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TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
Chapter 1—Preliminary	1
Part 1.1—Introduction	1
1 Purposes	1
2 Commencement	1
3 Definitions	2
3A Meaning of <i>terrorism record</i>	35
3B Meaning of <i>terrorism risk information</i>	35
6 Aboriginal agency	37
7 References to Parts	38
Part 1.2—Principles	39
Division 1—Decision makers to have regard to principles	39
8 Decision makers to have regard to principles	39
9 Role of principles	39
Division 2—Best interests principles	39
10 Best interests principles	39
Division 3—Decision-making principles	42
11 Decision-making principles	42
Division 4—Additional decision-making principles for Aboriginal children	44
12 Additional decision-making principles	44
13 Aboriginal Child Placement Principle	45
14 Further principles for placement of Aboriginal child	46
Chapter 2—Administration	48
15 Functions and powers of the Secretary	48
16 Responsibilities of the Secretary	48
16A Power of the Secretary to enter into contracts	50
16B Powers of the Secretary in relation to land	51

Section		Page
16C	Committee of management	51
16D	Record of dealings	51
16E	Secretary's powers in relation to intellectual property	52
17	Delegation	53
18	Secretary may authorise principal officer of Aboriginal agency to act	55
18A	Powers and functions of acting principal officer	56
18B	Delegation by principal officer of Aboriginal agency	57
18C	Disclosure of information by Secretary to principal officer of Aboriginal agency	57
18D	Use of information disclosed to Aboriginal agency and principal officer	57
19	Secretary may authorise person in charge of community service to act	58
20A	Disclosure of information for administrative purposes	59
20B	Report by Secretary	59
Chapter 3—Child and family services		61
Part 3.1—Support for community-based services and families		61
21	Object of Part	61
22	Purposes of community-based child and family services	61
23	Power of Secretary to provide funds	62
24	Family assistance grants	62
25	Authority to use Crown property	62
26	Agreements relating to use of Crown property	63
Part 3.2—Concern about wellbeing of child		64
27	Object of Part	64
28	Report to Secretary about child	64
29	Report to Secretary about unborn child	64
30	Response by Secretary to report	64
31	Referral to community-based child and family service about child	65
32	Referral to community-based child and family service about unborn child	65
33	Response by community-based child and family service to referral	65
34	Is the report about a child in need of protection?	66
38	Consultation with Secretary	67
39	Records of disclosures	67
40	Reporters and referrers protected	67
41	Identity of reporter or referrer confidential	68
42	Review by Victorian Civil and Administrative Tribunal	69

<i>Section</i>	<i>Page</i>
Part 3.2A—Disclosure of information about child's contact with registrable offender	70
42A Interpretation	70
42B Secretaries may disclose information relating to registrable offenders	70
42C Chief Commissioner of Police and Secretary may disclose information relating to registrable offenders	71
42D Disclosure of certain information relating to registrable offender in certain circumstances	71
42E Information obtained in certain circumstances not to be disclosed without authority	73
Part 3.3—Community services	74
Division 1—Object of Part	74
43 Object of Part	74
Division 2—Departmental services	74
44 Departmental community services and secure welfare services	74
Division 3—Registration of community services	74
45 Application for registration	74
46 Registration	74
47 Categories of registration	75
48 Conditions on registration	75
49 Period of registration	75
50 Renewal of registration	75
51 Revocation of registration	76
52 Notice to community service	76
53 Application for review	77
54 Register of community services	77
55 What information is to be included in the register?	77
56 Registered community service to notify changes	78
57 Register to be made public	78
Division 4—Performance standards and responsibilities of community services	78
58 Performance standards	78
59 What can performance standards provide for?	79
60 Community service to comply with performance standards	79
61 Responsibilities of registered community services	80
Division 5—Monitoring and review of community services	80
62 Secretary may conduct inquiries	80
63 Appointment of assessor	80
64 Visits to community services	81

<i>Section</i>	<i>Page</i>
65 Community service to assist	81
Division 6—Appointment of administrator	82
66 Displacement of other laws	82
67 Appointment of administrator	82
68 Period of appointment of administrator	83
69 Powers of administrator	83
70 Revocation of appointment of administrator	84
71 Remuneration of administrator	85
Division 7—Information privacy and registered community services	85
72 Registered community services	85
Division 8—Secure welfare services—security measures	86
72A Definitions	86
72B Search on entering or leaving a secure welfare service	88
72C Secretary may order search	88
72D Unclothed search of child resident	88
72E Manner of conducting frisk search or unclothed search	89
72F Manner of conducting any search under this Division	89
72G Consequences of refusal to submit to search	91
72H Seizure	91
72I Seizure register	91
72J Certain seized items to be handed to police	92
72K Manner of dealing with seized things that may be used in a legal proceeding	92
72L Manner of dealing with seized money	93
72M Manner of dealing with other seized articles or things	93
72N Disposal	94
72O Prohibition of use of seclusion as punishment	94
72P Seclusion in secure welfare service	94
Part 3.4—Out of home carers	96
Division 1—Introductory	96
73 Object of Part	96
74 Definitions	96
Division 2—Approval, employment or engagement of out of home carers	97
75 Approval of foster carers	97
76 Employment or engagement of carer	97
77 Matters to be considered	98
78 Notice of approval, employment or engagement of carer	98
79 Notice of revocation of approval or termination of employment or engagement of carer	99

<i>Section</i>	<i>Page</i>
Division 3—Register of out of home carers	99
80 Register of out of home carers	99
Division 4—Conduct of out of home carers	100
81 Report to Secretary by service of allegation about carer	100
82 Other reports to Secretary of allegations about carers	101
83 Secretary to report allegation to police	102
84 Notice to carer of allegation	102
85 Consideration by Secretary of report	103
86 Decision by Secretary on report	103
87 Notice to carer of decision	103
88 Record of reports	104
89 Appointment of investigator	104
90 Powers of authorised investigator	104
91 Out of home care service to assist investigator	105
92 Report by authorised investigator	105
93 Decision of Secretary following investigation	105
94 Notice to carer of result of investigation	106
95 Notice to out of home care service of result of investigation	106
96 Referral to Suitability Panel	107
97 Secretary not to proceed if police investigation is proceeding	107
Division 5—The Suitability Panel	108
Subdivision 1—Establishment and constitution	108
98 Establishment of Panel	108
99 Constitution of Panel	108
100 Terms and conditions of appointment	109
101 Functions of Panel	109
102 Executive officer of Panel	110
103 Constitution of Suitability Panel for hearings	110
Subdivision 2—Procedure of Suitability Panel in respect of allegation	110
104 Notice to parties of hearing	110
105 Finding of Panel on allegation	111
106 Finding in relation to disqualification	112
107 Notice of Panel's findings and determinations	113
108 Secretary to record finding	114
109 Notice to out of home care service	115
Subdivision 3—Review by Suitability Panel of disqualification	115
110 Application for review of disqualification	115
111 Notice to parties of hearing of application	115
112 Finding in relation to application	116

<i>Section</i>	<i>Page</i>
113 Notice of Panel's determination on application	117
114 Secretary to record removal of disqualification	118
Subdivision 4—General procedure of Suitability Panel	118
115 Conduct of hearing	118
116 Procedure at hearings	119
117 Powers of panel conducting a formal hearing	119
Subdivision 5—Review by VCAT	119
118 Review by VCAT	119
Division 6—Offences	120
119 Out of home care service not to approve, engage or employ disqualified person	120
120 Out of home care service must ask Secretary if person is disqualified	121
121 Offence to apply for work as out of home carer while disqualified	121
122 Offence to apply to work as out of home carer without disclosing investigation	121
Division 7—General	122
123 Information provided not to be used in criminal proceedings	122
124 Protection of reporter	122
125 Disclosure of information to police and investigator	122
126 Secretary may provide information for the purpose of proceedings	123
127 Limited disclosure of information to out of home care services	123
128 Disclosure by Chief Commissioner of Police	125
129 Disclosure of information by Secretary	125
130 Confidentiality of information acquired by authorised investigator	125
131 Confidentiality of proceedings	126
132 Disclosure allowed for referee checks	126
132A Immunity	126
Part 3.5—Child care agreements	128
Division 1—Introduction	128
133 Object	128
134 Definitions	128
Division 2—Short-term child care agreements	129
135 Short-term child care agreements	129
136 Return of child to parent who has custody	129

<i>Section</i>	<i>Page</i>
137 Extension of agreement	130
138 Maximum period for care under agreement	130
139 Review of agreement	131
140 Agreement may be made with minor	131
141 Termination of agreement	131
142 Return of child to parent at end of agreement	131
143 Rates of payment under agreement	131
Division 3—Long-term child care agreements	132
144 Children who may be the subject of a long-term child care agreement	132
145 Long-term child care agreements	132
146 When will the Secretary approve an agreement?	133
147 Who may have the care of the child under an agreement?	133
148 Who is a suitable person?	134
149 What must an agreement include?	135
150 Maximum period of care under agreement	135
151 Return of child at request of parent with custody	136
152 Review of agreement	136
153 Agreement may be with minor	137
154 Termination of agreement	137
155 Return of child at end of agreement	137
156 Rates of payment under agreement	138
Division 4—Review of decision-making and reports	138
157 Review by Secretary	138
158 Review by Victorian Civil and Administrative Tribunal	138
159 Report by service providers	139
160 Report by Secretary	139
Part 3.6—Restrictions on long-term care of children	140
161 Restrictions on who may provide long-term care of children	140
Part 3.7—Management of children in out of home care	142
161A Definitions	142
161B Prohibited actions	142
Chapter 4—Children in need of protection	144
Part 4.1—Children in need of protection	144
162 When is a child in need of protection?	144
163 Effect of conduct outside Victoria	145
Part 4.2—Responsibilities of Minister	146
164 Responsibilities of Minister	146

<i>Section</i>	<i>Page</i>
Part 4.3—Responsibilities of Secretary	147
Division 1—Case planning	147
166 What is a case plan?	147
167 Permanency objective	147
168 Preparation of case plan	149
169 Review of case plan	150
Division 1A—Therapeutic treatment planning	151
169A What is a therapeutic treatment plan?	151
169B Preparation of therapeutic treatment plan	151
169C Review of therapeutic treatment plan	152
Division 2—Responsibilities of Secretary for a child for whom Secretary has parental responsibility	153
172 Powers of Secretary when Secretary has parental responsibility	153
173 Placement of children	154
174 Secretary's duties in placing child	155
175 Support for child moving from secure welfare service	155
175A Secretary may specify certain issues	156
175B Authorisation of carer to make certain decisions	157
175C When Secretary must consult with parent of child	157
176 Cultural support for Aboriginal child	158
177 State Guardianship Fund	159
Division 3—Responsibility to provide information	160
178 Responsibility of Secretary to provide information to parents	160
179 Responsibility of Secretary or out of home care service to provide information to carers	161
180 Confidentiality	161
Part 4.4—Reporting	162
Division 1—Introduction	162
181 Who is a protective intervener?	162
182 Who is a mandatory reporter?	162
Division 2—Report to protective intervener	164
183 Report to protective intervener	164
184 Mandatory reporting	164
185 Report on child in need of therapeutic treatment	165
186 Grounds for belief	166
187 Determination by Secretary about report	166
188 Record of report	166

<i>Section</i>	<i>Page</i>
Division 3—Protection of reporters	167
189 Reporters protected	167
190 Evidence and legal proceedings	167
191 Confidentiality	168
Part 4.5—Disclosure of information	170
Division 1—Voluntary disclosure of information	170
192 Disclosure and use of information under this Act	170
193 Disclosure of information in course of consultation by a community-based child and family service	171
Division 2—Compulsory disclosure of information	173
194 Who is an authorised officer?	173
195 Secretary may authorise direction to disclose	173
196 Authorised officer may require disclosure of information	174
197 Refusal or failure to comply with requirement	175
198 Protection against self-incrimination	175
199 Legal professional privilege and client legal privilege	175
200 Medical professional privilege does not apply	175
201 Offence to give false or misleading information	176
202 Exclusion of evidence of disclosed information	176
Part 4.6—Investigation	177
Division 1—Investigation of protective intervention report	177
204 Directions for protective interveners	177
205 Investigation by protective intervener	177
206 Record of investigation	178
207 Provision of protection report to police	178
208 Protection of givers of information	179
209 Confidentiality	180
Division 2—Investigation of therapeutic treatment report	181
210 Investigation by Secretary	181
211 Record of investigation	181
212 Protection of givers of information	182
213 Confidentiality	182
Part 4.7—Procedure in Family Division	184
Division 1—General	184
214 How proceeding in Family Division commenced	184
215 Conduct of proceedings in Family Division	184
215A Standard of proof	185
215B Management of child protection proceedings	185
216 Power of Family Division to make certain orders by consent in absence of parties	187

<i>Section</i>	<i>Page</i>
216A Child not required to attend Court in Family Division	187
Division 2—Conciliation conferences	187
217 Referral of application to conciliation conference	187
218 What is a conciliation conference?	188
220 Guidelines for conciliation conferences	189
221 Time and place of conciliation conference	189
222 Who is to attend a conciliation conference?	189
223 Report to Court by convenor	191
224 Court to consider report of convenor	191
225 Immunity of participants	191
226 Confidentiality of conciliation conferences	192
227 Conciliation convenors	193
Part 4.8—Protective intervention	194
Division 1—Temporary assessment orders	194
228 Application for temporary assessment order by notice	194
229 Application for temporary assessment order without notice	195
230 Matters to be considered by Court	196
231 Temporary assessment order	196
232 What may a temporary assessment order provide for?	197
233 Child not to be medically examined in certain cases	198
234 Protection of privileges	198
235 Application for variation or revocation of order made in absence of child	199
236 Duration of temporary assessment order	199
237 Secretary may apply for warrant	200
238 Report to Court by Secretary	201
239 Appeal against temporary assessment order	202
Division 2—Action by protective intervener	203
240 Action by protective intervener	203
241 Protective intervener may place child in need of protection in emergency care	204
242 Actions on placing child in emergency care	205
243 Making a protection application without placing child in emergency care	206
Division 3—Child in need of therapeutic treatment	207
Subdivision 1—When is a child in need of therapeutic treatment?	207
244 When is a child in need of therapeutic treatment?	207
245 Referral to Therapeutic Treatment Board for advice	207
Subdivision 2—Therapeutic treatment orders	208
246 Secretary may apply for therapeutic treatment order	208
247 Issue of search warrant if child does not appear	209

<i>Section</i>	<i>Page</i>
247A Actions on placing child in emergency care—therapeutic treatment application	209
248 When Court may make order under this Division	210
249 Therapeutic treatment order	211
250 Duration of order	212
251 Statements by child not admissible in criminal proceedings	212
Subdivision 3—Therapeutic treatment (placement) orders	212
252 When can a therapeutic treatment (placement) order be made?	212
253 Therapeutic treatment (placement) order	213
254 Duration of order	213
Subdivision 4—Extension of orders	213
255 Application for extension of order	213
256 Extension of order	214
Subdivision 5—Variation and revocation of orders	215
257 Variation of order	215
258 Revocation of order	216
Division 4—Irreconcilable differences	217
259 Application if there is an irreconcilable difference	217
260 Conciliation counselling	218
261 Proceeding on application if party does not appear	219
Division 5—Interim accommodation orders	220
262 Interim accommodation order	220
263 Conditions of interim accommodation order	223
264 Duration of interim accommodation order	225
265 Parent entitled to know child's whereabouts	226
266 Power of Secretary to transfer child	226
267 Extension of interim accommodation order	226
268 Application for variation of interim accommodation order	228
269 Procedure on breach of interim accommodation order	230
270 Application for new interim accommodation order	233
271 Appeal against interim accommodation order	236
Division 6—Undertakings	237
272 Order requiring undertaking	237
273 Variation or revocation of undertaking	238
Part 4.9—Protection orders	239
Division 1—General	239
274 When Court may make order under this Part	239
275 Types of protection order	239

<i>Section</i>		<i>Page</i>
276	Restrictions on the making of protection orders	240
276A	Court to have regard to certain matters	241
277	Service of applications	243
Division 2—Undertaking		244
278	Undertaking—protection order	244
279	Variation or revocation of undertaking	244
Division 3—Family preservation order		245
280	Family preservation order	245
281	Family preservation order may impose conditions	246
282	Powers of Secretary under family preservation order	247
Division 6—Family reunification order		248
287	Family reunification order	248
287A	Determining the period of a family reunification order	249
288	Lapsing of family reunification order	251
288A	Change to nature of order	251
Division 7—Care by Secretary order		253
289	Care by Secretary order	253
289A	Change to nature of order	255
Division 8—Long-term care order		256
290	Long-term care order	256
Division 10—Extension of protection orders		258
293	Application for extension of protection order	258
294	Extension of order	259
294A	Restrictions on the extension of protection orders	259
296	Duration of extension	260
298	Review of extended orders	261
Division 11—Variation of protection orders		262
299	Application of Division	262
300	Application for variation of order	262
300A	Secretary may apply for variation of order without notice	263
301	Decision of Court on application for variation	263
302	Interim variation of family reunification order	263
Division 12—Revocation of protection orders		264
303	Application of Division	264
304	Application for revocation of order—general	264
305	Application for revocation of care by Secretary order	265
306	Application for revocation of long-term care order	265
307	Decision of Court on application for revocation	266

<i>Section</i>	<i>Page</i>
308	Revocation of family reunification order or care by Secretary order
309	Revocation of long-term care order
310	Court may make further orders on revocation
Division 13—Breach of protection order	269
311	Application of Division
312	Breach of protection order—notice of application
313	Placing child in emergency care when notice is served
314	Placing child in emergency care without notice
315	Requirements when placing child in emergency care
316	Order to continue
318	Decision of Court
Part 4.10—Permanent care orders	273
319	When Court may make permanent care order
320	Application for permanent care order
321	Permanent care order
322	Restrictions on the making of permanent care orders
323	Restrictions on the making of permanent care order in respect of an Aboriginal child
324	Lapsing of permanent care order
325	Disputes between persons jointly granted parental responsibility
325A	Change to nature of order
326	Variation or revocation of permanent care order
327	Decision on application for variation or revocation
Part 4.11—Appeals and reviews	286
Division 1—Appeals	286
328	Appeal to County Court or Supreme Court
329	Appeal to Supreme Court on a question of law
330	Appeals to be heard in open court
Division 2—Reviews	293
331	Internal review
332	Internal review—decision of principal officer of Aboriginal agency
333	Review by Victorian Civil and Administrative Tribunal
Part 4.12—Interstate movement of children and transfers	296
Division 1—Interstate movement of children	296
334	Definition
335	Interstate movement of children
336	Financial or other arrangements
337	Transfer agreements

<i>Section</i>	<i>Page</i>
Division 2—Transfer of child protection orders and proceedings	298
338 Transfer of child protection orders and proceedings	298
Part 4.13—Therapeutic Treatment Board	299
339 Establishment of Therapeutic Treatment Board	299
340 Constitution of Board	299
341 Functions of Board	299
342 Committees	299
343 Procedure of the Board	300
Chapter 5—Children and the criminal law	301
Part 5.1—Criminal responsibility of children	301
344 Children under 10 years of age	301
Part 5.1A—Commencement of proceedings	302
344A Time limits for filing a charge-sheet	302
344B Application for extension of time for commencement of proceeding	303
344C Extension of time	304
344D Rehearing	305
Part 5.2—Procedures and standard of proof	307
Division 1—Custody and bail	307
345 Children to be proceeded against by summons	307
346 Child in custody to be brought before Court or bail justice	307
347 Child in custody to be placed in remand centre	309
347A Child may be temporarily held in police gaol to facilitate transport to and from court and youth justice facilities	310
Division 2—Referral for investigation	312
349 Referral to Secretary	312
350 Report of investigation	313
351 Report on outcome of application	313
352 Court must adjourn in case of therapeutic treatment order	314
352A Report to Criminal Division on child's progress under therapeutic treatment order	314
353 Report to Criminal Division on outcome of therapeutic treatment order	315
354 Hearing of adjourned case	315
354A Powers of Court in criminal proceedings if child accused voluntarily participates in therapeutic treatment program	316
355 Pre-sentence report to Court	318

<i>Section</i>	<i>Page</i>
Division 3—Procedure for indictable offences that may be heard and determined summarily	318
356 Procedure for indictable offences that may be heard and determined summarily	318
356A Exceptional circumstances	321
Division 3A—Diversion	322
356B Application of Division	322
356C Purposes of diversion	323
356D Adjournment to undertake diversion program	324
356E Acknowledgement of responsibility and consent to diversion by the child	325
356F Prosecutorial consent to diversion	325
356G Matters to be considered when determining the type of diversion program	326
356H Extension of adjournment	326
356I Conclusion of the diversion program	327
356J Diversion program and community service activities	328
356K Natural justice	328
Division 4—Standard of proof	328
357 Proof beyond reasonable doubt	328
Division 5—Reports and other matters to be taken into account in considering sentence	328
358 Court may only consider certain reports and other matters	328
359 Victim impact statements	329
359A Alternative arrangements for reading aloud of victim impact statement	332
359B Alternative arrangements for examination	333
Part 5.3—Sentences	335
Division 1—Sentencing generally	335
360 Sentences	335
361 Sentencing hierarchy	336
362 Matters to be taken into account	337
362A Sentence discount for guilty plea	339
362B Aggregate sentence of detention	340
Division 2—Undertaking	342
363 Non-accountable undertaking	342
364 Breach of undertaking	342
Division 3—Accountable undertaking	342
365 Accountable undertaking	342
366 Breach of undertaking	342

<i>Section</i>	<i>Page</i>
Division 4—Good behaviour bond	344
367 Good behaviour bond	344
368 Dismissal where bond observed	345
369 Child required to appear	345
370 Failure to appear	346
371 Breach of bond	346
372 Time for application	348
Division 5—Fines	348
373 Fines	348
374 Financial circumstances of child to be considered	349
375 Instalment orders	349
376 Time to pay	350
377 Application for time to pay, for instalment order or for variation of instalment order	350
378 Default in payment of fine or instalment	350
379 Reduction of order by payment of portion of fine	352
Division 6—Probation orders	352
380 Court may order probation	352
381 Conditions of probation orders	353
382 Concurrent probation orders	354
383 Court may require Secretary to report	355
384 Breach of probation	355
385 Secretary's report	358
386 Time for application	359
Division 7—Youth supervision orders	359
387 Court may impose youth supervision order	359
388 Concurrent youth supervision orders	360
389 Youth supervision orders	360
390 Suspension of youth supervision order	363
391 Court may require Secretary to report	364
392 Breach of youth supervision order	364
393 Penalties for breach	366
394 Matters to be taken into account	366
395 Time for application	368
Division 8—Youth attendance orders	368
396 Definitions	368
397 Youth attendance order	368
398 Restrictions on power to make youth attendance order	369
399 Sentencing court to impose requirements	369
400 Concurrent orders	370
401 Copy of order to be given	371
402 Reporting	371

<i>Section</i>	<i>Page</i>
403	Suspension of youth attendance order 373
404	Court may require Secretary to report 374
405	Objects of youth attendance order 374
406	Person subject to control etc. of Secretary etc. 375
407	Community service 375
408	Breach of youth attendance order 377
409	Application for variation or revocation of order 380
Division 8A—Youth control orders	383
Subdivision 1—Youth control orders	383
409A	Objects of a youth control order 383
409B	Court may make youth control order 384
409C	Restrictions on power to make a youth control order 384
409D	Court order for youth control order planning meeting 385
409E	Matters to which Court is to have regard in determining whether to make a youth control order 385
409F	Court to impose certain requirements 386
409G	Non-accountable parental undertaking 388
409H	Breach of undertaking 388
409I	Concurrent orders 389
409J	Copy of order to be given 390
409K	Remission of monitoring etc. to the Court 390
409L	Reporting and monitoring 390
409M	Suspension of youth control order 392
409N	Variation of youth control order 392
409O	Warning of possible variation of a youth control order 394
409P	Neither consent nor warning required 394
409Q	Revocation of youth control order 394
409R	Consequences of revocation of youth control order 396
Subdivision 2—Youth control order planning meetings	397
409S	Purpose of youth control order planning meeting 397
409T	Requirements for youth control order planning meetings 397
409U	Youth control order plan 399
409V	Requirements for report of meeting 399
409W	Youth control order planning meeting report to be filed with registrar 400
409X	Access to youth control order planning meeting report 400
409Y	Confidentiality of meeting 400
409Z	Report by appellate court 401
Subdivision 3—Secretary	401
409ZA	References to the Secretary 401
Division 9—Youth residential centre orders	401
410	Court may make youth residential centre order 401

<i>Section</i>	<i>Page</i>
411 Youth residential centre orders	402
Division 10—Youth justice centre orders	405
412 Court may make youth justice centre order	405
413 Youth justice centre orders	406
Division 11—Deferral of sentencing	408
414 Deferral of sentencing	408
415 Group conference	410
416 Hearing of adjourned case	412
Division 12—Orders in addition to sentence	414
417 Orders in addition to sentence	414
418 Enforcement of orders in addition to sentence	414
Division 13—General	415
419 Provisions applicable to warrants	415
420 Bail	415
421 Variation or revocation of order	416
422 Suspension of order	418
423 Proceedings for breach of sentence	418
Part 5.4—Appeals	422
Division 1—Appeal by offender to the County Court or Trial Division of the Supreme Court	422
424 Right of appeal	422
425 How appeal is commenced	422
426 Determination of appeal	423
Division 2—Appeal by DPP against sentence	425
427 DPP's right of appeal against sentence	425
428 How appeal is commenced	426
429 Determination of DPP appeal	426
Division 2A—Appeal by DPP—Failure to fulfil undertaking	428
429A DPP's right of appeal—failure to fulfil undertaking	428
429B How appeal is commenced	429
429C Determination of DPP's appeal—failure to fulfil undertaking	429
Division 3—Procedure on appeals from Children's Court	430
430 Late notice of appeal deemed to be application for leave to appeal	430
430A Stay of order	431
430B Bail pending appeal	432
430C Abandonment of appeal	432

<i>Section</i>	<i>Page</i>
430D Appellant's failure to appear	434
430E Respondent's failure to appear on appeal by DPP	436
430F One notice of appeal for 2 or more sentences	437
430G Appeal to County Court or Trial Division of Supreme Court authorised by other Acts	437
Division 4—Reports	437
430H Application of Division	437
Subdivision 1—Pre-sentence reports	437
430I Court may order pre-sentence report	437
430J Notification of requirement to submit pre-sentence report	439
430K Pre-sentence report to be filed with court	439
430L Attendance at appellate court of author of pre-sentence report	439
430M Disputed pre-sentence report	441
Subdivision 2—Group conference reports	441
430N Group conference report	441
430O Group conference report to be filed with court	442
Division 5—Appeal to Supreme Court on a question of law	442
430P Appeal to Supreme Court on a question of law	442
430Q Appeal on question of law precludes other appeals	444
Division 6—Appeal to Court of Appeal	444
430R Right of appeal against sentence of detention imposed on appeal from Children's Court	444
430S How appeal is commenced	445
430T Determination of appeal	445
430U Orders etc. on successful appeal	446
430V Powers and procedure	447
Division 6A—Case stated for Court of Appeal	447
430VA Reservation of question of law	447
430VB Adjournment if question of law reserved	448
430VC Refusal to reserve question of law	448
430VD Case to be stated if question of law reserved	448
430VE General powers of Court of Appeal on case stated	449
430VF Judgment to be entered on record	449
430W DPP may refer point of law to Court of Appeal	449
430WA Powers and procedure	450
Division 7—Status of sentence and orders during appeal period	450
430X Sentence not stayed during appeal period	450
430Y Bail pending appeal	450
430Z Stay of certain orders during appeal period	451

