Act is deemed—

(i) to be a report under section 183 of the new Act; and

(ii) to have been determined under section 187 of the new Act to be a protective intervention report for the purposes of the new Act;

(b) a notification made under section 64(1A) of the old Act is deemed—

(i) to be a report under section 184 of the new Act; and

(ii) to have been determined under section 187 of the new Act to be a protective intervention report for the purposes of the new Act.

17 Central register

The central register established and maintained under section 65(1)(b) of the old Act is deemed to be the central register referred to in section 165 of the new Act.

18 Pre-hearing conferences

(1) Despite the repeal of the old Act, sections 37A, 82A, 82B and 87(2) of the old Act continue in force until the date of commencement of Division 2 of Part 4.7 of the new Act as if the words and expressions in those sections had the same meanings as they have in the new Act.

(2) On and from the commencement of Division 2 of Part 4.7 of the new Act, a reference in section 224 to a report of the convenor or convenors of a dispute resolution conference is deemed to include a reference to the convenor's report on a pre-hearing conference held under section 82A of the old Act.

19 Case plan

A case plan prepared under section 120 of the old Act in respect of a child is deemed to be a case plan prepared under section 166 of the new Act in respect of the child.

20 State Guardianship Fund

The State Guardianship Fund established under section 177 of the new Act is deemed to be the same fund as the State Guardianship Fund established under section 125 of the old Act.

Division 4—Children and the criminal law

21 Youth Residential Board

Any person who holds office as a member of the Youth Residential Board under the old Act immediately before the commencement day holds office as a member of that Board under and subject to the new Act for the duration of his or her appointment without further appointment.

22 Youth Parole Board

Any person who holds office as a member of the Youth Parole Board under the old Act immediately before the commencement day holds office as a member of that Board under and subject to the new Act for the duration of his or her appointment without further appointment.

23 Corrective services

A corrective service established under section 249 of the old Act and specified in Column 1 of the Table and existing immediately before the commencement day is deemed to be established under section 478 of the new Act as a corrective service specified opposite it in Column 2 of the Table.

Column 1	*Column 2*
Remand centre	Remand centre
Youth residential centre	Youth residential centre
Youth training centre	Youth justice centre
Youth supervision unit	Youth justice unit

24 Superseded references

On and from the commencement day unless the context otherwise requires, in any Act (other than the new Act), or in any instrument made under any Act or in any other document of any kind—

(a) a reference to a probation officer, responsible officer or supervisor within the meaning of the old Act must be read as a reference to a youth justice officer; and

(b) a reference to a youth supervision unit must be read as a reference to a youth justice unit; and

(c) a reference to a youth training centre must be read as a reference to a youth justice centre; and

(d) a reference to a youth training centre order must be read as a reference to a youth justice centre order.

Part 3—Children, Youth And Families Act 2005

25 Registration of existing out of home carers

(1) An out of home care service must notify the Secretary in writing within one month after the commencement day of each person who on the commencement day—

(a) is approved by the out of home care service to act as a foster carer; or

(b) is employed or engaged by the out of home care service—

(i) as a carer for children; or

(ii) as a provider of services to children (within the meaning of section 74 of the new Act) at an out of home care residence managed by the service.

(2) A notice under this clause must include the prescribed information (if any).

(3) The Secretary must record in the register of out of home carers the required information in respect of each person of whom notice is given under this clause as if the notice was given under Division 2 of Part 3.4 of the new Act.

26 Review of child care agreements

(1) Despite anything to the contrary in section 139 of the new Act, that section applies in respect of a short-term child care agreement existing on the commencement day as if a reference in section 139(1)(a) to the end of the first 6 months of the agreement were a reference to the end of 12 months after the commencement day.

(2) Despite anything to the contrary in section 152 of the new Act, that section applies in respect of a long-term child care agreement existing on the commencement day as if a reference in section 152(1)(b) to the end of the first 6 months of the agreement were a reference to the end of 12 months after the commencement day.

27 Reporting of child-care agreements

(1) Despite section 159(a) of the new Act, a service provider existing on the commencement day in their first report under that section is required only to report on the number of child care agreements that the service provider has been a party to in the period since the commencement day.

(2) The Secretary must first publish the details required under section 160 of the new Act by the end of 12 months after the commencement day.

28 Stability plans

For the purposes of section 170 of the new Act, any period that a child is in out of home care before the commencement day is to be disregarded in calculating the required time for the preparation of a stability plan for that child.

29 Permanent care orders

If a child is in out of home care on the commencement day, section 319 of the new Act applies as if for subsection (1)(a) there were substituted—

"(a) the child's parent or, if the child's parent has died, the child's surviving parent had not had the care of the child for—

(i) a period of at least 2 years commencing before the commencement day; or

(ii) for periods that total at least 2 of the last 3 years commencing before the commencement day; or

(iii) a period of at least 6 months commencing on the commencement day—

whichever period or total period ends first; and".

Part 4—Community Services Act 1970

30 Child care agreements

(1) A child care agreement entered into under Division 1A of Part III of the **Community Services Act 1970** and existing immediately before the commencement day is deemed to be a short-term child care agreement within the meaning of Part 3.5 of the new Act.

(2) A child care agreement entered into under Division 1B of Part III of the **Community Services Act 1970** and existing immediately before the commencement day is deemed to be a long-term child care agreement within the meaning of Part 3.5 of the new Act.

(3) Part 3.5 of the new Act re-enacts with modifications Divisions 1A, 1B and 1C of Part III of the **Community Services Act 1970**.

