NORFOLK ISLAND

Child Welfare Act 2009

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NORFOLK ISLAND

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NORFOLK ISLAND

CHILD WELFARE ACT 2009

An Act to make provision for the welfare of children and young people, to repeal the *Child Welfare Act 1937* and the *Child Welfare Agreement Act 1941,* and for matters connected therewith.

BE IT ENACTED by the Legislative Assembly as follows —

Chapter 1 Preliminary

Part 1.1 Introductory

1 Short title

This Act may be referred to as the *Child Welfare Act 2009*.

2 Commencement

(1) This Part 1.1, Part 2.1, sections 195, 196,197, and the dictionary commence on the day on which notification of assent to this Act is published in the Gazette.

(2) The remaining provisions of this Act commence on a day or days to be fixed by the Administrator by notice in the Gazette or on the day that is the day following the expiration of 90 days after the date of commencement of this Part 1.1 which ever first occurs.

Part 1.2 Interpretation

3 Dictionary and Notes

(1) The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (***signpost definitions***) to other terms defined elsewhere.

For example, the signpost definition '***dangerous drug***—see the *Dangerous Drugs Act 1927* s. 3(1)*,'* means that the term 'dangerous drug' is defined in that subsection and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears.

(2) A note included in this Act is explanatory and is not part of this Act.

4 Orders *in favour of* a person

(1) An order made in relation to a child or young person is an order ***in favour of*** a person if—

(a) for an order in relation to an aspect of parental responsibility—the person is given that aspect of parental responsibility under the order; or

(b) for an order for reparation or compensation—the order requires the child or young person to make reparation or pay compensation to the person; or

(c) for a contact order—the order allows the person to have contact with the child or young person; or

(d) for a residence order—the order requires the child or young person to live with the person.

(2) In this section:

order means an order made by the court or another court, whether under this Act or another law.

5 Meaning of *carer*

(1) In this Act:

carer, for a child or young person, includes a person who provides regular and substantial care for the child or young person.

(2) A person is not a ***carer***—

(a) only because the person provides care for a child or young person at a child-care centre or under a family day care scheme; or

(b) if the person provides care on a casual basis and is not a relative of the child or young person being cared for.

(3) In this section:

care includes foster care, respite care and crisis care.

Part 1.3 Application of the Act

6 Application of Act generally

This Act applies to children and young people.

7 Who is a child?

For this Act, a ***child*** is a person who is under 12 years old.

8 Who is a young person?

For this Act, a ***young person*** is a person who is 12 years old or older, but not yet 18 years old.

Note: Adult is defined in the dictionary.

9 Children and young people to whom Act applies

The functions under this Act may be exercised in relation to children and young people—

(a) who ordinarily live in Norfolk Island; or

(b) who do not ordinarily live in Norfolk Island, but who are present in Norfolk Island; or

(c) who are subject to an event or circumstances happening in Norfolk Island giving rise to a report under section 40 (Voluntary reporting) or section 41 (Mandatory reporting).

Chapter 2 General objects, principles and parental responsibility

Part 2.1 General objects

10 Objects

The objects of this Act include—

(a) to provide for and promote the care, protection and wellbeing of children and young people in a way that recognises their right to grow in a safe and stable environment and that takes into account the responsibilities of parents and others for them; and

(b) to recognise that children and young people have the right to be protected from abuse and neglect and that their protection is the responsibility of parents and families with community and government support; and

(c) to ensure that children and young people are provided with a safe and nurturing environment by organisations and people who, directly or indirectly, provide care and protection for them; and

(d) to ensure that services provided by or for government for the care and protection of children and young people foster their health, education, developmental needs, spirituality, self-respect, self-reliance and dignity; and

(e) to recognise that the support of children and young persons, and the provision of positive opportunities to allow them to become valuable community members, is the responsibility of parents and families with community and government support; and

(f) to prevent abuse and neglect of children and young people through the provision of appropriate assistance to parents and others who have responsibility for children and young people.

Part 2.2 Principles applying to the Act

11 Application of principles

In making a decision or taking action under this Act in relation to a child or young person the general principles in section 12 (including the best interests principle as explained in section 13) are to be applied; and

12 General principles

(1) In making a decision or taking action under this Act in relation to a child or young person, the general principles to be applied by a person are as follows:

(a) the best interests of the child or young person should be the paramount consideration (the ***best interests principle***);

(b) the primary responsibility for providing care and protection for the child or young person should lie with his or her parents and other family members;

(c) high priority should be given to supporting family members, in cooperation with them, to care for and protect the child or young person, including when the child or young person is subject to an order under this Act or a voluntary care agreement;

(d) if the child or young person is in need of care and protection and family members are unwilling or unable to provide the child or young person with adequate care and protection (whether temporarily or permanently)—it is the responsibility of government to share or take over their responsibility;

(e) if intervention by government in the life of the child or young person (and his or her family) is appropriate—the intervention should be the least intrusive consistent with the best interests of the child or young person;

(f) if removal of the child or young person from his or her existing situation is necessary or desirable in his or her best interests—consideration should be given, before any other placement option is considered, to the child or young person living or being placed with a family member or a person regarded by the child or young person as a family member;

(g) if the child or young person does not live with his or her family because of the operation of this Act—contact with people who are significant in his or her life should be encouraged;

(h) the education, training or lawful employment of the child or young person should be encouraged and continued without unnecessary interruption;

(j) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced and the decision or action should be consistent with his or her racial or ethnic traditions and religious, cultural and individual values.

(k) a child or young person should not be interviewed —

(i) unless the child or young person is the subject of a report made under section 40 or 41;

(ii) unless the child or young person consents to the interview;

(iii) unless a person having parental responsibility for the child or young person has been notified of the interview and been given the opportunity to attend;

(iv) without the support and presence at the interview of an adult person chosen by the child or young person;

(m) in default of an adult person chosen by the child or young person, then an interview may proceed with the support and presence at the interview of an adult person chosen by the child welfare officer.

(2) In making a decision under this Act about a child or young person, the following general principles are also to be applied:

(a) the child or young person, and anyone else involved in making decisions about the child or young person, should be given sufficient information about the decision-making process, in language and a way that they can understand, to allow them to take part fully in the process;

(b) if the child or young person can form and express views about his or her wellbeing—those views should be sought and considered, taking into account his or her age and maturity;

(c) anyone else involved in making decisions about the child or young person should be given the opportunity to give his or her views about the

wellbeing of the child or young person and those views should be considered;

(d) the decision-maker should make a decision promptly—

(i) having regard to the degree of urgency of the particular case and the child's or young person's developmental needs; and

(ii) having regard to the principle that a delay in the decision-making process is likely to prejudice the wellbeing of the child or young person;

(e) the decision-maker should also have regard to the principle that it is important for a child or young person to have settled and permanent living arrangements.

(3) In addition, if the decision-maker is a court considering whether to make an order under this Act in relation to the child or young person, the court should apply the general principle that an order under this Act should be made by a court in relation to a child or young person only if the court considers that making the order would be better for the child or young person than making no order at all.

13 How to apply the best interests principle

(1) In making a decision or taking action under this Act in relation to a child or young person, a person applies the best interests principle if the person takes into account the following matters so far as they are relevant:

(a) the need to protect the child or young person from harm;

(b) if the child or young person has been abused or neglected—the importance of responding to his or her needs;

(c) the capacity of each parent, or anyone else, to provide for his or her needs;

(d) the wishes stated by the child or young person and the factors (for example, his or her maturity or level of understanding) that the person considers are relevant to the weight that should be given to the child's or young person's wishes;

(e) the nature of his or her relationship with each parent and with anyone else who is significant in his or her life;

(f) the attitude to the child or young person, and to parental responsibilities, demonstrated by each parent;

(g) the importance of continuity in the child's or young person's care and the likely effect on the child or young person of disruption of that continuity, including separation from—

(i) a parent or anyone else with parental responsibility for the child or young person; or

(ii) a sibling or other family member; or

(iii) a carer or anyone else (including a child or young person) with whom the child or young person is, or has recently been, living; or

(iv) anyone else who is significant in his or her life;

(h) the practicalities of the child or young person maintaining contact with his or her parents, siblings and other family members and anyone else who is significant in his or her life;

(j) the age, maturity, sex and background of the child or young person.

(2) Subsection (1) does not limit the matters that the person may take into account.

(3) Despite subsection (1) a person (including the Children's court or a child welfare officer) must not give weight to the wishes of a child or young person where those wishes require overriding any desire of or action by the person having parental responsibility to reasonably supervise and/or restrict the activities of the child or young person for the purpose of limiting their ability to procure or use drugs, or alcohol or partake in sexual activity or other activities that the parent or carer reasonably believe are contrary to the mental and/or physical wellbeing or best interests of the child or young person.

Part 2.3 Parental responsibility

14 Meaning of *court order* for Part 2.3

In this part:

court order means an order made by the court or another court, whether under this Act or another law.

15 What is parental responsibility?

(1) In this Act:

parental responsibility, for a child or young person, means all the duties, powers and responsibilities parents ordinarily have by law in relation to their children.

Note ***Power*** includes authority (dictionary).

(2) ***Parental responsibility*** includes responsibility for the day-to-day or long-term care, welfare and development of the child or young person.

16 Who has parental responsibility?

(1) A person has parental responsibility for a child or young person if—

(a) the person is his or her parent; or

(b) a court order is in force in relation to the child or young person in favour of the person; or

(c) the person has parental responsibility for the child or young person because of section 92 (Parental responsibility following emergency action).

(2) A person, including a carer, may exercise parental responsibility on behalf of the child welfare officer in accordance with this Act.

17 Who can exercise parental responsibility for a child or young person?

(1) A person's parental responsibility for a child or young person may be shared or suspended by a court order or by the taking of emergency action.

(2) If 2 or more people have parental responsibility for the child or young person, each of them may act alone in discharging the responsibility.

(3) However, if the child welfare officer is one of the people with parental responsibility, no-one else may discharge parental responsibility for the child or

young person in a way that would be incompatible with the child welfare officer's discharge of his or her responsibility.

18 Parental responsibility for day-to-day care, welfare and development

(1) A person with parental responsibility for the day-to-day care, welfare and development of a child or young person has responsibility to make decisions about the following matters for the child or young person:

(a) arrangements for, or directions about, his or her care, including, for example, personal appearance or grooming;

(b) arrangements for temporary care by someone else (whether the person is in Norfolk Island or elsewhere);

(c) arrangements (including admission to hospital) for assessing his or her physical or mental wellbeing;

(d) the people with whom the child or young person may, or may not, have contact;

(e) day-to-day issues about his or her health, safety, education, training or employment.

(2) If the person makes arrangements for assessing the physical or mental wellbeing of the child or young person, subject to an order of any court to the contrary, the person is entitled to any report of the assessment.

(3) Also, if the person makes a decision about something covered by subsection (1) (d) or (e), the person is responsible for the arrangements to give effect to the decision.

(4) This section does not limit the matters for which the person has responsibility to make decisions for the child or young person, but is subject to any court order.

19 Parental responsibility for long-term care, welfare and development

(1) A person with parental responsibility for the long-term care, welfare and development of a child or young person is responsible for making decisions about the following matters for the child or young person:

(a) the administration, management or control of his or her property;

(b) his or her religion and his or her observance of racial, ethnic, religious or cultural traditions;

(c) consent to medical treatment (except as expressly dealt with in this Act);

(d) the issue of a passport (or opposing the issue of a passport) for the child or young person;

(e) long-term issues about his or her education, training or employment;

(f) an aspect of day-to-day parental responsibility that does not belong to someone else.

(2) Subsection (1) is subject to any court order.

(3) Without limiting the scope of subsection (2), the court may order that a person (including the child welfare officer) with parental responsibility for a child or young person must, if practicable, consult others with parental responsibility for the child or young person before exercising his or her responsibility.

(4) However, the court may not make such an order if the person has parental responsibility under an enduring parental responsibility order.

Chapter 3 Proceedings under Act generally

20 Entitlement to take part

A child or young person has a right to take part in a proceeding under this Act in relation to the child or young person.

21 General representation of child or young person

(1) In a proceeding under chapter 5 (Children and young people in need of care and protection) in relation to a child or young person—

(a) the child or young person may be represented by a lawyer or litigation representative, or both; and

(b) a representative of the child or young person must ensure that views or wishes stated by the child or young person are put to the court; and

(c) a representative of the child or young person must tell the court whether he or she is acting on the instructions of the child or young person or in the best interests of the child or young person, or both.

(2) A person may only be litigation representative for a child or young person with leave of the court.