<i>Section</i>	<i>Page</i>
430ZA Execution of order for forfeiture or destruction of property	451
Division 8—Miscellaneous	452
430ZB Appeal by child under 15 years	452
430ZC Parent may enter into bail	452
430ZD Appeals to be heard in open court	452
430ZE Legal representation	454
430ZF Interpreters	454
430ZG Explanation of and reasons for orders	454
Division 9—Costs on appeal	455
430ZH No costs on appeal or new hearing	455
Part 5.5—Parole	456
Division 2—Youth Parole Board	456
442 Establishment of Youth Parole Board	456
443 Terms and conditions of office	457
444 Alternate members	458
445 Meetings of the Youth Parole Board	460
446 Validity of acts or decisions of the Youth Parole Board	461
447 Secretary or member may act on behalf of Youth Parole Board	461
448 Evidentiary provisions	461
449 Powers etc. of Youth Parole Board	462
450 Powers to take evidence etc.	462
451 Saving of members of Youth Parole Board from liability	462
452 Reports by Youth Parole Board	463
Division 3—Youth parole officers	464
453 Youth parole officers	464
Division 4—Information sharing	465
454 Information sharing by Secretary about incidents	465
455 Information sharing by Youth Parole Board about release	466
Division 5—Release on parole from youth residential centre or youth justice centre	467
457A Limitation on Youth Parole Board's consideration of terrorism risk information	467
457B Provision of terrorism risk information for purposes of this Division	467
458 Release on parole from youth residential centre or youth justice centre	468
458A Certain conditions to be imposed in relation to certain offences	470
459 Person still under sentence until end of parole period	472

<i>Section</i>	<i>Page</i>
460 Cancellation of parole	473
460A Requirement to consider cancelling parole of person charged with certain offences in certain circumstances	476
460B Requirement to consider cancelling parole of person who gains a terrorism record	477
460C Requirement to consider cancelling parole if new terrorism risk information provided	477
461 Youth Parole Board may release on parole more than once	478
Part 5.6—Transfers	479
Division 1AA—Use of terrorism risk information	479
461A Limitation on Youth Parole Board's consideration of terrorism risk information	479
Division 1—Jurisdiction over detainees	480
462 Persons detained in youth residential centre subject to Youth Parole Board	480
463 Persons detained in youth justice centre subject to Youth Parole Board	480
Division 2—Transfer from youth residential centre to youth justice centre	481
464 Power of Youth Parole Board to transfer person to a youth justice centre	481
465 Restriction on transfer of under 14 year olds	481
466 Transfer to youth justice centre	481
Division 3—Transfer from youth justice centre to prison	483
467 Power of Youth Parole Board to transfer person to prison	483
468 Detainee may request transfer to prison	484
469 Transfer to prison	484
Division 4—Transfer from youth justice centre to youth residential centre	486
470 Persons in youth justice centre may be transferred to youth residential centre	486
Division 5—Transfers to and from prison	487
471 Persons in prison may be transferred to youth justice centre	487
472 Person in prison may be transferred to youth residential centre	489
473 Person transferred from prison to YJC or YRC may be transferred back to prison	491

<i>Section</i>	<i>Page</i>
Division 6—General	493
474 Person in youth residential centre sentenced to detention in youth justice centre or imprisonment	493
475 Person in youth justice centre sentenced to imprisonment	495
476 Person in youth justice centre sentenced to detention in youth residential centre	496
477 Person in prison sentenced to detention in youth justice centre	498
Part 5.7—Establishment of corrective services for children	500
478 Governor in Council may establish corrective services	500
479 Approval of service as youth justice unit	501
480 Approval of service as group conference program	501
480A Approval of service as a youth control order planning meeting program	502
481 Standard of services	503
482 Form of care, custody or treatment	503
Part 5.8—Persons in detention	506
Division 1AA—Preliminary	506
482A Definitions	506
482B Authorisation of an officer in charge	509
Division 1—Legal custody	509
483 Legal custody	509
484 Removal of person from remand centre etc.	510
485 Temporary leave from legal custody	512
Division 2—Management of detainees	515
487 Prohibited actions	515
487A Exemption from liability	516
488 Isolation	516
488AA Reporting on use of reasonable force and isolation	517
Division 3—Searches of persons entering, leaving or within youth justice facilities and requirements on visitors	518
488A Search on entering or leaving a youth justice facility	518
488AB Officer in charge may order search	519
488AC Unclothed search of detainee	519
488AD Manner of conducting search	520
488AE Consequences of refusal to submit to search	521
488AF Officer in charge may order search to be terminated	522
488B Visitors required to comply with orders	522
488C Visitors to give prescribed information	522
488D Officer in charge may refuse or terminate visits for security reasons	523

<i>Section</i>	<i>Page</i>
Division 3AA—Offences relating to operation or possession of remotely piloted aircraft or helicopter	524
488DA Definitions	524
488DB Offences relating to operation or possession of remotely piloted aircraft or helicopter	524
488DC Officer in charge may give authorisation	527
488DD Search	527
488DE Seizure	528
Division 3A—Seizure	529
488E Seizure	529
488F Seizure register	529
488G Certain seized items to be handed to police	530
488GA Manner of dealing with seized things that may be used in a legal proceeding	530
488GB Manner of dealing with seized money	531
488GC Manner of dealing with other seized articles or things	531
488GD Disposal	532
Division 4—Change of name applications by detainees	533
488H Application	533
488I Definitions	533
488J Applications for change of name by or on behalf of a detainee	533
488K Approval by Secretary	534
488L Approval to be notified in writing	535
488M Registration of name change	535
488N Registrar may correct Register	535
Division 4A—Approval of making of acknowledgement of sex applications by detainees	536
488O Offence to make acknowledgement of sex application without approval	536
488P Application by detainee or other person for approval of Secretary	536
488Q Approval by Secretary of the making of acknowledgement of sex application	537
488R Copy of approval or refusal of Secretary	537
Division 5—General	538
489 Detention in default of payment of a fine	538
490 Bringing of person before court or inquest	538
491 Power of police to arrest person in youth justice centre	539
492 Interstate transfer of young offenders	540
492A Secrecy of security arrangements at youth justice facilities	540

<i>Section</i>	<i>Page</i>
Part 5.9—Review of Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017	544
492B Review of Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017	544
Part 5.10—Sharing of terrorism risk information	546
492C What is the permitted purpose for sharing information under this Part?	546
492D Department of Justice and Regulation may disclose terrorism risk information	546
492E Youth Parole Board may disclose terrorism risk information	547
Chapter 6—Offences	548
Part 6.1—Offences relating to the protection of children	548
493 Offence to fail to protect child from harm	548
494 Offence to leave child unattended	549
495 Offence to harbour or conceal child	549
496 Offence to counsel or induce child to be absent without lawful authority etc.	550
497 Offences in relation to community service etc.	551
Part 6.2—Offences relating to detained persons	553
498 Offence to escape or attempt to escape etc.	553
499 Offence to harbour or conceal person	554
500 Offence to counsel or induce person to escape	554
501 Offences in relation to persons held in centres	555
Part 6.3—General offences	558
502 Offence to impersonate Secretary as protective intervener	558
503 Offence to obstruct Secretary or employee	558
Chapter 7—The Children's Court of Victoria	559
Part 7.1—The Children's Court	559
504 The Children's Court	559
506 President, magistrate or reserve magistrate to be in attendance	561
507 Assignment of magistrates or reserve magistrates	561
508 President	562
509 Acting President	563
509A Administrative responsibility of President	564
510 Assignment of duties	565
511 Delegation by the President	565
512 Protection of President	565
513 Protection of magistrates or reserve magistrates	565

<i>Section</i>	<i>Page</i>
513A Constitution of Court if magistrate unable to continue	566
513B Appeals from Court constituted by Chief Magistrate who is a dual commission holder	566
514 Annual report	566
Part 7.2—Jurisdiction	567
515 Jurisdiction of Family Division	567
516 Jurisdiction of Criminal Division	569
516A Joint committal proceedings	572
517 Koori Court (Criminal Division)	574
518 Jurisdiction of Koori Court (Criminal Division)	575
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	575
519 Circumstances in which Koori Court (Criminal Division) may deal with certain offences	576
520 Sentencing procedure in Koori Court (Criminal Division)	577
520A Neighbourhood Justice Division	579
520B Places where Neighbourhood Justice Division may sit and act	580
520C Jurisdiction of Neighbourhood Justice Division	580
520D Transfer of proceedings	583
520E Sentencing procedure in Neighbourhood Justice Division	583
521 Application of Act to other Courts	585
Part 7.3—Procedure	586
522 Procedural guidelines to be followed by Court	586
522A Consistent magistrate to oversee criminal proceedings	587
523 Proceedings to be heard in open court	588
524 Legal representation	589
525 Proceedings in which child is required to be legally represented	592
526 Interpreter	595
527 Explanation of and reasons for orders	595
527A Judicial resolution conference	599
527B Protection of conduct of judicial resolution conference	600
Part 7.4—Powers	601
528 Court to have powers of Magistrates' Court	601
528A Enforcement of costs orders made in the Family Division	602
528B Issue of warrants in electronic form	603
529 Recall and cancellation of warrant	603
530 Power to adjourn proceeding	605
531 Power to dispense with service	607
532 Witness summonses	607
533 Court may reserve question of law for determination by Supreme Court	610

<i>Section</i>	<i>Page</i>
533A Court may issue or transmit court documents electronically	611
Part 7.5—Restriction on publication of proceedings	613
534 Restriction on publication of proceedings	613
534A Certain publications exempted from the restriction on publication of proceedings	616
534B Certain publications exempted if publication is in relation to sentencing of an adult	617
Part 7.6—Court officers	619
535 Principal registrar, registrars and deputy registrars	619
536 Appointment of Aboriginal elders or respected persons	619
537 Court register	620
538 Process	621
539 Powers of registrar	621
540 Fees	623
541 Extortion by and impersonation of court officials	623
542 Protection of registrars	624
Part 7.6A—Judicial registrars	625
542A Assignment of duties	625
542B Guidelines relating to the appointment of judicial registrars	625
542C Recommendations for appointment of judicial registrars	626
542D Appointment by Governor in Council	626
542E Remuneration and terms and conditions of appointment	627
542EA Oath or affirmation of office	629
542F Resignation from office	629
542J Performance of duties by judicial registrar	629
542K Appeal from or review of determination of Court constituted by judicial registrar	630
Part 7.7—Court services	632
543 Youth justice officers	632
544 Duties of youth justice officers	633
545 Children's Court Liaison Office	634
546 Children's Court Clinic	634
Part 7.8—Reports to the Court	636
Division 1—General	636
547 Reports to which Part applies	636
548 Notification of requirement to submit report	636
549 Warning to be given to persons being interviewed	637
550 Attendance at Court of author of report	637
551 Disputed report	638
552 Confidentiality of reports	639

<i>Section</i>	<i>Page</i>
Division 2—Protection reports	640
553 Protection reports	640
554 Secretary to forward report to Court	640
555 Content of protection report	640
556 Access to protection report	640
Division 3—Disposition reports and additional reports	642
557 Disposition reports	642
558 Content of disposition report	643
559 Access to disposition report	644
560 Additional report	645
561 Access to additional report	645
562 Access to additional reports prepared by Secretary to Department of Justice	647
Division 4—Therapeutic treatment application reports	649
563 Therapeutic treatment application reports	649
564 Content of therapeutic treatment application report	649
565 Secretary to forward report to Court	650
566 Access to therapeutic treatment application report	650
Division 5—Therapeutic treatment (placement) reports	652
567 Therapeutic treatment (placement) reports	652
568 Content of therapeutic treatment (placement) report	652
569 Secretary to forward report to Court	652
570 Access to therapeutic treatment (placement) report	652
Division 6—Pre-sentence reports	654
571 Court may order pre-sentence report	654
572 Who prepares pre-sentence reports?	655
573 Contents of pre-sentence report	655
574 Pre-sentence report to be filed with registrar	656
575 Access to pre-sentence reports	656
Division 7—Group conference reports	658
576 Group conference report	658
577 Who prepares group conference reports?	658
578 Content of group conference report	658
579 Group conference report to be filed with registrar	658
580 Access to group conference report	659
Part 7.9—Children and Young Persons Infringement Notice System	660
581 CAYPINS procedure	660
582 Certain agencies may give information for enforcement purposes	660

<i>Section</i>	<i>Page</i>
Part 7.10—General	662
583 Witness who has previously appeared in Children's Court	662
584 Accused or other person who has previously appeared in Children's Court	663
585 Transfer of proceedings from Magistrates' Court to Children's Court	664
586 Supreme Court or County Court may exercise sentencing powers of Children's Court	664
587 Notice to be filed if child is placed in emergency care or apprehended without warrant	665
Part 7.11—Rules	666
588 Rules	666
589 Rules of court	668
590 Rules of court—Koori Court (Criminal Division)	669
590A Rules of court—Neighbourhood Justice Division	670
591 Disallowance	670
592 Practice notes	670
Chapter 7A—Relevant historical care and protection orders	672
Part 7A.1—Recognition of matters relating to relevant historical care and protection orders	672
592A Statement of recognition	672
592B Definitions	673
592C Meaning of <i>relevant historical care and protection order</i>	674
592D Application of this Part	675
592E Effect of relevant historical care and protection order in relation to matters concerning convictions, findings of guilt or criminal history	675
592F Effect of relevant historical care and protection order in relation to an appointment, post, status or privilege	676
592G Obligations of responsible agencies, other than Victoria Police, in relation to the release of official records and secondary records	677
592H Obligations of Victoria Police in relation to the release of official records and secondary records	677
592I Destruction of official records and secondary records	678
592J No effect on entitlement to compensation or creation of entitlement to compensation	678
Chapter 8—General	679
Part 8.1—Service of documents	679
593 Service of documents	679
594 Service on parent or child or other person	681
595 Proof of service	683

<i>Section</i>	<i>Page</i>
596 Person may cause document to be served	683
Part 8.2—Powers of Secretary in relation to medical services	684
597 Powers of Secretary in relation to medical services and operations	684
Part 8.3—Placing child in emergency care	687
598 Circumstances in which child may be placed in emergency care	687
Part 8.3A—Power of protective services officers to execute search warrants	689
598A Circumstances in which a protective services officer may apprehend a child under a search warrant	689
Part 8.4—Jurisdiction of Supreme Court	691
599 Supreme Court—limitation of jurisdiction	691
Part 8.5—Regulations	692
600 Regulations	692
Part 8.5A—Temporary measures in response to COVID-19 pandemic	697
Division 1—Preliminary	697
600A Purpose and effect of Part	697
Division 3—Pre-sentence reports	698
600G Application of Division	698
600H Definition of <i>oral pre-sentence report</i>	699
600I Circumstances in which oral pre-sentence report may be given	699
600J Disclosure of contents of oral pre-sentence report	700
600K Hearing of oral pre-sentence report	701
600L Interpretation of provisions relating to pre-sentence reports	702
Division 4—Isolation	703
600M Isolation for detection, prevention or mitigation of COVID-19 or other infectious disease	703
600N Entitlements of person placed in isolation under section 600M	705
600O Reporting on use of reasonable force to place person in isolation under section 600M	706
Division 4A—Family reunification orders	707
600OA Period of a family reunification order—modification of certain provisions	707

<i>Section</i>	<i>Page</i>
Division 5—Other measures	708
600S Requirements relating to attendance at a youth justice unit	708
600T Requirements relating to reporting	709
600ZA Requirements relating to bail justices	710
600ZB Application of Part 1.2 principles	710
Division 6—Repeal of Part	711
600ZC Repeal of this Part	711
Part 8.6—Repeals and transitional provisions	712
606 Transitional and saving provisions	712
607 Transitional provision—Criminal Procedure Legislation Amendment Act 2008	712
607A Transitional provisions—Statute Law Amendment (Evidence Consequential Provisions) Act 2009	712
608 Transitional provision—Crimes Amendment (Identity Crime) Act 2009	713
609 Transitional provision—Criminal Procedure Act 2009	713
610 Transitional provision—Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009	714
611 Order specifying land, leases, licences and interests in land to be transferred to Secretary	715
612 Vesting of property in Secretary	716
613 Action by Registrar of Titles	718
614 Taxes	718
615 Land etc. vests subject to encumbrances	718
616 Transitional provision—Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010	719
617 Transitional provision—Justice Legislation Amendment Act 2010	719
618 Transitional provision—Justice Legislation Further Amendment Act 2010 (CAYPINS)	720
619 Transitional provision—Children, Youth and Families Amendment (Security of Youth Justice Facilities) Act 2011	721
620 Transitional provision—Courts and Sentencing Legislation Amendment Act 2012	721
621 Transitional provision—Courts and Sentencing Legislation Amendment Act 2012	722
622 Transitional provision—Criminal Procedure Amendment Act 2012	722
623 Transitional provision—Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013	722
624 Transitional provision—Children, Youth and Families Amendment Act 2013	723

<i>Section</i>	<i>Page</i>
625 Transitional provision—Justice Legislation Further Amendment Act 2016	726
627 Transitional provisions—Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014	726
628 Transitional provisions—Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017	726
629 Transitional provision—Bail Amendment (Stage Two) Act 2018	726
630 Transitional and savings provisions—Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018	727
630A Transitional provisions—Justice Legislation Amendment (Terrorism) Act 2018	727
631 Transitional provision—Justice Legislation Miscellaneous Amendment Act 2018	728
632 Transitional provisions—Justice Legislation Amendment (Drug Court and Other Matters) Act 2020	728
Schedules	729
Schedule 1—Transfer of child protection orders and proceedings	729
Schedule 2—Interstate transfer of young offenders	753
Schedule 3—Children and Young Persons Infringement Notice System	766
Schedule 4—Transitional and saving provisions	790
Schedule 5—Transitional provisions relating to the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014	805
Schedule 6—Transitional provisions relating to the Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017	812
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Endnotes	813
1 General information	813
2 Table of Amendments	815
3 Amendments Not in Operation	833
4 Explanatory details	834

Authorised Version No. 125
Children, Youth and Families Act 2005

No. 96 of 2005

Authorised Version incorporating amendments as at
26 April 2021

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).**

Children, Youth and Families Act 2005
No. 96 of 2005
Part 1.1—Introduction

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;

Aboriginal person means a person who—

- (a) is descended from an Aborigine or Torres Strait Islander; and
- (b) identifies as an Aborigine or Torres Strait Islander; and
- (c) is accepted as an Aborigine or Torres Strait Islander 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 the County Court or the Trial Division of the Supreme Court, as the case requires;

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

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);

case plan means—

- (a) in relation to the Secretary, a case plan
as defined in section 166;
- (b) in relation to a community service, a
statement of any decision concerning a
child for whom it provides, or is to
provide, services;

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;

Children, Youth and Families Act 2005
No. 96 of 2005
Part 1.1—Introduction

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).

child means—

- (a) in the case of a person who is alleged to
have committed an offence, a person
who at the time of the alleged
commission of the offence was under
the age of 18 years but of or above the
age of 10 years but does not include
any person who is of or above the age
of 19 years when a proceeding for the
offence is commenced in the Court; 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 10 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;

community-based child and family service means a body registered under section 46 in the category of community-based child and family service;

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

community service means—

- (a) a community service established under section 44; or
- (ab) a secure welfare service established under section 44; or
- (b) a body registered under section 46;

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

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—

- (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;

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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;

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

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

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).

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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—

- (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**;

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), 26/2014 s. 455(Sch. item 2.1), 37/2014 s. 10(Sch. item 18.1(b)), 19/2014 s. 89(1), 19/2019 s. 254(2), 11/2018 s. 16 (as amended by No. 30/2019 s. 15).

- (g) a person in charge of a mental health service provider within the meaning of section 3(1) of the **Mental Health Act 2014**;
- (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;

interim accommodation order means an order under section 262;

Children, Youth and Families Act 2005
No. 96 of 2005
Part 1.1—Introduction

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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—

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).

- (a) including, but not limited to—
 - (i) mediation; or
 - (ii) early neutral evaluation;
 - (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;

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

legal representation means representation by a
legal practitioner;

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**;

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).

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—

- (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;

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

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

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 *nurse* inserted by No. 13/2010 s. 51(Sch. item 12.3).

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 means—

- (a) a registered out of home care service; or
- (b) a community service established under section 44 to provide out of home care;

parent, in relation to a child, includes—

- (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 *parent* amended by No. 61/2014 s. 4(4).

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;

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

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**;

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

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;

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);

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** or the **Personal Safety Intervention Orders**

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).

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 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;

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;

protective intervention report means—

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

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

- (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;

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

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

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

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

register of community services means the register of community services kept under section 54;

register of out of home care services means the register of out of home care services kept under section 80;

registered community service means a body registered under section 46;

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)).

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

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

registered out of home care service means a body
registered under section 46 in the category of
out of home care service;

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)).

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

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**;

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

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

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

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

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.

Children, Youth and Families Act 2005
No. 96 of 2005
Part 1.1—Introduction

S. 3(1) def. of
*secure
welfare
service*
substituted by
No. 29/2014
s. 4(b).

secure welfare service means a secure welfare
service established under section 44;

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).

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 service provider within
the meaning of section 3(1) of the
Mental Health Act 2014;

- (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;

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;

* * * * *

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

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

- (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
- (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;

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

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

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

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

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);

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

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

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

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

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);

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

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

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.
- (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.
- (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.

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

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

3A Meaning of ***terrorism record***

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.

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

3B Meaning of ***terrorism risk information***

- (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.

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

- (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

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.

* * * * *

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

**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 registered community service; and
 - (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 1.2—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.
- (3) A community service 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;

Children, Youth and Families Act 2005
No. 96 of 2005
Part 1.2—Principles

- (f) the desirability of continuity and permanency in the child's care;
S. 10(3)(f) amended by No. 61/2014 s. 6(1).
- (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;
S. 10(3)(fa) inserted by No. 61/2014 s. 6(2).
- (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

11 Decision-making principles

In making a decision or taking an action in relation to a child, the Secretary or a community service 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)).

- (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 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;
 - (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;

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

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

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.

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

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

14 Further principles for placement of Aboriginal child

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.

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 services to promote the development and adoption of common policies on risk and need assessment for vulnerable children and families;
 - (d) to implement or promote the implementation of appropriate requirements for checks to ensure that all persons employed, engaged or appointed by a community service to work with children—
 - (i) are and continue to be suitable to work with children; and
 - (ii) comply with appropriate ethical and professional standards;
 - (e) to work with other government agencies and community services to ensure that children in out of home care receive appropriate educational, health and social opportunities;

- (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;
 - (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.

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

- (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.

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

16A Power of the Secretary to enter into contracts

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.

16C Committee of management

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

- (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".

16D Record of dealings

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

- (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.

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

16E Secretary's powers in relation to intellectual property

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
 - (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

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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).

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 |
| S. 17(1)(fb) inserted by No. 25/2019 s. 21. | (fb) the power to approve under section 488Q the making of an acknowledgement of sex application; and |
| | (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). |
| S. 17(3) repealed by No. 48/2006 s. 5(2). | * * * * |
| S. 17(4) amended by No. 29/2014 s. 5(2), substituted by No. 21/2015 s. 3(Sch. 1 item 9). | (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—
(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. |
| S. 17(5) inserted by No. 29/2010 s. 15. | (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. |

**18 Secretary may authorise principal officer of
Aboriginal agency to act**

- (1) The Secretary may in writing authorise the principal officer of an Aboriginal agency to perform specified functions and exercise specified powers conferred on the Secretary by or under this Act in relation to a protection order in respect of—
- (a) an Aboriginal child; or
 - (b) a non-Aboriginal child who is a sibling of an Aboriginal child subject to an authorisation under this subsection.
- (2) An authorisation under this section may only be made with the agreement of the Aboriginal agency and the principal officer.
- (2A) 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.
- (3) The principal officer may only be authorised if he or she is an Aboriginal person.
- (4) Before giving an authorisation, 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.
- (5) 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.
- (6) The Secretary may at any time in writing revoke an authorisation under this section and on that revocation the Secretary may continue and

S. 18(1)
substituted by
No. 30/2019
s. 4(1).

S. 18(2A)
inserted by
No. 57/2015
s. 6(1).

complete any action commenced under the authorisation by the principal officer.

S. 18(7)
inserted by
No. 57/2015
s. 6(2).

- (7) 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.

S. 18(8)
inserted by
No. 30/2019
s. 4(2).

- (8) Despite the revocation of an authorisation in respect of an Aboriginal child or if a protection order in respect of the Aboriginal child is no longer in force, an authorisation under this section in respect of a non-Aboriginal child who is a sibling of that Aboriginal child continues to have effect until revoked or until a protection order in respect of the non-Aboriginal child is no longer in force.

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

18A Powers and functions of acting principal officer

- (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.

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

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

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

- (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(2A) to any other person unless the disclosure is—
- (a) to a person employed by that Aboriginal agency; and

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

- (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 registered 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—

- (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. 20
repealed by
No. 82/2012
s. 284.

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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;
- (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;

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

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

23 Power of Secretary to provide funds

- (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, 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

- (1) The Secretary may authorise any community-based child and family service, 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 Sustainability and Environment before giving an authority under this section.
- (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, 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—
 - (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 may—
 - (a) provide advice to the person who made the referral;
 - (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)(a)
amended by
No. 48/2006
s. 7(1).

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

- (2) If a referral is made to a community-based child and family service under section 31 and it considers that the child may be in need of protection, the service must report the matter to the Secretary.
- (3) If a referral is made to a community-based child and family service under section 32, the service 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;
 - (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.

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

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.

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

38 Consultation with Secretary

A community-based child and family service 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

The Secretary and a community-based child and family service must make a written record of each report or referral received and each disclosure made to or by them under this Part.

40 Reporters and referrers protected

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—

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

- (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 346 of the **Mental Health Act 2014**.

S. 40(c)(ii)
substituted by
No. 26/2014
s. 455(Sch.
item 2.3).

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
No. 30/2019
s. 7(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—

(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
No. 30/2019
s. 7(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—

(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—
 - (a) gives written consent to the Secretary; or
 - (b) gives written or oral consent to the community-based child and family service.
- (3) To avoid doubt, the name of a person who made a report or who made a referral may be shared between—
 - (a) the Secretary and any community-based child and family service; and
 - (b) a community-based child and family service and any other community-based child and family service.

S. 41(2)
amended by
No. 30/2019
s. 7(3).

S. 41(3)
inserted by
No. 30/2019
s. 7(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 under section 39.
- (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.

Ch.3 Pt 3.2A
(Heading and
ss 42A–42E)
inserted by
No. 82/2014
s. 28

Part 3.2A—Disclosure of information about child's contact with registrable offender

S. 42A
inserted by
No. 82/2014
s. 28.

42A Interpretation

(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).

S. 42B
inserted by
No. 82/2014
s. 28.

42B Secretaries may disclose information relating to registrable offenders

(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.

42C Chief Commissioner of Police and Secretary may disclose information relating to registrable offenders

S. 42C
inserted by
No. 82/2014
s. 28.

- (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.

42D Disclosure of certain information relating to registrable offender in certain circumstances

S. 42D
inserted by
No. 82/2014
s. 28.

- (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**.

42E Information obtained in certain circumstances not to be disclosed without authority

S. 42E
inserted by
No. 82/2014
s. 28.

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

The object of this Part is to provide for the establishment, registration and monitoring of community services.

Division 2—Departmental services

44 Departmental community services and secure welfare services

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
 - (ii) a service with lock-up facilities as a secure welfare service; or
- (b) abolish a service referred to in paragraph (a).

Division 3—Registration of community services

45 Application for registration

- (1) A body corporate may apply to the Secretary for registration of the body as a community service.
- (2) An application must be in a form approved by the Secretary.

46 Registration

- (1) The Secretary may register a body as a community service if the Secretary is satisfied that the body—

S. 44
substituted by
No. 29/2014
s. 6.

- (a) is established to provide services to meet the needs of children requiring care, support, protection or accommodation and of families requiring support; and
 - (b) will be able to meet the performance standards applicable to community services of that kind.
- (2) A body may be registered in one or more of the categories of registration set out in section 47.