31 Authorisations and agreements

(1) An authorisation given under section 200A(1) of the **Community Services Act 1970** and existing immediately before the commencement day is deemed to be an authorisation given under section 25(1) of the new Act.

(2) An agreement entered into in accordance with section 200A(2) of the **Community Services Act 1970** and existing immediately before the commencement day is deemed to be an agreement entered into under section 26 of the new Act.

32 Superseded references to Community Services Act 1970

On and from the commencement day unless the context otherwise requires, in any Act (other than the new Act), or in any instrument made under any Act or in any other document of any kind a reference to the **Community Services Act 1970**—

(a) to the extent that the reference relates to a provision of the **Community Services Act 1970** re-enacted (with or without modifications) in the **Children, Youth and Families Act 2005**, is deemed to be a reference to the **Children, Youth and Families Act 2005**; and

(b) to the extent that the reference relates to any other provision of the **Community Services Act 1970**, is deemed to be a reference to the **Community Services (Attendance at School) Act 1970**.

Part 5—Regulations

33 Transitional regulations

(1) The Governor in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the new Act.

(2) A provision mentioned in subclause (1) may be retrospective in operation to the commencement day or a day after the commencement day.

(3) Regulations under this clause have effect despite anything to the contrary in any Act other than the new Act or in any subordinate instrument.

Sch. 5 inserted by No. 61/2014 s. 154 (as amended by No. 20/2015 s. 48).

Schedule 5—Transitional provisions relating to the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014

Section 627

Part 1—Preliminary

1 Definitions

(1) In this Schedule—

amending Act means the **Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014**;

new provision means a provision of this Act as in force on or after the relevant commencement day;

old provision means a provision of this Act as in force before the relevant commencement day;

relevant commencement day means—

(a) in relation to Part 2 of this Schedule, the day on which the provisions of Part 2 of the amending Act come into operation; and

(b) in relation to Part 3 of this Schedule, the day on which the provisions of Part 3 of the amending Act come into operation; and

(c) in relation to Part 4 of this Schedule, the day on which the provisions of Part 5 of the amending Act come into operation.

2 General transitional provisions

(1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.

(2) If this Schedule provides that an old provision continues to apply to any matter or thing, then any regulation or other instrument having effect for the purposes of that provision also continues to apply to that matter or thing.

Part 2—Protection orders

3 Protection orders—renaming

An order specified in column 1 of the Table that was in force immediately before the relevant commencement day under the old provisions is taken on and after the relevant commencement day to be the corresponding order specified in column 2 of the Table.

Column 1	Column 2
supervision order	family preservation order
supervised custody order	family reunification order
guardianship to Secretary order	care by Secretary order
long-term guardianship to Secretary order	long-term care order

4 Custody to Secretary orders

A custody to Secretary order in force immediately before the relevant commencement day is taken on and after the commencement day to be—

(a) in the case of a child who has been under a custody to Secretary order for less than 24 months at the relevant commencement day, a family reunification order; or

(b) in the case of a child who has been under a custody to Secretary order for 24 months or more at the relevant commencement day, a care by Secretary order and any conditions on that order lapse on that day.

5 Custody to third party orders

A custody to third party order in force immediately before the relevant commencement day continues in force for all purposes until its expiry as if the amendments made by Part 2 of the amending Act had not been enacted.

6 Interim protection orders

An interim protection order in force immediately before the relevant commencement day continues in force for all purposes until the hearing date specified in the notice as if the amendments made by Part 2 of the amending Act had not been enacted.

Sch. 5 Pt 2 cl. 6A inserted by No. 8/2016 s. 20.

6A Determining the period of a family reunification order

Section 287A applies as if in subsection (1) the list of orders included the following orders—

(a) an interim protection order;

(b) a custody to third party order;

(c) a supervised custody order;

(d) a custody to Secretary order;

(e) a guardianship to Secretary order;

(f) a long-term guardianship to Secretary order.

7 References

On and after the relevant commencement day, in any Act (other than this Act), or in any instrument made under any Act or in any other document of any kind—

(a) a reference to a supervision order under the old provisions is taken to be a reference to a family preservation order; and

(b) a reference to a supervised custody order under the old provisions is taken to be a reference to a family reunification order; and

Sch. 5 Pt 2 cl. 7(b) amended by No. 8/2016 s. 21.

(c) a reference to a guardianship to Secretary order under the old provisions is taken to be a reference to a care by Secretary order; and

(d) a reference to a long-term guardianship to Secretary order under the old provisions is taken to be a reference to a long-term care order; and

(e) a reference to a custody to Secretary order under the old provisions is taken to be—

(i) if the reference relates to a child who has been under the order for less than 24 months at the relevant commencement day, a reference to a family reunification order; or

(ii) if the reference relates to a child who has been under the order for 24 months or more at the relevant commencement day, a reference to a care by Secretary order.

Part 3—Case planning

8 Case plans

(1) Subject to subclause (2), a case plan existing under the old provisions immediately before the relevant commencement day continues to apply to a child despite the amendments made by Part 3 of the amending Act.

(2) The case plan must be reviewed under the new provisions on the date specified in the plan for review or 12 months after the relevant commencement day, whichever happens first.

Part 4—Abolition of Youth Residential Board

9 Abolition of Youth Residential Board

On the relevant commencement day, the Youth Residential Board is abolished and its members and alternate members go out of office.

10 Saving of acts and decisions—general

Any act or decision of the Youth Residential Board is taken for all purposes in relation to any period on and after the relevant commencement day to be an act or decision of the Youth Parole Board.

11 Parole

(1) Without limiting clause 9, an order made by the Youth Residential Board under section 454 of the old provisions and existing immediately before the relevant commencement day is taken on and after the relevant commencement day for all purposes to be an order of the Youth Parole Board under section 458 and the new provisions apply accordingly.