(3) The court may give leave for a person to be a representative of a child or young person only if the person and the child or young person have been given an opportunity to be heard about the appointment.

(4) The court may appoint a litigation representative.

(5) In this section:

litigation representative means a litigation guardian or next friend.

22 Legal representation of child or young person

(1) The court may hear an application in relation to a child or young person only if—

(a) the child or young person has a lawyer; or

(b) the court is satisfied that—

(i) the child or young person has had a reasonable opportunity to get legal representation; and

(ii) the child's or young person's best interests will be adequately represented in the proceeding.

(2) If, in a proceeding in relation to a child or young person—

(a) the child or young person does not have a lawyer; and

(b) either—

(i) the court is not satisfied that the child or young person has made, or can make, an informed and independent decision not to be represented by a lawyer, and it considers that the child or young person should be represented by a lawyer; or

(ii) the court is not satisfied the child's or young person's interests will be adequately represented in the proceeding;

the court may make the orders, or give the directions, it considers necessary or desirable to—

(iii) allow the child or young person a reasonable opportunity to get a lawyer; or

(iv) appoint a litigation guardian for the child or young person; or

(v) appoint a lawyer to represent the child or young person.

(3) The court may act under subsection (2)—

(a) on application by or on behalf of the child or young person or a party to the proceeding; or

(b) on its own initiative.

(4) In a proceeding under chapter 5 or 6 in relation to a child or young person, a lawyer of the child or young person must—

(a) if the lawyer is satisfied that, because of the child's or young person's age, maturity and level of understanding of the proceeding, the child or young person can give the lawyer instructions—act and make representations to the court in accordance with the instructions; or

(b) in any other case—act and make representations to the court in the best interests of the child or young person and having regard to the objects and principles of this Act.

23 Applications may be heard together

(1) If 2 or more applications under this Act have been filed in relation to a child or young person, the court may hear and decide the applications together if it considers that it would be in the best interests of the child or young person.

(2) If 2 or more applications under this Act are before the court in relation to children or young people who are related or that raise related issues, the court may hear and decide the applications together if it considers that it would be in the best interest of each child or young person.

23A General nature of proceedings under this Act

(1) Proceedings under this Act are not to be conducted in an adversarial manner.

(2) Proceedings under this Act are to be conducted with as little formality and legal technicality as the circumstances of the case permit.

(3) In proceedings under this Act, the court is not bound by the rules of evidence unless the court determines that the rules of evidence, or such of those rules as are specified by the court, are to apply to the proceedings or parts of the proceedings.

(4) In proceedings under this Act, the standard of proof is proof on the balance of probabilities.

(5) Without limiting subsection (4), any requirement under this Act that the court be satisfied as to a particular matter is a requirement that the court be satisfied on the balance of probabilities.

(6) In this section:

proceedings under this Act does not include proceedings relating to an offence against this Act.

Chapter 4 Administration

Part 4.1 Child welfare officer

24 Child welfare officer appointment and functions

(1) (a) The Commonwealth Minister may, by written instrument, appoint any of the following as the child welfare officer:

(i) an individual who the Minister is satisfied has suitable qualifications and experience to perform the functions of the child welfare officer;

(ii) an individual who holds a position in a body that specialises in providing, or facilitating the provision of, child welfare services if the Minister is satisfied that the position is sufficiently senior to perform the functions of the child welfare officer;

(iii) an SES employee or acting SES employee, or an individual who performs the duties of an office or position in a Department of State or other body that is a part, or authority, of the Commonwealth, if the office or position is at a level equivalent to or higher than that of an SES employee;

(iv) an individual who holds or performs the duties of an office or position in a Department of State or other body that is a part, or authority, of a State or Territory, if the office or position is at a level equivalent to or higher than that of an SES employee.

Note: For subparagraph (a)(iii) and (iv), ***SES employee*** and ***acting SES employee*** are defined in section 2B of the *Acts Interpretation Act 1901* of the Commonwealth (applying because of section 8A of the *Interpretation Act 1979*).

(aa) However, the Commonwealth Minister may only make an appointment under subparagraph (a)(iv) if:

(i) the Department of State or other body has functions that include providing child welfare services; and

(ii) the State or Territory agrees to the appointment.

(ab) The Commonwealth Minister may determine the terms and conditions of an appointment under paragraph (a), including remuneration and allowances.

(b) The Commonwealth Minister may, by legislative instrument, give written directions to the child welfare officer about the exercise of his or her functions and powers under this Act.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* (Commonwealth) do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

(ba) A direction under paragraph (b) must be of a general nature only.

(bb) Subject to any direction given to the child welfare officer by the court, the child welfare officer must comply with a direction under paragraph (b).

(c) The Commonwealth Minister may, by written notice, terminate the appointment of the child welfare officer at any time.

(e) The appointment of the child welfare officer terminates immediately upon he or she —

(i) having been convicted of any offence concerning a child or young person, any offence including an assault whether or not of a sexual nature, any offence concerning child pornography;

(ii) having been convicted of any offence in Norfolk Island or elsewhere for which the maximum penalty is imprisonment for 1 year or more;

(iii) being declared bankrupt or compounding with his or her creditors or making an assignment of his or her remuneration for the benefit of creditors;

(iv) becoming physically or mentally incapacitated; or

(v) delivering his or her resignation in writing to the Commonwealth Minister.

(2) The child welfare officer has the following functions:

(a) to provide, or assist in the provision of, services directed to strengthening and supporting families in relation to the care and protection of their children and young people;

(b) to help the community to set up programs for the protection of children and young people and for the prevention or reduction of the incidence of abuse and neglect of children and young people in the community;

(c) to provide, or assist in the provision of, information to members of the community, including carers and prospective carers, about the operation of this Act and developmental, social and safety issues affecting children and young people;

(d) to provide, or assist in the provision of, information to people who are required under this Act to report cases, or suspected cases, of abuse to help them perform their legal obligation;

(e) to provide, or assist in the provision of, information, services or assistance to people who have left the child welfare officer's care.

25 Duties and particular powers of child welfare officer

(1) The child welfare officer must—

(a) have regard to the purposes and principles of this Act in exercising a function or a power under the Act; and

(b) encourage the maintenance and development of family, cultural and other significant relationships of every child or young person for whom the child welfare officer has parental responsibility; and

(c) set up mechanisms for coordinating services for the care and protection of children and young people.

(2) The child welfare officer may provide for any of the following for a child or young person for whom the child welfare officer has parental responsibility:

(a) accommodation with a carer (whether within or outside Norfolk Island);

(b) financial support;

(c) counselling;

(d) suitable education, training and employment opportunities;

(e) medical, dental and similar treatment;

(f) recreational opportunities;

(g) regular care planning and review that fully involves the child or young person so that he or she can take part and considers the views of parents and anyone else who is involved with the care, welfare and development of the child or young person;

(h) an explanation, in language and a way the child or young person can understand, of the aim of care plans.

26 Who can the child welfare officer get help from?

(1) For this Act, the child welfare officer may request a defined entity (within the meaning of subsection 27(11)) to provide information, advice, guidance, assistance, documents, facilities or services relevant to the physical or emotional welfare of children and young people.

(2) The entity must promptly comply with the request if:

(a) the entity is covered by paragraph (c), (ca), (cb), (d), (e), (f), (g), (h) or (j) of the definition of ***defined entity*** in subsection 27(11); or

(b) the entity is covered by paragraph (k) of that definition, unless the entity is contracted as mentioned in that paragraph by a Department of State or other body that is a part, or authority, of a State or Territory.

(3) Subsection (4) applies if a law of a State or Territory:

(a) limits disclosure of some or all of the information covered by the request by a Department of State or other body that is a part, or authority, of the State or Territory, or by a body or person acting on behalf of such a Department or other body; and

(b) exempts from the limitation a disclosure authorised by a law in force in Norfolk Island.

(4) For the purposes of the exemption, the Department or other body or person may disclose to the child welfare officer the information covered by the request.

27 Provision and exchange of information

(1) The functions referred to in subsection (2) may be exercised by the child welfare officer for any one or more of the following purposes —

(a) for the purposes of providing information to, or exchanging information with, a defined entity;

(b) for the purpose of exercising the functions of the child welfare officer.

(2) The child welfare officer may do either or both of the following—

(a) the child welfare officer may, in accordance with the requirements (if any) prescribed by the regulations, furnish a defined entity with information relating to the safety, welfare and well-being of a particular child or young person or class of children or young persons;

(b) the child welfare officer may, in accordance with the requirements (if any) prescribed by the regulations, direct a defined entity to furnish the child welfare officer with information relating to the safety, welfare and well-being of a particular child or young person or class of children or young persons.

(3) Information about the following may be furnished under this section in the same way as information about a child or young person or class of children or young persons may be furnished —

(a) an unborn child who is the subject of a pre-natal report under section 40A;

(b) the family of an unborn child the subject of such a report;

(c) the expected date of birth of an unborn child the subject of such a report.

(4) It is the duty of a defined entity to whom a direction is given under paragraph (2)(b) to comply promptly with the requirements of the direction.

(5) If information is furnished under subsection (2) or (3) —

(a) the furnishing of the information is not to be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and

(b) no liability for defamation or libel is incurred because of the furnishing of the information, and

(c) the furnishing of the information does not constitute a ground for civil or criminal proceedings for providing the information.

(6) A reference in subsection (5) to information furnished under subsection (2) or (3) extends to any information so furnished in good faith and with reasonable care.

(7) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent the furnishing of information (or affect a duty to furnish information) under this section. Nothing in this subsection affects any obligation or power to provide information apart from this subsection.

(8) A defined entity is not required to provide any information that it has been requested to provide if the defined entity reasonably believes that to do so would—

(a) prejudice the investigation of a contravention (or possible contravention) of a law in any particular case; or

(b) prejudice a coronial inquest or inquiry; or

(c) prejudice any care proceedings; or

(d) contravene any legal professional or client legal privilege; or

(e) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained; or

(f) endanger a person's life or physical safety; or

(g) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention (or possible contravention) of a law; or

(h) not be in the public interest.

(9) If a defined entity refuses to provide information in accordance with a request under this section, the defined entity must, at the time it notifies the child welfare officer of the refusal, provide the child welfare officer with reasons in writing for refusing the request.

(9A) If the child welfare officer furnishes information to a defined entity under this section, the defined entity is authorised, for the purposes of the *Privacy Act 1988* of the Commonwealth, to collect the information.

(10) This section does not limit any other power to give or collect information.

(11) In this section —

defined entity means —

(a) for a child or young person —

(i) a person with parental responsibility for the child or young person; or

(ii) a carer of the child or young person;

(b) a Minister;

(c) the public service;

(ca) a territory instrumentality;

(cb) a holder of an office established by an enactment;

(d) the Norfolk Island Hospital Enterprise or other body or organisation formed under the provisions of the *Norfolk Island Hospital Act 1985*;

(e) the Police Force of Norfolk Island;

(f) the Norfolk Island Central School;

(g) a body established under a law of a State or Territory or the Commonwealth;

(h) the holder of an office established under a law of a State or Territory or the Commonwealth; and

(j) a Department of State or other body that is a part, or authority, of the Commonwealth;

(ja) a Department of State or other body that is a part, or authority, of a State or Territory;

(k) a person contracted by a defined entity:

(i) to provide health care, welfare, education or residential services to children or young people; or

(ii) to assist the child welfare officer in exercising a function or power under this Act; or

(iii) to assist the defined entity in connection with the administration of this Act;

(l) a body determined by the Commonwealth Minister under subsection (12).

A reference in this section to a defined entity includes a reference to any part (however described) of the defined entity.

(12) The Commonwealth Minister may, by legislative instrument, determine a body (including an unincorporated body) for the purposes of paragraph (l) of the definition of ***defined entity*** in subsection (11).

28 Power to enter agreements for general exercise of parental responsibility

(1) The child welfare officer may enter into an agreement with an individual or a body (the ***carer***) for the carer to exercise parental responsibility on behalf of the child welfare officer.

(2) The child welfare officer may enter into an agreement with the carer only if the child welfare officer is satisfied that the carer is a suitable carer to exercise parental responsibility on behalf of the child welfare officer.

(3) If the child welfare officer enters into an agreement with the carer, the carer may exercise parental responsibility on behalf of the child welfare officer in relation to a particular child or young person only if the carer is authorised to do so under section 29.

(4) An agreement under this section can only be entered into with the approval of the Commonwealth Minister but that approval must consider only the same matters to be considered under this section by the child welfare officer.