47 Categories of registration

The categories of registration are—

- (a) out of home care service;
- (b) community-based child and family service;
- (c) a prescribed category of service.

48 Conditions on registration

The Secretary may impose any conditions or restrictions that the Secretary considers appropriate on the registration of a community service under this Division.

49 Period of registration

Unless revoked, registration of a body as a community service has effect for a period of 3 years or a longer period as determined by the Secretary in each case.

S. 49
substituted by
No. 61/2014
s. 133.

50 Renewal of registration

- (1) A registered community service may apply to the Secretary for renewal of registration as a community service.

S. 50(3)
substituted by
No. 61/2014
s. 134.

- (2) An application for renewal must be in a form approved by the Secretary.
- (3) Unless revoked, the renewal of registration as a community service has effect for a period of 3 years or a longer period as determined by the Secretary in each case.

S. 51
substituted by
No. 61/2014
s. 135.

51 Revocation of registration

- (1) The Secretary may revoke the registration of a body as a community service if the Secretary considers it appropriate to do so.
- (2) For the purposes of subsection (1), the Secretary may have regard to the following—
 - (a) a report from an authorised assessor under Division 5; or
 - (b) an inquiry under Division 5; or
 - (c) a recommendation of an administrator under Division 6; or
 - (d) the Secretary has ceased providing funding to the body; or
 - (e) the Secretary has terminated a contract with the body for the provision of services under the Act; or
 - (f) any other circumstances that the Secretary considers relevant.

52 Notice to community service

The Secretary must give a registered community service at least 14 days notice and the opportunity to make submissions before—

- (a) refusing an application by the community service for a renewal of registration; or
- (b) revoking the registration of the community service.

53 Application for review

- (1) A body may apply to VCAT for review of a decision by the Secretary—
 - (a) to refuse to register the body as a community service; or
 - (b) to refuse to renew the registration of the body as a community service; or
 - (c) to revoke the registration of the body as a community service.
- (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.

54 Register of community services

The Secretary must keep a register of community services.

55 What information is to be included in the register?

The Secretary must include the following information in the register of community services in respect of each body that is registered under this Division—

- (a) the name of the body;
- (b) the address of the body;
- (c) contact information for the body;
- (d) the category of registration of the body;
- (e) any other information that is prescribed.

56 Registered community service to notify changes

A registered community service must notify the Secretary in writing within 14 days if there is any change to the information recorded in the register of community services in respect of that registered community service.

Penalty: 10 penalty units.

57 Register to be made public

The Secretary must make a copy of the register of community services available for inspection on the Department's Internet site.

Division 4—Performance standards and responsibilities of community services

58 Performance standards

- (1) The Minister may from time to time determine performance standards to be met by community services.
- (2) The Minister may determine different performance standards for different categories of community services.
- (3) The Minister must ensure that each performance standard is published in the Government Gazette.

- (4) A performance standard takes effect—
 - (a) on the day that is 30 days after the day that the performance standard is published in the Government Gazette; or
 - (b) if a later day is specified in the determination, on that later day.
- (5) The Minister may, by determination published in the Government Gazette, amend or revoke a performance standard.

59 What can performance standards provide for?

Performance standards may be made in respect of any matter relating to the operation of a community service including, but not limited to—

- (a) governance;
- (b) probity;
- (c) information management;
- (d) financial viability;
- (e) client care, including cultural standards applicable to client care;
- (f) pre-employment checks and pre-placement checks;
- (g) service delivery and case management;
- (h) privacy and confidentiality;
- (i) complaints management;
- (j) human resource management;
- (k) compliance with this Act and the regulations.

60 Community service to comply with performance standards

A community service must comply with the relevant performance standards applicable to that community service.

61 Responsibilities of registered community services

A registered community service must—

- (a) provide its services in relation to a child in a manner that is in the best interests of the child; and
- (b) ensure that the services provided by the service are accessible to and made widely known to the public, recognising that prioritisation of provision of services will occur based on need; and
- (c) participate collaboratively with local service networks to promote the best interests of children.

Division 5—Monitoring and review of community services

62 Secretary may conduct inquiries

The Secretary may make or cause to be made any inquiries the Secretary considers appropriate relating to any matter arising from the performance by a community service of its powers and functions.

63 Appointment of assessor

- (1) The Secretary may in writing authorise any person as an assessor to conduct an independent review of the performance by a community service of its powers and functions.
- (2) An authorised assessor must report in writing to the Secretary within the time required by the Secretary on the results of the review and any recommendations arising from the review.

- (3) An authorised assessor must not disclose to any person other than the Secretary or the person in charge of or an employee of the community service, whether directly or indirectly, any information acquired by the authorised assessor in carrying out a review under this Division.

Penalty: 10 penalty units.

64 Visits to community services

The Secretary or an authorised assessor may at any time visit any community service—

- (a) to make any examinations or inspections that appear to be necessary regarding the management of the community service; and
- (b) to inspect any part of the premises of that community service; and
- (c) to see any child who is receiving services from the community service; and
- (d) to make inquiries relating to the care of children in the care of that community service; and
- (e) to inspect any document or record relating to the child or that is required to be kept under this Act or the regulations.

65 Community service to assist

The person in charge of the community service and every member of staff of the community service must provide the Secretary or the authorised assessor with such reasonable assistance and access to records and employees as the Secretary or the authorised assessor requires in carrying out a function under this Division.

Division 6—Appointment of administrator

66 Displacement of other laws

- (1) Sections 67 to 71 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency.

S. 66(2)
amended by
Nos 20/2012
s. 226(Sch. 5
item 3), 9/2013
s. 42(Sch. 2
item 6).

- (2) This Division applies despite anything to the contrary in the Co-operatives National Law (Victoria) or the **Associations Incorporation Reform Act 2012** or any other Act establishing a body that is a registered community service.

67 Appointment of administrator

S. 67(1)
amended by
No. 46/2009
s. 4(1)(2).

- (1) If the Minister is satisfied that a registered community service or part of a registered community service is inefficiently or incompetently managed, the Minister may recommend to the Governor in Council that an administrator of the service or the part of the service be appointed.

S. 67(2)
amended by
No. 46/2009
s. 4(3).

- (2) If the Minister proposes that a registered community service or part of a registered community service should be administered by an administrator, the Minister—
- (a) must give notice in the prescribed form to the registered community service of his or her proposal; and

- (b) must consider any submissions made to the Minister by the registered community service within 7 days after the giving of the notice; and
- (c) may consider any other submissions and any other matters the Minister considers appropriate—

before deciding whether or not to recommend the appointment of an administrator.

68 Period of appointment of administrator

- (1) If the Minister recommends the appointment of an administrator, the Governor in Council may appoint an administrator of the registered community service or the part of the service for the period and subject to the terms and conditions that are specified in the instrument of appointment.
- (2) If the Minister recommends to the Governor in Council that the period of appointment of an administrator appointed under this Division be extended, the Governor in Council may, by notice published in the Government Gazette, extend the appointment of that administrator for a further period as specified in the notice.

S. 68
amended by
No. 46/2009
s. 5 (ILA
s. 39B(1)).

S. 68(2)
inserted by
No. 46/2009
s. 5(2).

69 Powers of administrator

- (1) An administrator appointed under this Division—
 - (a) is deemed to be the board or other governing body of the registered community service to the extent that the Minister considers necessary for the purpose of performing functions under this Act or under an agreement under this Act; and

S. 69
substituted by
No. 46/2009
s. 6.

- (b) for the purposes of those functions has all the powers and may exercise any of the duties of the board or other governing body or its members; and
 - (c) is subject to all the duties of the board or other governing body or its members.
- (2) On the day on which an administrator is appointed under this Division in respect of a registered community service for the purposes of its functions under this Act, the members of the board or other governing body cease to constitute the board or other governing body to the extent that the administrator is deemed to be the board or other governing body.
- (3) If an administrator is appointed in respect of part of the business of a registered community service, the administrator and the board or other governing body must ensure that there is in place a process for consultation and decision-making to enable the continuity of operation of the whole of the business of the registered community service.
- (4) If an administrator appointed under this Division to a registered community service, or part of a service, recommends that an allocation of funds in respect of that service under section 23 should be terminated, the Secretary may reallocate those funds with immediate effect.

70 Revocation of appointment of administrator

- (1) If the Minister recommends to the Governor in Council that the appointment of an administrator of a registered community service or part of a registered community service should be revoked, the Governor in Council may by notice published in the Government Gazette declare that the appointment will be revoked on the date specified in the notice.

S. 70(1)
amended by
No. 46/2009
s. 7(1).

- (2) The date specified in the notice must be a date not less than 28 days after the publication of the notice.
- (3) If a notice is published under subsection (1)—
 - (a) the board or other governing body is re-instated as the board or other governing body of the registered community service, or if its members ceased to hold office, is to be re-established by appointment or election as the case may be; and
 - (b) on the date specified in the notice the appointment of the administrator is revoked.

S. 70(3)
substituted by
No. 46/2009
s. 7(2).

71 Remuneration of administrator

The remuneration of an administrator appointed under this Division and any expenses of the administrator necessarily incurred in the administration of the registered community service are to be paid by the Secretary.

Division 7—Information privacy and registered community services

72 Registered community services

The **Privacy and Data Protection Act 2014** applies to a registered community service in relation to the collection and handling of information under this Act as if the registered community service were an organisation within the meaning of that Act.

S. 72
amended by
No. 60/2014
s. 140(Sch. 3
item 5).

Note

The **Health Records Act 2001** may also apply to a registered community service.

Ch. 3 Pt 3.3
Div. 8
(Heading and
ss 72A–72P)
inserted by
No. 29/2014
s. 7.

S. 72A
inserted by
No. 29/2014
s. 7.

Division 8—Secure welfare services— security measures

72A Definitions

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.

S. 72B
inserted by
No. 29/2014
s. 7.

72B Search on entering or leaving a secure welfare service

- (1) A person (whether a child resident, a visitor or any other person) who wishes or is required to enter or leave a secure welfare service must, if asked, submit to a screening search.
- (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.

S. 72C
inserted by
No. 29/2014
s. 7.

72C Secretary may order search

- (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 secure welfare service.
- (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.

S. 72D
inserted by
No. 29/2014
s. 7.

72D Unclothed search of child resident

- (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).

72E Manner of conducting frisk search or unclothed search

S. 72E
inserted by
No. 29/2014
s. 7.

- (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.

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—

- (a) prohibit the person from entering the secure welfare service; or
- (b) if the person is in the secure welfare service, order the person to leave the service immediately.

S. 72G
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.

S. 72H
inserted by
No. 29/2014
s. 7.

72I Seizure register

- (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.

S. 72I
inserted by
No. 29/2014
s. 7.

S. 72J
inserted by
No. 29/2014
s. 7.

72J Certain seized items to be handed to police

S. 72J(1)
amended by
No. 37/2014
s. 10(Sch.
item 18.2).

- (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. 72K
inserted by
No. 29/2014
s. 7.

72K Manner of dealing with seized things that may be used in a legal proceeding

Subject to section 72J, if an article or thing that may be used in a legal proceeding is seized at a secure welfare service, 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.

72L Manner of dealing with seized money

If money is seized at a secure welfare service 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.

S. 72L
inserted by
No. 29/2014
s. 7.

Note

See section 72F(2)(a)(iv).

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 secure welfare service, 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

S. 72M
inserted by
No. 29/2014
s. 7.

- (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.

S. 72N
inserted by
No. 29/2014
s. 7.

72N Disposal

- (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 secure welfare service.
- (2) If an article or thing is disposed of, the Secretary must ensure that the prescribed details are recorded in the seizure register.

S. 72O
inserted by
No. 29/2014
s. 7.

72O Prohibition of use of seclusion as punishment

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.

Part 3.4—Out of home carers

Division 1—Introductory

73 Object of Part

The object of this Part is to provide increased protection for children in out of home care through the registration of persons who are, or are to be, approved or employed or engaged as out of home carers.

74 Definitions

In this Part—

allegation means allegation in a report under section 81 or 82;

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

disqualified person means a person who is disqualified from registration under this Part;

out of home carer means—

- (a) a person who acts as a foster carer for an out of home care service; or
- (b) a person employed or engaged by an out of home care service—
 - (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;

S. 74 def. of
*Commission
for Children
and Young
People*
inserted by
No. 4/2017
s. 13(1).

registered foster carer means a person registered as a foster carer under Division 3;

registered out of home carer means a person registered as an out of home carer under Division 3;

services to children means services provided to children where the provision of the services usually involves or is likely to usually involve working in close proximity to the children but does not include prescribed services.

S. 74 def. of
*services to
children*
amended by
No. 48/2006
s. 10.

Division 2—Approval, employment or engagement of out of home carers

75 Approval of foster carers

- (1) An out of home care service must have regard to the prescribed matters before approving a person to act as a foster carer for the service.
- (2) A disqualified person is not eligible to be approved by an out of home care service as a foster carer.

76 Employment or engagement of carer

- (1) An out of home service must have regard to the prescribed matters before employing or engaging a person—
 - (a) as a carer for children placed with the service; or
 - (b) as a provider of services to children at an out of home care residence managed by the service.

- (2) A disqualified person is not eligible to be employed or engaged by an out of home care service to carry out a function specified under subsection (1).

77 Matters to be considered

The matters prescribed for the purposes of this Division may include matters relating to—

- (a) the checking of criminal records and criminal history;
- (b) suitability and fitness;
- (c) medical, including psychiatric, health;
- (d) skills, experience and qualifications.

78 Notice of approval, employment or engagement of carer

- (1) An out of home care service must notify the Secretary of—
- (a) the approval of a person as a foster carer by that service;
 - (b) the employment or engagement of a person—
 - (i) as a carer for children placed with the service; or
 - (ii) as a provider of services to children at an out of home care residence managed by the service.
- (2) A notice under this section must be given within 14 days after the approval, employment or engagement of the person.
- (3) A notice under this section must include the prescribed information (if any).

79 Notice of revocation of approval or termination of employment or engagement of carer

- (1) An out of home care service must notify the Secretary within 14 days of—
 - (a) the revocation by the service of the approval of a person as a foster carer; or
 - (b) if a person ceases to be employed or engaged by the service—
 - (i) as a carer for children placed with the service; or
 - (ii) as a provider of services to children at an out of home care residence managed by the service.
- (2) A notice under this section must include the prescribed information (if any).

Division 3—Register of out of home carers

80 Register of out of home carers

- (1) The Secretary must keep a register of out of home carers.
- (2) The register of out of home carers must record the following information in respect of each person of whom notice is given to the Secretary under Division 2—
 - (a) name;
 - (b) address;
 - (c) date of birth;
 - (d) date of approval as a foster carer by the out of home care service, if applicable;
 - (e) date of employment or engagement as an out of home carer by the out of home care service, if applicable;

S. 80
(Heading)
amended by
No. 48/2006
s. 11.

- (f) name of notifying out of home care service;
 - (g) any other prescribed information.
- (3) The information about a person's name to be recorded on the register must include—
- (a) the name by which the person is registered under the **Births, Deaths and Marriages Registration Act 1996**, or an equivalent law of another jurisdiction; and
 - (b) any previous name of that person that was registered under that Act or such a law; and
 - (c) any other name used by the person or by which the person is known.
- (4) The Secretary must not record information in respect of a disqualified person in the register.
- (5) The Secretary must remove from the register any entry relating to—
- (a) a person of whom the Secretary receives notice under section 79 that the person has ceased to be approved, employed or engaged as an out of home carer by an out of home care service; or
 - (b) a person who is a disqualified person.
- (6) Subject to this Part, a person who is recorded on the register of out of home carers is registered under this Division.

Division 4—Conduct of out of home carers

81 Report to Secretary by service of allegation about carer

- (1) The person in charge of a registered out of home care service must make a report to the Secretary if—

- (a) the person in charge receives or becomes aware of an allegation that—
 - (i) a person who is or was a registered foster carer has sexually or physically abused a child placed in his or her care by that service; or
 - (ii) a person who is or was a registered out of home carer employed or engaged by the service as an out of home carer has sexually or physically abused a child in the course of that employment or engagement; and
 - (b) the person in charge is reasonably satisfied that an investigation of the allegation by the Secretary is warranted.
- (2) The report must be given within 7 days after the person in charge receives or becomes aware of the allegation.
 - (3) The report must include details of any inquiries made by the out of home care service into the allegation.
 - (4) The report may relate to conduct occurring on or after or not more than 3 years before the date on which this Act receives the Royal Assent.

82 Other reports to Secretary of allegations about carers

- (1) Any person may make a report to the Secretary alleging that—
 - (a) a person who is or was a registered foster carer has sexually or physically abused a child placed in his or her care by an out of home care service; or
 - (b) a person who is or was a registered out of home carer has sexually or physically abused a child in the course of the person's

**S. 82(1)(b)
amended by
No. 56/2007
s. 21(1).**

S. 82(1)(c)
inserted by
No. 56/2007
s. 21(2).

employment or engagement by an out of home care service as an out of home carer; or

(c) a person, while acting as a foster carer, has sexually or physically abused a child who was placed in his or her care by a community service approved under section 58(1) of the **Children and Young Persons Act 1989**; or

S. 82(1)(d)
inserted by
No. 56/2007
s. 21(2).

(d) a person, while employed or engaged as a carer for children by a community service approved under section 58(1) of the **Children and Young Persons Act 1989**, has sexually or physically abused a child placed in his or her care by the community service.

(2) The report may relate to conduct occurring on or after or not more than 3 years before the date on which this Act receives the Royal Assent.

83 Secretary to report allegation to police

The Secretary must report to the Chief Commissioner of Police any allegation of sexual or physical abuse made in a report under section 81 or 82.

84 Notice to carer of allegation

The Secretary must, without delay after receiving a report under section 81 or 82, advise the person about whom the allegation is made—

- (a) that a report has been made; and
- (b) the nature of the allegation; and
- (c) that the Secretary—
 - (i) will consider the report and decide whether an independent investigation of the allegation is warranted; or
 - (ii) has considered the report and decided that no investigation is warranted.

85 Consideration by Secretary of report

- (1) If the Secretary receives a report under section 81 or 82, the Secretary may ask the following persons for more information about the allegation—
 - (a) the person who made the report; and
 - (b) the person about whom the allegation was made.
- (2) A person may but is not required to provide any information requested of the person under this section.

86 Decision by Secretary on report

If the Secretary receives a report under section 81 or 82, the Secretary must consider whether there is a reasonable basis for conducting an investigation and may decide—

- (a) that an independent investigation of the allegation is warranted; or
- (b) that no investigation is warranted.

87 Notice to carer of decision

- (1) The Secretary must give notice of a decision under section 86 to the person about whom the allegation was made.
- (2) The notice must be given without delay after the decision is made.
- (3) If the Secretary decides that an independent investigation is warranted, the notice must specify each allegation to be investigated.
- (4) The notice is not required to be given if the person has already been notified under section 84 that no investigation is warranted.

88 Record of reports

The Secretary must keep a written record of any report made under section 81 or 82 in respect of which the Secretary has decided that an independent investigation of the allegation is warranted.

89 Appointment of investigator

- (1) If the Secretary decides under this Division that an independent investigation of an allegation is warranted, the Secretary may authorise a person to conduct that investigation.
- (2) An authorisation must be in writing.

90 Powers of authorised investigator

- (1) The authorised investigator may at any time visit the out of home care service that approved, employed or engaged the person who is the subject of the investigation—
 - (a) to inspect any document or record relating to a person who is the subject of the investigation or the child in relation to whom the allegation was made; and
 - (b) to interview any person employed or engaged by the out of home care service whom the authorised investigator considers to be relevant to the investigation.
- (2) The authorised investigator may interview—
 - (a) the child in relation to whom the allegation was made; and
 - (b) the person who is the subject of the investigation.
- (3) Before interviewing a child, the authorised investigator must consider, and take all reasonable steps to mitigate, any negative effect that the interview may have on the child.

- (4) The person who is the subject of the investigation may, but is not required to, answer any question of, or provide any information to, the authorised investigator.

91 Out of home care service to assist investigator

The person in charge of the out of home care service and every member of staff of the out of home care service must provide an authorised investigator with such reasonable assistance and access to records and employees of and persons engaged by the service as the authorised investigator requires in carrying out an investigation under this Part.

92 Report by authorised investigator

- (1) An authorised investigator must report in writing to the Secretary, within the time required by the Secretary, on the results of the investigation.
- (2) The report must set out the findings of the investigation.
- (3) The report may include a finding that on the balance of probabilities, the person who was the subject of the investigation has physically or sexually abused the child.

93 Decision of Secretary following investigation

- (1) After receiving a report from the authorised investigator in relation to an allegation against a person, the Secretary must decide whether to refer the matter for hearing by the Suitability Panel.
- (2) The Secretary must not refer the matter to the Suitability Panel unless—
 - (a) the report of the authorised investigator includes a finding specified in section 92(3) in respect of the person; and

- (b) the Secretary considers that the person poses an unacceptable risk of harm to children.
- (3) In making a decision, the Secretary must not draw any adverse inference from a failure or refusal by the person who is the subject of the investigation to answer any question by, or provide any information to, the authorised investigator.

94 Notice to carer of result of investigation

- (1) The Secretary must, within 14 days after receiving a report of an investigation under this Part, advise the person who was the subject of the investigation—
 - (a) as to the result of the investigation; and
 - (b) as to whether or not the matter is to be referred for hearing by the Suitability Panel.
- (2) If the notice states that the matter is to be referred for hearing by the Suitability Panel, the notice must be accompanied by a copy of the report of the investigation.

95 Notice to out of home care service of result of investigation

If the Secretary decides not to refer the matter for hearing by the Suitability Panel, the Secretary must within 14 days after receiving a report of an investigation under this Part, advise any out of home care service to which information has been provided under section 127 about the investigation—

- (a) that the investigation has been completed; and
- (b) that the matter will not be referred for hearing by the Suitability Panel.

96 Referral to Suitability Panel

- (1) If the Secretary decides to refer a matter to the Suitability Panel under this Part, the Secretary must give notice of the referral to the chairperson of the Suitability Panel.
- (2) The notice must—
 - (a) be in the prescribed form and include—
 - (i) the decision of the Secretary in relation to the report of the investigation; and
 - (ii) the reasons for that decision; and
 - (b) be accompanied by a copy of the report of the investigation.

97 Secretary not to proceed if police investigation is proceeding

- (1) Despite anything to the contrary in this Division, if the Secretary is or becomes aware that an allegation is the subject of a police investigation, the Secretary must defer giving any notice or further notice or taking any step or further step or making any decision or further decision under this Division in respect of the allegation until the completion of that investigation.
- (2) On completion of the police investigation, the Secretary may take into account any information he or she receives as to the results of the investigation to reconsider or to make any decision under this Division.
- (3) If the Secretary has given notice to a person under section 84, and the Secretary subsequently defers the matter, the Secretary must notify the person in writing of the deferral and of the ending of the deferral.

Division 5—The Suitability Panel

Subdivision 1—Establishment and constitution

98 Establishment of Panel

There is established a Panel to be called the Suitability Panel.

99 Constitution of Panel

S. 99(1)
amended by
No. 46/2009
s. 8.

- (1) The Suitability Panel consists of a chairperson and at least 5 other members appointed by the Governor in Council on the recommendation of the Minister.
- (2) The chairperson must be a legal practitioner.
- (3) In recommending other persons for appointment to the Suitability Panel, the Minister must have regard to the need to appoint people with the qualifications and experience in law, social work, psychology and the treatment of sex offenders and in any other discipline required for the Panel to perform its functions.
- (4) The Governor in Council may appoint a person who is a legal practitioner to be acting chairperson during any period when—
 - (a) there is a vacancy in the office of chairperson; or
 - (b) the chairperson is absent on leave or for any reason is temporarily unable to perform the duties of chairperson.
- (5) The acting chairperson has during the period of acting as chairperson the same powers and duties as the chairperson.

100 Terms and conditions of appointment

- (1) A member of the Suitability Panel is appointed for a term of 3 years and is eligible to be reappointed.
- (2) The acting chairperson may be appointed for a period of not more than 3 years specified in the instrument of appointment.
- (3) A member of the Suitability Panel is entitled to be paid the remuneration and allowances fixed from time to time by the Governor in Council in respect of that member.
- (4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of the Suitability Panel in respect of the office of member.
- (5) A member of the Suitability Panel may at any time resign from office by letter in writing delivered to the Minister.
- (6) The Governor in Council may at any time remove a member of the Suitability Panel from office.
- (7) Subsections (3) to (6) apply to the acting chairperson.

S. 100(4)
substituted by
No. 80/2006
s. 26(Sch.
item 12.1).

101 Functions of Panel

The functions of the Suitability Panel are—

- (a) to hear any matter referred to it by the Secretary under this Part; and
- (b) to determine whether or not a person should be disqualified from being placed on the register of out of home carers; and
- (c) to hear and determine any application by a person for the removal of a disqualification under this Part.

102 Executive officer of Panel

- (1) An executive officer of the Suitability Panel shall be employed under Part 3 of the **Public Administration Act 2004**.
- (2) The functions of the executive officer are—
 - (a) to assist the Suitability Panel; and
 - (b) to give notice of hearings and determinations of the Suitability Panel; and
 - (c) to fix times and dates for hearings of the Suitability Panel.

103 Constitution of Suitability Panel for hearings

S. 103(1)
amended by
No. 63/2016
s. 15.

- (1) The Suitability Panel is to be constituted for the purposes of a particular matter by the chairperson and 2 other members of the Suitability Panel.
- (2) The chairperson determines the members who are to constitute the Suitability Panel for a particular matter.
- (3) The chairperson must preside at any hearing by the Suitability Panel.

Subdivision 2—Procedure of Suitability Panel in respect of allegation

104 Notice to parties of hearing

- (1) If the Secretary refers a matter to the Suitability Panel under this Part, the executive officer of the Panel must cause notice of the hearing of the matter to be served on the person who was the subject of the investigation to which the matter relates.
- (2) The notice of hearing must—
 - (a) be in the prescribed form; and
 - (b) state the nature of the hearing and the allegation made against the person; and

- (c) give the time, date and place of the hearing;
and
 - (d) state that the person has the right to
be present at the hearing and to make
submissions and to be legally represented
at the hearing; and
 - (e) state that the hearing is not open to the
public; and
 - (f) list the findings that the Suitability Panel can
make; and
 - (g) state that there is a right to apply for a review
of a decision of the Suitability Panel; and
 - (h) be accompanied by a copy of the notice
given by the Secretary under section 96.
- (3) The notice must be served in accordance with
section 593 at least 28 days before the date set
for the hearing of the matter.

S. 104(3)
amended by
No. 4/2017
s. 13(2).

105 Finding of Panel on allegation

- (1) At a hearing the Suitability Panel must first
determine whether or not the allegation that the
person has physically or sexually abused the child
is proved on the balance of probabilities.
- (2) In making the determination, the Suitability Panel
must have regard to—
 - (a) the allegation referred by the Secretary to the
Panel; and
 - (b) any evidence presented to the Panel by any
of the parties to the hearing; and
 - (c) any other matters that the Panel considers
relevant to its determination.

- (3) The Suitability Panel must not consider any other allegations or findings of misconduct by the person when making the determination.
- (4) The Suitability Panel must not draw any adverse inference from a failure or refusal by the person to answer any question by, or provide any information to, the authorised investigator or the Panel when making the determination.
- (5) If the Suitability Panel determines that the allegation is proved, the Panel must make a finding of misconduct against the person.
- (6) If the Suitability Panel determines that the allegation is not proved, the Panel must state that fact and that no finding of misconduct has been made against the person in respect of the allegation.