(2) A warrant signed by the secretary or a member of the Youth Residential Board under section 456(5)(a) and existing immediately before the relevant commencement day is taken on and after the relevant commencement day to be a warrant signed by the secretary of the Youth Parole Board under section 460(5)(a) to apprehend the person and return the person to a

youth residential centre to serve the unexpired portion of the person's sentence of detention.

(3) Section 460 as in force on and after the relevant commencement day applies to any warrant issued under section 460 but not executed before that day.

12 Saving of proceedings of Youth Residential Board

(1) The Youth Parole Board may continue and complete under the new provisions any proceedings before the Youth Residential Board under the old provisions that were not completed before the relevant commencement day.

(2) For the purposes of any proceedings referred to in subclause (1), the Youth Parole Board may have regard to any files, documents or findings of the Youth Residential Board in relation to those proceedings.

13 Saving of evidentiary provision

Section 437 as in force immediately before the relevant commencement day continues in effect in relation to any order, document or certificate signed before that day despite the repeal of that section by Part 5 of the Amending Act.

14 Saving of immunity provision

Section 440 as in force immediately before the relevant commencement day continues in effect in relation to anything done or omitted to be done before that day despite the repeal of that section by Part 5 of the Amending Act.

15 Reports by Youth Parole Board

(1) The Youth Parole Board must in its first report under section 452(1) on or after the relevant commencement day include a report of the matters set out in 441(1) in relation to the Youth Residential Board in relation to the prescribed

period, or part of that period, under section 441(1) up to the relevant commencement day.

(2) The Youth Parole Board may continue and complete under section 452(2), any report of the Youth Residential Board commenced but not completed under section 441(2) before the relevant commencement day.

(3) For the purposes of a report referred to in subclause (1) or (2), the Youth Parole Board may have regard to any files or documents of the Youth Residential Board.

Part 5—Transitional regulations

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Sch. 5 Pt 5 cl. 16 expired by force of No. 96/2005 Sch. 5 Pt 5 cl. 16(3).

Schedule 6—Transitional provisions relating to the Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017

Sch. 6 inserted by No. 43/2017 s. 64(2).

1 Transitional provisions—Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017

Sch. 6 cl. 1(1) amended by No. 3/2018 s. 26(3).

(1) The amendments made to this Act by Division 2 of Part 4 of **Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017** apply to the hearing of a charge or the sentencing of an offender (as the case requires) for an offence alleged to have been committed on or after the commencement of that Part.

(2) The amendments made to this Act by section 29 of the **Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017** apply to the detention of a person for an offence for which the person has been convicted on or after the commencement of that section, irrespective of when the previous offence referred to in section 458A(1)(b)(ii) of this Act (as inserted by the **Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017**) was committed, being an offence committed when the person was aged 16 years or over.

(3) The amendments made to this Act by Divisions 1 and 2 of Part 8 of the **Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017** (other than by section 52 of that Act) apply respectively to the sentencing of an offender, or the hearing of a charge, for an offence alleged to have been committed on or after the commencement of that Part.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 6 October 2005

Legislative Council: 15 November 2005

The long title for the Bill for this Act was "to provide for community services to support children and their families, to provide for the protection of children, to make provision in relation to children who have been charged with, or who have been found guilty of, offences, to continue The Children's Court of Victoria as a specialist court dealing with matters relating to children, to repeal the **Children and Young Persons Act 1989**, to amend the **Community Services Act 1970** and other Acts and for other purposes."

The **Children, Youth and Families Act 2005** was assented to on 7 December 2005 and came into operation as follows:

Sections 1, 2 and 603 on 8 December 2005: section 2(1); sections 3–17, 19–184, 186–189, 190(1)(a)(2)–(4), 191(1)(2), 192–209, 214–216, 228–243, 259–338, 344–348, 349(1), 350(1)(2)(a)(b)(i), 351, 355–546, 547(a)–(c)(f)–(h), 548–562, 571–602, 604, 606 and Schedules 1–4 on 23 April 2007: Government Gazette 19 April 2007 page 672; sections 18, 185, 190(1)(b), 191(3), 210–213, 217–227, 244–258, 339–343, 349(2), 350(2)(b)(ii)(iii), 352–354, 547(d)(e), 563–570 on 1 October 2007: section 2(5); section 605 never proclaimed, repealed by No. 25/2009 section 38(3).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Children, Youth and Families Act 2005** by Acts and subordinate instruments.

Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005, No. 93/2005

Assent Date:	29.11.05
Commencement Date:	S. 8 on 23.4.07: s. 2(4)
Current State:	This information applies only to provision/s amending the **Children, Youth and Families Act 2005**

Children, Youth and Families Act 2005, No. 96/2005 (as amended by No. 17/2023)

Assent Date:	7.12.05
Commencement Date:	S. 626 inserted on 1.12.13 by No. 52/2013 s. 61: Special Gazette (No. 419) 26.11.13 p. 1; Sch. 5 cl. 16(3) inserted on 1.3.16 by No. 61/2014 s. 154: s. 2(3); s. 600ZC inserted on 25.4.20 by No. 11/2020 s. 25: s. 2 (as amended by Nos 27/2020 s. 10, 11/2021 s. 204, 11/2022 s. 5); s. 634(4) inserted on 28.6.23 by No. 17/2023 s. 14: s. 2(1)
Note:	S. 626 repealed ss 625, 626 on 1.6.15; Sch. 5 cl. 16(3) provided that Sch. 5 cl. 16 expired on 1.3.17; s. 600ZC(1) repealed Pt 8.5A Div. 2 (ss 600B−600F), ss 600P−600R, 600U−600Z on 26.4.21; s. 600ZC(2) repealed Pt 8.5A Div. 3 (ss 600G−600L), Div. 4 (ss 600M−600O) and s. 600ZA on 26.4.22; s. 600ZC(3) repealed ss 600A, 600OA, 600S, 600T, 600ZB, 600ZC on 26.4.23; s. 634(4) repealed s. 634 on 28.6.25
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Health Professions Registration Act 2005, No. 97/2005