29 Authorisation to exercise parental responsibility for particular child or young person

(1) The child welfare officer may, orally or in writing, authorise—

(a) a carer with whom the child welfare officer has an agreement under section 28 to exercise parental responsibility for a child or young person on behalf of the child welfare officer; or

(b) a member of kin of a child or young person to exercise parental responsibility for the child or young person on behalf of the child welfare officer.

Examples of way authorised carer or member of kin may exercise parental responsibility: by the provision of foster care, respite care or crisis care.

(2) When giving the authorisation or as soon as possible afterwards, the child welfare officer must give the authorised carer or member of kin written confirmation that the child welfare officer has parental responsibility for the child or young person, including a copy of any relevant court order.

(3) The child welfare officer may authorise a carer or member of kin under subsection (1) only if the carer or person agrees to be authorised.

30 Monitoring children and young people for whom child welfare officer has parental responsibility

(1) If the child welfare officer has parental responsibility for a child or young person, the child welfare officer may, with reasonable and necessary assistance and at a reasonable time, enter and inspect the place where the child or young person is living to ensure that the child or young person is being properly cared for on behalf of the child welfare officer.

(2) The child welfare officer must, when exercising power under subsection (1), identify himself or herself and, if asked, provide identification.

(3) If the child welfare officer cannot provide identification when asked, the child welfare officer may not exercise a power under subsection (1).

31 After care assistance

If the child welfare officer ceases to have parental responsibility for a person for any reason, the child welfare officer may arrange for financial or other assistance to be provided to, or in relation to, the person on the terms and conditions the child welfare officer considers appropriate.

32 Delegation by child welfare officer

(1) The child welfare officer may delegate the child welfare officer's functions or powers under this Act or an interstate law to:

(a) an employee under the *Norfolk Island Health and Residential Aged Care Service Act 1985*; or

(b) a person with expertise in the provision of child welfare services who is approved, in writing, by the Commonwealth Minister; or

(c) an individual who:

(i) holds or performs the duties of an office or position in a Department of State or other body that is a part, or authority, of the Commonwealth or of a State or Territory, if the office or position is, or is equivalent to or higher than, an Executive Level 2 position in the Australian Public Service; and

(ii) has suitable qualifications and experience to perform the functions or exercise the powers under the Act or the interstate law; or

(d) if the child welfare officer was appointed under subparagraph 24(1)(a)(ii):

(i) an employee of the body mentioned in that subparagraph; or

(ii) an individual engaged by that body to provide child welfare services.

Note For the making of delegations and the exercise of delegated functions, see sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* of the Commonwealth applying because of section 8A of the *Interpretation Act 1979*.

(2) If a function or power is delegated under subsection (1) to a person referred to in paragraph (1)(c), the person need not accept the function or power delegated.

Chapter 5 Children and young people in need of care and protection

Part 5.1 General

Division 5.1.1 Preliminary

33 Meaning of *abuse* and *neglect*

(1) In this chapter:

abuse, in relation to a child or young person, means—

(a) physical abuse; or

(b) sexual abuse; or

(c) emotional abuse (including psychological abuse) if the child or young person—

(i) has suffered, is suffering or is likely to suffer in a way that has caused, is causing or is likely to cause or at risk of causing significant harm to his or her well-being or development; or

(ii) the child or young person has seen or heard the physical, sexual or psychological abuse of a person with whom the child or young person has a domestic relationship, the exposure to which has caused or is causing significant harm to the well-being or development of the child or young person; or

(iii) the child or young person has been put at risk of seeing or hearing abuse mentioned in subparagraph (ii), the exposure to which may cause significant harm to the well-being or development of the child or young person.

(iv) has been, is being or is likely to be exposed to behaviour that is a domestic violence offence within the meaning of the Domestic Violence Act 1995, section 3, and that has caused, is causing or is likely to cause significant harm to the child or young person's well-being or development.

(2) In this chapter:

neglect, of a child or a young person, means a failure to provide the child or young person with a necessity of life that has caused, is causing or is likely to cause the child or young person significant harm to his or her wellbeing or development.

Examples of necessities of life
Food, shelter, clothing and medical care.

(3) A child or young person is **at risk of significant harm** if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances —

(a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met;
(b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care;
(c) in the case of a child or young person who is required to attend school in accordance with the *Education Act 1990* (NSW) (NI) — the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act;
(d) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated;
(e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm;
(f) the child was the subject of a pre-natal report under section 40A and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report;
(g) the child or young person has access to sexually explicit and inappropriate or offensive computer media including websites, internet and social media sites and the parents or other care givers have not and are unable or unwilling to arrange appropriate security measures to prevent such access.

34 Meaning of *contact*

In this chapter:

contact with a person means direct or indirect contact with the person.

Examples of direct contact
Physical or face to face contact with the person.
Examples of indirect contact
Contact by an agent, by telephone, email, or letter or by giving the person something.

35 Meaning of *former caregiver*

(1) In this chapter:

former caregiver means—

(a) for a child or young person for whom it is proposed to make a voluntary care agreement—the person who is providing care for the child or young person when the agreement is proposed; or

(b) for any other child or young person—a person who was providing care for the child or young person immediately before parental responsibility for him or her vested in the child welfare officer or someone else by order of the court or operation of this Act, whether or not the person had parental responsibility for the child or young person at that time.

(2) However, ***former caregiver*** does not include a person providing care for the child or young person—

(a) at a childcare centre, under a family day care scheme or otherwise for reward; or

(b) if the person provides care on a casual basis and is not a relative.

36 Person apparently a child or young person

For this chapter—

(a) a person who appears, on reasonable grounds, to the court, the child welfare officer or a police officer to be a child or young person may be

dealt with under this chapter as if he or she were a child or young person and the provisions of this chapter that refer to a child or young person have effect in relation to the person accordingly; and

(b) if it becomes known that the person is not a child or young person—

(i) no further proceeding with respect to the person may be taken under this chapter; and

(ii) if, by reason of the application of a provision of this chapter, the person is in a hospital, a shelter or a State institution, the provision ceases to have effect with respect to the person and the person must be released; and

(iii) an order or agreement under this chapter ceases to have effect with respect to the person.

37 Chapter ceases applying when young person becomes adult

(1) This chapter, and any order or agreement under it, ceases to apply in relation to a young person when the young person becomes an adult.

(2) A young person being detained under this chapter must be released immediately on becoming an adult.

(3) However, this section does not require the release of a person who—

(a) has been convicted of an offence and, in relation to the conviction, is detained under an order or other decision of a court, including a court of a State; or

(b) has been charged with an offence and is so detained in relation to the charge.

Division 5.1.2 Abuse and neglect

38 In need of care and protection

(1) For this chapter, a child or young person is in need of care and protection if—

(a) he or she has been, is being or is likely to be, abused or neglected; and

(b) no-one with parental responsibility for the child or young person is willing and able to protect him or her from suffering the abuse or neglect.

(2) Without limiting subsection (1), a child or young person is in need of care and protection in the following circumstances:

(a) if a person with whom the child or young person lives or is likely to live—

(i) has threatened to kill or injure or has injured the child or young person and there is a reasonable possibility of the threat being carried out; or

(ii) has killed, injured, abused or neglected a child or young person and there is a reasonable possibility of the person killing, injuring, abusing or neglecting the relevant child or young person;

and no-one with parental responsibility for the child or young person is willing and able to protect the child or young person;

(b) no-one with parental responsibility for the child or young person (other than the child welfare officer) is willing and able to provide him or her with adequate care and protection;

(c) if there is a serious or persistent conflict between the child or young person and the people with parental responsibility for him or her (other than the child welfare officer) to such an extent that the care and protection of the child or young person is, or is likely to be, seriously disrupted;

(d) the people with parental responsibility for the child or young person (other than the child welfare officer) are—

(i) dead, have abandoned him or her or cannot be found after reasonable inquiry; or

(ii) unwilling or unable to keep him or her from engaging in self-damaging behaviour; or

(iii) sexually or financially exploiting the child or young person or unwilling or unable to keep him or her from being sexually or financially exploited;

(e) the child or young person is the subject of a child protection order in a State that is not being complied with.

39 Effect of conduct outside Norfolk Island

In section 38, it does not matter whether conduct giving rise to the belief that a child or young person has been, is being or is likely to be, abused or neglected occurred wholly or partly outside Norfolk Island.

40 Voluntary reporting

A person who believes or suspects that a child or young person is in need of care and protection may report the circumstances on which the belief or suspicion is based to the child welfare officer.

40A Pre-natal reporting

A person who has reasonable grounds to suspect, before the birth of a child, that the child may be at risk of significant harm after his or her birth may make a report to the child welfare officer.

Note. The intentions of this section are -

(a) to allow assistance and support to be provided to the expectant mother to reduce the likelihood that her child, when born, will need to be placed in out-of-home care, and

(b) to provide early information that a child who is not yet born may be at risk of significant harm subsequent to his or her birth.

41 Mandatory reporting

(1) This section applies to a person who is—

(a) a medical practitioner; or

(aa) a dentist; or

(b) a teacher at a school; or

(c) a police officer; or

(d) a person employed to counsel children or young people at a school; or

(e) a person caring for a child at a child-care centre; or

(f) a public sector employee who, in the course of his or her employment, provides services related to the health or wellbeing of children, young people or families; or

(g) a minister of religion, priest, pastor, or other person providing religious advice or assistance within the community of Norfolk Island; or

(h) an enrolled nurse, nurse or midwife; or

(j) all other persons who provide health care, welfare, education and residential services to children or young people.

(2) If—

(a) an adult to whom this section applies reasonably suspects that a child or young person has suffered, or is suffering, or at risk of suffering, sexual abuse or non-accidental physical injury; and

(b) the person's reasons for the belief arise from information obtained by the person during the course of or from the person's work (whether for remuneration or otherwise);

the person must, as soon as practicable, report to the child welfare officer the name, or a description, of the child or young person and the grounds for the person's suspicion.

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

42 Report other than in good faith

A person must not make a report under section 40, 40A or 41 other than in good faith.

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

43 Action on report

(1) If the child welfare officer receives a report about a child or young person under section 40, 40A or 41, the child welfare officer must:

(a) consider the report; and

(b) after considering the report, take whatever action is necessary to safeguard or promote the safety, welfare and well-being of the child or young person.

(1A) However, the child welfare officer may decide to take no action after considering the report if:

(a) the child welfare officer considers, on the basis of the information provided in the report, that there is insufficient reason to believe that the child or young person is in need of care and protection; or

(b) the child welfare officer considers that the circumstances that led to the report have been, or are being, adequately dealt with.

(2) The action the child welfare officer may take in relation to a report about a child or young person includes the following:

(a) a child protection appraisal of the child or young person and his or her situation;

(b) providing, or arranging the provision of, support services for the child or young person and, if appropriate, his or her family;

(c) assisting a member of kin of the child or young person to care for him or her;

(d) developing, in consultation with a person with parental responsibility for the child or young person if appropriate, a plan to meet the needs of the

child or young person and, if appropriate, his or her family, that does not involve bringing the matter before a court;

(e) emergency action or an application to a court for an order in relation to the child or young person.

(3) Nothing in this Act, other than this section and section 44, requires the child welfare officer to act in relation to a report made to him or her under section 40, 40A or 41.

44 Records

(1) The child welfare officer must keep a written record of—

(a) each report made to him or her under section 40, 40A or 41; and

(b) for each such report:

(i) the child welfare officer's decision to take action, or to take no action, in relation to the report; and

(ii) the reasons for the decision; and

(iii) any action taken in relation to the report; and

(iv) any child protection appraisal made as a result of the report.

45 Protection of people making reports

(1) If a person makes a report under section 40, 40A or 41 in good faith—

(a) the making of the report is, for all purposes, not a breach of confidence, professional etiquette or ethics or a departure from accepted standards or rules of professional conduct; and

(b) no civil (including liability for libel or slander) or criminal liability is incurred by reason only of the making of the report; and

(c) subject to subsections (2) and (3), the report is not admissible in evidence in any proceeding in a court or tribunal and evidence of its contents is not so admissible; and

(d) subject to subsection (2), a person may not be compelled in any proceeding before a court or tribunal to provide the report or a copy of, or extract from, the report or to disclose, or give evidence of, the contents of the report.

(2) Subsection (1)(c) does not apply to a report tendered in evidence, or evidence given in respect of a report, by the person by whom the report was, or was caused to be, made.

(3) Subsection (1)(c) and (d) do not apply—

(a) in a proceeding before the court under this part in relation to the child or young person concerned or before a court hearing an appeal from a decision of the court in such a proceeding; and

(b) to a charge or allegation made in a proceeding against a person in relation to the person's exercising a function under this Act.