106 Finding in relation to disqualification

- (1) If the Suitability Panel has made a finding of misconduct against a person, the Panel must then determine on the balance of probabilities whether or not the person poses an unacceptable risk of harm to children.
- (2) In making the determination the Suitability Panel must consider any of the following factors that the Panel considers relevant, giving a factor the weighting that the Panel considers appropriate in the circumstances—
 - (a) the gravity of the misconduct;
 - (b) any previous findings of misconduct by the Suitability Panel in respect of the person;
 - (c) the likelihood of the person physically or sexually abusing a child in the future;
 - (d) the recency of the misconduct;

- (e) the relevance of the misconduct to the role of the person as an out of home carer;
 - (f) the history of the person's work with the out of home care agency as an out of home carer.
- (3) If the Suitability Panel finds that the person poses an unacceptable risk of harm to children, the Panel must find that the person should be disqualified from registration under this Part.
- (4) If the Suitability Panel determines that the person does not pose an unacceptable risk of harm to children, the Panel must state that fact and that no finding of disqualification has been made against the person.
- (5) If the Suitability Panel finds that the person should be disqualified from registration under this Part, the person is disqualified from registration under this Part.

107 Notice of Panel's findings and determinations

- (1) The Suitability Panel must notify the Secretary and the Commission for Children and Young People without delay of its findings and determinations under sections 105 and 106 in respect of an allegation and may provide reasons for the findings and determinations.
- (2) The Suitability Panel must notify the following persons without delay if it finds under section 106 that a person should be disqualified and may provide reasons for the finding—

S. 107(1)
amended by
No. 4/2017
s. 13(3).

S. 107(2)
amended by
No. 4/2017
s. 13(4),
substituted by
No. 31/2018
s. 70.

- (a) the Secretary within the meaning of the
Worker Screening Act 2020;

S. 107(2)(a)
amended by
No. 34/2020
s. 180.

S. 107(3)
amended by
No. 4/2017
s. 13(5).

- (b) the Chairperson of the Victorian Institute of Teaching established under Part 2.6 of the **Education and Training Reform Act 2006**.
- (3) The Suitability Panel must give the person about whom the allegation was made written notice of its findings and determinations under sections 105 and 106 in respect of the allegation and reasons, if any, within 14 days after the findings and determinations are made.

108 Secretary to record finding

- (1) On receipt of the notice under section 107 of a finding of disqualification of a person, the Secretary must immediately make a record of the disqualification of the person.
- (2) The record of disqualification of a person must set out the following information in respect of the person—
 - (a) name;
 - (b) address;
 - (c) date of birth;
 - (d) date of disqualification;
 - (e) the reason given by the Suitability Panel for the disqualification.
- (3) The information about a person's name to be recorded under this section must include—
 - (a) the name by which the person is registered under the **Births, Deaths and Marriages Registration Act 1996**, or an equivalent law of another jurisdiction; and
 - (b) any previous name of that person that was registered under that Act or such a law; and
 - (c) any other name used by the person or by which the person is known.

109 Notice to out of home care service

If an allegation is made against a person under this Part, the Secretary must notify the out of home care service by which the person is currently approved, employed or engaged of the findings or determinations of the Suitability Panel or of VCAT in respect of the allegation.

Subdivision 3—Review by Suitability Panel of disqualification

110 Application for review of disqualification

- (1) A disqualified person may apply to the Suitability Panel for the removal of the disqualification.
- (2) An application must be in the prescribed form and must state the reasons why the person believes the disqualification should be removed.
- (3) The application must set out the way in which the applicant's circumstances have changed and why the applicant no longer poses an unacceptable risk of harm to children.
- (4) An application may not be brought under this section before the end of the period of 12 months after the disqualification takes effect unless the Panel considers that exceptional circumstances exist.

111 Notice to parties of hearing of application

- (1) The executive officer of the Suitability Panel must give notice to the applicant and the Secretary of the hearing of an application under this Division.
- (2) The notice of hearing must—
 - (a) be in the prescribed form; and
 - (b) state the nature of the hearing; and
 - (c) give the time, date and place of the hearing; and

- (d) state that any party to the hearing has the right to be present at the hearing and to make submissions and to be legally represented at the hearing; and
 - (e) state that the hearing is not open to the public; and
 - (f) list the findings that the Suitability Panel can make; and
 - (g) state that there is a right to apply for a review of a decision of the Suitability Panel; and
 - (h) in the case of a notice to the Secretary, be accompanied by a copy of the application.
- (3) The notice must be served at least 28 days before the date set for the hearing of the application.

112 Finding in relation to application

- (1) In considering an application under this Division the Panel must determine whether or not on the balance of probabilities the person should continue to be disqualified or should have the disqualification removed.
- (2) In making the determination, the Suitability Panel must consider—
 - (a) if the conduct that resulted in the disqualification was dealt with as an offence—
 - (i) any finding of a court in respect of the offence and any reasons for that finding; and
 - (ii) any sentence imposed by a court in respect of the offence;
 - (b) the applicant's behaviour since he or she was disqualified;

- (c) any information, evidence or submissions presented to the Panel by the applicant, the Secretary or any other person.
- (3) In making a determination, the Suitability Panel may also consider any of the following factors, that the Panel considers relevant—
 - (a) if the conduct that resulted in the disqualification was an offence at the time the conduct occurred, whether the conduct has since been decriminalised;
 - (b) the period of time that has elapsed since the person was disqualified;
 - (c) any other matter the Panel considers relevant to the application.
- (4) If the Suitability Panel determines that the applicant's disqualification from registration should be removed—
 - (a) the Panel must make a finding to that effect; and
 - (b) the person is no longer disqualified from being registered under this Part.

113 Notice of Panel's determination on application

- (1) The Suitability Panel must notify the Secretary and the Commission for Children and Young People without delay of its determination in respect of an application under this Division and may provide reasons for the determination.
- (2) The Suitability Panel must notify the following persons without delay if it finds, under section 112, that a person's disqualification should be removed and may provide reasons for the finding—

S. 113(1)
amended by
No. 4/2017
s. 13(6).

S. 113(2)
amended by
No. 4/2017
s. 13(7),
substituted by
No. 31/2018
s. 71.

S. 113(2)(a)
amended by
No. 34/2020
s. 181.

(a) the Secretary within the meaning of the
Worker Screening Act 2020;

(b) the Chairperson of the Victorian Institute of
Teaching established under Part 2.6 of the
Education and Training Reform Act 2006.

S. 113(3)
amended by
No. 4/2017
s. 13(8).

(3) The Suitability Panel must give the applicant
written notice of its determination and reasons,
if any, in respect of the application within
14 days after the determination is made.

114 Secretary to record removal of disqualification

On receipt of a notice under section 113 of
a determination that a disqualification of a
person should be removed, the Secretary must
immediately make a record of the removal of
the disqualification in the record kept under
section 108.

Subdivision 4—General procedure of Suitability Panel

115 Conduct of hearing

(1) At a hearing—

- (a) the Suitability Panel must hear and
determine the matter before it; and
- (b) the person who is the subject of the
hearing and the Secretary are entitled
to be present, to make submissions and
to be legally represented.

(2) A hearing must be closed to the public.

116 Procedure at hearings

- (1) At a hearing of the Suitability Panel under this Part—
 - (a) subject to this Part and the regulations, the procedure of the Panel is in its discretion; and
 - (b) the proceedings must be conducted with as little formality and technicality as the requirements of this Part and the proper consideration of the matter permit; and
 - (c) the Panel is not bound by rules of evidence but may inform itself in any way it thinks fit; and
 - (d) the Panel is bound by the rules of natural justice.
- (2) Subject to the regulations, before permitting a child to appear before or be questioned in any hearing, the Suitability Panel must consider and take all reasonable steps to mitigate any negative effect that the hearing may have on the child.

117 Powers of panel conducting a formal hearing

Sections 14, 15, 16 and 21A of the **Evidence (Miscellaneous Provisions) Act 1958**, as in force immediately before their repeal, apply to the Suitability Panel in the conduct of a hearing as if it were a Board or the Chairman of a Board appointed by the Governor in Council.

S. 117
amended by
Nos 69/2009
s. 54(Sch. Pt 2
item 10),
67/2014
s. 147(Sch. 2
item 8.1).

Subdivision 5—Review by VCAT

118 Review by VCAT

- (1) A person may apply to VCAT for review of a finding or determination of the Suitability Panel under section 105, 106 or 112.

- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the applicant is given notice under this Part of the finding or determination;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the finding, 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.

Division 6—Offences

119 Out of home care service not to approve, engage or employ disqualified person

- (1) An out of home care service is guilty of an offence if the out of home care service knowingly or recklessly—
 - (a) approves a disqualified person as a foster carer; or
 - (b) employs or engages a disqualified person—
 - (i) as a carer for children placed with the service; or
 - (ii) to provide services to children at an out of home care residence managed by the service.
- (2) An out of home care service that is guilty of an offence under this section is liable to a penalty not exceeding 240 penalty units.

120 Out of home care service must ask Secretary if person is disqualified

An out of home care service must ask the Secretary for advice as to whether or not a person is a disqualified person before—

- (a) approving the person as a foster carer; or
- (b) employing or engaging the person—
 - (i) as a carer for children placed with the service; or
 - (ii) to provide services to children at an out of home care residence managed by the service.

Penalty: 300 penalty units.

121 Offence to apply for work as out of home carer while disqualified

A disqualified person must not knowingly apply for approval, employment or engagement by an out of home care service as an out of home carer.

Penalty: 240 penalty units or 2 years imprisonment.

122 Offence to apply to work as out of home carer without disclosing investigation

A person who knows that he or she is the subject of an allegation that is the subject of a continuing investigation under Division 4 or 5 or a continuing police investigation must not apply for approval, employment or engagement by an out of home care service as an out of home carer without disclosing the existence of that investigation.

Penalty: 60 penalty units.

Division 7—General

123 Information provided not to be used in criminal proceedings

The following information is not admissible in criminal proceedings (other than proceedings for perjury) against a person—

- (a) any information provided to the Secretary, an authorised investigator, the Suitability Panel or VCAT in the investigation of an allegation or hearing of a matter relating to an allegation against a person; and
- (b) any finding or determination of the Secretary, Suitability Panel or VCAT about a person under this Part.

124 Protection of reporter

Subject to section 125, the Secretary must not disclose the identity of or disclose any information that is likely to lead to the disclosure of the identity of a person who made a report to the Secretary under section 82 if the Secretary is satisfied that—

- (a) the disclosure of the identity of the person making the report is likely to place the child who is alleged to have been abused at risk of harm; or
- (b) the identity of the person who made the report should be protected for the sake of the health or safety of that person or members of his or her family.

125 Disclosure of information to police and investigator

- (1) The Secretary may disclose to a police officer and to any person appointed under this Part to conduct the independent investigation—

S. 125
amended by
Nos 37/2014
s. 10(Sch.
item 18.3),
4/2017 s. 13(9)
(ILA s. 39B(1)).

- (a) the decision that an investigation is warranted; and
 - (b) the nature of the allegation to be investigated; and
 - (c) any information obtained by the Secretary in relation to the allegation.
- (2) The Secretary may disclose to the Commission for Children and Young People the matters referred to in subsection (1)(a), (b) and (c) if the allegation to be investigated is a reportable allegation within the meaning of Part 5A of the **Child Wellbeing and Safety Act 2005**.

S. 125(2)
inserted by
No. 4/2017
s. 13(9).

126 Secretary may provide information for the purpose of proceedings

The Secretary may provide information from any record kept by the Secretary under this Part for the purpose of any proceeding by the Suitability Panel or VCAT under this Part.

127 Limited disclosure of information to out of home care services

- (1) The Secretary may disclose to an out of home care service, or the person in charge of the out of home care service, by whom a person is employed or engaged the fact that an investigation is to be or is being conducted under this Part into an allegation about that person.
- (2) At the request of an out of home care service, or the person in charge of an out of home care service, the Secretary must provide a statement as to whether or not an investigation is to be or is being conducted under this Part in relation to a person whom the service is proposing to—
 - (a) approve as a foster carer; or

- (b) employ or engage—
 - (i) as a carer for children placed with the service; or
 - (ii) as a provider of services to children at an out of home care residence managed by the service.
 - (3) The Secretary must not disclose under subsection (1) or (2)—
 - (a) the nature of the allegation; or
 - (b) any other information obtained by the Secretary in relation to the allegation.
 - (4) At the request of an out of home care service or the person in charge of an out of home care service, the Secretary must provide a statement as to whether or not a person whom the service is proposing to—
 - (a) approve as a foster carer; or
 - (b) employ or engage—
 - (i) as a carer for children placed with the service; or
 - (ii) as a provider of services to children at an out of home care residence managed by the service—
- is a disqualified person.
- (5) An out of home care service or person to whom information is disclosed under this section must not disclose that information to any other person.

Penalty: 60 penalty units.

128 Disclosure by Chief Commissioner of Police

The Chief Commissioner of Police may disclose to the Secretary any information he or she holds in relation to an allegation being considered by the Secretary under this Part.

129 Disclosure of information by Secretary

- (1) Except as provided in this Part, the Secretary must not disclose to any person—
 - (a) any record kept by the Secretary under this Part; or
 - (b) any information provided to the Secretary by an authorised investigator or the Chief Commissioner of Police under this Part.

S. 129
amended by
No. 61/2014
s. 136 (ILA
s. 39B(1)).

- (2) The Secretary may disclose a record or information referred to in subsection (1) to a person for the purpose of protecting a child.

S. 129(2)
inserted by
No. 61/2014
s. 136.

130 Confidentiality of information acquired by authorised investigator

- (1) An authorised investigator must not disclose to any person other than the Secretary, the Suitability Panel or, if the investigation relates to a reportable allegation, the Commission for Children and Young People, whether directly or indirectly, any information acquired by the authorised investigator in carrying out an investigation under this Part, except as far as is necessary to carry out the investigation.

S. 130
amended by
No. 4/2017
s. 13(10)(11)
(ILA s. 39B(1)).

Penalty: 10 penalty units.

- (2) In this section, reportable allegation has the same meaning as in the **Child Wellbeing and Safety Act 2005**.

S. 130(2)
inserted by
No. 4/2017
s. 13(11).

131 Confidentiality of proceedings

A person must not publish or broadcast or cause to be published or broadcast any report of a hearing of the Suitability Panel under this Part which contains information which would enable—

- (a) in the case of a hearing under Subdivision 2 of Division 5, the person against whom the allegation has been made to be identified; or
- (b) in the case of the hearing of an application under Subdivision 3 of Division 5, the applicant to be identified; or
- (c) a child to whom an allegation that has been considered by the Panel relates to be identified; or
- (d) if the Panel has made a determination prohibiting the publication or broadcast of the identity of a witness, that witness to be identified.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

132 Disclosure allowed for referee checks

An out of home care service by whom a disqualified person has been approved, employed or engaged as an out of home carer is not guilty of an offence under section 127(5) or 131 if it discloses the fact that a person is a disqualified person to another out of home care service in the course of a referee check in respect of that person.

S. 132A
inserted by
No. 4/2017
s. 14.

132A Immunity

- (1) A member of the Suitability Panel is not personally liable for anything done or omitted to be done in good faith—

- (a) in the exercise of a power or the discharge of a duty under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a member of the Suitability Panel attaches instead to the Crown.

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;

service provider means—

- (a) the Secretary; or
- (b) the person in charge of a registered out of home care service; 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).

S. 134 def. of
service
provider
amended by
No. 23/2006
s. 234(3).

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
- (c) been in the care of a residential service within the meaning of the **Disability Act 2006**.

S. 144(c)
substituted by
No. 23/2006
s. 234(4).

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 in his or her official capacity; or
- (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

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.

S. 155
amended by
No. 29/2006
s. 3(Sch. 1
item 5.1).

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
 - (c) by an out of home care service or a secure welfare service; 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
 - (ga) by a registered NDIS provider providing to the child under the NDIS short term accommodation and assistance or supported independent living; or

S. 161(2)(ga)
inserted by
No. 19/2019
s. 254(3).

(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—

out of home carer has the same meaning as in
section 74.

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.
- (3) For the purposes of subsection (1)(c), (d), (e) and (f)—
 - (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.

S. 162(2)
amended by
No. 48/2006
s. 12.

S. 162(3)
inserted by
No. 52/2013
s. 6.

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
- (b) to promote a clear definition of the respective responsibilities, in relation to children at risk of harm, of protective interveners, community services 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

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.
- (3) A case plan for a child includes—
 - (a) a permanency objective for a child as required by section 167; and
 - (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.

Ch. 4 Pt 4.3
Div. 1
(Heading)
amended by
No. 61/2014
s. 95.

S. 166(2)(b)
amended by
No. 52/2013
s. 7.

S. 166(3)
substituted by
No. 61/2014
s. 96.

167 Permanency objective

- (1) A case plan must include one of the following objectives (a *permanency 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;

S. 167
substituted by
No. 61/2014
s. 97.

- (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;
 - (c) adoption—the objective of placing the child for adoption under the **Adoption Act 1984**;
 - (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)(c) to (e), it is to be preferred that a child is placed—
- (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.
- (3) For the purposes of this section, a permanency objective of family reunification would be appropriate if the child has been in out of home care for a cumulative period of less than 12 months and the safe reunification of the child with a parent is likely to be achieved.
- (4) For the purposes of this section, a permanency objective set out in subsection (1)(c) to (e) would be appropriate if—

S. 167(3)
amended by
No. 8/2016
s. 3(1).

- | | |
|---|--|
| (a) the child has been in out of home care for a cumulative period of 12 months and there is no real likelihood for the safe reunification of the child with a parent in the next 12 months; or | S. 167(4)(a) amended by No. 8/2016 s. 3(2)(a). |
| (b) except in exceptional circumstances, the child has been in out of home care for a cumulative period of 24 months. | S. 167(4)(b) amended by No. 8/2016 s. 3(2)(b). |
| (5) Section 287A(4) applies to the determination of a cumulative period under this section. | S. 167(5) inserted by No. 8/2016 s. 3(3). |

168 Preparation of case plan

- | | |
|---|---|
| (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. | S. 168 substituted by No. 61/2014 s. 97. |
| (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

(ba) within 8 weeks after the making by the Court of a therapeutic treatment (placement) order; and | S. 168(2)(ba) inserted by No. 8/2016 s. 4(2). |

- (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 permanency objective for the child is family reunification; and
 - (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 permanency objective in the case plan; and

- (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.

169B Preparation of therapeutic treatment plan

S. 169B
inserted by
No. 33/2018
s. 4.

- (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.

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Ss 170, 171
repealed by
No. 61/2014
s. 97.

Division 2—Responsibilities of Secretary for a child for whom Secretary has parental responsibility

Ch. 4 Pt 4.3
Div. 2
(Heading)
substituted by
No. 61/2014
s. 9.

172 Powers of Secretary when Secretary has parental responsibility

S. 172
(Heading)
amended by
No. 61/2014
s. 10(1).

- (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.
- (2) The Secretary, in relation to a child for whom the Secretary has parental responsibility—
- (a) has the sole right to care of the child; and

S. 172(1)
amended by
No. 61/2014
s. 10(2).

S. 172(2)
amended by
No. 61/2014
s. 10(3)(a).

S. 172(2)(a)
substituted by
No. 61/2014
s. 10(3)(b).

S. 172(3)
substituted by
No. 61/2014
s. 10(4).

- (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.
- (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

S. 173(1)(a)
substituted by
No. 61/2014
s. 11(1).

- (1) This section applies in relation to a child—
- (a) for whom the Secretary has parental responsibility under this Act; or
 - (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;
- (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.

S. 173(2)(c)
amended by
No. 61/2014
s. 11(2).

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 to
s. 175A(1)
amended by
No. 30/2019
s. 8.

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.

S. 175A(2)
amended by
No. 61/2014
s. 12(2).

- (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.
- (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

- (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.
- (2) The Secretary or the person in charge of an out of home care service may authorise a person who has care 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. 175B
inserted by
No. 61/2014
s. 172.

S. 175B(1)(b)
amended by
No. 61/2014
s. 12(3).

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.

S. 175C
inserted by
No. 61/2014
s. 12(4).

- (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.

S. 176
substituted by
No. 61/2014
s. 98.

176 Cultural support for Aboriginal child

- (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.

S. 177(5)
amended by
No. 61/2014
s. 67(a).

- (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.
- (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 to provide information to carers

- (1) If the Secretary or an out of home care service intends to place a child in the care of a person other than the parent of the child, the Secretary or out of home care service must provide the carer with all information that is known to the Secretary or the service 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.
- (2) If the Secretary or an out of home care service has placed a child in the care of a person other than the parent of the child, the Secretary or out of home care service must provide the carer with any information known to the Secretary or the service 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).

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).

- (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)(c)
amended by
Nos 24/2006
s. 6.1.2(Sch. 7
item 7.2(a)),
19/2014
s. 89(2).

- (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)(d)
substituted by
No. 24/2006
s. 6.1.2(Sch. 7
item 7.2(b)).

- | | |
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| (e) a police officer; | S. 182(1)(e)
amended by
No. 37/2014
s. 10(Sch.
item 18.5). |
| (ea) a person in religious ministry; | S. 182(1)(ea)
inserted by
No. 30/2019
s. 9. |
| (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)(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. |
| (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); | S. 182(1)(fa)
inserted by
No. 80/2011
s. 79(Sch.
item 2.3). |
| (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; | |

S. 182(2)
amended by
No. 19/2014
s. 89(3).

- (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.
- (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.
- (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.
- (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.

S. 184(2A)
inserted by
No. 30/2019
s. 10(1).

S. 184(3A)
inserted by
No. 30/2019
s. 10(2).

185 Report on child in need of therapeutic treatment

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

S. 185
amended by
No. 33/2018
s. 5.

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.
- (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.

S. 187(3)
inserted by
No. 36/2014
s. 6(3),
amended by
No. 36/2014
s. 7(4).

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
 - (ii) section 346 of the **Mental Health Act 2014**.

S. 189(c)(ii)
substituted by
No. 26/2014
s. 455(Sch.
item 2.3).

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
No. 48/2006
s. 13(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 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.
- (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 if—
 - (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 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(3)
amended by
No. 37/2014
s. 10(Sch.
item 18.5).**

**S. 191(4)
inserted by
No. 48/2006
s. 13(2).**

**S. 191(5)
amended by
No. 48/2006
s. 13(2).**

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
 - (e) a person in charge of, or employed in, a registered community service; 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—
 - (i) section 141 of the **Health Services Act 1988**; or
 - (ii) section 346 of the **Mental Health Act 2014**; or
 - (iii) Part 6A of the **Child Wellbeing and Safety Act 2005**.

S. 192(3)(c)
substituted by
No. 30/2019
s. 11.

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.

193 Disclosure of information in course of consultation by a community-based child and family service

- (1) This section applies if a community-based child and family service receives a referral under Part 3.2.
- (2) The community-based child and family service may, for the purpose of assessing a risk to a child, consult with any of the following—
 - (a) the Secretary;
 - (b) a community service;
 - (c) a service agency;
 - (d) an information holder.
- (3) The community-based child and family service may, for the purpose of determining which community-based child and family service or service agency is an appropriate body to provide assistance for the child or the family of the child

S. 193
amended by
No. 26/2014
s. 455(Sch.
item 2.3),
substituted by
No. 11/2018
s. 19.

or the mother of the unborn child, consult with any of the following—

- (a) the Secretary;
 - (b) a community service;
 - (c) a service agency.
- (4) For the purpose only of a consultation under this section, a community-based child and family service 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.
- (5) A person or entity consulted under subsection (2) or (3) by a community-based child and family service may disclose information about the child or family to the community-based child and family service.
- (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 346 of the **Mental Health Act 2014**; or
 - (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.

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.

S. 195
amended by
No. 37/2014
s. 10(Sch.
item 18.5),
substituted by
No. 11/2018
s. 20.

196 Authorised officer may require disclosure of information

S. 196(1)
amended by
No. 11/2018
s. 21.

- (1) This section applies if the Secretary has authorised under section 195 the giving of a direction in relation to a child.
- (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.

S. 196(2A)
inserted by
No. 48/2006
s. 14(1).

- (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.
- (3) An authorised officer may disclose to the Secretary any information or document provided to the authorised officer under this Division.

S. 196(3A)
inserted by
No. 48/2006
s. 14(2).

- (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.
- (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 of 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.

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.

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).

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.
- (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

S. 200(2)
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 10).

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).
- (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.

S. 204(2)
amended by
No. 37/2014
s. 10(Sch.
item 18.6).

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—
 - (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)(a)
amended by
No. 11/2018
s. 22(1)(a).

Children, Youth and Families Act 2005
No. 96 of 2005
Part 4.6—Investigation

S. 205(2)(b)
repealed by
No. 11/2018
s. 22(1)(b).

* * * *

Note to
s. 205(2)
inserted by
No. 23/2017
s. 32(2).

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.

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

S. 207(1)
amended by
No. 37/2014
s. 10(Sch.
item 18.7(a)).

- (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.

- (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.

S. 207(2)
amended by
No. 37/2014
s. 10(Sch.
item 18.7(a)).

Penalty: 10 penalty units.

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.

Note to
s. 207(2)
inserted by
No. 23/2017
s. 32(3),
substituted as
Notes by
No. 11/2018
s. 24.

- (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.

S. 207(3)
amended by
No. 37/2014
s. 10(Sch.
item 18.7(b)).

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

S. 208(c)(ii)
substituted by
No. 26/2014
s. 455(Sch.
item 2.3).

(ii) section 346 of the **Mental Health Act 2014**.

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—
 - (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)(a)
amended by
No. 11/2018
s. 25(a).

* * * * *

S. 210(2)(b)
repealed by
No. 11/2018
s. 25(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. 210(2)
inserted by
No. 23/2017
s. 32(4).

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.

Children, Youth and Families Act 2005
No. 96 of 2005
Part 4.6—Investigation

S. 211(2)
amended by
Nos 61/2014
s. 145, 23/2017
s. 32(4),
repealed by
No. 11/2018
s. 26.

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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 346 of the **Mental Health Act 2014**.

S. 212(c)(ii)
substituted by
No. 26/2014
s. 455(Sch.
item 2.3).

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

A proceeding in the Family Division is commenced by filing an application with the appropriate registrar.

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.
- (7) Nothing in subsection (1)(d) prevents the application of Part 3.10 of the **Evidence Act 2008**.

S. 215(7)
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 7.3).

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.

S. 215A
inserted by
No. 52/2013
s. 10.

215B Management of child protection proceedings

- (1) Without limiting Part 1.2 or section 215(1), in any proceeding before the Family Division under this Act, the Court may—
- (a) consider the needs of the child and the impact that the proceeding may have on the child;

S. 215B
inserted by
No. 52/2013
s. 11.

- (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.

216 Power of Family Division to make certain orders by consent in absence of parties

S. 216
amended by
No. 61/2014
s. 68.

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.

216A Child not required to attend Court in Family Division

S. 216A
inserted by
No. 52/2013
s. 12.

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

S. 217(1)
amended by
No. 52/2013
s. 14(2).

conference to one or two convenors appointed under section 227.

S. 217(2)
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(3)
repealed by
No. 52/2013
s. 14(3).

* * * *

S. 218
(Heading)
amended by
No. 52/2013
s. 15(1).

218 What is a conciliation conference?

S. 218(1)
amended by
No. 52/2013
s. 15(2).

- (1) The purpose of a conciliation conference is to enable the parties to the application, with the assistance of the convenor or convenors—
- (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.

* * * *

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. 220
(Heading)
amended by
No. 52/2013
s. 17(1).
S. 220
amended by
No. 52/2013
s. 17(2).

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
(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)).

- (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.

S. 221(2)
inserted by
No. 11/2021
s. 30.

222 Who is to attend a conciliation conference?

- (1) A conciliation conference is to be attended by the child's parent and the Secretary.
- (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;

S. 222
(Heading)
amended by
No. 52/2013
s. 19(1).

S. 222(1)
amended by
No. 52/2013
s. 19(2).

- (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.
- (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.