Assent Date:	7.12.05
Commencement Date:	S. 182(Sch. 4 item 10) on 1.7.07: s. 2(3)
Current State:	This information applies only to the provision/s amending the **Children, Youth and Families Act 2005**

Terrorism (Community Protection) (Amendment) Act 2006, No. 5/2006 (as amended by No. 48/2006)

Assent Date:	7.3.06
Commencement Date:	Ss 17, 18 on 23.4.07: s. 2(3)
Current State:	This information applies only to provision/s amending the **Children, Youth and Families Act 2005**

Disability Act 2006, No. 23/2006

Assent Date:	16.5.06
Commencement Date:	S. 234 on 1.7.07: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Education and Training Reform Act 2006, No. 24/2006

Assent Date:	16.5.06
Commencement Date:	S. 6.1.2(Sch. 7 item 7) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date:	6.6.06
Commencement Date:	S. 3(Sch. 1 item 5) on 7.6.06: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date:	15.8.06
Commencement Date:	Ss 3–30 on 23.4.07: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Courts Legislation (Neighbourhood Justice Centre) Act 2006, No. 51/2006

Assent Date:	15.8.06
Commencement Date:	Ss 11–15 on 2.1.07: Government Gazette 21.12.06 p. 2768
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date:	10.10.06
Commencement Date:	S. 26(Sch. item 12) on 11.10.06: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Roads Legislation (Projects and Road Safety) Act 2006, No. 81/2006

Assent Date:	10.10.06
Commencement Date:	S. 31(2) on 1.7.07: s. 2(4)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Courts Legislation Amendment (Judicial Education and Other Matters) Act 2007, No. 24/2007

Assent Date:	26.6.07
Commencement Date:	S. 12 on 27.6.07: s. 2
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Statute Law Revision Act 2007, No. 28/2007

Assent Date:	26.6.07
Commencement Date:	S. 3(Sch. item 8) on 27.6.07: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Working with Children Amendment Act 2007, No. 56/2007

Assent Date:	7.11.07
Commencement Date:	S. 21 on 8.11.07: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Crimes Amendment (Child Homicide) Act 2008, No. 7/2008

Assent Date:	18.3.08
Commencement Date:	Ss 7(1), 8 on 19.3.08: s. 2
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Criminal Procedure Legislation Amendment Act 2008, No. 8/2008

Assent Date:	18.3.08
Commencement Date:	S. 22(2) on 19.3.08: s. 2(1); ss 4, 19 on 1.7.08: s. 2(5)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Infringements and Other Acts Amendment Act 2008, No. 9/2008

Assent Date:	18.3.08
Commencement Date:	S. 41 on 1.7.08: Special Gazette (No. 172) 27.6.08 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Relationships Act 2008, No. 12/2008

Assent Date:	15.4.08
Commencement Date:	S. 73(1)(Sch. 1 item 6) on 1.12.08: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Family Violence Protection Act 2008, No. 52/2008

Assent Date:	23.9.08
Commencement Date:	Ss 234–237 on 8.12.08: Special Gazette (No. 339) 4.12.08 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Stalking Intervention Orders Act 2008, No. 68/2008

Assent Date:	18.11.08
Commencement Date:	Ss 64–66 on 8.12.08: Special Gazette (No. 339) 4.12.08 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Coroners Act 2008, No. 77/2008

Assent Date:	11.12.08
Commencement Date:	S. 129(Sch. 2 item 6) on 1.11.09: s. 2
Current State:	This information relates only to the provisions amending the **Children, Youth and Families Act 2005**

Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009

Assent Date:	10.2.09
Commencement Date:	S. 37(Sch. 1 item 4) on 1.12.09: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Criminal Procedure Act 2009, No. 7/2009 (as amended by No. 68/2009)

Assent Date:	10.3.09
Commencement Date:	Ss 428–430 on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Crimes Amendment (Identity Crime) Act 2009, No. 22/2009

Assent Date:	17.6.09
Commencement Date:	Ss 8, 9 on 1.10.09: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment Act 2009, No. 25/2009

Assent Date:	17.6.09
Commencement Date:	S. 38 on 18.6.09: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Transport Legislation General Amendments Act 2009, No. 26/2009

Assent Date:	17.6.09
Commencement Date:	S. 12 on 1.1.10: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children Legislation Amendment Act 2009, No. 46/2009

Assent Date:	18.8.09
Commencement Date:	Ss 3–8 on 19.8.09: s. 2
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Courts Legislation Amendment (Judicial Resolution Conference) Act 2009, No. 50/2009

Assent Date:	8.9.09
Commencement Date:	Ss 16–19 on 16.9.09: Special Gazette (No. 319) 16.9.09 p. 1—see **Interpretation of Legislation Act 1984**
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date:	24.11.09
Commencement Date:	Ss 59–87 on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date:	24.11.09
Commencement Date:	S. 54(Sch. Pt 1 item 7), (Sch. Pt 2 item 10) on 1.1.10: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Transport Integration Act 2010, No. 6/2010