(4) The identity of the person who made the report, or information from which the identity of that person could be deduced, must not be disclosed by any person or body, except with —

(a) the consent of the person who made the report; or

(b) the leave of a court or other body before which proceedings relating to the report are conducted, and, unless that consent or leave is granted, a party

or witness in any such proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity or leading to the identification of that person.

Part 5.2 Voluntary action

Division 5.2.1 Voluntary care agreements

46 Meaning of *party*

In this Division:

party, for a voluntary care agreement, means the child welfare officer and the person with parental responsibility who entered the agreement.

47 Voluntary care agreements

(1) The child welfare officer may enter into a written agreement with a person with parental responsibility for a child or young person to share that parental responsibility for the period of the agreement.

(2) Negotiations for making or ending a voluntary care agreement in relation to a child or young person may be initiated by—

(a) a person with parental responsibility for the child or young person; or

(b) the child or young person or a person acting on behalf of the child or young person; or

(c) the child welfare officer.

(3) The child welfare officer may not enter into a voluntary care agreement in relation to a child or young person unless—

(a) he or she has considered whether another form of assistance (for example, organising care by someone else with parental responsibility or a member of kin) would be preferable; and

(b) he or she is satisfied that a voluntary sharing of parental responsibility is appropriate; and

(c) if the child welfare officer is satisfied that the child or young person is capable of understanding that it is proposed that the child or young person will be temporarily cared for by a person other than his or her former caregiver—the child welfare officer has sought and considered the views of the child or young person; and

(d) in relation to a young person who is 15 or over—

(i) the young person consents to the agreement being made; or

(ii) the young person is incapable of consenting.

(4) If the child welfare officer has signed a voluntary care agreement in relation to a child or young person, he or she assumes parental responsibility for the child or young person when the agreement is entered into or at the later time stated in the agreement.

(5) A voluntary care agreement must state the period of 6 months or less for which parental responsibility is to be shared.

48 Extending voluntary care agreements

(1) The parties to a voluntary care agreement may agree in writing to extend the period of the agreement if—

(a) the child welfare officer—

(i) has considered whether another form of assistance would be preferable; and

(ii) is satisfied that a voluntary sharing of parental responsibility is appropriate; and

(iii) if satisfied that the child or young person is capable of understanding that it is proposed that he or she will continue to be temporarily cared for under a voluntary care agreement—has sought and considered the views of the child or young person; and

(b) the period of the voluntary care agreement and the proposed extension together will not be longer than 6 months; and

(c) at the end of the proposed extension if the agreement is extended, the child or young person will not have been cared for under a voluntary care agreement for more than 6 months in the previous 12 months; and

(d) in relation to a young person who is 15 or over, the young person—

(i) consents to the extension; or

(ii) is incapable of consenting.

(2) A voluntary care agreement may be extended in accordance with subsection (1) more than once.

49 Longer agreements allowed for certain young people

Despite anything to the contrary in section 47 or 48, a voluntary care agreement in relation to a young person who is 15 or over may be entered into or extended for more than 6 months with the consent of the young person.

50 Agreements not void

A voluntary care agreement is not void or voidable because a person with parental responsibility who is a party to it is not an adult.

51 Early termination

A party to a voluntary care agreement may, before the agreement ends, end the agreement by giving written notice to the other parties.

52 Action on expiration or termination

(1) If a voluntary care agreement in relation to a child or young person expires or is ended, the child welfare officer—

(a) must return the child or young person to a former caregiver or other person as agreed between the parties to the voluntary care agreement; and

(b) has no parental responsibility for the child or young person once he or she is returned.

(2) However, the child welfare officer is not required to return a child or young person if—

(a) emergency action is being taken in relation to the child or young person; or

(b) the child welfare officer has made an application to the court seeking parental responsibility for the child or young person.

(3) Nothing in this section allows the child welfare officer to keep parental responsibility for the child or young person if the court refuses the application for parental responsibility.

53 Parental contributions

If the child welfare officer agrees with a person with parental responsibility for a child or young person that—

(a) the child welfare officer exercise parental responsibility for the child or young person; and

(b) the person with parental responsibility pay an amount by way of contribution to the cost of the care of the child or young person;

the amount by way of contribution—

(c) may not be more than the amount paid by the Administration in relation to the care of the child or young person; and

(d) is a debt due and payable to the Administration.

Division 5.2.2 Appraisal and assessment

54 Child protection appraisals

(1) If the child welfare officer reasonably suspects that a child or young person is in need of care and protection, the child welfare officer may make an appraisal of the circumstances of the child or young person.

(2) For the appraisal, the child welfare officer may—

(a) visually examine the child or young person or anyone else; and

(b) give information to anyone; and

(c) ask anyone to give information to the child welfare officer; and

(d) make inquiries about the child or young person or anyone else; and

(e) arrange for a special assessment to be made of the child or young person or anyone else.

(3) In conducting the child protection appraisal, the child welfare officer must seek the cooperation of anyone with parental responsibility for the child or young person, if it is practicable to do so.

(4) The child welfare officer may ask the child or young person or other person who is being appraised or assessed to—

(a) attend at the place and time stated for the appraisal or assessment; and

(b) comply with any arrangement made by the child welfare officer for the purpose of the appraisal or assessment.

55 Special assessment

A special assessment of a person may include the following:

(a) an examination, a test or a treatment of a physical, medical or dental nature on the person, other than by way of surgery;

(b) the conducting of a detailed social assessment of the person by a social worker, psychologist or other suitably qualified person;

(c) the conducting of a paediatric or developmental assessment of the person by a suitably qualified person;

(d) an examination, a test or a treatment of a psychological nature on the person performed by a suitably qualified person;

(e) an examination or test of a psychiatric nature on the person performed by a suitably qualified person;

(f) surgery if it is performed primarily—

(i) for the purpose of saving the person's life or preventing serious damage to his or her health; or

(ii) to relieve significant pain; or

(iii) as part of the management or setting of broken or dislocated bones;

(g) if authorised by a court order—other surgery;

but does not include a prescribed assessment.

56 Restrictions on special assessment of children and young people

(1) An assessor may not undertake a special assessment of a child or young person if—

(a) the assessor reasonably believes that the child or young person has the maturity to make a reasoned decision about whether to consent to the assessment; and

(b) the child or young person refuses to consent to the assessment.

(2) If a proposed special assessment of a child or young person involves—

(a) penetration of a body cavity other than an ear, the nose or the mouth; or

(b) penetration of the skin, including by way of injection;

the assessment may not be undertaken unless a person with parental responsibility consents to the assessment.

(3) A special assessment of a child or young person for whom the child welfare officer has parental responsibility may not be undertaken unless the child welfare officer consents to the assessment.

(4) Nothing in this section prevents a special assessment of a child or young person from taking place without the relevant consent if the assessment—

(a) is authorised by an assessment order or other order of a court; or

(b) takes place primarily—

(i) for the purpose of saving the person's life or preventing serious damage to his or her health; or

(ii) to relieve significant pain; or

(iii) as part of the management or setting of broken or dislocated bones.

57 Assistance with assessment

(1) If the child welfare officer considers it necessary or desirable, he or she may get the assistance of the chief police officer in carrying out a child protection appraisal or a special assessment.

(2) The chief police officer must give assistance to the child welfare officer by assigning police officers to assist the child welfare officer as allowed by this section.

(3) For an assessment, a police officer assisting the child welfare officer may, after getting a warrant, do one or more of the following:

(a) enter or break into, remain in and search any premises or place;

(b) seize and remove an item that the officer reasonably believes may afford evidence relevant to the assessment;

(c) take photographs or audio or video recordings, or make sketches, of anything relevant to the assessment;

(d) require a person who may be in a position to provide information relevant to the assessment to answer a question to the best of that person's knowledge, information or belief.

Note: The *Evidence Act 2004*, Part 3.10 Division 1, deals with the application of client legal privilege.

(4) A police officer assisting the child welfare officer may exercise the powers stated in subsection (3) even if the police officer has not got a warrant, if the police officer reasonably believes that the delay that would follow as a result of getting a warrant would prejudice the assessment or the safety of a child or young person.

(5) A police officer assisting the child welfare officer may be accompanied by such other police officers or authorised people while exercising powers under this section as are reasonable or necessary.

(6)A person must not, without reasonable excuse, contravene a requirement made under subsection (3)(d).

Maximum penalty: 50 penalty units.

(7) A person who is required to answer a question under this section does not incur liability in doing so if the person acts in good faith.

(8) If an item is seized while exercising a power under subsection (4), the commissioner of police or the child welfare officer may retain the item until the assessment is complete and any proceeding arising out of the assessment is finalised.

58 Report

If a person assesses a child or young person or other person in accordance with this Division, the assessor must, unless the court orders otherwise, provide a written report on the assessment to the child welfare officer as soon as practicable after its completion.

Part 5.3 Care and protection orders and emergency action

Division 5.3.1 General

59 Definitions for chapter 5

In this chapter:

care and protection application means an application for a care and protection order.

care and protection order means an order under this chapter for or in relation to the care and protection of a child or young person.

final care and protection order means an order under Division 5.3.7 (Final care and protection orders) (other than a protection order or interim order), or a contact order, residence order or therapeutic protection order made as a final care and protection order.

final protection order—see the *Domestic Violence Act 1995*, section 8.

interim protection order—see the *Domestic Violence Act 1995*, section 14.

residence order means an order under section 75.

short care and protection order means an assessment order or a contact order, residence order, therapeutic protection order or specific issues order made in accordance with Division 5.3.2 (Short care and protection orders).

specific issues order means an order under section 114.

therapeutic protection order means an order under section 103.

60 Basis for orders

(1) Subject to section 61, a person may apply for an order under this chapter in relation to a child or young person if he or she reasonably believes that the child or young person is in need of care and protection.

(2) Also, the child welfare officer may apply for an order under Division 5.3.3 (Assessment orders) if he or she reasonably suspects that a child or young person may be in need of care and protection.

61 Applications by other people

(1) If the child welfare officer has not made a care and protection application in relation to a child or young person, a person may, after consultation with the child welfare officer, seek the leave of the court to make an application in relation to the child or young person.

(2) The court must hear the person and the child welfare officer and may make an order granting leave to the person to make the application.

(3) If an application is made with the court's leave, a copy of it must be served on the child welfare officer who may appear and be heard in the proceeding.

62 Burden of proof

In a proceeding under this part, a fact is proved if it is proved on the balance of probabilities.

63 Information not required to be disclosed

A person is not required, in relation to a care and protection order—

(a) to provide information that is privileged on the ground of legal professional privilege; or

(b) to provide information, or answer a question, if to do so would incriminate, or tend to incriminate, the person.

64 Orders in relation to third parties

(1) The court may not make a care and protection order that imposes an obligation on a person unless the person—

(a) consents to the making of the order; or

(b) has had an opportunity to be heard in relation to the proposed order.

(2) The court gives a person an opportunity to be heard in relation to a proposed order if the court has caused to be served on the person a written notice directing his or her attendance at the proceeding to be heard in relation to the proposed making of an order, regardless of whether the person attends the proceeding.

(3) Despite subsection (1), the court may make a care and protection order if the person on whom the obligation is proposed to be imposed cannot, after reasonable inquiry, be found.

65 Contents of care and protection applications

A care and protection application must specify the particular care and protection order sought and the ground on which it is sought.

66 Cross-applications for care and protection orders

(1) A party to a proceeding on a care and protection application who seeks—

(a) an order in terms different from that applied for; or

(b) a different order from that applied for;

should make a cross-application.

(2) A cross-application on a care and protection application may only be made by a party to the proceeding with leave of the court.

(3) No-one may cross apply for a therapeutic protection order or an assessment order for a child protection appraisal.

(4) A cross-application must specify the particular care and protection order sought and the grounds on which it is sought.

67 Restriction on leave to cross apply

The court may not grant leave to cross apply unless satisfied that there are reasonable grounds for believing that the child or young person to whom the order sought would relate would be in need of care and protection if an order was not made.

68 Interim care and protection orders

(1) The court may make an interim care and protection order in relation to a child or young person after a care and protection application is made and before the application is finally decided if satisfied that the child welfare officer reasonably believes that the child or young person is in need of care and protection or would be in need of care and protection if the order was not made.

(2) However, the court may not make an interim assessment order.

(3) If making an interim care and protection order, the court may make any other care and protection order that it considers appropriate for the care and protection of the child or young person.