S. 222(8)
inserted by
No. 11/2021
s. 31.

223 Report to Court by convenor

- (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(1)
amended by
No. 52/2013
s. 20(1).

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S. 223(2)
repealed by
No. 52/2013
s. 20(2).

224 Court to consider report of convenor

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.

S. 224
amended by
No. 52/2013
s. 21.

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.

S. 225(2)
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. 226
(Heading)
amended by
No. 52/2013
s. 23(1).

226 Confidentiality of conciliation conferences

S. 226(1)
amended by
No. 52/2013
s. 23(2).

- (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.

- (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.

S. 226(3)
amended by
No. 52/2013
s. 23(2).

- (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.

Penalty: 10 penalty units.

S. 226(4)(a)
amended by
No. 52/2013
s. 23(2).

- (4) Nothing in subsection (3) prevents—
- (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.

227 Conciliation convenors

- (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.
- (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.
- (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**.

S. 227
(Heading)
amended by
No. 52/2013
s. 24.

S. 227(1)
amended by
No. 23/2012
s. 3(1).

S. 227(3)
substituted by
Nos 48/2006
s. 15, 23/2012
s. 3(2).

S. 227(4)
substituted by
No. 48/2006
s. 15,
amended by
No. 23/2012
s. 3(2).

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—
 - (a) be issued out of the Court by the appropriate registrar; 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;
- (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;

S. 232(1)(f)
amended by
No. 48/2006
s. 16.

- (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—

(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)
amended by
No. 37/2014
s. 10(Sch.
item 18.8).

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—

(a) the safety of any person; or

(b) that the effective execution of the search warrant is not frustrated. | S. 237(6)
amended by
No. 37/2014
s. 10(Sch.
item 18.8). |
| (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)—

S. 241(2)(a)
amended by
No. 37/2014
s. 10(Sch.
item 18.9).

- (a) may only be directed to a named police officer or generally all police officers; and

- (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—
- (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. 242(1)
amended by
No. 52/2013
s. 27(2).

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.
- (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(2)
substituted by
No. 52/2013
s. 27(3).

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—
- (a) be issued out of the Court by the appropriate registrar; 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?

For the purposes of this Division, a child is in need of therapeutic treatment if the child has exhibited sexually abusive behaviours.

S. 244
substituted by
No. 33/2018
s. 6.

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).
- (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.

S. 245(2)
amended by
No. 37/2014
s. 10(Sch.
item 18.10).

- (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 by the appropriate registrar; and
 - (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).

S. 248
amended by
No. 33/2018
s. 7(1)(2) (ILA
s. 39B(1)).

248 When Court may make order under this Division

- (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.

- (2) In deciding whether or not to make a therapeutic treatment order in respect of a child, the Court must consider—

S. 248(2)
inserted by
No. 33/2018
s. 7(2).

- (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
 - (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. 249(2)(ba)
inserted by
No. 33/2018
s. 8.

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.
- (2) Subsection (1) applies even if the child attains the age of 18 years after the order is made.

S. 250(2)
inserted by
No. 33/2018
s. 9(1).

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 by the appropriate registrar; and

- (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
- (b) subject to paragraph (a), does not otherwise affect parental responsibility for the child; and
- (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(a)
amended by
No. 61/2014
s. 99(1).

S. 253(b)
substituted by
No. 61/2014
s. 99(2).

S. 253(c)
amended by
No. 52/2013
s. 31,
substituted by
No. 61/2014
s. 99(3).

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.
- (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.

S. 254
amended by
No. 33/2018
s. 9(2) (ILA
s. 39B(1)).

S. 254(2)
inserted by
No. 33/2018
s. 9(2).

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

S. 256(1A)
inserted by
No. 33/2018
s. 10(1).

- (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.
- (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.
- (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.

**S. 256(4)
inserted by
No. 33/2018
s. 10(2).**

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 by the appropriate registrar; and
 - (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, apply to the Court for a finding that such a difference exists.
- (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—
 - (a) be issued out of the Court by the appropriate registrar; and

S. 259(1)
amended by
Nos 61/2014
s. 69, 8/2016
s. 7(1).

S. 259(2)
amended by
No. 8/2016
s. 7(2).

- (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

- (1) Before an irreconcilable difference application may be filed with the appropriate registrar by a person, he or she must lodge with the Secretary an application for conciliation counselling and produce to the appropriate registrar a certificate of conciliation counselling issued by the Secretary within the last 3 months.
- (2) If an application for conciliation counselling is lodged with the Secretary, he or she must—
- (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.

S. 260(2)(a)
amended by
No. 61/2014
s. 70.

- (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.

- (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.

S. 260(4A)
inserted by
No. 11/2021
s. 32.

- (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.

261 Proceeding on application if party does not appear

- (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

S. 261(1)
substituted by
No. 52/2013
s. 32.

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
 - (b) a protection application is filed with the appropriate registrar; or
 - (c) a child has been placed in emergency care under section 247; or
 - (d) an irreconcilable difference application is filed with the appropriate registrar; or
 - (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

S. 262(1)(a)
amended by
No. 52/2013
s. 33(a).

S. 262(1)(c)
amended by
No. 52/2013
s. 33(b).

- (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
 - (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

S. 262(1)(j)
amended by
No. 52/2013
s. 33(c).

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 with the appropriate registrar as soon as possible.

S. 262(5A)
inserted by
No. 61/2014
s. 13(1).

(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—

- (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.

S. 262(6)
amended by
No. 61/2014
s. 13(2).

(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(7)
amended by
No. 61/2014
s. 13(3).

(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 the family preservation order is not extended by the suspension.

263 Conditions of interim accommodation order

(1) An interim accommodation order may provide for—

- | | |
|--|---|
| (a) the release of the child pending the hearing, or the resumption of the hearing; or | S. 263(1)(a) amended by No. 64/2010 s. 12(1)(a)(b). |
| (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)(b) amended by No. 64/2010 s. 12(1)(c)(d). |
| (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 | S. 263(1)(c) amended by No. 64/2010 s. 12(1)(e)(f). |
| (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 | |
| (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 | S. 263(1)(fa) inserted by No. 61/2014 s. 14. |

S. 263(1)(fb)
inserted by
No. 19/2019
s. 254(4).

- (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
- (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.
- (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).

S. 263(8)
amended by
No. 52/2013
s. 34.

264 Duration of interim accommodation order

- (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.
- (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.

S. 264(1)
amended by
No. 64/2010
s. 13(1).

S. 264(2)
amended by
No. 64/2010
s. 13(2).

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 appropriate registrar.

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—

(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)(a)
amended by
No. 64/2010
s. 14(1)(a).**

(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;

**S. 267(2)(b)
amended by
No. 64/2010
s. 14(1)(b).**

(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.

- (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

S. 268(3)
substituted by
No. 52/2013
s. 35(1).

- 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.
- (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
 - (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

S. 268(5)
amended by
No. 52/2013
s. 35(2)(a).

S. 268(5)(a)
amended by
No. 52/2013
s. 35(2)(b).

S. 268(5)(b)
amended by
No. 52/2013
s. 35(2)(c).

purpose of having the child placed in emergency care.

S. 268(6)
substituted by
No. 52/2013
s. 35(3).

- (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 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

S. 269(1)
substituted by
No. 52/2013
s. 36(1).

- (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—
 - (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.
- (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—
- (a) a protective intervener may, without a warrant, place the child in emergency care; or
 - (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.
- (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

S. 269(3)
amended by
No. 52/2013
s. 36(2)(a).

S. 269(3)(a)
amended by
No. 52/2013
s. 36(2)(b).

S. 269(3)(b)
amended by
No. 52/2013
s. 36(2)(c).

S. 269(4)
amended by
No. 52/2013
s. 36(3).

- (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.
- (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. 269(8)
inserted by
No. 52/2013
s. 36(6).

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

- (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. **S. 270(5)(b) amended by No. 52/2013 s. 37(2)(c).**
- (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—
- (a) without a warrant, place the child in emergency care; or **S. 270(6)(a) amended by No. 52/2013 s. 37(3).**
- (b) apply to a magistrate for the issue of a search warrant.
- (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— **S. 270(7) substituted by No. 52/2013 s. 37(4).**
- (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).**

S. 270(9A)
inserted by
No. 52/2013
s. 37(6).

- (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.
- (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

- (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.

S. 272(1)
amended by
No. 48/2006
s. 17.

- (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
- (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.

S. 274(b)
amended by
No. 61/2014
s. 15.¹

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;
- (b) a family preservation order;
- (c) a family reunification order;
- (d) a care by Secretary order;
- (e) a long-term care order.

S. 275(1)(b)
substituted by
No. 61/2014
s. 16.

S. 275(1)(c)
substituted by
No. 61/2014
s. 16.

S. 275(1)(d)
substituted by
No. 61/2014
s. 16.

S. 275(1)(e)
substituted by
No. 61/2014
s. 16.

Children, Youth and Families Act 2005
No. 96 of 2005
Part 4.9—Protection orders

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.

S. 275(3)
inserted by
No. 8/2016
s. 8.

(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.

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.

S. 276(2)
amended by
No. 61/2014
s. 17 (as
amended by
No. 27/2015
s. 3).

(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)(a)
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

- (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. 276(2)(b)
amended by
No. 61/2014
s. 17 (as
amended by
No. 27/2015
s. 3).

276A Court to have regard to certain matters

S. 276A
inserted by
No. 61/2014
s. 18.

- (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—
 - (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 12 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)).

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
 - (ea) a care by Secretary order applied for under section 289(1A); or
 - (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

**S. 277
substituted by
No. 61/2014
s. 19.**

**S. 277(1)(ea)
inserted by
No. 8/2016
s. 22(1).**

**S. 277(1)(eb)
inserted by
No. 8/2016
s. 22(1).**

S. 277(2)(b)
amended by
No. 8/2016
s. 22(2).

- (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.

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.

Division 3—Family preservation order

Ch. 4 Pt 4.9
Div. 3
(Heading)
substituted by
No. 61/2014
s. 20.

280 Family preservation order

S. 280
(Heading)
substituted by
No. 61/2014
s. 21(1).

- (1) A family preservation order—
- (a) gives the Secretary responsibility for the supervision of the child; and
 - (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.
- (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

S. 280(1)
amended by
No. 61/2014
s. 21(2)(a).

S. 280(1)(b)
substituted by
No. 61/2014
s. 21(2)(b).

S. 280(2)
amended by
No. 61/2014
s. 21(3).

- (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).

S. 281
(Heading)
amended by
No. 61/2014
s. 22(1).

281 Family preservation order may impose conditions

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.

(1A) Conditions that may be included under subsection (1) are conditions that the Court considers—

S. 281(1A)
inserted by
No. 61/2014
s. 22(2).

- (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.

(2) A family preservation order must not include any condition as to where the child lives, unless the condition relates to—

S. 281(2)
amended by
No. 61/2014
s. 22(3).

- (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.

282 Powers of Secretary under family preservation order

S. 282
(Heading)
amended by
No. 61/2014
s. 23(1).

(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.

S. 282(1)
amended by
No. 61/2014
s. 23(2).

(2) The Secretary may, by notice in the prescribed form, give to—

- (a) the child in respect of whom a family preservation order is made; or

S. 282(2)(a)
amended by
No. 61/2014
s. 23(2).

- (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.

Children, Youth and Families Act 2005
No. 96 of 2005
Part 4.9—Protection orders

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.

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Ch. 4 Pt 4.9
Div. 6
(Heading)
substituted by
No. 61/2014
s. 25.

Division 6—Family reunification order

S. 287
amended by
No. 52/2013
s. 40,
substituted by
No. 61/2014
s. 26.

287 Family reunification order

- (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 12 months) specified in the order; and
 - (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

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 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) If the child has been in out of home care for less than 12 months under one or more orders specified in subsection (1), the period specified in a family reunification order must not have the

effect that the child will be placed in out of home care for a cumulative period that exceeds 12 months commencing on the date that the child is first placed in out of home care under the first of those orders.

- (3) If the child has been in out of home care for 12 months or more but less than 24 months under one or more orders specified in subsection (1), the period specified in a family reunification order must not have the effect that the child will be placed in out of home care for a cumulative period that exceeds 24 months commencing on the date that the child is first placed in out of home care under the first of those orders.
- (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
 - (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
 - (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. 287A(4)(b)
amended by
No. 8/2016
s. 9(1).

S. 287A(4)(c)
amended by
No. 8/2016
s. 9(2).

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 which the parties to the application have agreed; and

S. 288(1)(a)
amended by
No. 61/2014
s. 28(3).

(b) ceases to be in force on the making of that order under the Family Law Act 1975 of the Commonwealth.

(2) A family reunification order that has been suspended under subsection (1)(a) revives if—

S. 288(2)
amended by
No. 61/2014
s. 28(2).

(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.

288A Change to nature of order

S. 288A
inserted by
No. 61/2014
s. 29.

(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.

(1A) Subject to Division 1, a care by Secretary order may be made on the application of the Secretary.

S. 289(1A)
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(1B)
inserted by
No. 8/2016
s. 10.

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.

Division 8—Long-term care order

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.

290 Long-term care order

S. 290
amended by
No. 48/2006
s. 18(2)(3),
substituted by
No. 61/2014
s. 31.

- (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.

S. 290(1A)
inserted by
No. 8/2016
s. 11.

- (1A) Subject to Division 1, a long-term care order may be made on the application of the Secretary.

S. 290(1B)
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(1C)
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—
- (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.

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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—

S. 293(1)(a)
substituted by
No. 61/2014
s. 33(1).

(a) a family preservation order;

S. 293(1)(b)
substituted by
No. 61/2014
s. 33(1).

(b) a family reunification order;

S. 293(1)(c)
substituted by
No. 61/2014
s. 33(1).

(c) a care by Secretary order.

S. 293(1)(d)
repealed by
No. 61/2014
s. 33(1).

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- (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.

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S. 293(4)
repealed by
No. 61/2014
s. 33(2).

294 Extension of order

If an extension application is made in respect of an order, the Court may extend the order if it is satisfied that this is in the best interests of the child.

294A Restrictions on the extension of protection orders

S. 294A
inserted by
No. 61/2014
s. 34.

- (1) The Court must not extend a family reunification order unless it is satisfied that—
 - (a) there is compelling evidence that it is likely that a parent of the child will permanently resume care of the child during the period of the extension; and
 - (b) the extension will not have the effect that a child will be placed in out of home care for a cumulative period that exceeds 24 months, calculated in accordance with section 287A.
- (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.

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296 Duration of extension

S. 296(1)
amended by
No. 61/2014
s. 36(1).

- (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(2)
substituted by
No. 61/2014
s. 36(2).

- (2) If an extension application is made in relation to a family reunification order the duration of an extension or additional extension is to be determined in accordance with subsection (3) or (4), as applicable.

S. 296(3)
inserted by
No. 61/2014
s. 36(2).

- (3) If the child has been in out of home care for a cumulative period of less than 12 months under one or more orders specified in section 287A(1), an extension or additional extension of the family reunification order must not have the effect that the child will be placed in out of home care for a cumulative period that exceeds 12 months commencing on the date that the child is first placed in out of home care under the first of the orders specified in section 287A(1).

S. 296(4)
inserted by
No. 61/2014
s. 36(2).

- (4) If the child has been in out of home care for a cumulative period of 12 months or more but less than 24 months under one or more orders specified in section 287A(1), an extension or additional extension of the family reunification order must not have the effect that the child will

be placed in out of home care for a cumulative period that exceeds 24 months commencing on the date that the child is first placed in out of home care under the first of the orders specified in section 287A(1).

- (5) Section 287A(4) applies to the determination of a cumulative period under this section.

S. 296(5)
inserted by
No. 61/2014
s. 36(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.

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.

S. 298
substituted by
No. 61/2014
s. 38 (as
amended by
No. 21/2015
s. 3(Sch. 1
item 10)).

- (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.

* * * *

S. 300
amended by
No. 61/2014
s. 40(a).

300 Application for variation of order

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.

301 Decision of Court on application for variation

S. 301
amended by
No. 61/2014
s. 42(a).

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
- (b) in the case of a family reunification order, make any change to the conferral of parental responsibility for the child.

S. 301(b)
substituted by
No. 61/2014
s. 42(b).

302 Interim variation of family reunification order

S. 302
(Heading)
amended by
No. 61/2014
s. 43(1).

- (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.
- (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.

S. 302(1)
amended by
No. 61/2014
s. 43(2).

S. 302(2)
amended by
No. 61/2014
s. 43(3).

- (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).

* * * * *

S. 304(2)
substituted by
No. 61/2014
s. 45(2).

- (2) This section does not apply to a care by Secretary order or a long-term care order.

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—
- (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—
- (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. 305(1)
amended by
No. 61/2014
s. 46(2).

S. 305(2)(a)
amended by
No. 61/2014
s. 46(2).

306 Application for revocation of long-term care order

S. 306
(Heading)
amended by
No. 61/2014
s. 47(1).

- (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.

S. 306(1)
amended by
No. 61/2014
s. 47(2).

- (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).

S. 308
amended by
No. 61/2014
s. 49(2).

On an application under section 304 in respect of a family reunification order or on an application under section 305, the Court—

- (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.

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.

S. 309
(Heading)
substituted by
No. 61/2014
s. 50.

310 Court may make further orders on revocation

* * * * *

S. 310(1)(2)
repealed by
No. 61/2014
s. 51(1).

- (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—

S. 310(3)
amended by
No. 61/2014
s. 51(2)(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
- (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.

S. 310(3)(b)
amended by
No. 61/2014
s. 51(2)(b).

S. 310(3)(c)
amended by
No. 61/2014
s. 51(2)(c).

- S. 310(5)
amended by
No. 61/2014
s. 51(3)(a).
- (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.
- (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
- (b) a family preservation order in respect of the child.
- S. 310(5)(b)
amended by
No. 61/2014
s. 51(3)(b).
- S. 310(6)
amended by
No. 61/2014
s. 51(4)(a).
- (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—
- (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 care by Secretary order.
- S. 310(6)(b)
amended by
No. 61/2014
s. 51(4)(b).
- S. 310(6)(c)
substituted by
No. 61/2014
s. 51(4)(c).
- S. 310(7)
amended by
No. 61/2014
s. 51(5).
- (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.

Division 13—Breach of protection order

311 Application of Division

This Division applies to a family preservation order.

S. 311
substituted by
No. 61/2014
s. 52.

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

(b) there has been a failure to comply with any direction given by the Secretary under section 282(2); or

S. 312(1)(b)
amended by
No. 61/2014
s. 53(1).

* * * * *

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.

- (3) In this section, *relevant person* means the parent of the child.

S. 312(3)
substituted by
No. 61/2014
s. 53(3).

S. 313
(Heading)
substituted by
No. 52/2013
s. 44(1).
S. 313
amended by
No. 52/2013
s. 44(2)(a).

313 Placing child in emergency care when notice is served

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.

S. 314
(Heading)
substituted by
No. 52/2013
s. 45(1).

314 Placing child in emergency care without notice

(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—

S. 314(1)(b)(i)
amended by
No. 61/2014
s. 54(a).

(i) there has been a failure to comply with any condition of the family preservation order; or

S. 314(1)(b)(ii)
amended by
No. 61/2014
s. 54(b).

(ii) there has been a failure to comply with any direction given by the Secretary under section 282(2); or

	*	*	*	*	*	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 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 (Heading) substituted by No. 52/2013 s. 46(1). S. 315 amended by No. 52/2013 s. 46(2).
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. 316 amended by No. 61/2014 s. 55.
	*	*	*	*	*	S. 317 amended by No. 52/2013 s. 47, repealed by No. 61/2014 s. 56.
318					Decision of Court (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	S. 318(1) amended by Nos 48/2006 s. 19, 52/2013 s. 48, substituted by No. 61/2014 s. 57(1).

(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.

S. 318(3)
amended by
No. 61/2014
s. 57(3).

(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.

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—

(i) the parent is unable or unwilling to resume parental responsibility for the child; or

**S. 319(1)(b)(i)
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)(b)(ii)
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—

**S. 319(1)(c)
amended by
No. 61/2014
s. 58.**

(i) any prescribed matters; and

(ii) any wishes expressed by the parent in relation to those prescribed matters; and

(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

**S. 319(1)(d)
amended by
No. 61/2014
s. 58.**

(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

- | | |
|---|---|
| <p>(c) the person or persons named in the application as suitable to have parental responsibility for the child; and</p> <p>(d) such other persons as the Court directs.</p> | <p>S. 320(4)(c)
amended by
No. 61/2014
s. 59(3).</p> |
| <p>(5) A notice under subsection (4) must—</p> | |
| <p>(a) be issued out of the Court by the appropriate registrar; and</p> <p>(b) set out the grounds on which the applicant has made the application; and</p> <p>(c) be served on a person—</p> | |
| <p>(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</p> | <p>S. 320(5)(c)(i)
amended by
No. 11/2021
s. 33.</p> |
| <p>(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</p> | <p>S. 320(5)(c)(ii)
amended by
No. 11/2021
s. 33.</p> |
| <p>(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.</p> | <p>S. 320(5)(c)(iii)
amended by
No. 11/2021
s. 33.</p> |
| <p>(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.</p> | <p>S. 320(6)
inserted by
No. 8/2016
s. 12.</p> |

S. 320(7)
inserted by
No. 8/2016
s. 12.

- (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—
- (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

S. 321(1)(a)
amended by
No. 61/2014
s. 60(1)(a).

- (1) A permanent care order—

S. 321(1)(b)
amended by
No. 61/2014
s. 60(1)(b)(i).

- (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
- (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)(i)
amended by
No. 61/2014
s. 60(1)(b)(ii).

- (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
 - (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
- (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
- (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
- (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.

S. 321(1)(ca)
inserted by
No. 61/2014
s. 60(1)(c).

S. 321(1)(d)
amended by
No. 52/2013
s. 49,
substituted by
No. 61/2014
s. 60(1)(d).

S. 321(1)(e)
amended by
No. 52/2013
s. 49.

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.

Note to
s. 321(1)
inserted by
No. 61/2014
s. 60(2).

S. 321(1A)
inserted by
No. 61/2014
s. 60(3).

(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(1B)
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—

- (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).

S. 321(1C)
inserted by
No. 61/2014
s. 60(3).

(1C) A permanent care order may include a condition that a child must not have contact with a parent, sibling or other person.

(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.

(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. 322(4)
amended by
No. 61/2014
s. 61(2).

323 Restrictions on the making of permanent care order in respect of an Aboriginal child

S. 323
substituted by
No. 61/2014
s. 62.

(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—

S. 324(1)(a)
amended by
No. 61/2014
s. 73.

- (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
- (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.

S. 325
(Heading)
substituted by
No. 61/2014
s. 63(1).

325 Disputes between persons jointly granted parental responsibility

S. 325
amended by
No. 61/2014
s. 63(2).

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.

325A Change to nature of order

S. 325A
inserted by
No. 61/2014
s. 64.

- (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

- (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
 - (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

S. 326(1)
substituted by
No. 61/2014
s. 65(1).

S. 326(1)(b)
substituted by
No. 8/2016
s. 13(1).

S. 326(1)(c)
substituted by
No. 8/2016
s. 13(1).

(c) a person who has parental responsibility for the child under the order (the *permanent care parent*); or

(d) the Secretary.

S. 326(1A)
inserted by
No. 61/2014
s. 65(1).

(1A) A sibling of the child may make an application to the Court for the variation of a permanent care order.

S. 326(1B)
inserted by
No. 61/2014
s. 65(1),
amended by
No. 8/2016
s. 13(2).

(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(1C)
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—

(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.
- (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(1D) inserted by No. 61/2014 s. 65(1), amended by No. 8/2016 s. 13(2).**
- (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(1E) 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. **S. 326(1F) inserted by No. 61/2014 s. 65(1).**
- (2) The applicant must cause notice of the application to be served on—
- (a) the child who is the subject of the application; and
- (b) each person who has parental responsibility for the child under the order; and **S. 326(2)(b) substituted by No. 61/2014 s. 65(2).**

Children, Youth and Families Act 2005
No. 96 of 2005
Part 4.10—Permanent care orders

S. 326(2)(c)
amended by
No. 29/2006
s. 3(Sch. 1
item 5.2),
substituted by
No. 61/2014
s. 65(2).

(c) each person who is a parent of the child
(other than a person referred to in
paragraph (b)); and

(d) the Secretary; and

(e) such other persons as the Court directs.

S. 326(2A)
inserted by
No. 61/2014
s. 65(3).

(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—

(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 by the appropriate
registrar; and

(b) set out the grounds on which the applicant
has made the application; and

(c) be served on a person—

S. 326(3)(c)(i)
amended by
No. 11/2021
s. 34.

(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)(ii)
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

- (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. 326(3)(c)(iii)
amended by
No. 11/2021
s. 34.

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
amended by
No. 61/2014
s. 66(2) (ILA
s. 39B(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(1)(a)
amended by
No. 61/2014
s. 66(1).

- (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.

S. 327(2)
inserted by
No. 61/2014
s. 66(2).

Part 4.11—Appeals and reviews

Division 1—Appeals

328 Appeal to County Court or Supreme Court

S. 328(1)
amended by
No. 3/2016
s. 51.

- (1) A person to whom this section applies may appeal to the County Court or, if the Court was constituted by the President or the Chief Magistrate who is a dual commission holder, to the Trial Division of the Supreme Court against—

S. 328(1)(ba)
inserted by
No. 8/2016
s. 22(3).

- (a) a protection order; or
- (b) the dismissal of a protection application or an irreconcilable difference application; or
- (ba) the dismissal of an application under section 289(1A) for a care by Secretary order; or

S. 328(1)(bb)
inserted by
No. 8/2016
s. 22(3).

- (bb) the dismissal of an application under section 290(1A) for a long-term care order; or
- (c) an order requiring an undertaking where the Court has not found the child to be in need of protection; or
- (d) a therapeutic treatment order; or
- (e) a therapeutic treatment (placement) order; or
- (f) the dismissal of an application for—
 - (i) a therapeutic treatment order; or
 - (ii) a therapeutic treatment (placement) order; or
- (g) an order varying or revoking—
 - (i) a therapeutic treatment order; or
 - (ii) a therapeutic treatment (placement) order; or

- (h) an order extending—
 - (i) a therapeutic treatment order; or
 - (ii) a therapeutic treatment (placement) order; or
 - (i) an order varying or revoking—
 - (i) a family preservation order; or
 - (ii) a family reunification order; or
 - (iii) a permanent care order; or

S. 328(1)(i)
substituted by
No. 61/2014
s. 74(1).
 - (j) an order extending—
 - (i) a family preservation order; or
 - (ii) a family reunification order; or
 - (iii) a care by Secretary order; or

S. 328(1)(j)
substituted by
No. 61/2014
s. 74(1).
 - (k) an order revoking—
 - (i) a care by Secretary order; or
 - (ii) a long-term care order; or

S. 328(1)(k)
substituted by
No. 61/2014
s. 74(1).
 - (l) an order made under section 318 (breach of family preservation order); or
 - (m) the dismissal of an application for an order referred to in paragraph (g), (h), (i), (j), (k) or (l); or
 - (n) a permanent care order; or
 - (o) the dismissal of an application for a permanent care order.
- (2) This section applies to—
- (a) the child who is the subject of the order or application; or
 - (b) the parent of that child; or

S. 328(2)(d)
amended by
No. 61/2014
s. 74(2).

- (c) the protective intervener, if one has been involved in the proceeding; or
 - (d) the person who has been granted parental responsibility in a permanent care order; or
 - (e) the Secretary; or
 - (f) the Attorney-General, if he or she appeared or was represented in the proceeding under section 215(2).
- (3) If the appellant is a child under the age of 15 years an appeal may be made on the child's behalf and in the name of the child by the child's parent.
- (4) If a protective intervener wishes to appeal under this section, the appeal must be brought by the Secretary on behalf of the protective intervener.
- (5) If a person appeals under this Act to the Supreme Court on a question of law, that person is deemed to have abandoned finally and conclusively any right under this or any other Act to appeal to the County Court or any right under this section to appeal to the Trial Division of the Supreme Court.
- (6) The following sections—
- (a) section 425 (except subsection (3)(a))
(How appeal is commenced);
 - (b) section 426(1), (2), (4) and (5)
(Determination of appeal);
 - (c) section 430 (Late notice of appeal deemed to be application for leave to appeal);
 - (d) section 430C (except subsections (3) and (4))
(Abandonment of appeal);
 - (e) section 430D (Appellant's failure to appear);
 - (f) section 430E (Respondent's failure to appear on appeal by DPP);

S. 328(6)
substituted by
No. 68/2009
s. 60(1).

- (g) section 430F (One notice of appeal for 2 or more sentences);
- (h) section 430G (Appeal to County Court or Trial Division of Supreme Court authorised by other Acts);
- (i) section 430ZD (Appeals to be heard in open court);

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**S. 328(6)(j)
repealed by
No. 15/2013
s. 9(1).**

- (k) section 430ZF (Interpreters);
- (l) section 430ZG (Explanation of and reasons for orders);
- (m) section 430ZH (No costs on appeal or new hearing)—

apply, with any necessary modifications, to an appeal under this section as if—

- (n) a reference to an appeal under section 424 were a reference to an appeal under this section;
- (o) a reference to the sentence were a reference to the order or dismissal that is the subject of the appeal;
- (p) a reference to the DPP were a reference to the Secretary or the Attorney-General (as the case requires);
- (q) a reference to the Criminal Division were a reference to the Family Division.