Assent Date:	2.3.10
Commencement Date:	S. 203(1)(Sch. 6 item 6) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date:	30.3.10
Commencement Date:	S. 51(Sch. item 12) on 1.7.10: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010, No. 18/2010

Assent Date:	18.5.10
Commencement Date:	Ss 45–47 on 19.5.10: s. 2(1); ss 3–6 on 1.1.11: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Health and Human Services Legislation Amendment Act 2010, No. 29/2010

Assent Date:	8.6.10
Commencement Date:	S. 16 on 23.6.10; ss 13–15, 17 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment Act 2010, No. 30/2010

Assent Date:	8.6.10
Commencement Date:	S. 44(2) on 1.1.10: s. 2(2), ss 30–44(1)(3) on 26.6.10: Government Gazette 24.6.10 p. 1274
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Courts Legislation Miscellaneous Amendments Act 2010, No. 34/2010

Assent Date:	15.6.10
Commencement Date:	Ss 36–40 on 1.1.11: s. 2(5)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Personal Safety Intervention Orders Act 2010, No. 53/2010

Assent Date:	7.9.10
Commencement Date:	S. 221(Sch. item 2) on 5.9.11: Special Gazette (No. 271) 23.8.11 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Further Amendment Act 2010, No. 64/2010

Assent Date:	28.9.10
Commencement Date:	Ss 54–57 on 29.9.10: s. 2(1); s. 60 on 1.11.10: Government Gazette 21.10.10 p. 2530; ss 12–14 on 1.1.11: Government Gazette 28.10.10 p. 2583
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Infringement Offences) Act 2011, No. 27/2011

Assent Date:	21.6.11
Commencement Date:	S. 9 on 30.6.11: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Statute Law Revision Act 2011, No. 29/2011

Assent Date:	21.6.11
Commencement Date:	S. 3(Sch. 1 item 9) on 22.6.11: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children, Youth and Families Amendment (Security of Youth Justice Facilities) Act 2011, No. 54/2011

Assent Date:	2.11.11
Commencement Date:	Ss 4–12 on 19.12.11: s. 2(2)
Current State:	All of Act in operation

Children's Services Amendment Act 2011, No. 80/2011 (as amended by No. 43/2012)

Assent Date:	21.12.11
Commencement Date:	S. 79(Sch. item 2) on 1.1.12: Special Gazette (No. 423) 21.12.11 p. 2
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Associations Incorporation Reform Act 2012, No. 20/2012

Assent Date:	1.5.12
Commencement Date:	S. 226(Sch. 5 item 3) on 26.11.12: Special Gazette (No. 384) 20.11.12 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment Act 2012, No. 23/2012

Assent Date:	8.5.12
Commencement Date:	S. 3 on 30.6.12: s. 2(5)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Courts and Sentencing Legislation Amendment Act 2012, No. 26/2012

Assent Date:	29.5.12
Commencement Date:	Ss 3–12 on 16.7.12: Special Gazette (No. 237) 3.7.12 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Criminal Procedure Amendment Act 2012, No. 48/2012

Assent Date:	4.9.12
Commencement Date:	Ss 33–37 on 5.9.12: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012

Assent Date:	18.12.12
Commencement Date:	S. 284 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Courts Legislation Amendment (Reserve Judicial Officers) Act 2013, No. 5/2013

Assent Date:	26.2.13
Commencement Date:	Ss 48–56, 78, 79 on 27.2.13: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Co-operatives National Law Application Act 2013, No. 9/2013

Assent Date:	13.3.13
Commencement Date:	S. 42(Sch. 2 item 6) on 3.3.14: Special Gazette (No. 46) 18.2.14 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013, No. 15/2013

Assent Date:	26.3.13
Commencement Date:	Ss 9–12 on 27.3.13: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Heavy Vehicle National Law Application Act 2013, No. 30/2013

Assent Date:	4.6.13
Commencement Date:	S. 60(Sch. item 3) on 10.2.14: Special Gazette (No. 28) 4.2.14 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children, Youth and Families Amendment Act 2013, No. 52/2013

Assent Date:	24.9.13
Commencement Date:	Ss 4–61 on 1.12.13: Special Gazette (No. 419) 26.11.13 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Courts Legislation Amendment (Judicial Officers) Act 2013, No. 63/2013

Assent Date:	6.11.13
Commencement Date:	Ss 52, 53, 81 on 1.2.14: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013

Assent Date:	12.11.13
Commencement Date:	S. 649(Sch. 9 item 2) on 1.7.14: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Road Legislation Amendment Act 2013, No. 74/2013

Assent Date:	3.12.13
Commencement Date:	S. 8 on 1.7.15: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date:	25.3.14
Commencement Date:	S. 160(Sch. 2 item 14) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Act 2014, No. 19/2014

Assent Date:	1.4.14
Commencement Date:	S. 89 on 30.9.15: Special Gazette (No. 278) 22.9.15 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Mental Health Act 2014, No. 26/2014

Assent Date:	8.4.14
Commencement Date:	S. 455(Sch. item 2) on 1.7.14: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children, Youth and Families Amendment (Security Measures) Act 2014 No. 29/2014

Assent Date:	15.4.14
Commencement Date:	Ss 4–13 on 1.7.14: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Crimes Amendment (Protection of Children) Act 2014, No. 36/2014

Assent Date:	3.6.14
Commencement Date:	S. 6(3) on 27.10.14: Special Gazette (No. 350) 7.10.14 p. 1; s. 7(4) on 27.10.14: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Victoria Police Amendment (Consequential and Other Matters) Act 2014 No. 37/2014