69 Court order not limited by terms of care and protection application

The making of an application for a particular care and protection order of the court does not prevent the court from making a different care and protection order in addition to, or in substitution for, the order applied for.

70 When court may make interim protection order

(1) The court may make an interim protection order in relation to a child or young person at any time on an application (the ***care and protection application***) for a care and protection order in relation to the child or young person—

(a) on its own initiative, or further application by a party to the care and protection application ; and

(b) if the court is satisfied that it is necessary to make the interim protection order to ensure the safety of the child or young person until the care and protection application is decided.

Note The grounds for making an interim protection order are intended to mirror the grounds mentioned in the *Domestic Violence Act 1995*.

(2) To remove doubt, the court may not make an interim protection order that the court of Petty Sessions could not make on an application for a final protection order made in accordance with the *Domestic Violence Act 1995*.

Example: The court could not make an interim protection order for a period longer than that allowed for interim protection orders under the *Domestic Violence Act 1995*.

71 When court may make final protection order

(1) The court may make a final protection order in relation to a child or young person on an application (the ***care and protection application***) for a care and protection order in relation to the child or young person—

(a) on its own initiative, or on further application by a party to the care and protection application; and

(b) if the person against whom the final protection order is proposed to be made—

(i) has engaged in domestic violence in relation to the child or young person; or

(ii) has engaged in personal violence towards the child or young person and may engage in personal violence towards the child or young person during the time the order is proposed to be made if the order is not made.

Note The grounds for making a final protection order are intended to mirror the grounds mentioned in the *Domestic Violence Act 1995*.

(2) To remove doubt, the court may not make a final protection order that the court of Petty Sessions could not make on an application for a final protection order made in accordance with the *Domestic Violence Act 1995*.

(3) In this section:

domestic violence—see the *Domestic Violence Act 1995*, section 3.

72 Can someone apply for protection order if no care and protection proceedings?

(1) This section applies if—

(a) someone wants to apply for a protection order in relation to a child or young person; and

(b) no application for a final care and protection order has been made in relation to the child or young person.

Note *A final care and protection order* does not include a *protection order* (see s 59, definition of *final care and protection order).*

(2) The person may not apply for a protection order under this Act.

(3) To remove doubt, this section does not stop the person from applying for a protection order under the *Domestic Violence Act 1995*.

73 What is effect of making protection order under this Act?

(1) A protection order made under this Act is taken to have been made under the *Domestic Violence Act 1995*.

Examples of consequences of protection order being taken to have been made under *Domestic Violence Act 1995* —

1 The protection order can be amended (including by extension) or revoked under that Act.

2 The provisions about consent orders under that Act apply to the amendment (including by extension) or revocation of the protection order.

3 The provisions dealing with the end of protection orders under that Act apply to the order.

Note: An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears.

(2) The making of the protection order on an application for a care and protection order does not affect the validity of the protection order.

(3) In applying the *Domestic Violence Act 1995* to an interim protection order made under this Act—

(a) a reference in that Act to a ***final order*** is taken to be a reference to a final care and protection order; and

(b) a reference in that Act to the ***application*** or ***proceeding*** is taken to be a reference to the application or proceeding under this Act in relation to which the interim protection order was made.

Example for paragraph (a)

The *Domestic Violence Act 1995*, section 20, provides that an interim order ends in certain circumstances when the final order is made. Applying paragraph (a), the interim protection order ends when the final care and protection order is made in those circumstances.

74 Contact orders

(1) This section applies to a child or young person in relation to whom—

(a) another order under this chapter is being sought or is in force; or

(b) a proceeding is under way under this chapter that may lead to the making of an order that has the effect of separating the child or young person from a significant person in his or her life.

(2) The court may, on its own initiative, or on application by a person, make an order allowing contact between a child or young person to whom this section applies and someone else.

(3) If a person applies for a contact order in relation to a child or young person—

(a) if the person has parental responsibility for the child or young person or is his or her sibling—there is a rebuttable presumption that it is in the best interests of the child or young person to have contact with the person; or

(b) in any other case—the person has the burden of proving that contact between him or her and the child or young person is in the best interests of the child or young person.

(4) A sibling of a child or young person in relation to whom a contact order is sought does not need the leave of the court to be joined as a party to the proceeding on the application.

(5) An order stating that there be no contact between a child or young person and someone else is a specific issues order, not a contact order.

75 Residence orders

(1) This section applies to a child or young person in relation to whom another order under this chapter is being sought or is in force.

(2) The court may, on application or on its own initiative, make an order about the person with whom a child or young person to whom this section applies is to live if satisfied that there are reasonable grounds for believing that the child or young person would be in need of care and protection if the proposed order were not made.

(3) If the court intends a person to have responsibility for deciding where a child or young person lives, the court must make a residence order in favour of the person.

76 Temporary absence

A person in whose favour a residence order in relation to a child or young person is in force may permit the child or young person to be temporarily absent from the place where he or she is directed to live under the order.

77 Supervision order

(1) While a child or young person is subject to a supervision order under section 114 or 123, the supervisor may meet and talk with the child or young person alone or otherwise.

(2) Without limiting what may be included in a supervision order under this chapter, a supervision order in relation to a child or young person may—

(a) require—

(i) the child or young person; or

(ii) a person with parental responsibility for the child or young person; or

(iii) both the child or young person and a person with parental responsibility for the child or young person;

to report to the supervisor at a place and at intervals stated by the supervisor; and

(b) require—

(i) the child or young person; or

(ii) a person with parental responsibility for the child or young person; or

(iii) both a child or young person and a person with parental responsibility for the child or young person;

to take part in discussions with the supervisor in relation to the welfare of the child or young person, in particular whether the child or young person should receive some form of educational, vocational or recreational activity or other activity, having as its object the welfare of the child or young person.

78 Failure to comply with care and protection orders

(1) A person must not contravene a short care and protection order.

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

(2) A person must not contravene an order under this chapter directing that the person—

(a) not live at the same premises as a child or young person; or

(b) stop or refrain from living at the same premises as a child or young person.

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

(3) A person must not contravene a final care and protection order.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(4) It is a defence to a prosecution under this section if the person proves that he or she had not been served with, did not know about and could not reasonably be expected to know about the care and protection order.

(5) This section applies to a person's conduct whether within or outside Norfolk Island.

Division 5.3.2 Short care and protection orders

79 Initial consideration of applications

(1) The court must initially consider an application for—

(a) a short care and protection order; or

(b) the extension, variation or revocation of a short care and protection order;

within 2 working days after the day it is filed.

(2) The court must initially consider a cross-application on an application for a short care and protection order within 2 working days after the day the cross-application is filed.

(3) Subject to section 80, after initially considering an application or cross-application, the court may adjourn further consideration for not longer than 7 days at a time beginning on the day after adjournment if satisfied that it is appropriate to do so given the urgency of the application.

(4) However, an application for a therapeutic protection order must be heard in accordance with section 108 (Time for hearing and deciding applications).

80 Consideration of applications

(1) The court must begin hearing an application for a short care and protection order (the ***main application***) or cross-application within 14 days after the day the main application is filed.

(2) If the court fails, for whatever reason, to begin hearing an application or cross-application in accordance with subsection (1), an interim order made before the hearing of the proceeding was last adjourned continues in force until the application or cross-application is decided.

(3) This section does not apply to an application for a therapeutic protection order.

81 Period of effect of short care and protection orders

(1) A short care and protection order, other than an assessment order or a therapeutic protection order, has effect for the period of not longer than 18 weeks that is stated in the order.

(2) An assessment order has effect for the period of not longer than 4 weeks that is stated in the order.

(3) However, an assessment order or specific issues order may be extended under section 119(1)(c)(i) for a period equal to the period of the adjournment.

(4) A therapeutic protection order made as a short care and protection order has effect for the period of not longer than 8 weeks that is stated in the order.

(5) The time limits in this section do not apply to a therapeutic protection order made as a final care and protection order.

82 Extension, variation or revocation of orders

(1) A person who was a party to the proceeding in which a short care and protection order was made (the ***original order***) or a person named in the original order may apply for an extension, variation or the revocation of the original order.

(2) On application, the court may extend, vary or revoke the original order.

(3) If—

(a) an application has been filed; and

(b) the court cannot hear and decide the application before the date when, but for this subsection, the order would cease to have effect;

then—

(c) the court may adjourn the application for a period of not longer than 7 days beginning on the day after the application is adjourned; and

(d) despite any other provision in this Act, the order sought to be extended continues to have effect until the application is decided.

(4) However, the court may extend or vary an order only if—

(a) the effect of the extension or variation does not make the total period of the order extended or varied (including any extension, whether under subsection (3)(d) or otherwise) longer than the relevant period; or

(b) the court is satisfied that there are exceptional circumstances that justify the extension or variation.

(5) In subsection (4):

relevant period means—

(a) in relation to an assessment order or therapeutic protection order—8 weeks; or

(b) in any other case—18 weeks.

Division 5.3.3 Assessment orders

83 Applications for assessment orders

(1) The child welfare officer may apply to the court for an assessment order in relation to a child or young person if the child welfare officer considers it appropriate to do so.

(2) A person, other than the child welfare officer, may apply to the court for an assessment order in relation to a child or young person in accordance with section 83 only if the child welfare officer has not made a care and protection application in relation to the child or young person.

(3) A person, including the child welfare officer, may make an application for an assessment order by telephone, fax or other electronic means in an urgent case.

84 Cross applications on assessment orders

On application for an assessment order, the only order for which a cross application may be made is an assessment order for a special assessment.

85 Assessment orders

(1) In this section:

assessment means a child protection appraisal or special assessment.

(2) On application under this part, the court may make an order authorising the making of an assessment of a person and any of the following orders:

(a) an order requiring a person to attend, either alone or with someone else, at a stated place and time for an assessment;

(b) an order requiring a person or entity to comply with arrangements made by the child welfare officer for an assessment;

(c) an order requiring, or authorising the child welfare officer to require, a person or entity to give the child welfare officer information about the care, welfare or development of a child or young person;

(d) an order requiring that something be produced to the court or given to the child welfare officer or someone else for an assessment.

(3) The order may relate to someone other than a child or young person.

86 Restrictions on making assessment orders

(1) The court may only make an assessment order if satisfied that the child welfare officer reasonably believes or reasonably suspects that the child or young person in relation to whom the order is proposed to be made is in need of care and protection or would be in need if the order were not made.

(2) If the child welfare officer applies for an assessment order because a child or young person has refused to consent to an appraisal or assessment, the court must—

(a) take such steps as it considers appropriate to—

(i) judge the capacity of the child or young person to give consent; and

(ii) identify the reasons for his or her refusal to consent; and

(b) have regard to such capacity and reasons in making an assessment order.

87 Assistance with assessment

The child welfare officer may get assistance under section 57 in carrying out a child protection appraisal or a special assessment in accordance with an assessment order.

88 Report

If someone assesses a child or young person or other person in accordance with this Division, the assessor must provide a written report on the assessment as soon as practicable after its completion to—

(a) each person named in the order for the purpose of receiving the report; and

(b) if the court so orders—the court.

Maximum penalty: 5 penalty units.

89 Court may act on recommendations

The court may, on its own initiative, make an order under this part to implement a recommendation arising out of a special assessment that it could make on application by the child welfare officer.

Division 5.3.4 Emergency action

90 Taking emergency action

(1) In this section:

place includes a hospital or place where therapeutic protection is provided.

(2) This section applies if the child welfare officer or a police officer reasonably believes that a child or young person—

(a) is in immediate need of care and protection; or

(b) would be so in need if immediate care and protection were not provided.

(3) If this section applies, the child welfare officer or police officer may—

(a) arrange for the child's or young person's care and protection either in a premises or place or by moving him or her from a place to another place; and

(b) for the purpose of making those arrangements, use such force (including for breaking into premises) as is reasonably necessary to safeguard the wellbeing of the child or young person.

(3A) To avoid doubt, the premises and places in which a child or young person may be provided with care and protection under this section include premises and places outside Norfolk Island.

(4) The child welfare officer or police officer may take emergency action in relation to a child or young person even if, at the time he or she proposes to take the action, the child or young person is in the care of someone with parental responsibility for the child or young person.

(5) The child welfare officer or police officer may use the assistance that is necessary and reasonable for the purpose of taking the emergency action.

91 Emergency action by police officer

(1) If a police officer takes emergency action in relation to a child or young person, he or she must—

(a) immediately notify the child welfare officer in writing about the action taken, the reasons for taking the action and the child or young person in relation to whom the action was taken; and

(b) if practicable, notify each person with parental responsibility for the child or young person about the action taken; and

(c) deliver the child or young person to the place or person advised by the child welfare officer.