* * * * *

**S. 328(7)
repealed by
No. 68/2009
s. 60(1).**

S. 328(9)
amended by
No. 68/2009
s. 60(2).

(8) An appeal under this section does not operate as a stay of any order made by the Court unless the Court so orders with respect to the whole or any part of the order.

(9) The Court must hear and determine as expeditiously as possible an application for a stay of an order made by a person who has filed a notice of appeal and signed the undertaking referred to in section 425(4) (as applied by subsection (6)).

S. 328(10)
amended by
Nos 68/2009
s. 60(3)(a),
15/2013
s. 9(2).

(10) Sections 522(1) (except paragraph (c)), 524, 534, 547 to 570 and Part 1.2 apply, with any necessary modifications, to appeals under this section as if—

(a) a reference to the Court or the Family Division were a reference to the County Court or the Supreme Court (as the case requires); and

(b) a reference to a proceeding to which section 525(1) applies were a reference to an appeal under this section; and

S. 328(10)(c)
repealed by
No. 68/2009
s. 60(3)(b).

* * * * *

(d) a reference in section 534(1) to the President were a reference to the County Court or the Supreme Court (as the case requires); and

(e) a reference to the appropriate registrar were a reference to the registrar of the County Court or the prothonotary of the Supreme Court (as the case requires).

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.
- (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—

**S. 329(2)
amended by
No. 61/2014
s. 75.**

- (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

- (1) Proceedings on an appeal under section 328 or 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.

(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.

S. 333(3) amended by Nos 61/2014 s. 148(2), 57/2015 s. 10(3).

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

S. 335(1)
amended by
Nos 61/2014
s. 76(1),
8/2016
s. 15(1).

- (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(2)
amended by
Nos 61/2014
s. 76(2),
8/2016
s. 15(2).

- (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—
 - (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

S. 335(2)(b)
amended by
No. 8/2016
s. 15(2).

- (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(3)
amended by
No. 61/2014
s. 76(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).

- (4) Subject to subsections (2) and (3), a deemed care by Secretary order referred to in subsection (2) remains in force—

S. 335(4)
amended by
No. 61/2014
s. 76(2).

- (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—

- (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
- (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**.

S. 336(a)
amended by
Nos 61/2014
s. 77, 8/2016
s. 16.

S. 336(b)
amended by
Nos 61/2014
s. 77, 8/2016
s. 16.

337 Transfer agreements

- (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.

S. 337(1)
amended by
No. 61/2014
s. 78(1).

S. 337(2)(b)
amended by
No. 61/2014
s. 78(2).

- (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.

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
- (c) the DPP; and

S. 340(c)
substituted by
No. 68/2009
s. 61.

- (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.

Chapter 5—Children and the criminal law

Part 5.1—Criminal responsibility of children

344 Children under 10 years of age

It is conclusively presumed that a child under the age of 10 years cannot commit an offence.

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)).

S. 344A
inserted by
No. 7/2009
s. 429 (as
amended by
No. 68/2009
ss 47, 54(o)).

S. 344A(1)(b)
amended by
No. 37/2014
s. 10(Sch.
item 18.12).

Part 5.1A—Commencement of proceedings

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
 - (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.
- (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. **S. 344A(7) amended by No. 61/2014 s. 79(c).**

Note

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.

Note to s. 344A inserted by No. 18/2010 s. 45, amended by No. 64/2010 s. 54.

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.

S. 344B inserted by No. 7/2009 s. 429 (as amended by No. 68/2009 ss 47, 54(o)).

- (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
 - (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.

S. 344B(5)(a)
amended by
No. 6/2018
s. 68(Sch. 2
item 20.2).

S. 344C
inserted by
No. 7/2009
s. 429 (as
amended by
No. 68/2009
ss 47, 54(o)).

344C Extension of time

- (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.

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.

S. 344D
inserted by
No. 7/2009
s. 429 (as
amended by
No. 68/2009
ss 47, 54(o)).

- (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

- (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.
- (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**.

S. 345
amended by
No. 68/2009
s. 62(1)(2),
substituted by
No. 1/2016
s. 20.

S. 345(4)
amended by
No. 6/2018
s. 68(Sch. 2
item 20.3).

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.
- (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)
amended by
No. 3/2018
s. 25(1).

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.

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).

- (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—

- (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.

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
 No. 26/2017
 s. 19(2).

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);

Children, Youth and Families Act 2005
No. 96 of 2005
Part 5.2—Procedures and standard of proof

- 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 enter into undertaking);
- section 24(3A) (arrest of person released on bail).

* * * *

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).

* * * *

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.

(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

S. 347(1A)
inserted by
No. 3/2018
s. 25(3).

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.

* * * * *

S. 348
amended by
No. 26/2012
s. 4,
repealed by
No. 1/2016
s. 18(1)(b).

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—

S. 349(2)(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 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.

S. 349(3)
inserted by
No. 33/2018
s. 11.

- (3) In deciding whether or not to refer a matter to the Secretary under subsection (2), 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.

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.

S. 352A
inserted by
No. 33/2018
s. 12.

352A Report to Criminal Division on child's progress under therapeutic treatment order

- (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.

S. 354A
inserted by
No. 61/2014
s. 141.

354A Powers of Court in criminal proceedings if child accused voluntarily participates in therapeutic treatment program

(1) This section applies if—

S. 354A(1)(a)
amended by
No. 33/2018
s. 13.

- (a) a child appears as an accused in a criminal proceeding in the Court; and
- (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.

Ch. 5 Pt 5.2
Div. 3
(Heading)
amended by
No. 68/2009
s. 66.

Division 3—Procedure for indictable offences that may be heard and determined summarily

S. 356
(Heading)
amended by
No. 68/2009
s. 67.

356 Procedure for indictable offences that may be 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.

- (1) If a child 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), 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.

(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
- (b) is under the age of 15 years—

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.

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.

(3) If a child 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), the Court must hear and determine the charge summarily unless—

S. 356(3)
amended by
Nos 7/2008
ss 7(1)(a), 8(a),
63/2014
s. 5(1)(c),
16/2020 s. 12.

- (a) before the hearing of any evidence the child objects; or

- (ab) subsection (6) applies; or

S. 356(3)(ab)
inserted by
No. 43/2017
s. 23(1).

- (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.

S. 356(4)
amended by
Nos 7/2008
ss 7(1)(a), 8(a),
63/2014
s. 5(1)(d),
16/2020 s. 12.

- (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—

(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.

S. 356(6)
inserted by
No. 43/2017
s. 23(2),
amended by
No. 16/2020
s. 12.

- (6) If a child is charged before the Court with a Category A serious youth offence committed when the child was aged 16 years or over, 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), 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.

(7) In determining whether there is a substantial and compelling reason why the charge should be heard and determined summarily, the Court must have regard to the intention of the Parliament that a charge for a Category A serious youth offence should not normally be heard and determined summarily.

S. 356(7)
inserted by
No. 43/2017
s. 23(2).

(8) If a child is charged before the Court with a Category B serious youth offence 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.

S. 356(8)
inserted by
No. 43/2017
s. 23(2).

(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).

356A Exceptional circumstances

(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

S. 356A
inserted by
No. 43/2017
s. 5.

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.

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

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. 356C
inserted by
No. 43/2017
s. 59.

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;
- (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.

S. 358(ba)
inserted by
No. 43/2017
s. 10.

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).

S. 359(4A)
inserted by
No. 18/2010
s. 4(1).

- (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.
- (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.
- (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.
- (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(12)
substituted by
No. 18/2010
s. 4(2).

S. 359(12A)
inserted by
No. 18/2010
s. 4(2).

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

Division 1—Sentencing generally

360 Sentences

- (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
 - (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.

Ch. 5 Pt 5.3
(Heading)
substituted by
No. 68/2009
s. 68(1)(a).

S. 360
(Heading)
substituted by
No. 68/2009
s. 68(1)(b).

S. 360(1)(ha)
inserted by
No. 43/2017
s. 11.

S. 360(3)
amended by
No. 68/2009
s. 68(1)(c).

- (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.
- (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
 - (g) the need to protect the community, or any person, from the violent or other wrongful acts of the child—
 - (i) in all cases where the sentence is for a Category A serious youth offence or a Category B serious youth offence; or
 - (ii) in any other case—if it is appropriate to do so; and
 - (h) if appropriate, the need to deter the child from committing offences in remand centres, youth residential centres or youth justice centres.

S. 362(1)(g)
substituted by
No. 43/2017
s. 24.²

S. 362(1)(g)(ii)
amended by
No. 8/2019
s. 90(3).

S. 362(1)(h)
inserted by
No. 43/2017
s. 42(b).

S. 362(4)
amended by
No. 48/2006
s. 20.

S. 362(4A)
inserted by
No. 43/2017
s. 12(1).

S. 362(5)
inserted by
No. 30/2010
s. 30.

- (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.
- (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.
- (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—
 - (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.

- (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.

S. 362A(3)
amended by
No. 22/2009
s. 8,
substituted by
No. 30/2010
s. 31(2).

- (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.
- (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

**S. 366(3)(b)(i)
amended by
No. 52/2013
s. 50.**

- (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
 - (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.

S. 371(3)(b)(i)
amended by
No. 52/2013
s. 51.

(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
- (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.

S. 372(b)
amended by
No. 61/2014
s. 151.

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

S. 378(1)
amended by
No. 48/2006
s. 21.

- (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—
- (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.
- (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.
- (3) If—
- (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
 - (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.

S. 378(1)(f)
amended by
Nos 48/2006
s. 21, 28/2007
s. 3(Sch.
item 8).

S. 378(2)
amended by
No. 48/2006
s. 21.

S. 378(3)
amended by
No. 48/2006
s. 21.

S. 378(3)(a)
amended by
No. 48/2006
s. 21.

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

S. 381(4)(g)
substituted by
Nos 23/2006
s. 234(6),
68/2009
s. 68(1)(d).

- (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
 - (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
 - (ii) with the person's consent.

S. 384(3)(b)(i)
amended by
No. 26/2012
s. 5(1).

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
- (g) if the probation order has expired, impose any sentence that the Court thinks just.

S. 384(5)(f)
amended by
No. 68/2009
s. 68(1)(e).

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
 - (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
 - (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.

S. 385(1)(c)
amended by
No. 68/2009
s. 68(1)(f).

S. 385(2)(b)
amended by
No. 68/2009
s. 68(1)(f).

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—

S. 389(7)(a)
amended by
No. 67/2013
s. 649(Sch. 9
item 2(1)(a)).

- (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)(b)
amended by
No. 67/2013
s. 649(Sch. 9
item 2(1)(b)).

- (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

- (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—
 - (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(3)(b)(i)
amended by
No. 26/2012
s. 6(1).**

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
- (g) if the youth supervision order has expired, imposing any sentence that the Court thinks just.

S. 393(f)
amended by
No. 68/2009
s. 68(1)(g).

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.
- (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.

S. 408(2)(d)
amended by
No. 68/2009
s. 68(1)(i).

(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
 - (ii) with the person's consent.

S. 408(7)(b)(i)
amended by
No. 26/2012
s. 7(1).

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
- (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.

S. 409(5)(f)
amended by
No. 68/2009
s. 68(1)(j).

- (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.

409A Objects of a youth control order

S. 409A
inserted by
No. 43/2017
s. 13.

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.

S. 409C
inserted by
No. 43/2017
s. 13.

409C Restrictions on power to make a youth control order

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.

409E Matters to which Court is to have regard in determining whether to make a youth control order

S. 409E
inserted by
No. 43/2017
s. 13.

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.

S. 409F
inserted by
No. 43/2017
s. 13.

409F Court to impose certain requirements

- (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).

S. 409G
inserted by
No. 43/2017
s. 13.

409G Non-accountable parental undertaking

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.

S. 409H
inserted by
No. 43/2017
s. 13.

409H Breach of undertaking

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.

S. 409K
inserted by
No. 43/2017
s. 13.

409K Remission of monitoring etc. to the Court

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).

S. 409L
inserted by
No. 43/2017
s. 13.

409L Reporting and monitoring

- (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 with the appropriate registrar at least 3 working days before the attendance, or otherwise as directed by the Court.
- (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.

S. 409N
inserted by
No. 43/2017
s. 13.

409N Variation of youth control order

- (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).

S. 409O
inserted by
No. 43/2017
s. 13.

409O Warning of possible variation of a youth control order

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.

S. 409P
inserted by
No. 43/2017
s. 13.

409P Neither consent nor warning required

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.

S. 409Q
inserted by
No. 43/2017
s. 13.

409Q Revocation of youth control order

- (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.

S. 409R
inserted by
No. 43/2017
s. 13.

409R Consequences of revocation of youth control order

- (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

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. 409S
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.
- (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.

S. 409T
inserted by
No. 43/2017
s. 13.

S. 409T(2A)
inserted by
No. 11/2021
s. 35(1).

- (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.
- (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

S. 409T(5)
inserted by
No. 11/2021
s. 35(2).

- (b) participate in the meeting by making oral or written submissions.

409U Youth control order plan

S. 409U
inserted by
No. 43/2017
s. 13.

- (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.

409V Requirements for report of meeting

S. 409V
inserted by
No. 43/2017
s. 13.

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
inserted by
No. 43/2017
s. 13.

409W Youth control order planning meeting report to be filed with registrar

A youth control order planning meeting report must be filed with the appropriate registrar at least 3 working days before the return date for proceedings in relation to the youth control order.

S. 409X
inserted by
No. 43/2017
s. 13.

409X Access to youth control order planning meeting report

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.

S. 409Y
inserted by
No. 43/2017
s. 13.

409Y Confidentiality of meeting

- (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.

409Z Report by appellate court

S. 409Z
inserted by
No. 43/2017
s. 13.

- (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

409ZA References to the Secretary

S. 409ZA
inserted by
No. 43/2017
s. 13.

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
 - (b) on the day of sentencing, the child is aged 10 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

S. 410(1)(e)
amended by
No. 61/2014
s. 100(a).

(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)(f)
inserted by
No. 61/2014
s. 100(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 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—
- (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(2)(a)
amended by
No. 43/2017
s. 43(1).

- (2A) If one or more of the offences referred to in subsection (2) is—

S. 411(2A)
inserted by
No. 43/2017
s. 43(2).

- (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 centre as if a reference to the Magistrates' Court were a reference to the Children's Court.

S. 411(5)
amended by
No. 43/2017
s. 43(3).

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
- (e) it has received and considered a pre-sentence report; and
- (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. 412(1)(e)
amended by
No. 61/2014
s. 101(a).**

**S. 412(1)(f)
inserted by
No. 61/2014
s. 101(b).**

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.

S. 413(2)
amended by
No. 43/2017
s. 52(1).

- (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.
- (3) If a child is convicted on the same day, or in the same proceeding, of more than one offence—

S. 413(3)(a)
amended by
No. 43/2017
s. 44(1).

- (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)(b)
amended by
No. 43/2017
s. 52(2).

- (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.

- (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—

S. 413(3A)
inserted by
No. 43/2017
s. 44(2).

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.

- (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(4)
amended by
No. 43/2017
s. 44(3).

- (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—

S. 413(4A)
inserted by
No. 43/2017
s. 44(4).

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—

(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)(a)
amended by
No. 61/2014
s. 102(2)(a).

(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—

S. 414(2)(ab)
inserted by
No. 61/2014
s. 102(2)(b).

(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.

(3) The period for which sentencing may be deferred is—

S. 414(3)
inserted by
No. 61/2014
s. 102(3).

(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.

(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.

S. 414(4)
inserted by
No. 61/2014
s. 102(3).

S. 414(5)
inserted by
No. 61/2014
s. 102(3).

- (5) Bail must not be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation.

415 Group conference

S. 415(1)
substituted by
No. 61/2014
s. 103.

- (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—

- (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
- (f) convicting the child and making a youth control order under section 409B.

S. 415(1)(e)
amended by
No. 43/2017
s. 14(a).

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.

S. 415(3A)
inserted by
No. 11/2021
s. 36(1).

- (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.

- (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
 - (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(6)(c)
amended by
No. 37/2014
s. 10(Sch.
item 18.12).

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

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.

S. 419
amended by
No. 68/2009
s. 68(1)(l).

420 Bail

(1) If—

S. 420(1)
amended by
Nos 68/2009
s. 68(1)(m)(ii),
37/2014
s. 10(Sch.
item 18.12).

- (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)(a)
amended by
No. 68/2009
s. 68(1)(m)(i).

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.

S. 420(2)
amended by
No. 52/2013
s. 52.

- (2) If a person is refused bail, the person must be remanded in custody for a period not exceeding 21 clear days.

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.

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|--|--|
| (2) A proceeding for breach of a sentence must be commenced in the Children's Court— | S. 423(2)
amended by
No. 68/2009
s. 68(1)(q)(i). |
| (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 | S. 423(2)(a)
amended by
No. 68/2009
s. 68(1)(q)(ii). |
| (b) whether the person against whom the proceeding is commenced is aged 19 years or more. | |
| (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)
amended by
No. 68/2009
s. 68(1)(r)(i). |
| (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)(a)
amended by
No. 68/2009
s. 68(1)(r)(ii). |
| (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(3)(b)
amended by
No. 68/2009
s. 68(1)(r)(iii). |
| (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). | S. 423(4)
amended by
No. 68/2009
s. 68(1)(s). |

S. 423(5)(e)
amended by
No. 68/2009
s. 68(1)(t).

- (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;
 - (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.

S. 423(6)
amended by
No. 68/2009
s. 68(1)(u).

- (6) A proceeding must not be transferred on the sole ground that the sentence was imposed by another court.

S. 423(7)
amended by
No. 68/2009
s. 68(1)(v)(i).

- (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—
- (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

- (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. **S. 423(7)(c) amended by No. 68/2009 s. 68(1)(v)(ii).**
- (8) If a proceeding is transferred to the Magistrates' Court under this section—
- (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 **S. 423(8)(a) amended by No. 68/2009 s. 68(1)(w).**
- (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.
- (9) This section applies despite section 426(5). **S. 423(9) substituted by No. 68/2009 s. 68(2).**

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.

Part 5.4—Appeals

Division 1—Appeal by offender to the County Court or Trial Division of the Supreme Court

S. 424
substituted by
No. 68/2009
s. 69,
amended by
No. 3/2016
s. 52.

424 Right of appeal

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 or the Chief Magistrate who is a dual commission holder, to the Trial Division of the Supreme Court 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.

S. 425
substituted by
No. 68/2009
s. 69.

425 How appeal is commenced

- (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—
- (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 or the prothonotary of the Supreme Court (as the case requires) and to appear at the appellate court for the duration of the appeal; and
 - (b) to give written notice without delay to the registrar of the County Court or the prothonotary of the Supreme Court (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.

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

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.

S. 426
substituted by
No. 68/2009
s. 69.

Note to
s. 426(1)
inserted by
No. 28/2016
s. 11.

S. 426(3)
amended by
No. 30/2010
s. 44(2).

- (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.
- (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

427 DPP's right of appeal against sentence

S. 427
substituted by
No. 68/2009
s. 69.

- (1) The DPP may appeal to the County Court or, if the Children's Court was constituted by the President or the Chief Magistrate who is a dual commission holder, to the Trial Division of the Supreme Court 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. 427(1)
amended by
No. 3/2016
s. 53.

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.

S. 429
substituted by
No. 68/2009
s. 69.

429 Determination of DPP appeal

- (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 to
s. 429(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 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).

- (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(6)
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(7)
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.

S. 429(8)
amended by
No. 30/2010
s. 33(2).

- (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.

Ch. 5 Pt 5
Div. 2A
(Heading and
ss 429A–
429C)
inserted by
No. 30/2010
s. 34.

Division 2A—Appeal by DPP—Failure to fulfil undertaking

S. 429A
inserted by
No. 30/2010
s. 34.

429A DPP's right of appeal—failure to fulfil undertaking

S. 429A(1)
amended by
No. 3/2016
s. 54.

- (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 or the Chief Magistrate who is a dual commission holder, to the Trial Division of the Supreme Court 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.

429B How appeal is commenced

S. 429B
inserted by
No. 30/2010
s. 34.

- (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.

429C Determination of DPP's appeal—failure to fulfil undertaking

S. 429C
inserted by
No. 30/2010
s. 34.

- (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

S. 430
substituted by
No. 68/2009
s. 69.

430 Late notice of appeal deemed to be application for leave to appeal

- (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.
- (3) If the appellate court does not grant leave to appeal under subsection (2), the appellate court must strike out the appeal.
- (4) If—
- (a) the appellate court strikes out an appeal under subsection (3); and

S. 430(3)
inserted by
No. 48/2012
s. 33.

S. 430(4)
inserted by
No. 48/2012
s. 33.

- (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 or the prothonotary of the Supreme Court (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.

- (5) If an appeal is struck out under subsection (3)—

S. 430(5)
inserted by
No. 48/2012
s. 33.

- (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
- (b) the registrar of the County Court or the prothonotary of the Supreme Court (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.

430A Stay of order

S. 430A
inserted by
No. 68/2009
s. 69.

- (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**.

S. 430B
inserted by
No. 68/2009
s. 69.

430B Bail pending appeal

- (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.

S. 430C
inserted by
No. 68/2009
s. 69.

430C Abandonment of appeal

- (1) Subject to subsections (3) and (4), an appeal to the County Court or the Trial Division of the Supreme Court may be abandoned by filing a notice of abandonment of appeal with the registrar of the County Court or the prothonotary of the Supreme Court, 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—
 - (a) surrendering to the registrar of the County Court or the prothonotary of the Supreme Court (as the case requires); and
 - (b) immediately filing a notice of abandonment of appeal in accordance with subsections (1) and (2).
- (5) If a person surrenders to the registrar of the County Court or the prothonotary of the Supreme Court 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.
- (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

S. 430C(6A)
inserted by
No. 30/2010
s. 35.

- (b) the registrar of the County Court or the prothonotary of the Supreme Court (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. 430D
inserted by
No. 68/2009
s. 69.

430D Appellant's failure to appear

- (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.

S. 430D(1A)
inserted by
No. 30/2010
s. 36(1).

- (1A) If—
 - (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 or the prothonotary of the Supreme Court (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

- (b) the registrar of the County Court or the prothonotary of the Supreme Court (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 Trial Division of the Supreme Court (as the case requires).

**S. 430D(6A)
inserted by
No. 30/2010
s. 36(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**.

S. 430E
inserted by
No. 68/2009
s. 69.

430E Respondent's failure to appear on appeal by DPP

S. 430E(1)
amended by
No. 30/2010
s. 37(1)(a).

- (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)(b)
amended by
No. 30/2010
s. 37(1)(b).

- (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.

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.

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. 430F
inserted by
No. 68/2009
s. 69.

430G Appeal to County Court or Trial Division of 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 Trial Division of the Supreme Court, subject to that Act, the provisions of this Act with respect to appeals to those courts apply.

S. 430G
inserted by
No. 68/2009
s. 69.

Division 4—Reports

430H Application of Division

This Division applies to an appeal under Division 1, 2 or 2A.

S. 430H
inserted by
No. 68/2009
s. 69,
amended by
No. 30/2010
s. 38.

Subdivision 1—Pre-sentence reports

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.

S. 430I
inserted by
No. 68/2009
s. 69.

- (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.

430J Notification of requirement to submit pre-sentence report

S. 430J
inserted by
No. 68/2009
s. 69.

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 or the prothonotary of the Supreme Court (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
No. 61/2014
s. 122.

A pre-sentence report ordered under section 430I must be filed with the registrar of the County Court or the prothonotary of the Supreme Court (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 or the prothonotary of the Supreme Court (as the case requires) as soon as possible and, if practicable, not later than 2 working days before the hearing.
- (3) On the filing of a notice under subsection (1), the registrar of the County Court or the prothonotary of the Supreme Court (as the case requires) must immediately notify the author of the report that his or her attendance is required on the return date.
- (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.

430M Disputed pre-sentence report

S. 430M
inserted by
No. 68/2009
s. 69.

- (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
No. 61/2014
s. 123.

430O Group conference report to be filed with court

A group conference report must be filed with the registrar of the County Court or the prothonotary of the Supreme Court (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.

- (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

S. 430P(2)
amended by
No. 37/2014
s. 10(Sch.
item 18.12).

- (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.

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 Trial Division of 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.

- (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—

S. 430R(2)
amended by
No. 30/2010
s. 39.

- (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.

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.

S. 430U
inserted by
No. 68/2009
s. 69.

430U Orders etc. on successful appeal

- (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.

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.

S. 430V
inserted by
No. 68/2009
s. 69.

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

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—

S. 430VA
inserted by
No. 48/2012
s. 35.

- (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. 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, the DPP may refer to the Court of Appeal any point of law that has arisen in the proceeding.
- (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

- (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.
- (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).

S. 430Z
inserted by
No. 68/2009
s. 69.

S. 430Z(3)
amended by
No. 30/2010
s. 44(3).

430ZA Execution of order for forfeiture or destruction of property

- (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**.

S. 430ZA
inserted by
No. 68/2009
s. 69.

- (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

- (1) If the child is granted bail with or without a surety 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).

S. 430ZD
inserted by
No. 68/2009
s. 69.

430ZD Appeals to be heard in open court

- (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.

S. 430ZG
inserted by
No. 68/2009
s. 69.

430ZG Explanation of and reasons for orders

- (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

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.

**S. 430ZH
inserted by
No. 68/2009
s. 69.**

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

S. 444(1)(a)
substituted by
No. 43/2020
s. 51(1).

- (1) The Governor in Council may appoint—
- (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.
- (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.
- (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.

S. 444(1A)
inserted by
No. 5/2013
s. 79,
substituted by
No. 43/2020
s. 51(2).

S. 444(1B)
inserted by
No. 5/2013
s. 79.

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
 - (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

S. 452(1)(ab)
inserted by
No. 61/2014
s. 108.

- (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**.
- (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.

S. 453(4)
substituted by
No. 61/2014
s. 109.

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.

(1AAC) The presumption against parole set out in subsection (1AAD) applies to a person if—

S. 458(1AAC)
inserted by
No. 32/2018
s. 106(2).

- (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.

(1AAD) The Youth Parole Board must not release on parole a person referred to in subsection (1AAC) unless satisfied that—

S. 458(1AAD)
inserted by
No. 32/2018
s. 106(2).

- (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.

(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.