Assent Date:	3.6.14
Commencement Date:	S. 10(Sch. item 18) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Vexatious Proceedings Act 2014, No. 42/2014

Assent Date:	17.6.14
Commencement Date:	Ss 109–113 on 31.10.14: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Fines Reform Act 2014, No. 47/2014

Assent Date:	1.7.14
Commencement Date:	Ss 252, 253 on 31.12.17: Special Gazette (No. 443) 19.12.17 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Criminal Organisations Control and Other Acts Amendment Act 2014, No. 55/2014

Assent Date:	26.8.14
Commencement Date:	Ss 132–139 on 31.10.14: Special Gazette (No. 330) 23.9.14 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date:	2.9.14
Commencement Date:	S. 140(Sch. 3 item 5) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014, No. 61/2014 (as amended by Nos 20/2015, 21/2015, 27/2015)

Assent Date:	9.9.14
Commencement Date:	Ss 171, 172 on 10.9.14: s. 2(1); ss 122–137, 143–150, 152 on 21.1.15: Special Gazette (No. 10) 20.1.15 p. 1; ss 100–121, 138–142, 151 on 4.3.15: Special Gazette (No. 44) 3.3.15 p. 1; ss 4–99, 153, 154 on 1.3.16: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Courts Legislation Miscellaneous Amendments Act 2014, No. 62/2014

Assent Date:	9.9.14
Commencement Date:	Ss 96–100 on 10.11.14: Special Gazette (No. 364) 14.10.14 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Crimes Amendment (Abolition of Defensive Homicide) Act 2014, No. 63/2014

Assent Date:	9.9.14
Commencement Date:	S. 5(1) on 1.11.14: Special Gazette (No. 350) 7.10.14 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Inquiries Act 2014, No. 67/2014

Assent Date:	23.9.14
Commencement Date:	S. 147(Sch. 2 item 8) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Sentencing Amendment (Emergency Workers) Act 2014, No. 69/2014

Assent Date:	23.9.14
Commencement Date:	Ss 9, 10 on 2.11.14: Special Gazette (No. 330) 23.9.14 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Sex Offenders Registration Amendment Act 2014, No. 82/2014

Assent Date:	21.10.14
Commencement Date:	S. 28 on 1.6.15: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Statute Law Revision Act 2015, No. 21/2015

Assent Date:	16.6.15
Commencement Date:	S. 3(Sch. 1 item 9) on 1.7.14: s. 2(2)(a)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Judicial Entitlements Act 2015, No. 29/2015

Assent Date:	11.8.15
Commencement Date:	S. 48 on 12.8.15: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children, Youth and Families Amendment (Aboriginal Principal Officers) Act 2015, No. 57/2015

Assent Date:	18.11.15
Commencement Date:	S. 5 on 19.11.15: s. 2(1); ss 4, 6–10 on 4.1.16: Special Gazette (No. 426) 22.12.15 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Bail Amendment Act 2016, No. 1/2016

Assent Date:	16.2.16
Commencement Date:	Ss 18(1)(2), 19–21 on 2.5.16: Special Gazette (No. 103) 19.4.16 p.1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Further Amendment Act 2016, No. 3/2016

Assent Date:	16.2.16
Commencement Date:	Ss 9, 10, 51–55 on 1.5.16: Special Gazette (No. 114) 26.4.16 p. 1; s. 8 on 1.7.16: Special Gazette (No. 204) 28.6.16 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children Legislation Amendment Act 2016, No. 8/2016

Assent Date:	15.3.16
Commencement Date:	S. 21 on 1.3.16: s. 2(2); ss 3–20, 22 on 16.3.16: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Judicial Commission of Victoria Act 2016, No. 16/2016

Assent Date:	19.4.16
Commencement Date:	Ss 186–188 on 1.7.17: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Sex Offenders Registration Amendment Act 2016, No. 21/2016

Assent Date:	26.4.16
Commencement Date:	Ss 20, 21 on 1.2.17: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Crimes Legislation Amendment Act 2016, No. 28/2016

Assent Date:	31.5.16
Commencement Date:	S. 11 on 1.6.16: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Fines Reform and Infringements Acts Amendment Act 2016, No. 29/2016

Assent Date:	31.5.16
Commencement Date:	Ss 107(1), 108, 109(1), 110 on 1.7.17: s. 2(4); ss 107(2), 109(2) on 31.12.17: s. 2(5)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

National Domestic Violence Order Scheme Act 2016, No. 53/2016

Assent Date:	18.10.16
Commencement Date:	Ss 88–92 on 25.11.17: Special Gazette (No. 388) 15.11.17 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Child Wellbeing and Safety Amendment (Oversight and Enforcement of Child Safe Standards) Act 2016, No. 63/2016

Assent Date:	15.11.16
Commencement Date:	Ss 14–18 on 1.1.17: Special Gazette (No. 381) 13.12.16 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children Legislation Amendment (Reportable Conduct) Act 2017, No. 4/2017

Assent Date:	28.2.17
Commencement Date:	S. 17(2) on 1.3.17: s. 2(1); ss 13, 14 on 1.7.17: Special Gazette (No. 216) 27.6.17 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Family Violence Protection Amendment (Information Sharing) Act 2017, No. 23/2017

Assent Date:	14.6.17
Commencement Date:	S. 32 on 26.2.18: Special Gazette (No. 40) 6.2.18 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Bail Amendment (Stage One) Act 2017, No. 26/2017

Assent Date:	27.6.17
Commencement Date:	S. 19 on 21.5.18: Special Gazette (No. 218) 15.5.18 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Corrections Legislation Miscellaneous Amendment Act 2017, No. 31/2017