(2) If it is not practicable to notify the child welfare officer in writing immediately, the police officer may notify the child welfare officer orally immediately and provide written notice as soon as practicable.

92 Parental responsibility following emergency action

(1) A police officer has parental responsibility for a child or young person in relation to whom he or she has taken emergency action until the officer notifies the child welfare officer under section 91.

(2) The child welfare officer has parental responsibility for a child or young person if—

(a) a police officer notifies the child welfare officer that the officer has taken emergency action in relation to the child or young person; or

(b) the child welfare officer takes emergency action in relation to the child or young person.

(3) The child welfare officer may authorise a police officer to exercise parental responsibility for a child or young person on his or her behalf.

93 Keeping and losing parental responsibility

(1) The child welfare officer or police officer ceases to have parental responsibility for a child or young person after emergency action has been taken in relation to the child or young person if—

(a) the child or young person is returned to a former caregiver or person with parental responsibility; or

(b) the court so orders.

(2) Except as expressly provided in this Act, the child welfare officer or police officer may keep parental responsibility for the child or young person without the need for an order of the court—

(a) for the period of 3 working days beginning after the day the emergency action was taken; or

(b) if the period mentioned in paragraph (a) is interrupted by a Saturday, a Sunday and a public holiday—for the period from the day the emergency action is taken until such time as the matter can be brought before the court on the next sitting day of the court.

(3) However, if the child welfare officer has parental responsibility for a child or young person after having been notified under section 91 (Emergency action by police officer), the period for which the child welfare officer may keep parental responsibility is the relevant period stated under subsection (2) less any period during which the police officer had parental responsibility for the child or young person.

(4) If, at the end of the period for which the child welfare officer or police officer may keep parental responsibility—

(a) no order has been made in relation to the child or young person in relation to whom the emergency action was taken; and

(b) the child welfare officer or police officer still has parental responsibility for the child or young person;

the child welfare officer or police officer must deliver the child or young person into the care of a former caregiver or someone with parental responsibility for the child or young person.

(5) The child welfare officer or a police officer may only exercise parental responsibility for a child or young person under this section for the immediate care and protection of the child or young person.

94 Notice of emergency action

(1) If the child welfare officer takes emergency action in relation to a child or young person or is notified that a police officer has taken emergency action, he or she must, as soon as practicable, give notice that the action has been taken to—

(a) each person with parental responsibility for the child or young person who has not been told about the action by the person who took the action; and

(b) the court.

(2) This section applies even if the child welfare officer considers that it would not be in the best interests of the child or young person to give notice.

95 Action by child welfare officer

(1) If the child welfare officer has parental responsibility for a child or young person under this Division, he or she may make arrangements for the care and protection of the child or young person.

(2) The arrangements the child welfare officer may make for a child or young person include—

(a) arranging a child protection appraisal that includes an examination of the circumstance that led to the taking of the emergency action; and

(b) delivering the child or young person to a person (including someone with parental responsibility or a former caregiver).

96 Early initial consideration of care and protection application

(1) If, before the end of the relevant period mentioned in section 93(2), the child welfare officer applies to the court for a care and protection order, the court must give initial consideration to an application on the day it is filed.

(2) This section applies despite any other provision of this Part.

97 Contact with siblings and people with parental responsibility

(1) If emergency action has been taken in relation to a child or young person for whom a police officer or the child welfare officer has parental responsibility, the officer or child welfare officer must allow reasonable contact between the child or young person and his or her siblings or a person with parental responsibility for the child or young person.

(2) However the child welfare officer is not required to allow contact under this section if it would not be in the best interests of the child or young person to do so.

98 Record of action

The child welfare officer must keep a written record of any emergency action taken, including particulars of any notice given under section 91 (Emergency action by police officer).

99 Application for release of child or young person

(1) At any time while the child welfare officer or a police officer has parental responsibility for a child or young person because of the taking of emergency action, anyone mentioned in subsection (2) may apply to the court for an order for the release of the child or young person into the care of the applicant or another named person.

(2) For subsection (1), the following people may apply:

(a) the child or young person;

(b) someone with parental responsibility; or

(c) a former caregiver.

(3) The court may not order the release of a child or young person on an application under this section unless satisfied that proper arrangements exist for the care and protection of the child or young person.

Division 5.3.5 Therapeutic protection orders

100 Effect of Division 5.3.5 on other powers of child welfare officer

(1) Nothing in this Division prevents the child welfare officer from taking action he or she can take under the common law, this Act or another enactment.

(2) However, as far as another law would be contrary to this Division, this Division must, so far as possible, prevail.

101 What is therapeutic protection?

Therapeutic protection is care provided by the child welfare officer for a child or young person, where the child or young person is confined to a place in a way that the child welfare officer considers appropriate to protect the child or young person from serious harm.

102 Restriction on provision of therapeutic protection

The child welfare officer may not provide therapeutic protection for a child or young person except in accordance with a therapeutic protection order.

103 Therapeutic protection orders

(1) The court may make a therapeutic protection order in relation to a child or young person if satisfied that there are reasonable grounds for believing that—

(a) the child or young person is in need of care and protection and therapeutic protection should be arranged for the child or young person; or

(b) the child or young person would be in need of care and protection if therapeutic protection were not provided.

(2) If the court makes a therapeutic protection order—

(a) the court must include in the order any term or condition to which it is subject; and

(b) unless the court otherwise orders—the order has the effect of a residence order in favour of the child welfare officer and a specific issues order giving day-to-day responsibility for the care, welfare and development of the child or young person to the child welfare officer.

104 Restriction on making, varying and extending

(1) The court may not make, vary or extend a therapeutic protection order in relation to a child or young person unless it has received from the child welfare officer—

(a) a schedule setting out the proposed time, date and duration of the provision of therapeutic protection for the child or young person and the type of therapeutic protection proposed to be provided; and

(b) in relation to an application for variation or extension—the same details about the therapeutic protection already provided.

(2) The court may not make, vary or extend a therapeutic protection order in relation to a child or young person unless satisfied that—

(a) the order is necessary to prevent the child or young person from behaving in a manner likely to cause physical harm to himself or herself or another child or young person; and

(b) a planned program is in place for the child or young person to be provided with treatment, therapy or other services that will help him or her to deal with the matter mentioned in paragraph (a); and

(c) the program is likely to lead to a significant improvement in the circumstances of the child or young person; and

(d) the person or administrative unit proposed to provide the therapeutic protection has indicated to the court a willingness and ability to allocate the resources necessary to implement the program; and

(e) less intrusive methods have been attempted or would be insufficient for the support of the child or young person.

(3) However, on application for a variation of the term of a therapeutic protection order or for an extension, the court is not required to rehear the matter completely but may take into consideration a finding of fact made previously in relation to the child or young person.

105 Action by child welfare officer under therapeutic protection order

Without limiting the therapeutic protection the child welfare officer may provide under an order, he or she may do, or cause to be done, such of the following as he or she reasonably believes is in the best interests of the child or young person who is the subject of the order:

(a) take necessary steps to ensure that the child or young person may not leave the place where therapeutic protection is provided;

(b) use the force that is reasonably necessary to safeguard the wellbeing of the child or young person;

(c) search the child or young person in accordance with sections 182 and 183 (about personal searches);

(d) provide close or constant supervision for the child or young person;

(e) restrict the child or young person from having contact with other people.

106 Restriction on cross-application

A person may only cross apply on an application for a therapeutic protection order for—

(a) an assessment order for a special assessment; or

(b) a specific issues order; or

(c) a residence order.

107 Application for variation or revocation of therapeutic protection order

(1) The following people may apply to the court for an order varying or revoking a therapeutic protection order in relation to a child or young person:

(a) the child or young person;

(b) anyone with parental responsibility for the child or young person;

(c) a former caregiver.

(2) If an application in relation to a child or young person is served on the child welfare officer, the child welfare officer must file with the court a schedule setting out—

(a) the time, date and duration of the provision of therapeutic protection in relation to the child or young person; and

(b) the type of therapeutic protection provided or to be provided.

108 Time for hearing and deciding applications

(1) The court must hear and decide an application for a therapeutic protection order within 2 working days after the day the application is filed with the court.

(2) However, a cross-application may be dealt with in accordance with section 79 (Initial consideration of applications).

109 Limitations on restricting contact

If, acting under a therapeutic protection order, the child welfare officer restricts a child or young person from having contact with others—

(a) the restriction may not—

(i) unreasonably limit contact between the child or young person and a sibling or the child or young person and a person with parental responsibility for him or her; or

(iii) unreasonably restrict the child's or young person's access to open air; and

(b) so far as it prevents the child or young person from having contact with people other than a supervisor of the child or young person—the restriction—

(i) may only occur under constant supervision; and

(ii) may not exceed a continuous period of longer than 12 hours or a period of 12 hours (whether continuous or otherwise) in any 24 hour period.

110 Separation of children and young people from offenders

A child or young person who is under therapeutic protection must not be accommodated in premises used mainly to confine people convicted of offences or remanded into custody in relation to offences.

111 Provision of schedule of therapeutic protection

On request by the Commonwealth Minister, the child welfare officer must promptly make available to him or her a written schedule setting out—

(a) the time, date and duration of the provision of therapeutic protection in relation to a named child or young person; and

(b) the type of therapeutic protection provided or to be provided.

112 Therapeutic protection order made as final care and protection order

A therapeutic protection order made as a final care and protection order may be made for a period of up to 8 weeks and may be varied under Division 5.3.7 (Final care and protection orders) to extend the term of the order for an additional period of up to 8 weeks each time a variation is sought.

113 Review

(1) The Minister must every 12 months after the commencement of this chapter review the operation (the ***review period***) of this Act in relation to therapeutic protection, to determine whether therapeutic protection is being provided in appropriate cases and appropriate ways and to evaluate the effectiveness of therapeutic protection orders.

(2) The Minister must inform the Assembly of the terms of reference for the review.

(3) The Minister must present a report of the review to the Legislative Assembly not later than the first sitting day after a 3 month consideration period commencing on the first day after the end of the review period.

Division 5.3.6 Specific issues orders

114 Specific issues orders

(1) On application under this Part, the court may make any specific issues order it considers appropriate in relation to a child or young person if satisfied that there are reasonable grounds for believing that the child or young person is in need of care and protection or would be in need if an order were not made.

(2) A specific issues order is an order relating to the care and protection of a child or young person (other than an assessment order).

(3) Without limiting subsection (2), the specific issues orders that may be made in relation to a child or young person include the following:

(a) an order relating to the day-to-day or long-term care, welfare or development of the child or young person;

(b) an order requiring or authorising the child welfare officer to require a named person or public sector agency to give the child welfare officer oral or written information relating to the care, protection, welfare or development of a child or young person;

(c) an order directing that a named person not live at the same premises as the child or young person (including that someone who lives in the same premises as the child or young person stop or refrain from living at those premises);

(d) an order directing that a party to the application, or anyone else, have no contact with the child or young person;

(e) an order that the child or young person submit to the jurisdiction of the mental health tribunal to allow the tribunal—

(i) to decide whether the child or young person is mentally dysfunctional or mentally ill; and

(ii) if the tribunal decides that the child or young person is mentally dysfunctional or mentally ill—to make recommendations to the court as to how the child or young person should be dealt with;

(f) a supervision order;

(g) an order requiring a named person to do a stated thing, refrain from doing a stated thing or observe a stated condition;

(h) such ancillary or other orders as the court thinks fit.

115 Restriction on cross-application

A person may only cross apply on an application for a specific issues order for—

(a) a specific issues order; or

(b) an assessment order for a special assessment; or

(c) a residence order.

116 Notice of making, varying or extending certain specific issues orders

(1) This section applies to a specific issues order in relation to a child or young person—

(a) directing someone to stop or refrain from living in the same premises as the child or young person; or

(b) directing a named person to have no contact with the child or young person; or

(c) requiring a named person to do a stated thing, refrain from doing a stated thing or observe a stated condition.

(2) If the court makes, varies or extends an order to which this section applies, the court must cause a copy of the order, or a copy of the order as varied or extended, to be—

(a) served personally on the person directed to do a thing, cease or refrain from doing a thing or observe a condition; and

(b) served on the Commonwealth Minister; and

(c) given to—

(i) the chief police officer; and

(ii) each other person who was a party to the proceeding; and

(iii) any other person the court considers appropriate.