S. 458(1A)
inserted by
No. 69/2014
s. 9.

- (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.
- (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. 458(8)
inserted by
No. 55/2014
s. 133,
amended by
No. 63/2016
s. 17.

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

- (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.
- (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.

S. 460(1)
amended by
No. 32/2018
s. 107.

S. 460(4)
amended by
No. 61/2014
s. 113(1).

S. 460(5)(a)
amended by
No. 37/2014
s. 10(Sch.
item 18.12),
substituted by
No. 61/2014
s. 113(2).

(5) If a person's parole is cancelled, the Youth Parole Board or any member of the Board may—

(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—

(a) the safety of any person; or

(b) that the effective execution of the warrant is not frustrated. | S. 460(6C)
inserted by
No. 61/2014
s. 113(4). |
| (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

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.

S. 464
(Heading)
amended by
No. 61/2014
s. 115(1).

S. 464
amended by
No. 61/2014
s. 115(2).

465 Restriction on transfer of under 14 year olds

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.

S. 465
amended by
No. 61/2014
s. 116.

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.
- (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(1)
amended by
No. 61/2014
s. 117(1).

S. 466(2)
amended by
No. 61/2014
s. 117(1).

Children, Youth and Families Act 2005
No. 96 of 2005
Part 5.6—Transfers

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.
- (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.
- (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.

S. 470(4)
amended by
No. 37/2014
s. 10(Sch.
item 18.12).

S. 470(5)
substituted by
No. 61/2014
s. 118(1).

(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.
- (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

S. 471(4)
amended by
No. 37/2014
s. 10(Sch.
item 18.12).

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.
- (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.

S. 472(5)
amended by
No. 37/2014
s. 10(Sch.
item 18.12).

(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.
- (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.

S. 473(6)
amended by
No. 37/2014
s. 10(Sch.
item 18.12).

Division 6—General

474 Person in youth residential centre sentenced to detention in youth justice centre or imprisonment

- (1) 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 in respect of any offence—

S. 474(1)
amended by
No. 61/2014
s. 120.

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.

(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(2)
amended by
No. 61/2014
s. 121(1).**

(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.

**S. 476(3)
amended by
No. 61/2014
s. 121(2).**

(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—
 - (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 and Human Services) as a youth control order planning meeting program; or
 - (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 and Human Services (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

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.

S. 481
amended by
No. 43/2017
s. 16.

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—
 - (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

S. 482(1)(c)(ii)
substituted by
No. 43/2017
s. 32.

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);

Children, Youth and Families Act 2005
No. 96 of 2005
Part 5.8—Persons in detention

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S. 482A def. of
formal search
repealed by
No. 29/2014
s. 9(a).

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—

S. 482A def. of
frisk search
substituted by
No. 29/2014
s. 9(b).

- (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;

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
Registrar
inserted by
No. 25/2019
s. 22.

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

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—

S. 482B inserted by No. 54/2011 s. 4.

- (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

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.

Ch. 5 Pt 5.8 Div. 1 (Heading) inserted by No. 5/2006 s. 17(1)(a).

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.
- (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.
- (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;

S. 484(5)
amended by
No. 37/2014
s. 10(Sch.
item 18.12).

S. 484(6)
inserted by
No. 43/2017
s. 33.

- (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;
 - (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(1)(g)
amended by
No. 37/2014
s. 10(Sch.
item 18.13).

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).

* * * * *

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)).

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.

S. 488A(1)(a)
substituted by
No. 29/2014
s. 10(1).

S. 488A(1)(b)
substituted by
No. 29/2014
s. 10(1).

S. 488A(3)
amended by
No. 29/2014
s. 10(2).

Division 3—Searches of persons entering, leaving or within youth justice facilities and requirements on visitors

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—

(a) a screening search; and

(b) a frisk search.

- (2) Subsection (1)(b) does not apply to a judge of the Supreme Court or County Court or a magistrate.

- (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

- (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.
- (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.

S. 488AB
inserted by
No. 54/2011
s. 7.

S. 488AB(2)
amended by
No. 29/2014
s. 11.

488AC Unclothed search of detainee

- (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. 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).

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.
- (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.

S. 488AD(4)
amended by
No. 29/2014
s. 13.

488AE Consequences of refusal to submit to search

- (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

S. 488AE
inserted by
No. 54/2011
s. 7.

(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

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.

S. 488DC
inserted by
No. 31/2017
s. 64.

488DD Search

- (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

S. 488DD
inserted by
No. 31/2017
s. 64.

- (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

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.

S. 488GB
inserted by
No. 54/2011
s. 8.

Note

See section 488AD(3)(a)(iv).

488GC Manner of dealing with other seized articles or things

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—

S. 488GC
inserted by
No. 54/2011
s. 8.

- (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

This Division applies despite anything to the contrary in the **Births, Deaths and Marriages Registration Act 1996**.

S. 488H
inserted by
No. 48/2006
s. 24.

488I Definitions

In this Division—

S. 488I
inserted by
No. 48/2006
s. 24.

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).

488J Applications for change of name by or on behalf of a detainee

S. 488J
inserted by
No. 48/2006
s. 24.

- (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

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.

S. 488L
inserted by
No. 48/2006
s. 24.

488M Registration of name change

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. 488M
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

S. 488N
inserted by
No. 48/2006
s. 24.

- (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.

S. 488P
inserted by
No. 25/2019
s. 25.

488P Application by detainee or other person for approval of Secretary

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.

488R Copy of approval or refusal of Secretary

S. 488R
inserted by
No. 25/2019
s. 25.

- (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—

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).

- (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
- (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.
- (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(2)
amended by
No. 37/2014
s. 10(Sch.
item 18.14).

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—
 - (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.
- (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—

S. 491(1)
amended by
No. 37/2014
s. 10(Sch.
item 18.14).

S. 491(2)
amended by
No. 68/2009
s. 71.

- (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.

492 Interstate transfer of young offenders

Schedule 2 sets out provisions relating to the interstate transfer of young offenders.

S. 492A
inserted by
No. 54/2011
s. 9.

492A Secrecy of security arrangements at youth justice facilities

(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
 - (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
 - (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)(ca)
inserted by
No. 45/2019
s. 47.

S. 492A(3)(d)
amended by
No. 37/2014
s. 10(Sch.
item 18.15(a)).

(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—

S. 492A(3)(e)
amended by
No. 37/2014
s. 10(Sch.
item 18.15(b)).

(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.

Ch. 5 Pt 5.9
(Heading and
s. 492B)
inserted by
No. 43/2017
s. 65.

S. 492B
inserted by
No. 43/2017
s. 65.

Part 5.9—Review of Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017

492B Review of Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017

- (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.

Ch. 5 Pt 5.10
(Heading and
ss 492C–
492E)
inserted by
No. 32/2018
s. 103.

Part 5.10—Sharing of terrorism risk information

S. 492C
inserted by
No. 32/2018
s. 103.

492C What is the permitted purpose for sharing information under this Part?

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.

S. 492D
inserted by
No. 32/2018
s. 103.

492D Department of Justice and Regulation may disclose terrorism risk information

- (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 to
s. 492D
inserted by
No. 32/2018
s. 109.

Note

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.

492E Youth Parole Board may disclose terrorism risk information

S. 492E
inserted by
No. 32/2018
s. 103.

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

- (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. 494(1)
amended by
No. 61/2014
s. 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.

S. 495
amended by
Nos 37/2014
s. 10(Sch.
item 18.16),
61/2014 ss 81,
150.

496 Offence to counsel or induce child to be absent without lawful authority etc.

S. 496(1)
amended by
No. 61/2014
s. 150.

(1) A person must not directly or indirectly—

S. 496(1)(a)
amended by
No. 61/2014
s. 82(a).

(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

(b) counsel, induce or assist a child placed as described in paragraph (a) to absent himself or herself from any such place; or

S. 496(1)(c)
amended by
No. 61/2014
s. 82(b).

(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)(d)
amended by
No. 37/2014
s. 10(Sch.
item 18.16).

(d) without lawful authority or excuse, withdraw a child from the lawful custody of a police officer or other person; or

S. 496(1)(e)
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.

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.

- (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).

S. 496(3)
amended by
No. 61/2014
s. 150.

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.

497 Offences in relation to community service etc.

S. 497
amended by
Nos 61/2014
s. 150, 43/2017
s. 60 (ILA
s. 39B(1)).

- (1) A person must not without lawful authority or excuse—

- (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

S. 497(1)(a)
amended by
No. 61/2014
s. 83.

Children, Youth and Families Act 2005
No. 96 of 2005
Part 6.1—Offences relating to the protection of children

S. 497(1)(c)
amended by
No. 52/2013
s. 53.

- (c) contrary to the instructions of the Secretary, attempt to have contact with a child placed as described in paragraph (a); or
- (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.

S. 497(2)
inserted by
No. 43/2017
s. 60.

- (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(3)
inserted by
No. 43/2017
s. 60.

- (3) An instruction under subsection (2) must be served in accordance with section 593.

Part 6.2—Offences relating to detained persons

498 Offence to escape or attempt to escape etc.

- (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.

S. 498(1)
amended by
Nos 37/2014
s. 10(Sch.
item 18.16),
43/2017 s. 53.

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.
- (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.
- (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.

S. 498(2)
amended by
No. 37/2014
s. 10(Sch.
item 18.16).

S. 498(3)
amended by
No. 6/2018
s. 68(Sch. 2
item 20.5).

- (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.

S. 499
amended by
No. 43/2017
s. 54.

499 Offence to harbour or conceal person

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.

S. 500
amended by
No. 43/2017
s. 55.

500 Offence to counsel or induce person to escape

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

(1) A person must not without lawful authority or excuse—

S. 501(1)
amended by
Nos 54/2011
s. 10(3),
43/2017
s. 56(1).

(aa) enter or attempt to enter a remand centre, youth residential centre, youth justice centre or youth justice unit; or

S. 501(1)(aa)
inserted by
No. 54/2011
s. 10(1).

(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

(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

S. 501(1)(ab)
inserted by
No. 54/2011
s. 10(2).

(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.

S. 501(2)
amended by
Nos 54/2011
s. 10(3),
43/2017
s. 56(2).

- (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

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.

- | | |
|--|--|
| (3) A person guilty of an offence under this section may be apprehended by a police officer without warrant. | S. 501(3)
amended by
No. 37/2014
s. 10(Sch.
item 18.16). |
| (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(4)
inserted by
No. 54/2011
s. 10(4). |
| (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(5)
inserted by
No. 43/2017
s. 61. |
| (6) An instruction under subsection (5) must be served in accordance with section 593. | S. 501(6)
inserted by
No. 43/2017
s. 61. |

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.

S. 503
amended by
No. 43/2017
s. 57.

503 Offence to obstruct Secretary or employee

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".
- (2) The Court consists of a President, the magistrates, the judicial registrars and the registrars of the Court. S. 504(2)
amended by
No. 34/2010
s. 37(1).
- (3) The Court has the following Divisions—
 - (a) the Family Division;
 - (b) the Criminal Division;
 - (c) the Koori Court (Criminal Division); S. 504(3)(c)
amended by
No. 51/2006
s. 12(a).
 - (d) the Neighbourhood Justice Division. S. 504(3)(d)
inserted by
No. 51/2006
s. 12(b).
- (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.

S. 504(8)
inserted by
No. 34/2010
s. 37(2).

(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—

- (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.

S. 505
substituted by
No. 11/2021
s. 37.

505 Where and when Court to be held

The Court may sit and act at any time and place.

S. 505A
inserted by
No. 11/2021
s. 37.

505A Court may order place of hearing which is not a proper venue

- (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.

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. 506
(Heading)
amended by
No. 5/2013
s. 49(1).

S. 506
amended by
No. 5/2013
s. 49(2).

507 Assignment of magistrates or reserve magistrates

- (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.
- (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.
- (3) The President, after consulting the Chief Magistrate, may at any time revoke the assignment of a magistrate or reserve magistrate.
- (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**.

S. 507
(Heading)
amended by
No. 5/2013
s. 50(1).

S. 507(1)
amended by
No. 5/2013
s. 50(2).

S. 507(2)
amended by
No. 5/2013
s. 50(3).

S. 507(3)
amended by
No. 5/2013
s. 50(4).

S. 507(4)
amended by
No. 5/2013
s. 50(5).

S. 507(5)
repealed by
No. 68/2009
s. 72,
new s. 507(5)
inserted by
No. 5/2013
s. 50(6).

- (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.

508 President

S. 508(2)
amended by
No. 5/2013
s. 51.

- (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.
- (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.
- (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**.

S. 508(11)
inserted by
No. 63/2013
s. 53.

509 Acting President

- (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.

S. 509(1)
amended by
No. 5/2013
s. 52.

- (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.

S. 509A
inserted by
No. 16/2016
s. 187.

509A Administrative responsibility of President

- (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

- (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. 510(1)
amended by
No. 5/2013
s. 53.

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.
- (2) In this section, "magistrate for the Court" does not include a reserve magistrate.

S. 511
amended by
No. 5/2013
s. 54 (ILA
s. 39B(1)).

S. 511(2)
inserted by
No. 5/2013
s. 54.

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.

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.

S. 513
(Heading)
amended by
No. 5/2013
s. 55(1).
S. 513
amended by
No. 5/2013
s. 55(2).

S. 513A
inserted by
No. 63/2013
s. 81.

513A Constitution of Court if magistrate unable to continue

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.

S. 513B
inserted by
No. 3/2016
s. 55.

513B Appeals from Court constituted by Chief Magistrate who is a dual commission holder

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 Trial Division of the Supreme Court.

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
 - (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
 - (ca) a care by Secretary order applied for under section 289(1A); or
 - (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

S. 515(1)(c)
amended by
No. 61/2014
s. 84(1).

S. 515(1)(ca)
inserted by
No. 8/2016
s. 22(4).

S. 515(1)(cb)
inserted by
No. 8/2016
s. 22(4).

S. 515(1)(j)
substituted by
No. 61/2014
s. 84(2).

- (j) the variation or revocation of—
 - (i) a family preservation order; or
 - (ii) a family reunification order; or
 - (iii) a permanent care order; or

S. 515(1)(k)
substituted by
No. 61/2014
s. 84(2).

- (k) the extension of—
 - (i) a family preservation order; or
 - (ii) a family reunification order; or
 - (iii) a care by Secretary order; or

S. 515(1)(l)
substituted by
No. 61/2014
s. 84(2).

- (l) the revocation of—
 - (i) a care by Secretary order; or
 - (ii) a long-term care order; or

S. 515(1)(m)
substituted by
No. 61/2014
s. 84(2).

- (m) an order in respect of a failure to comply with an interim accommodation order; or

S. 515(1)(n)
amended by
No. 61/2014
s. 84(3).

- (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
- (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.

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.

516 Jurisdiction of Criminal Division

- (1) The Criminal Division has jurisdiction—
- (a) to hear and determine all charges against children for summary offences; and
 - (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, 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) 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
 - (ii) discharge the child; and
 - (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.
- (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.

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.

S. 516(1)(c)(i)
amended by
No. 68/2009
s. 73(1)(a).

S. 516(1)(c)(ii)
amended by
No. 68/2009
s. 73(1)(a).

S. 516(1)(e)
amended by
No. 68/2009
s. 73(1)(b).

S. 516(4)
amended by
No. 68/2009
s. 73(2)(a).

(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)(a)
amended by
No. 68/2009
s. 73(2)(a).

(a) permit the accused to go at large; or

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;

- | | |
|--|---|
| (d) whether the accused is the subject of another proceeding in any other court; | S. 516(5)(d)
amended by
No. 68/2009
s. 73(3)(a). |
| (e) any delay in the hearing of the charge and the reason for the delay; | |
| (f) whether the sentences available to the Court are appropriate; | S. 516(5)(f)
amended by
No. 68/2009
s. 73(3)(b). |
| (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). |

516A Joint committal proceedings

S. 516A
inserted by
No. 7/2009
s. 430 (as
amended by
No. 68/2009
ss 48, 54(p)).

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
 - (ii) is charged with 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
 - (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

S. 516A
(1)(b)(ii)
amended by
Nos 63/2014
s. 5(1)(f),
16/2020 s. 14.

- (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
- (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
- (c) any other jurisdiction given to it by or under this or any other Act.

S. 518(b)
amended by
Nos 68/2009
s. 74(a),
26/2012
s. 8(1).

S. 518(ba)
inserted by
No. 26/2012
s. 8(2).

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

S. 518A
inserted by
No. 26/2012
s. 9.

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
 - (iii) has been found guilty of the offence by the Criminal Division; or
 - (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).

S. 518A(c)(iii)
amended by
No. 43/2017
s. 62(1).

S. 518A(c)(iv)
inserted by
No. 43/2017
s. 62(2).

519 Circumstances in which Koori Court (Criminal Division) may deal with certain offences

- (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

S. 519(1)
amended by
No. 68/2009
s. 74(b).

(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)

(1) This section applies to the Koori Court (Criminal Division) when it is considering which sentence to impose in respect of a child.

S. 520(1)
amended by
No. 68/2009
s. 74(c).

(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;
- (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
- (iii) the whole or a material part of the allegations of family violence occurred in the municipal district;
- (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

S. 520C(3)(b)
amended by
Nos 52/2008
s. 237, 53/2016
s. 91(1).

S. 520C(3)(b)(iii)
amended by
No. 68/2008
s. 66(1).

S. 520C(3)(c)
inserted by
No. 68/2008
s. 66(2),
amended by
No. 53/2010
s. 221(Sch.
item 2.3).

(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

(iii) the whole or a material part of the alleged stalking or prohibited behaviour occurred in the municipal district.

S. 520C(3)(c)(iii)
amended by
No. 53/2010
s. 221(Sch.
item 2.4).

(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

(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)(c)
amended by
No. 68/2009
s. 75(a).

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.

520E Sentencing procedure in Neighbourhood Justice Division

S. 520E
inserted by
No. 51/2006
s. 13.

- (1) This section applies to the Neighbourhood Justice Division when it is considering which sentence to impose in respect of a child.

S. 520E(1)
amended by
No. 68/2009
s. 75(b).

- (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

S. 520E(6)
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 7.6).

accordance with section 4(2) of the **Evidence Act 2008**, that that Act applies.

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.
- (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. 522(4)
amended by
No. 68/2009
s. 76.

522A Consistent magistrate to oversee criminal proceedings

S. 522A
inserted by
No. 43/2017
s. 6.

- (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
- (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)(a)
amended by
No. 15/2013
s. 10(1).

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.
- (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

S. 524(11)
amended by
No. 15/2013
s. 10(7).

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.

525 Proceedings in which child is required to be legally represented

S. 525(1)
amended by
No. 15/2013
s. 11.

- (1) Subject to section 524, a child aged 10 years or more must be legally represented in the following proceedings in the Family Division—
- (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;
- (i) application in respect of a failure to comply with— S. 525(1)(i) substituted by No. 61/2014 s. 86(1).
 - (i) an interim accommodation order; or
 - (ii) a family preservation order;
- (j) application for the extension of— S. 525(1)(j) substituted by No. 61/2014 s. 86(1).
 - (i) a family preservation order; or
 - (ii) a family reunification order; or

S. 525(1)(k)
substituted by
No. 61/2014
s. 86(1).

S. 525(1)(l)
amended by
No. 61/2014
s. 86(2).

- (iii) a care by Secretary order;
 - (k) application for the revocation of—
 - (i) a care by Secretary order; or
 - (ii) a long-term care order;
 - (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**;
 - (ba) proceeding or investigation under Part 5A of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;

S. 525(2)(ba)
inserted by
No. 55/2014
s. 138.

(bb) proceeding under Part 4A of the **Sex Offenders Registration Act 2004**;

S. 525(2)(bb)
inserted by
No. 21/2016
s. 20.

(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;

(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)(da)
inserted by
No. 43/2017
s. 17(1).

(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.

S. 525(2)(e)
amended by
No. 43/2017
s. 17(2).

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.
- (3) Immediately after the Court makes an order to which this subsection applies, the appropriate registrar 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;
- (f) an order varying or revoking—
 - (i) a temporary assessment order; or
 - (ii) a therapeutic treatment order; or
 - (iii) a therapeutic treatment (placement) order;
- (g) an order varying a family reunification order;
- (h) an order extending—
 - (i) a family preservation order; or
 - (ii) a family reunification order; or
 - (iii) a care by Secretary order;
- (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;

S. 527(4)(e)
substituted by
No. 61/2014
s. 87(2).

S. 527(4)(f)
substituted by
No. 61/2014
s. 87(2).

S. 527(4)(g)
substituted by
No. 61/2014
s. 87(2).

S. 527(4)(h)
substituted by
No. 61/2014
s. 87(2).

S. 527(4)(i)
substituted by
No. 61/2014
s. 87(2).

S. 527(4)(l)
amended by
No. 68/2009
s. 77(a).

- (k) an order granting or refusing bail;
- (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.
- (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. 527(12)
amended by
No. 68/2009
s. 77(b).

527A Judicial resolution conference

S. 527A
inserted by
No. 50/2009
s. 18.

- (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.

(2) Unless the contrary intention appears in this Act or any other Act—

S. 528(2)
substituted by
No. 68/2009
s. 78.

(a) the **Magistrates' Court Act 1989**
(except section 58 and Part 5); and

(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

S. 528(2)(b)
amended by
No. 30/2010
s. 41(1).

(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.

(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.

S. 528(2A)
inserted by
No. 30/2010
s. 41(2).

- (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.

- (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.

S. 528B(1)
substituted by
No. 33/2018
s. 55.

529 Recall and cancellation of warrant

- (1) A warrant issued by a registrar, magistrate or bail justice may be recalled and cancelled by—
- (a) that registrar, magistrate or bail justice; 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.
- (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

S. 530(5)
amended by
Nos 69/2009
s. 54(Sch. Pt 2
item 10),
11/2021 ss. 39,
196(2).

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).
- (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).

S. 530(7)
amended by
No. 37/2014
s. 10(Sch.
item 18.16).

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.
- (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.

S. 531(2)
amended by
Nos 52/2013
s. 60, 6/2018
s. 68(Sch. 2
item 20.6).

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—
- (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

S. 532(5)(a)
amended by
No. 11/2021
s. 40.

S. 532(5)(b)
amended by
No. 11/2021
s. 40.

and who apparently is not less than 16 years of age.

- (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.
- (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 appropriate registrar not later than 2 days before the first day on which production is required.
- (11) If a document or thing is produced to the appropriate registrar under subsection (10), he or she must—

S. 532(6)
amended by
No. 6/2018
s. 68(Sch. 2
item 20.7).

- (a) if requested to do so, give a receipt to the person producing the document or thing; and
 - (b) produce the document or thing as the Court directs.
- (12) The production of a document or thing to the appropriate registrar 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.

- (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.

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.
- (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.
- (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—
- (a) the name of the person;
 - (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;
 - (c) the name or address of any place of residence of the person, or the locality in which the residence is situated;

S. 534(3B)
inserted by
No. 43/2017
s. 40(1).

S. 534(4)
amended by
Nos 43/2017
s. 40(2),
5/2018
s. 23(1).

S. 534(4)(a)
substituted by
No. 11/2019
s. 13(1).

S. 534(4)(b)
substituted by
No. 11/2019
s. 13(1).

S. 534(4)(c)
substituted by
No. 11/2019
s. 13(1).

Children, Youth and Families Act 2005
No. 96 of 2005
Part 7.5—Restriction on publication of proceedings

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

- (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

S. 534(B)
inserted by
No. 11/2019
s. 14.

- (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.
- (3) Process issued by a registrar may be recalled and cancelled by—
 - (a) that 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
 - (c) if that registrar is dead or has ceased to hold office or cannot be located, a magistrate.
- (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**.

S. 538(4)
amended by
No. 68/2009
s. 79.

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;
 - (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)

S. 539(1)(b)
amended by
No. 6/2018
s. 68(Sch. 2
item 20.8).

- 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—
 - (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. 542B(1)(a)
amended by
No. 62/2014
s. 96.

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—
 - (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.

S. 542D(2)(a)(i)
amended by
No. 17/2014
s. 160(Sch. 2
item 14.2).

- (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.
- (6) The **Public Administration Act 2004** does not apply to a judicial registrar in respect of the office of judicial registrar.

S. 542D(5)
amended by
No. 62/2014
s. 97.

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.
- (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.

S. 542E(6)
inserted by
No. 29/2015
s. 48(3).

- (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. 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—
 - (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.
- (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.
- (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**.

S. 544(1)(a)
amended by
No. 55/2014
s. 139(1).

S. 544(2)
amended by
No. 37/2014
s. 10(Sch.
item 18.17).

S. 544(4)
amended by
No. 55/2014
s. 139(2).

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;
- (h) progress reports;

S. 547(h)
amended by
No. 43/2017
s. 19(a).

- (i) youth control order planning
meeting reports;

S. 547(i)
inserted by
No. 43/2017
s. 19(b).

- (j) reports under section 409L(3)
(child's compliance with youth
control order).

S. 547(j)
inserted by
No. 43/2017
s. 19(b).

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 with the appropriate registrar or a court liaison officer at the proper venue of the Court as soon as possible and, if practicable, not later than 2 working days before the hearing.
- (3) On the filing of a notice under subsection (1), the registrar or court liaison officer must immediately notify the author of the report that his or her attendance is required on the return date.

- (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
 - (ab) the Secretary applies under section 289(1A) for a care by Secretary order; or
 - (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

S. 557(1)(ab)
inserted by
No. 8/2016
s. 22(6).

S. 557(1)(ac)
inserted by
No. 8/2016
s. 22(6).

- (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). |
| (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(c)
substituted 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 | S. 558(ca)
inserted by
No. 61/2014
s. 90(2). |

- (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

- (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

**S. 561(1)
amended by
No. 61/2014
s. 125.**

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

- (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

S. 562(1)
amended by
No. 61/2014
s. 126.

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.

S. 569
amended by
No. 61/2014
s. 128.

569 Secretary to forward report to Court

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.
- (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—

S. 571(4)
substituted by
No. 23/2006
s. 234(7).

- (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;
 - (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.

S. 573(1)(c)
amended by
No. 68/2009
s. 80(a).

S. 573(2)(b)
amended by
No. 68/2009
s. 80(b).

- (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
 - (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.

S. 574
substituted by
No. 61/2014
s. 129.

574 Pre-sentence report to be filed with registrar

A pre-sentence report must be filed with the appropriate registrar at least 3 working days before the return date.

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 with registrar

A group conference report must be filed with the appropriate registrar at least 3 working days before the return date.

S. 579
substituted by
No. 61/2014
s. 131.

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.
- (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**.

S. 581(2)
amended by
No. 47/2014
s. 252.

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).

(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—

S. 584(1)
amended by
Nos 68/2009
s. 81(c),
69/2009
s. 54(Sch. Pt 2
item 10).

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
No. 52/2013
s. 55.

If under the provisions of this Act (other than section 172(3)) a child is placed in emergency care or apprehended without a warrant and an application is to be made to the Court in respect of the child, the person who placed the child in emergency care or apprehended the child must file with the appropriate registrar as soon as possible after doing so and before the application is made a notice 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)(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;

(b) generally any matter relating to the practice and procedure of the Criminal Division of the Court.

S. 588(1AAB)
inserted by
No. 8/2016
s. 17(3).

(1AAB) The President together with 2 or more magistrates for the Court may jointly make rules of court for or with respect to—

(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—
 - (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 with the appropriate registrar in proceedings in the Court; or
 - (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—
- (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
(1AAB)(ba)
inserted by
No. 33/2018
s. 57.**

**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).**

- (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.
- S. 588(2)
amended by
No. 68/2009
s. 84(2).
- (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(3)
inserted by
No. 5/2013
s. 56.
- (3) In this section, "magistrate" or "magistrate for the Court" does not include a reserve magistrate.