Assent Date:	15.8.17
Commencement Date:	S. 64 on 1.2.18: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017, No. 38/2017

Assent Date:	29.8.17
Commencement Date:	S. 64 on 1.5.18: s. 2(4)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017, No. 43/2017

Assent Date:	26.9.17
Commencement Date:	Ss 30–33, 40, 52–57, 60, 61, 64(2) on 30.11.17: Special Gazette (No. 406) 30.11.17 p. 1; ss 59, 62, 63 on 20.12.17: Special Gazette (No. 406) 28.11.17 p. 1; ss 5, 22, 28, 29, 39 on 26.2.18: Special Gazette (No. 406) 28.11.17 p. 1; ss 23, 24, 41–44 on 5.4.18: Special Gazette (No. 136) 27.3.18 p. 1; ss 6, 7, 9–19, 65 on 1.6.18: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Protective Services Officers and Other Matters) Act 2017, No. 45/2017

Assent Date:	26.9.17
Commencement Date:	Ss 3, 4, 59 on 1.4.18: Special Gazette (No. 136) 27.3.18 p. 3
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Fines Reform Amendment Act 2017, No. 59/2017

Assent Date:	5.12.17
Commencement Date:	S. 109 on 6.12.17: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Bail Amendment (Stage Two) Act 2018, No. 3/2018

Assent Date:	27.2.18
Commencement Date:	S. 26 on 5.4.18: Special Gazette (No. 136) 27.3.18 p. 1; s. 25 on 1.7.18: Special Gazette (No. 218) 15.5.18 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Victims) Act 2018, No. 5/2018

Assent Date:	27.2.18
Commencement Date:	Ss 23, 24 on 28.2.18: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Oaths and Affirmations Act 2018, No. 6/2018

Assent Date:	27.2.18
Commencement Date:	S. 68(Sch. 2 item 20) on 1.3.19: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children Legislation Amendment (Information Sharing) Act 2018, No. 11/2018
(as amended by No. 30/2019)

Assent Date:	10.4.18
Commencement Date:	Ss 17–27 on 27.9.18: Special Gazette (No. 405) 4.9.18 p. 1; s. 16 on 31.12.19: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Education Legislation Amendment (Victorian Institute of Teaching, TAFE and Other Matters) Act 2018, No. 31/2018

Assent Date:	7.8.18
Commencement Date:	Ss 70, 71 on 1.9.19: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Terrorism) Act 2018, No. 32/2018

Assent Date:	7.8.18
Commencement Date:	Ss 100–103 on 8.8.18: s. 2(1); s. 113 on 1.10.18: s. 2(2); ss 104–112 on 30.11.18: Special Gazette (No. 497) 23.10.18 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018, No. 33/2018

Assent Date:	14.8.18
Commencement Date:	Ss 3–13, 55–58 on 29.3.19: Special Gazette (No. 114) 26.3.19 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Victims and Other Legislation Amendment Act 2018, No. 42/2018

Assent Date:	11.9.18
Commencement Date:	S. 35 on 31.12.18: Special Gazette (No. 480) 16.10.18 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Miscellaneous Amendment Act 2018, No. 48/2018

Assent Date:	25.9.18
Commencement Date:	Ss 3, 4 on 28.10.18: Special Gazette (No. 480) 16.10.18 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

West Gate Tunnel (Truck Bans and Traffic Management) Act 2019, No. 8/2019

Assent Date:	26.3.19
Commencement Date:	Ss 88–90 on 19.2.20: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Open Courts and Other Acts Amendment Act 2019, No. 11/2019

Assent Date:	7.5.19
Commencement Date:	Ss 13, 14 on 7.2.20: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Disability (National Disability Insurance Scheme Transition) Amendment Act 2019, No. 19/2019

Assent Date:	25.6.19
Commencement Date:	S. 254 on 1.7.19: Special Gazette (No. 254) 25.6.19 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Births, Deaths and Marriages Registration Amendment Act 2019, No. 25/2019

Assent Date:	3.9.19
Commencement Date:	Ss 21–25 on 1.5.20: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children Legislation Amendment Act 2019, No. 30/2019

Assent Date:	17.9.19
Commencement Date:	Ss 3(1), 4–8, 11–14 on 18.9.19: s. 2(1); ss 3(2), 9, 10 on 17.2.20: Special Gazette (No. 49) 4.2.20 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children's Services Amendment Act 2019, No. 37/2019

Assent Date:	6.11.19
Commencement Date:	S. 19 on 17.5.20: Special Gazette (No. 232) 12.5.20 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Criminal Appeals) Act 2019, No. 44/2019 (as amended by No. 11/2021)

Assent Date:	19.11.19
Commencement Date:	S. 18 on 20.11.19: s. 2(1); ss 3, 4 on 4.12.21: Special Gazette (No. 673) 30.11.21 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Serious Offenders and Other Matters) Act 2019, No. 45/2019

Assent Date:	19.11.19
Commencement Date:	S. 47 on 20.11.19: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

COVID-19 Omnibus (Emergency Measures) Act 2020, No. 11/2020

Assent Date:	24.4.20
Commencement Date:	S. 25 on 25.4.20: s. 2
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Crimes Amendment (Manslaughter and Related Offences) Act 2020, No. 16/2020

Assent Date:	10.6.20
Commencement Date:	Ss 11−14 on 1.7.20: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

North East Link Act 2020, No. 18/2020

Assent Date:	10.6.20
Commencement Date:	S. 124 on 1.3.21: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020, No. 27/2020

Assent Date:	20.10.20
Commencement Date:	Ss 7–10 on 21.10.20: s. 2
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Worker Screening Act 2020, No. 34/2020