(3) Despite subsection (2)(a), if it appears to the court that it is not practicable to serve a document required to be served under subsection (2) personally, the court may—

(a) order that the copy of the order be served by such other means as the court thinks just; or

(b) make an order for substituted service.

(4) If the court is satisfied, having regard to the material before it, that it is appropriate to do so, the court may direct that a document required to be served on someone under subsection (2) be served by a police officer.

(5) If the court gives a direction for service by a police officer, the chief police officer must, when requested to do so by the Clerk, arrange for the document to be served by a police officer.

Division 5.3.7 Final care and protection orders

117 Initial consideration of applications

(1) The court must initially consider—

(a) an application for a final care and protection order; or

(b) an application for the variation or revocation of a final care and protection order; or

(c) a cross-application on an application for a final care and protection order;

within 5 working days after the day the application, or cross-application, is filed.

(2) After initially considering an application (the ***main application***) or cross-application, the court must—

(a) if satisfied that no purpose would be served by an adjournment—decide the main application or cross-application; or

(b) in any other case—set a date to begin hearing the main application or cross-application that is not more than 10 weeks after the day the main application is filed, and adjourn the main application or cross-application.

(3) If the court fails, for whatever reason, to begin hearing the main application or cross-application within 10 weeks after the day the main application is filed, an order or direction made in relation to the proceeding before that day continues in force until the main application or cross-application is decided.

118 Restriction on cross-application

A person may only cross apply on an application for a final care and protection order for—

(a) an assessment order for a special assessment; or

(b) a specific issues order; or

(c) a residence order.

119 Before application adjourned

(1) Before adjourning an application or cross-application under this Division, the court—

(a) must define the matters that are in dispute and consider the length of hearing required; and

(b) must make the directions necessary to facilitate the hearing; and

(c) if a specific issues order or assessment order is in force, may—

(i) extend the length of the order in accordance with section 81(3); or

(ii) revoke the order; and

(d) may order that a meeting be held to find out or resolve the issues in dispute; and

(e) may make one or more of the following orders (***interim orders***) to have effect for a stated period ending on or before the day the application or cross application is decided:

(i) an order giving interim parental responsibility for the child or young person to the child welfare officer or someone else;

(ii) a contact order;

(iii) an assessment order;

(iv) a specific issues order.

(2) The types of directions that the court may give under subsection (1)(b) include a direction—

(a) setting a schedule for the filing of evidence; and

(b) providing a time for the making of any further direction required.

(3) Before making an interim order, the court may require the child welfare officer to provide a care plan for the child or young person who is the subject of the hearing for the period of the adjournment.

120 Court-ordered meeting

(1) A meeting ordered by the court under section 119(1)(d)—

(a) must be attended by the child welfare officer and someone with parental responsibility for the child or young person who is the subject of the proceeding; and

(b) may be attended by—

(i) a party to the proceeding; and

(ii) the representative of a party to the proceeding; and

(iii) a person who was served with the application for the care and protection order; and

(iv) with the leave of the court, anyone who has an interest in the proceeding.

(2) The court must appoint someone mentioned in subsection (1) to preside over the meeting.

(3) Evidence of anything said or done at a meeting is not admissible in the proceeding to which it relates except with—

(a) the consent of the parties to the proceeding; or

(b) the leave of the court.

(4) The person presiding at a meeting must report the outcome of the meeting to the court.

121 Variation of interim orders

(1) A party to the proceeding may apply to the court for the variation of an interim order.

(2) The court must hear and decide an application for variation within 5 working days after the day the application is filed.

(3) After hearing an application, the court must—

(a) vary the terms of the interim order; or

(b) make another order available under section 119(1)(e) in substitution for the order sought to be varied; or

(c) dismiss the application.

(4) If, but for this subsection, an interim order in force on the day an application for a variation is filed would expire on a day before the hearing of the application, that order continues in force until the application is heard and decided.

122 Appeal from assessment and specific issues interim orders

If the court makes an interim order that is an assessment order or a specific issues order, the order may be appealed from as if it had been made as a short care and protection order.

123 Final care and protection orders

(1) The court may declare a child or young person to be in need of care and protection if satisfied that a final care and protection order should be made in relation to the child or young person.

(2) The court may not accept the admission of the parties to a proceeding that a child or young person is in need of care and protection but must satisfy itself that the child or young person is in need of care and protection.

(3) After making a declaration, the court may make a final care and protection order if satisfied that such an order is necessary to secure—

(a) the care and protection of the child or young person; or

(b) proper arrangements in existence for the care and protection of the child or young person.

(4) A final care and protection order in relation to a child or young person may include one or more of the following:

(a) an order that the child welfare officer supervise the care and protection of the child or young person in relation to matters mentioned in the order;

(b) an order giving parental responsibility for the child or young person to the child welfare officer or someone else;

(c) an enduring parental responsibility order that has effect until the child or young person turns 18;

(d) an order that the child or young person submit to the jurisdiction of the mental health tribunal to allow the tribunal—

(i) to decide whether the child or young person is mentally dysfunctional or mentally ill; and

(ii) if the tribunal decides that the child or young person is mentally dysfunctional or mentally ill—to make recommendations to the court as to how the child or young person should be dealt with;

(e) any other order the court considers appropriate.

(5) A final care and protection order has effect for a stated period or, if no period is stated, until the child or young person becomes an adult.

(6) Subsection (5) does not apply to the following final care and protection orders:

(a) an enduring parental responsibility order;

(b) a therapeutic protection order;

(c) an order that a child or young person submit to the jurisdiction of the mental health tribunal.

(7) The court does not need to make a declaration that a child or young person is in need of care and protection before it may make a contact order, or a protection order, on an application for a final care and protection order.

124 Therapeutic protection order made as final care and protection order

A therapeutic protection order made as a final care and protection order must comply with section 112.

125 Parental responsibility

A final care and protection order dealing with parental responsibility for a child or young person may—

(a) vest parental responsibility in more than one person; and

(b) state or limit the manner in which a person may exercise his or her responsibilities for the child or young person under that order; and

(c) state the responsibilities that someone has or does not have; and

(d) state how someone must consult with someone else with parental responsibility before exercising an aspect of parental responsibility.

126 Restriction on making final care and protection orders

The court may not make a final care and protection order in relation to a child or young person unless it has considered a care plan prepared by the child welfare officer in relation to the child or young person.

127 What is a care plan?

(1) A ***care plan*** for a child or young person is a written plan of the child welfare officer's proposals in relation to the care and protection of the child or young person.

(2) The care plan may include proposals for the following:

(a) allocation of parental responsibility in relation to the child or young person;

(b) the type of placement that will be sought or provided for the child or young person if he or she is to live away from home, including any interim placement arrangements;

(c) whether the child welfare officer believes restoration of the child or young person to his or her parents is a realistic possibility and, if the child welfare officer believes it is, a description of the changes at the home or by the parents that the child welfare officer believes would need to occur before the child welfare officer would consider it safe for the child or young person to return to his or her parents;

(d) contact between the child or young person and his or her parents (and anyone else as appropriate);

(e) the agency with whom arrangements are to be made about the provision of care and protection, supervision or other support for the child or young person;

(f) services to be provided in relation to the child or young person.

(3) Unless the court orders otherwise, the child welfare officer must serve a copy of a care plan provided for a proceeding on each other party to the proceeding.

128 Enduring parental responsibility orders

(1) The court may make an enduring parental responsibility order in relation to a child or young person if—

(a) no-one with parental responsibility for the child or young person (other than under a care and protection order) has had care of him or her for a continuous period of at least 2 years, or for periods that total at least 2 years within the period of 3 years, immediately before the order is made; and

(b) the child or young person has been living with the person in whose favour the order is sought (the ***proposed carer***) under a care and protection order

for a continuous period of 2 years, or for periods that total at least 2 years within the period of 3 years, immediately before the order is made; and

(c) satisfied that—

(i) no-one with parental responsibility for the child or young person (other than under a care and protection order) (a ***previous carer***) is able or willing to exercise that responsibility; or

(ii) it is not in the best interests of the child or young person for a previous carer to exercise parental responsibility for the child or young person; and

(d) satisfied that the proposed carer—

(i) is a suitable person to have parental responsibility for the child or young person; and

(ii) is willing and able to assume day-to-day and long-term responsibility for the care, welfare and development of the child or young person.

(2) An enduring parental responsibility order is—

(a) a residence order in favour of the proposed carer; and

(b) an order giving parental responsibility for the day-to-day and long-term care, welfare and development of the child or young person to the proposed carer while the order is in force.

129 Restriction on making enduring parental responsibility orders

The court may not make an enduring parental responsibility order in favour of the child welfare officer.

130 Effect of enduring parental responsibility order on others with parental responsibility

No-one may discharge parental responsibility for a child or young person in a way that would be incompatible with the discharge of parental responsibility of someone who has an enduring parental responsibility order in relation to the child or young person.

131 Financial contributions and burdens

(3) Unless the court orders otherwise, if the court makes a care and protection order involving a financial cost to a person, the person is responsible for the cost.

(4) If—

(a) the court makes an enduring parental responsibility order; and

(b) immediately before the order was made the child or young person was in the care of the child welfare officer (however described);

the child welfare officer may arrange for the provision of financial or other assistance to the person in whose favour the order is made, on the terms and conditions, that the child welfare officer considers appropriate.

132 Application for variation and revocation of orders

(1) A person may, with the leave of the court, apply to the court for the variation or revocation of a final care and protection order on the ground that—

(a) the child or young person is no longer in need of care and protection; or

(b) the order made by the court does not secure—

(i) the care and protection of the child or young person; or

(ii) proper arrangements in existence for the care and protection of the child or young person.

(2) The court may not grant leave to someone to apply under subsection (1) on more than one occasion in a 12 month period unless satisfied that there are exceptionable circumstances that justify doing so.

(3) The court may grant leave to apply to someone who was a party to the proceeding in which the final care and protection order sought to be varied was made unless subsection (2) prevents it from doing so.

(4) An application for a variation may specify—

(a) the provision sought to be varied; and

(b) the nature of the proposed variation.

(5) On application under subsection (1), the court may list the application so that there is a directions hearing in relation to it within 5 working days after the day the application is filed.

(6) At a directions hearing in relation to an application under subsection (1), the court—

(a) may deal with the application in the same way as it would deal with an application for a final care and protection order at a directions hearing; and

(b) may take any action in relation to the application that it could take if the application were an application for a final care and protection order.

133 Variation and revocation of orders

(1) On application under section 132(1), the court may—

(a) if satisfied that it is in the best interests of the child or young person to do so—

(i) vary the order; or

(ii) revoke the order; or

(b) in any other case—dismiss the application.

(2) The court may not vary or revoke an order under this section unless the applicant has proved to the satisfaction of the court that it is in the best interests of the child or young person to vary or revoke the order.

(3) The orders the court may make when varying an order under subsection (1)(a)(i) include the following:

(a) substituting the order with another order the court may make on application for a final care and protection order;

(b) changing the period for which the order has effect;

(c) varying a term or condition in the order;

(d) making an additional order that the court may make on application for a final care and protection order.

134 Continuation of existing orders

If, but for this section, a final care and protection order in force on the day an application for a variation of the order under section 132(1) is filed would expire on a day before the hearing of the application, that order continues in force until the application is heard and decided.

135 Child welfare officer to report

(1) This section applies if, under a final care and protection order in force for a period longer than 6 months in relation to a child or young person—

(a) the child welfare officer has parental responsibility for the child or young person; or

(b) the child or young person is subject to the supervision of the child welfare officer.

(2) The child welfare officer must give a report under this section to each of the following people:

(a) the child or young person;

(b) each person with parental responsibility for the child or young person;

(c) a carer caring for the child or young person;

(d) the court.

(3) A report under this section must include information in relation to the following:

(a) the circumstances of the child or young person and the family with which he or she lives;

(b) the child welfare officer's performance of his or her obligations under the care and protection order;

(c) whether the child welfare officer considers the existing arrangements for the care and protection of the child or young person are in the best interests of the child or young person.

(4) A report under this section in relation to a care and protection order must be given—

(a) if the order is in force for a period of less than 12 months—at least one month before the order expires but not earlier than 2 months before; or

(b) if the order is in force for a period of 12 months or more—

(i) at least one month before each anniversary of the making of the order while the order is in force, but not earlier than 2 months before; and

(ii) if the order is due to expire more than 6 months but less than 12 months after the last report was provided—at least one month before the order expires but not earlier than 2 months before.

(5) The child welfare officer may also give a report to an interpreter, doctor or similar person if the child welfare officer considers it appropriate to do so to allow the person to bring the report to the attention of someone to whom the report must be provided.