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;
- (b) applications to the Court under Division 2 or 3 of Part IIA of the **Evidence (Miscellaneous Provisions) Act 1958**;
S. 589(b) amended by No. 69/2009 s. 54(Sch. Pt 2 item 10).
- (c) any matter relating to the practice and procedure of the Court under 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).
- (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(ca) inserted by No. 38/2017 s. 64.
- (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.
S. 589(d) inserted by No. 21/2016 s. 21(b).

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).

S. 590A
inserted by
No. 51/2006
s. 15.

590A Rules of court—Neighbourhood Justice 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 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**.

Children, Youth and Families Act 2005
No. 96 of 2005
Part 7.11—Rules

- (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.

S. 592(2)
amended by
No. 42/2014
s. 113(2).

Ch. 7A
(Headings
and ss 592A–
592J)
inserted by
No. 42/2018
s. 35.

Chapter 7A—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).

Part 7A.1—Recognition of matters relating to relevant historical care and protection orders

S. 592A
inserted by
No. 42/2018
s. 35.

592A Statement of recognition

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.

592B Definitions

S. 592B
inserted by
No. 42/2018
s. 35.

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—

- (a) a public authority within the meaning
of the **Charter of Human Rights and
Responsibilities Act 2006**;
- (b) a community service;
- (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.

S. 592C
inserted by
No. 42/2018
s. 35.

**592C Meaning of *relevant historical care and protection
order***

- (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

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**.

S. 592D
inserted by
No. 42/2018
s. 35.

592E Effect of relevant historical care and protection order in relation to matters concerning convictions, findings of guilt or criminal history

(1) On and after the commencement of this section, the following have effect in relation to a relevant historical care and protection order.

S. 592E
inserted by
No. 42/2018
s. 35.

- (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.

S. 592I
inserted by
No. 42/2018
s. 35.

592I Destruction of official records and secondary records

- (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—

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.

S. 593(5)
inserted by
No. 11/2021
s. 42(3).

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—

(a) for whom the Secretary has parental responsibility as the result of—

S. 597(1)(a)
amended by
No. 61/2014
s. 91(1).

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).

Children, Youth and Families Act 2005
No. 96 of 2005
Part 8.3—Placing child in emergency care

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

- (1) It is the intention of sections 328 and 424 to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of section 430Q to alter or vary section 85 of the **Constitution Act 1975**.

S. 599
amended by
No. 68/2009
s. 85 (ILA
s. 39B(1)).

S. 599(2)
inserted by
No. 68/2009
s. 85.

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—
 - (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
 - (i) the registration of community services and prescribing standards to be observed for the protection, care or accommodation of persons placed in out of home care services

S. 600(1)(h)(i)
substituted by
No. 61/2014
s. 93(a).

- and in the conduct, management and control of community services; and
- (j) the care, control and management of persons placed in out of home care services or for whom the Secretary has parental responsibility; and
 - (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)(j)
substituted by
No. 61/2014
s. 93(b).

* * * * *

S. 600(1)(o)
amended by
No. 5/2006
s. 17(2)(a),
repealed by
No. 54/2011
s. 11.

S. 600(1)(pa)
inserted by
No. 5/2006
s. 17(2)(b).

- (p) the particulars of the use of isolation to be recorded under section 488(6); and
- (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

Children, Youth and Families Act 2005
No. 96 of 2005
Part 8.5—Regulations

* * * *

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.

Part 8.5A—Temporary measures in response to COVID-19 pandemic

Division 1—Preliminary

Ch. 8 Pt 8.5A
(Headings
and ss 600A–
600ZC)
inserted by
No. 11/2020
s. 25.

600A Purpose and effect of Part

S. 600A
inserted by
No. 11/2020
s. 25.

- (1) The purpose of this Part is to temporarily change the operation of this Act in response to the COVID-19 pandemic.
- (2) This Part applies despite anything to the contrary in—
 - (a) another Part of this Act; or
 - (b) any other Act, other than—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (c) any subordinate instrument, other than a subordinate instrument made under—
 - (i) the Charter of Human Rights and Responsibilities; or
 - (ii) the **COVID-19 Omnibus (Emergency Measures) Act 2020**; or
 - (iii) the **Constitution Act 1975**; or
 - (d) any other law.

Pt 8.5A Div. 2
(Heading and
ss
600B–600F)
inserted by
No. 11/2020
s. 25,
repealed by
No. 96/2005
s. 600ZC(1)
(as
amended by
Nos 27/2020
s. 10, 11/2021
s. 204).

* * * *

Division 3—Pre-sentence reports

S. 600G
inserted by
No. 11/2020
s. 25.

600G Application of Division

This Division applies if—

- (a) the Court or an appellate court finds a person guilty of an offence; and
- (b) the person is a child or other person under the age of 21 years to whom this Act applies; and
- (c) the Court or appellate court is proposing to sentence the person; and
- (d) the Court or appellate court—
 - (i) may or must order a pre-sentence report under this Act in respect of the person before passing sentence on that person; or
 - (ii) had ordered, but not received or considered, a pre-sentence report in respect of the person immediately before the commencement of the **COVID-19 Omnibus (Emergency Measures) Act 2020**.

600H Definition of *oral pre-sentence report*

In this Part—

S. 600H
inserted by
No. 11/2020
s. 25.

oral pre-sentence report means a report given to the Court or appellate court by the Secretary to the Department of Justice and Community Safety (whether given in person, or by audio link or audio visual link) that sets out all or any of the following matters but no others—

S. 600H def of
*oral pre-sentence
report*
amended by
No. 11/2021
s. 196(3).

- (a) the sources of information on which the report is based;
- (b) the circumstances of the offence of which the person has been found guilty;
- (c) any previous sentences in respect of the person involving the Secretary or the Secretary to the Department of Justice and Community Safety;
- (d) the family circumstances of the person;
- (e) the education of the person;
- (f) the employment history of the person;
- (g) the recreation and leisure activities of the person;
- (h) medical and health matters relating to the person.

600I Circumstances in which oral pre-sentence report may be given

S. 600I
inserted by
No. 11/2020
s. 25.

- (1) The Secretary to the Department of Justice and Community Safety may give an oral pre-sentence report in respect of a person if—
 - (a) the Court or appellate court is satisfied that it is not reasonably practicable for a pre-sentence report to be prepared due to the impact of the COVID-19 pandemic; and

- (b) subject to subsection (2), a previous pre-sentence report has been prepared in respect of the person during the 6 month period before the day on which the Court or appellate court proposes to order an oral pre-sentence report; and
 - (c) the person consents to the giving and consideration of an oral pre-sentence report instead of a pre-sentence report; and
 - (d) the Secretary to the Department of Justice and Community Safety consents to the giving and consideration of an oral pre-sentence report instead of a pre-sentence report; and
 - (e) the Court or appellate court is satisfied that it is in the interests of justice to consider an oral pre-sentence report instead of a pre-sentence report in passing sentence on the person.
- (2) Subsection (1)(b) does not apply if the person is of or over the age of 20 years and 6 months on the day on which the Court or appellate court proposes to order an oral pre-sentence report.

S. 600J
inserted by
No. 11/2020
s. 25.

600J Disclosure of contents of oral pre-sentence report

- (1) The Secretary to the Department of Justice and Community Safety, if it is reasonably practicable to do so before the giving of an oral pre-sentence report, must provide a summary of the information contained in that report to—
 - (a) subject to subsection (3), the person who is the subject of the report; and
 - (b) the legal practitioner representing that person.
- (2) A summary referred to in subsection (1) may be provided in written or oral form.

- (3) The Secretary to the Department of Justice and Community Safety is not under subsection (1)(a) required to provide the person with a summary of any information contained in the oral pre-sentence report that the Secretary to the Department of Justice and Community Safety considers may be prejudicial to the physical or mental health of the person.
- (4) A person who receives the summary of the information contained in an oral pre-sentence report under this section (part or all of which was not disclosed to the person who is the subject of the report because of subsection (3)) must not, unless otherwise directed by the Court or appellate court, disclose to the person who is the subject of the report any information contained in the summary or the part of the summary that was not sent to that person.

Penalty: 10 penalty units.

600K Hearing of oral pre-sentence report

S. 600K
inserted by
No. 11/2020
s. 25.

- (1) The Court or appellate court (as the case requires) may on its own motion—
 - (a) order the whole or any part of an oral pre-sentence report be given in closed court;
or
 - (b) order that only persons or classes of persons specified by it may be present during the giving of the whole or any part of an oral pre-sentence report.
- (2) If any matter in an oral pre-sentence report is disputed by the person who is the subject of the report, the person who gave the oral pre-sentence report may be cross-examined on the contents of the report.

S. 600L
inserted by
No. 11/2020
s. 25.

600L Interpretation of provisions relating to pre-sentence reports

- (1) Subject to subsection (3), the Court or appellate court (as the case requires) is taken to have ordered, received or considered (however described) a pre-sentence report under section 355, 358, 410, 412, 414, 416, 430I, 430M, 544, 551 or 571 if the Court or appellate court has ordered, heard or considered an oral pre-sentence report.
- (2) Subject to subsection (3), sections 355, 358, 410, 412, 414, 416, 430I, 430J, 430M, 544, 547, 548, 549, 551, 552, 571 and 573 apply to oral pre-sentence reports as if—
 - (a) any reference to a pre-sentence report were a reference to an oral pre-sentence report; and
 - (b) any reference to the preparation or submission of a pre-sentence report were a reference to the giving of an oral pre-sentence report; and
 - (c) any reference to the author of a pre-sentence report were a reference to the Secretary to the Department of Justice and Community Safety.
- (3) Despite the operation of this Division, the Court or appellate court (as the case requires) must not order, receive or consider an oral pre-sentence report instead of a pre-sentence report under section 430I(3) or 571(3).
- (4) If, due to the operation of this Division, the Court or appellate court (as the case requires) orders, receives or considers an oral pre-sentence report instead of a pre-sentence report, the following provisions do not apply in relation to the proceeding for the purposes of which the oral pre-

sentence report is ordered, received or considered—

- (a) section 430K;
- (b) section 430L;
- (c) section 550;
- (d) section 574;
- (e) section 575.

Division 4—Isolation

600M Isolation for detection, prevention or mitigation of COVID-19 or other infectious disease

S. 600M
inserted by
No. 11/2020
s. 25.

- (1) Without limiting section 488, the Secretary or 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 to others and from the normal routine of the centre, for the purpose of—
 - (a) detecting COVID-19 or any other infectious disease; or
 - (b) preventing or mitigating the transmission of COVID-19 or any other infectious disease within the remand centre, youth residential centre or youth justice centre.
- (2) Isolation may be authorised under subsection (1) whether or not the person isolated is suspected of having, or has been diagnosed as having, COVID-19 or any other infectious disease.
- (3) If isolation is authorised under subsection (1), the Secretary must determine the period of isolation, not exceeding 14 consecutive days, being the minimum period of time that is required to detect, or prevent or mitigate the transmission of, COVID-19 or other infectious disease.

- (4) In determining the minimum period of time for the purposes of subsection (3), the Secretary may have regard to—
 - (a) any relevant current direction under the **Public Health and Wellbeing Act 2008** relating to COVID-19 or any other infectious disease; and
 - (b) any current recommendation made by, or current advice of, the Chief Health Officer, the Deputy Chief Health Officer or the Department of Health and Human Services relating to COVID-19 or any other infectious disease; and
 - (c) any other relevant medical or mental health advice relating to COVID-19 or any other infectious disease.
- (5) A person placed in isolation under subsection (1) must—
 - (a) be closely supervised and observed at intervals of not longer than 15 minutes; and
 - (b) receive medical and mental health support and treatment that the person reasonably requires.
- (6) If necessary, reasonable force may be used to place a person in isolation under this section.
- (7) The officer in charge of a remand centre, a youth residential centre or a youth justice centre must make sure that the following particulars of every use of isolation under this section are recorded in a register established for the purpose—
 - (a) the name of the person isolated;
 - (b) the time and date the isolation commenced;
 - (c) the frequency of staff supervision and observation;

- (d) the frequency of supervision and observation by a registered medical practitioner or other primary health service provider, or a medical, health or mental health expert;
 - (e) the time and date of release from isolation.
- (8) The Secretary may authorise isolation under subsection (1) in respect of a person on more than one occasion, and may determine a further minimum period of isolation in accordance with subsection (3) for each occasion.
- (9) In this section and section 600N—
infectious disease has the same meaning as in the **Public Health and Wellbeing Act 2008**.

600N Entitlements of person placed in isolation under section 600M

S. 600N
inserted by
No. 11/2020
s. 25.

- (1) Subject to subsection (3), a person who is placed in isolation under section 600M is entitled to be temporarily removed from isolation to allow the person access to outdoors and to undertake outdoor recreation activities—
 - (a) at least once each day; and
 - (b) for a reasonable period of time on each occasion that the person is temporarily removed.
- (2) Subject to subsection (3), a person who is placed in isolation under section 600M has, during the period of isolation, all the entitlements of a person detained in a remand centre, youth residential centre or youth justice centre that are set out in section 482(2).
- (3) The Secretary may determine not to give effect to an entitlement referred to in subsection (1) or (2), if the Secretary considers that it would not be reasonably safe to do so, or that the Secretary

would not be reasonably able to do so, having regard to—

- (a) any relevant current direction under the **Public Health and Wellbeing Act 2008** relating to COVID-19 or any other infectious disease; or
 - (b) any current recommendation made by, or current advice of, the Chief Health Officer, the Deputy Chief Health Officer, or the Department of Health and Human Services, relating to COVID-19 or any other infectious disease; or
 - (c) any other relevant medical or mental health advice relating to COVID-19 or any other infectious disease; or
 - (d) the interests of the security of the remand centre, youth residential centre or youth justice centre.
- (4) The period of isolation authorised under section 600M(1) continues to apply for any period that the person is temporarily removed from isolation under subsection (1).

S. 600O
inserted by
No. 11/2020
s. 25.

600O Reporting on use of reasonable force to place person in isolation under section 600M

- (1) This section applies if an officer uses physical force to place a person in isolation under section 600M.
- (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.
- (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.

Division 4A—Family reunification orders

Pt 8.5A
Div. 4A
(Heading and
s. 600OA)
inserted by
No. 27/2020
s. 7.

600OA Period of a family reunification order—modification of certain provisions

S. 600OA
inserted by
No. 27/2020
s. 7.

- (1) This section applies to—
 - (a) the making of a family reunification order for a child; and
 - (b) the extension of a family reunification order for a child under section 294.
- (2) The Court may specify a period in the order, or extend the order by a period, that will have the effect that the child will be placed in out of home care for a longer cumulative period than would otherwise be permitted under section 287A(2) or (3), or section 294A(1)(b) or 296(3) or (4), as the case requires, if—
 - (a) the Court is satisfied that the progress of a parent of the child towards reunification has been impeded as a result of the COVID-19 pandemic; and
 - (b) the Court is satisfied that it is in the best interests of the child to specify the period in the order, or extend the order by the period, as the case requires; and
 - (c) the period specified, or the extension, does not exceed the period for which the parent's capacity to make progress towards reunification has been impeded as a result of the COVID-19 pandemic; and
 - (d) specifying the period in the order, or extending the order, will not have the effect that the child will be placed in out of home

care for a cumulative period that is more than 6 months longer than would otherwise have been permitted under section 287A(2) or (3), or section 294A(1)(b) or 296(3) or (4), as the case requires.

Notes

- 1 This section does not prevent periods being specified in increments under a particular provision, up to a total of 6 months.
- 2 Making or extending a family reunification order as permitted by this section can never have the effect that a child will be placed in out of home care for a cumulative period that is more than 30 months.

Division 5—Other measures

* * * * *

Ss
600P–600R
inserted by
No. 11/2020
s. 25,
repealed by
No. 96/2005
s. 600ZC(1)
(as
amended by
Nos 27/2020
s. 10, 11/2021
s. 204).

S. 600S
inserted by
No. 11/2020
s. 25.

600S Requirements relating to attendance at a youth justice unit

- (1) A person who is required under this Act or the regulations to attend a youth justice unit may attend the youth justice unit in any manner directed by the Secretary including, but not limited to, attending by means of audio link or audio visual link.
- (2) This section applies to attendance at any time while this section is in force, irrespective of when the requirement to attend was imposed.

600T Requirements relating to reporting

- (1) A person who is required under this Act or the regulations to report to the Secretary, a youth justice officer or a parole officer as a condition or requirement of a sentence or parole order may report in any manner directed by the Secretary, the youth justice officer or the parole officer as the case requires including, but not limited to, reporting by means of audio link or audio visual link.
- (2) This section applies to reporting at any time while this section is in force, irrespective of when the requirement to report was imposed.

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S. 600T
inserted by
No. 11/2020
s. 25.

* * * * *

Ss
600U–600W
inserted by
No. 11/2020
s. 25,
repealed by
No. 96/2005
s. 600ZC(1)
(as
amended by
Nos 27/2020
s. 10, 11/2021
s. 204).

S. 600WA
inserted by
No. 27/2020
s. 8,
repealed by
No. 96/2005
s. 600ZC(1)
(as
amended by
Nos 27/2020
s. 10, 11/2021
s. 204).

Children, Youth and Families Act 2005
No. 96 of 2005
Part 8.5A—Temporary measures in response to COVID-19 pandemic

Ss 600X–600Z
inserted by
No. 11/2020
s. 25,
repealed by
No. 96/2005
s. 600ZC(1)
(as
amended by
Nos 27/2020
s. 10, 11/2021
s. 204).
S. 600ZA
inserted by
No. 11/2020
s. 25.

* * * * *

600ZA Requirements relating to bail justices

- (1) The operation of the following provisions is suspended—
 - (a) section 242(3);
 - (b) section 247A(3).
- (2) Sections 269 and 270 have effect as if—
 - (a) the references to "a bail justice" in subsections 269(5) and (7) and 270(8) and (9) were omitted; and
 - (b) the references to "24 hours" in subsections 269(5) and 270(8) were references to "one working day".

S. 600ZB
inserted by
No. 11/2020
s. 25.

600ZB Application of Part 1.2 principles

S. 600ZB(1)
amended by
No. 11/2021
s. 203(1).

- (1) Subject to subsections (2) and (2A), the principles in Part 1.2 do not apply to Part 8.5A.

S. 600ZB(2)
amended by
No. 27/2020
s. 9,
substituted by
No. 11/2021
s. 203(2).

- (2) The principles in Part 1.2 apply to Division 4A of Part 8.5A, except to the extent that Division 4A relates to—
 - (a) Chapter 5; or
 - (b) Chapter 7 (in relation to a matter under Chapter 5).

(2A) The principles in Part 1.2 apply to Division 5 of Part 8.5A, except to the extent that Division 5 relates to—

S. 600ZB(2A)
inserted by
No. 11/2021
s. 203(2).

(a) Chapter 5; or

(b) Chapter 7 (in relation to a matter under Chapter 5).

(3) In this section a reference to Part 8.5A includes a reference to a decision or action under Part 8.5A.

Division 6—Repeal of Part

600ZC Repeal of this Part

(1) Division 2 of this Part and sections 600P, 600Q, 600R, 600U, 600V, 600W, 600WA, 600X, 600Y and 600Z are **repealed** on 26 April 2021.

(2) Divisions 3 and 4 of this Part and sections 600S, 600T, 600ZA and 600ZB(2A) are **repealed** on 26 April 2022.

(3) The remaining provisions of this Part are **repealed** on 26 April 2023.

S. 600ZC
inserted by
No. 11/2020
s. 25,
substituted by
Nos 27/2020
s. 10, 11/2021
s. 204.

Part 8.6—Repeals and transitional provisions

Ss 601–604
repealed by
No. 29/2011
s. 3(Sch. 1
item 9.2).

* * * *

S. 605
repealed by
No. 25/2009
s. 38(3).

* * * *

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

- (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.

- (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

- (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.

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).

S. 617(2)
inserted by
No. 18/2010
s. 6.

S. 616
inserted by
No. 30/2010
s. 43,
renumbered
as s. 617 by
No. 29/2011
s. 3(Sch. 1
item 9.3).

- (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.

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S. 626
inserted by
No. 52/2013
s. 61,
repealed by
No. 96/2005
s. 626.

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.

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

Sch. 1 Pt 2
cl. 4(1)
amended by
Nos 52/2013
s. 59, 8/2016
s. 19.

- (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.
- (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—

- (a) as far as possible, make decisions having regard to the principles in Part 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

Sch. 1 Pt 2
cl. 5(d)
amended by
No. 68/2009
s. 87(1)(a).

- (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.

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).

12 Duty of the Secretary to inform the Court of certain matters

Sch. 1 Pt 2
cl. 12
amended by
No. 68/2009
s. 87(1)(b).

If the Secretary is aware that—

(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

Sch. 1 Pt 2
cl. 12(a)
amended by
No. 68/2009
s. 87(1)(b).

(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
- (b) a criminal proceeding is pending against that child in any court—

Sch. 1 Pt 3
cl. 16(2)(a)
amended by
No. 68/2009
s. 87(1)(c).

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.

Sch. 3
substituted by
No. 48/2006
s. 29.

Schedule 3—Children and Young Persons Infringement Notice System

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);

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 10 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);

Children, Youth and Families Act 2005
No. 96 of 2005
Schedule 3—Children and Young Persons Infringement Notice System

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 notice 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 offence has the same meaning as it
has in the **Infringements Act 2006**;

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**;

Sch. 3 Pt 1
cl. 2 def. of
*penalty
reminder
notice fee*
inserted by
No. 59/2017
s. 109(2).

penalty reminder notice fee has the same meaning
as it has in the **Infringements Act 2006**;

Sch. 3 Pt 1
cl. 2 def. of
*prescribed
costs*
repealed by
No. 59/2017
s. 109(1).

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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;

registrar means principal registrar or registrar;

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).

work and development permit has the same
meaning as it has in the **Fines Reform
Act 2014**.

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).

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
 - (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

Sch. 3 Pt 2
cl. 3(1)(a)(ii)
substituted by
No. 47/2014
s. 253(1)(a).

Children, Youth and Families Act 2005
No. 96 of 2005
Schedule 3—Children and Young Persons Infringement Notice System

Sch. 3 Pt 2
cl. 3(1)(a)(iii)
amended by
Nos 29/2016
s. 108(a),
47/2014
s. 253(1)(b).

(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)(iv)
inserted by
No. 29/2016
s. 108(b).

(iv) who is not subject to a work and development permit; or

Sch. 3 Pt 2
cl. 3(1)(a)(v)
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

(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

- | | |
|---|--|
| (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)(d)
amended by
No. 59/2017
s. 109(3). |
| (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)(e)
substituted by
No. 47/2014
s. 253(2). |
| (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 | Sch. 3 Pt 2
cl. 3(2)(f)
amended by
Nos 59/2017
s. 109(3),
47/2014
s. 253(3). |
| (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 | |
| (h) a charge-sheet in relation to the offence has not been filed; and | Sch. 3 Pt 2
cl. 3(2)(h)
amended by
No. 68/2009
s. 87(3)(a). |
| (i) a charge-sheet may still be filed in relation to the offence; and | Sch. 3 Pt 2
cl. 3(2)(i)
amended by
Nos 68/2009
s. 87(3)(a),
64/2010 s. 55. |
| (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 | Sch. 3 Pt 2
cl. 3(2)(j)
substituted by
No. 81/2006
s. 31(2). |

- 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)(k)
substituted by
No. 81/2006
s. 31(2).
- (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)(l)
substituted by
Nos 81/2006
s. 31(2),
9/2008 s. 41.
- (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)(m)
substituted by
No. 9/2008
s. 41,
amended by
No. 8/2019
s. 88(1).
- (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)(n)
inserted by
No. 8/2019
s. 88(2),
amended by
No. 18/2020
s. 124(1)(a).
- (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

- (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.

Sch. 3 Pt 2
cl. 3(2)(o)
inserted by
No. 18/2020
s. 124(1)(b).

4 Registration of infringement penalty

- (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. 4(1)
amended by
No. 59/2017
s. 109(4).

4A Extended period for registration

- (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

Sch. 3 Pt 2
cl. 4A
inserted by
No. 29/2016
s. 109(1).

Sch. 3 Pt 2
cl. 4A(1)
amended by
Nos 59/2017
s. 109(5),
29/2016
s. 109(2).

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
 - (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.

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).

Sch. 3 Pt 2
cl. 6(6)
amended by
No. 68/2009
s. 87(3)(b).

(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).

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

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).

- (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
- (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
- (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

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).

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.

Sch. 3 Pt 2
cl. 12(3)
amended by
No. 74/2013
s. 8.

(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(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—
 - (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
 - (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
 - (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)(a)
amended by
No. 59/2017
s. 109(6).

Sch. 3 Pt 3
cl. 16(3)(b)
amended by
No. 59/2017
s. 109(7).

Sch. 3 Pt 3
cl. 16(3)(c)
amended by
No. 59/2017
s. 109(7).

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.

Sch. 3 Pt 4
(Heading and
cl. 17)
inserted by
No. 18/2010
s. 47.

Part 4—Extension of time for commencing proceeding

Sch. 3 Pt 4
cl. 17
inserted by
No. 18/2010
s. 47.

17 Decision to go to Court

- (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

(b) in accordance with section 53 of the
Infringements Act 2006; or

(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

(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

Sch. 3 Pt 4
cl. 17(1)(ab)
inserted by
No. 29/2016
s. 110.

Sch. 3 Pt 4
cl. 17(1)(b)
amended by
No. 64/2010
s. 56(1).

Sch. 3 Pt 4
cl. 17(1)(ba)
inserted by
No. 64/2010
s. 56(2).

- infringement penalty or 12 months after the date of the alleged offence (whichever is the earlier); or
- (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
- (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
- (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**
- Sch. 3 Pt 4
cl. 17(1)(d)
amended by
No. 27/2011
s. 9.
- Sch. 3 Pt 4
cl. 17(1)(e)
amended by
Nos 8/2019
s. 89(1),
18/2020
s. 124(2)(a).
- Sch. 3 Pt 4
cl. 17(1)(f)
substituted by
No. 8/2019
s. 89(2).
- Sch. 3 Pt 4
cl. 17(1)(f)(ii)
amended by
No. 18/2020
s. 124(2)(b).

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)(g)
amended by
No. 8/2019
s. 89(3).

- (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)(h)
amended by
No. 8/2019
s. 89(4).

- (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)(i)
inserted by
No. 8/2019
s. 89(5),
amended by
No. 18/2020
s. 124(2)(c).

- (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)(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).

Children, Youth and Families Act 2005
No. 96 of 2005
Schedule 3—Children and Young Persons Infringement Notice System

- (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.

Sch. 4
substituted by
No. 48/2006
s. 30.

Schedule 4—Transitional and saving provisions

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.

<i>Old Provision</i>	<i>New Provision</i>
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

Children, Youth and Families Act 2005
No. 96 of 2005
Schedule 4—Transitional and saving provisions

<i>Old Provision</i>	<i>New Provision</i>
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

Children, Youth and Families Act 2005
No. 96 of 2005
Schedule 4—Transitional and saving provisions

<i>Old Provision</i>	<i>New Provision</i>
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.

<i>Column 1</i>	<i>Column 2</i>
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.

Schedule 5—Transitional provisions relating to the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014

Sch. 5
inserted by
No. 61/2014
s. 154 (as
amended by
No. 20/2015
s. 48).

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.

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—

Sch. 5 Pt 2
cl. 6A
inserted by
No. 8/2016
s. 20.

Sch. 5 Pt 2
cl. 7(b)
amended by
No. 8/2016
s. 21.

- (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
- (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).

Sch. 6
inserted by
No. 43/2017
s. 64(2).

Schedule 6—Transitional provisions relating to the Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017

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).

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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

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)
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
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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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 Act 2005
No. 96 of 2005
Endnotes

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

**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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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

Assent Date: 19.11.19
Commencement Date: S. 18 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**

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**

Children, Youth and Families Act 2005
No. 96 of 2005
Endnotes

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**

3 Amendments Not in Operation

This version does not contain amendments that are not yet in operation.

4 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. 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";