Assent Date:	4.11.20
Commencement Date:	Ss 180, 181 on 1.2.21: Special Gazette (No. 647) 8.12.20 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Drug Court and Other Matters) Act 2020, No. 43/2020

Assent Date:	8.12.20
Commencement Date:	Ss 49−53 on 26.4.21: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021, No. 11/2021

Assent Date:	23.3.21
Commencement Date:	Ss 203, 204 on 24.3.21: s. 2(1); ss 30–43, 196 on 26.4.21: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Social Services Regulation Act 2021, No. 37/2021 (as amended by No. 40/2022)

Assent Date:	21.9.21
Commencement Date:	Ss 351, 352 on 1.7.24: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Terrorism (Community Protection) Amendment Act 2021, No. 47/2021

Assent Date:	3.11.21
Commencement Date:	S. 25 on 2.9.22: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Public Health and Wellbeing Amendment (Pandemic Management) Act 2021, No. 53/2021

Assent Date:	7.12.21
Commencement Date:	Ss 22−24 on 8.12.21: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022, No. 1/2022

Assent Date:	15.2.22
Commencement Date:	Ss 122, 123 on 16.2.22: s. 2(1); ss 40−62 on 29.3.22: Special Gazette (No. 157) 29.3.22 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Trial by Judge Alone and Other Matters) Act 2022, No. 11/2022

Assent Date:	29.3.22
Commencement Date:	S. 5 on 30.3.22: s. 2
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Mental Health and Wellbeing Act 2022, No. 39/2022

Assent Date:	6.9.22
Commencement Date:	Ss 789−794 on 1.9.23: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023, No. 17/2023

Assent Date:	27.6.23
Commencement Date:	Ss 6–11, 14, 33–35, 64 on 28.6.23: s. 2(1); ss 3–5, 12, 13, 40–52 on 1.7.24: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment Act 2023, No. 26/2023

Assent Date:	10.10.23
Commencement Date:	Ss 34–59 on 11.10.23: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Bail Amendment Act 2023, No. 28/2023

Assent Date:	24.10.23
Commencement Date:	Ss 65, 117 on 25.3.24: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Regulatory Legislation Amendment (Reform) Act 2024, No. 6/2024

Assent Date:	5.3.24
Commencement Date:	Ss 64−101 on 1.7.24: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Youth Justice Act 2024, No. 32/2024

Assent Date:	10.9.24
Commencement Date:	Ss 855, 856 on 16.10.24: Special Gazette (No. 557) 15.10.24 p. 1; ss 781–788 on 30.9.25 s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Committals) Act 2025, No. 5/2025

Assent Date:	25.2.25
Commencement Date:	Ss 49, 50 on 28.12.25: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Regulatory Legislation Amendment (Reform) Act 2025, No. 14/2025

Assent Date:	20.5.25
Commencement Date:	Ss 10, 11 on 21.5.25: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Roads and Ports Legislation Amendment (Road Safety and Other Matters) Act 2025, No. 25/2025

Assent Date:	5.8.25
Commencement Date:	S. 106(Sch. 1 item 7) on 6.8.25: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Justice Legislation Amendment (Community Safety) Act 2025, No. 54/2025

Assent Date:	9.12.25
Commencement Date:	S. 26 on 10.12.25: s. 2(1); ss 11, 14–17 on 27.2.26: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Social Services Regulation Amendment (Child Safety, Complaints and Worker Regulation) Act 2025, No. 58/2025

Assent Date:	16.12.25
Commencement Date:	Ss 445–447 on 9.2.26: Special Gazette (No. 50) 3.2.26 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

Children, Youth and Families Amendment (Stability) Act 2026, No. 6/2026

Assent Date:	11.3.26
Commencement Date:	Ss 4–16 on 12.5.26: Special Gazette (No. 232) 5.5.26 p. 1
Current State:	This information relates only to the provision/s amending the **Children, Youth and Families Act 2005**

3 Explanatory details

[1] S. 274(b): The amendment proposed by section 72 of the **Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014**, No. 61/2014 (*repealed*) is not included in this publication due to the earlier amendment by section 15 of that Act.

Section 72 read as follows:

72 When Court may make order under this Part

In section 274(b) of the Principal Act, for "custody of" **substitute** "parental responsibility for".

[2] S. 328 *(repealed)*: The amendment to section 328 proposed by section 41 of the **Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022**, No. 1/2022 is not included in this publication due to the earlier repeal of section 328 by section 3 of the **Justice Legislation Amendment (Criminal Appeals) Act 2019**, No. 44/2019.

Section 41 read as follows:

41 Appeal to County Court or Supreme Court

(1) In section 328(1) of the **Children, Youth and Families Act 2005**, for "President or the Chief Magistrate who is a dual commission holder, to the Trial Division of the Supreme Court against" **substitute** "President, to the Trial Division of the Supreme Court, or if constituted by the Chief Magistrate who is a dual commission holder, to the Court of Appeal, against".

(2) In section 328(5) of the **Children, Youth and Families Act 2005**, after "to the Trial Division of the Supreme Court" **insert** "or to the Court of Appeal, as the case requires".

(3) In section 328(6)(h) of the **Children, Youth and Families Act 2005 omit** "Trial Division of".

[3] S. 362(1)(g): The amendment proposed by section 42(a) of the **Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017**, No. 43/2017 (*repealed*) is not included in this publication because the word "child." does not appear in section 362(1)(g).

Section 42(a) read as follows:

42 Matters to be taken into account

In section 362 of the Principal Act—

(a) in paragraph (g), for "child." **substitute** "child; and";