(6) If the child welfare officer causes a report under this section to be prepared in relation to a child or young person, the child welfare officer may, before providing the report to someone mentioned in subsection (2)(a), (b) or (c) or (5), make the minor alterations to the report to protect the privacy and confidentiality of a person named in the report that the child welfare officer considers appropriate.

136 Waiving of obligation to give report

(1) The child welfare officer may apply to the court for an order waiving the need to comply with section 133(2) in relation to someone mentioned in section 135(2)(a), (b) or (c) if—

(a) the child welfare officer considers that to give the report to the person would not be in the best interests of the child or young person; or

(b) the person cannot be found after reasonable inquiries.

(2) If the ground for applying is that the child welfare officer considers that to give the report to the person would not be in the best interests of the child or young person, the child welfare officer must cause a copy of the application to be served on each person to whom the report is required to be given.

(3) On application under subsection (1), the court must order—

(a) if satisfied that—

(i) to give a copy of the report to the named person would not be in the best interests of the child or young person; or

(ii) reasonable inquiries have been made and the person cannot be found;

that the child welfare officer is not required to give a copy of the report to the person under section 135; or

(b) in any other case—that the child welfare officer is required to provide the person with a copy of the report.

(4) An order under subsection (3)(b) must specify whether the copy of the report is to be provided in full or in part.

(5) If the court makes an order under subsection (3)(b), it may make such other orders in relation to the provision of the copy of the report as it considers appropriate.

(6) An application under subsection (1) may be heard in the absence of a party.

137 Failure to give report

(1) A person to whom a report is required to be given may apply to the court for an order requiring the child welfare officer to give a report to a person to whom a report is required to be given under section 135 if the child welfare officer has not—

(a) given the report in accordance with the section; and

(b) obtained an order waiving the requirement to give the report to the person.

(2) If, on application, the court orders the child welfare officer to give a report, the child welfare officer must give the report in accordance with section 135 within 14 days after the day the court makes the order.

(3) The court may extend the period of a final care and protection order so that it ends not more than one month after the day the order is made if—

(a) the court orders the child welfare officer to give a report in relation to the final care and protection order; and

(b) the final care and protection order ends within a month after the day the order is made.

Division 5.3.8 Safe custody

138 Circumstances in which child or young person may be taken into safe custody

(1) A magistrate may issue a warrant for the purpose of having a child or young person taken into safe custody if satisfied by evidence on oath or by the affidavit of the child welfare officer, an officer or a police officer that—

(a) someone has contravened an order in force under this Part and as a result the child or young person to whom the order relates is in danger; or

(b) the child or young person who is the subject of an order in force under this Part is absent without lawful authority or excuse from the place in which the child or young person is required under the order to live and needs to be found and returned to such a place.

(2) An application for a warrant may be made in writing by the child welfare officer, an officer or a police officer.

Note If a form is approved under s 196 (Approval of forms by Minister) for an application, the form must be used.

(3) When acting under a warrant, the child welfare officer, officer or police officer may—

(a) be accompanied by such authorised people and police officers as is reasonable or necessary; and

(b) use the force that is reasonable.

(4) If a child or young person is taken into safe custody under a warrant issued under this section, the child welfare officer must ensure that as soon as practicable and in any event within one working day after the day the child or young person is taken into safe custody, the matter is brought before the court.

(5) However, the child or young person is not required to be brought before the court (unless the court directs otherwise).

(6) A child or young person taken into safe custody under this section must be placed by the person who executed the warrant—

(a) in the place stated in the warrant; or

(b) if no such place is stated—in a place decided by the child welfare officer.

139 Court's power in relation to child or young person taken into safe custody

If a child or young person has been taken into safe custody, when the matter is subsequently brought before the court, the court may do one or more of the following in relation to the child or young person:

(a) make or vary an assessment order;

(b) make or vary a care and protection order or interim care and protection order;

(c) make such other orders as it considers necessary or desirable.

Division 5.3.9 Representation of wishes of child or young person

140 Opportunity for child or young person to be heard

The court must allow a child or young person who is the subject of a proceeding under this chapter a reasonable opportunity to give his or her views or wishes personally to the court as to his or her ongoing care and protection unless satisfied that the child or young person is not capable of doing so.

141 Court may inform itself of child's or young person's wishes

The court should inform itself of the views or wishes of a child or young person—

(a) by having regard to—

(i) anything said by the child or young person personally to the court; or

(ii) anything said by a representative of the child or young person in relation to the child's or young person's views or wishes; or

(iii) anything contained in a report (whether ordered by the court or otherwise) given to the court in relation to the child's or young person's views or wishes; or

(b) by any other means the court considers appropriate, including by the child or young person expressing his or her wishes through a statement or submission by a carer, an expert or someone else.

142 No requirement to express views or wishes

Nothing in this Part permits the court or a person to require a child or young person to express his or her views or wishes in relation to a matter.

Division 5.3.10 Procedures

143 Applications and other procedures before the court

(1) The *Court of Petty Sessions Act 1960* and the forms and Regulations made under that Act apply to the commencement of proceedings and the hearing of applications and other matters under this Act.

(2) If a provision of the *Court of Petty Sessions Act 1960* is inconsistent with this Act, this Act prevails.

Division 5.3.11 — Support for children and young persons in crisis

Part 1 — Serious or persistent conflict

143A What are the objects of this Part?

The objects of this Part are —

(a) to ensure, so far as possible, that conflicts between children or young persons and their parents are resolved without recourse to legal proceedings, and

(b) to enable proper access to services where breakdowns in relationships occur between children or young persons and their parents, and

(c) to enable the Court to make appropriate orders in circumstances where the differences between a child or young person and his or her parents are so serious that it is no longer possible for the child or young person to continue living with his or her parents.

143B When does this Part apply?

(1) This Part applies -

(a) if there is a serious or persistent conflict between the parents and the child or young person of such a nature that the safety, welfare or well-being of the child or young person is in jeopardy, or

(b) if the parents are unable to provide adequate supervision for the child or young person to such an extent that the safety, welfare or well-being of the child or young person is in jeopardy.

(2) The provisions of this Part apply in addition to the provisions of Chapters 3, 4 and 5.

143C What principle is to be applied in the administration of this Part?

(1) The principle to be applied in the administration of this Part in its application to children is that the parents of a child should have responsibility for the child unless it is not in the best interests of the child that his or her parents have responsibility for him or her.

(2) The provisions of this section apply in addition to the provisions of sections 10 to 13.

143D Request for assistance

(1) A parent, child or young person, or any other person may ask the child welfare officer for assistance-

(a) if there is a serious or persistent conflict between the parents and the child or young person of such a nature that the safety, welfare or well-being of the child or young person is in jeopardy, or

(b) if the parents are unable to provide adequate supervision for the child or young person to such an extent that the safety, welfare or well-being of the child or young person is in jeopardy.

(2) On receiving a request for assistance, the child welfare officer may provide or arrange for the provision of such advice or assistance as is necessary-

(a) to help the parents and the child or young person to resolve the conflict between them without recourse to legal proceedings, or

(b) to ensure that the child or young person is adequately supervised, or

(c) to enable the child or young person and his or her parents to have access to appropriate services.

143E Alternative dispute resolution

(1) If the differences between a child or young person and his or her parents are so serious that it is no longer possible for the child or young person to continue living with his or her parents, the child, the young person, or a parent or the parents may request the child welfare officer to attempt to resolve those differences.

(2) On receiving a request, the child welfare officer must seek to resolve the differences, by any form of dispute resolution the child welfare officer considers appropriate, prior to making an application to the Court for appropriate orders.

143F Alternative parenting plan

(1) In this Division, ***alternative parenting plan*** means a plan:

(a) that sets out the way in which the needs of the child or young person are proposed to be met having regard to the breakdown in the relationship between the child or young person and his or her parents, and

(b) that may include proposals concerning the following:

(i) allocation of parental responsibility or specific aspects of parental responsibility,

(ii) residential arrangements,

(iii) supervision,

(iv) contact arrangements,

(v) education and training,

(vi) medical care,

(vii) the provision of services.

(2) In seeking to resolve conflict of a kind to which this Division applies:

(a) the child welfare officer must formulate an alternative parenting plan if the child welfare officer is a party to the proceedings, and

(b) any party may formulate an alternative parenting plan if the child welfare officer is not a party to the proceedings.

143G Application for order for alternative parenting plan

(1) If the differences between a child or young person and his or her parents are so serious that it is no longer possible for the child or young person to continue living with his or her parents, the child or young person, a parent or the parents, or the child welfare officer may make an application to the Court for an order approving an alternative parenting plan.

(2) An application is to be accompanied by an alternative parenting plan.

(3) The Court must not make an order unless it is satisfied that the parents and the child or young person have been advised of the desirability of seeking legal advice concerning any proposed changes to the allocation of parental responsibility and —

(a) that all appropriate steps that could be taken to resolve the matter have been taken and that all other appropriate forms of dispute resolution have been exhausted, or

(b) that no useful purpose would be served in taking those steps or other forms of dispute resolution.

(4) The Court may order a person who makes an application under this section to notify those persons whom the Court specifies of the making of the application.

143H Adjournment

The Court may adjourn an application for an order approving an alternative parenting plan in order that further assessment, counselling or mediation may be carried out.

143I Court orders

(1) The Court may make such orders as it considers appropriate to give effect to a proposed alternative parenting plan or specified parts of the plan.

(2) In considering whether to make an order with respect to a child or young person, the Court is to have regard to the following:

(a) the views of the child or young person,

(b) the age of the child or young person,

(c) the maturity of the child or young person,

(d) the capacity of the child or young person for independent living,

(e) the practical and emotional supports available to the child or young person.

143J Registration of certain alternative parenting plans

(1) A party to an alternative parenting plan that has been made with the agreement of —

(a) all persons having existing parental responsibility for the child or young person to whom the alternative parenting plan applies, and

(b) the child or young person, may apply to the Court for registration of the plan.

(2) The regulations may make provision with respect to such an application.

(3) The Court may register an alternative parenting plan if:

(a) it is of the opinion that it is necessary and appropriate for the care and protection of the child or young person to whom it applies, and

(b) the child or young person and his or her parents have been advised of the desirability of seeking legal advice concerning changes to the allocation of parental responsibility.

(4) On registration, an alternative parenting plan has the same effect as if it had been approved by order of the Court.

Part 2 — Homelessness

143K Homelessness of children

(1) Any person may report the homelessness of a child to the child welfare officer.

(2) On receipt of a report, the child welfare officer must conduct such investigation and assessment concerning the child as the child welfare officer considers necessary.

(3) The child welfare officer may provide or arrange for the provision of services, including residential accommodation, where appropriate, for a child whose homelessness has been reported to the child welfare officer.

143L Homelessness of young persons

Any person may, with the consent of the young person, report the homelessness of a young person to the child welfare officer.

143M Mandatory reporting of child who lives away from home without parental permission

A person who provides residential accommodation for another person who the person has reasonable grounds to suspect -

(a) is a child, and

(b) is living away from home without parental permission,

must, as soon as practicable, inform the child welfare officer of the child's whereabouts.

Note: (a) The police will notify the child welfare officer of the details of children who have been reported to the police as missing. If the child welfare officer becomes aware that a child reported as missing is safe, the child welfare officer is required to advise the police that the child is safe but not of the whereabouts of the child.

(b) The purpose of this provision is to avoid wasting resources in having the police search for missing children whose whereabouts are known to the child welfare officer.

(c) The parents should be informed that the child is safe, but nothing in this section requires any person to reveal the whereabouts of the child to a person other than the child welfare officer.

Chapter 6 Transfer of child care and protection orders and proceedings

Part 6.1 Preliminary

144 Object of chapter 6

The object of this chapter is to provide for the transfer of care and protection orders and proceedings between Norfolk Island and a State or Territory or between Norfolk Island and New Zealand—

(a) so that children and young people 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 or young person.

145 Definitions for chapter 6

(1) In this chapter:

child care and protection order, in relation to a child or young person, means an order (other than an interim order) under a child welfare law in relation to

the child or young person that relates to an aspect of parental responsibility (however that responsibility is described) if the order is in favour of a welfare body.

child care and protection proceeding means a proceeding brought in a court under a child welfare law for the making of a care and 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) part 5.3 (Care and protection orders and emergency action); or

(b) a law that, under a notice under subsection (2) that has not been revoked, is declared to be a child welfare law for this chapter; or

(c) a law of a State that corresponds to part 5.3.

interim order means an order under section 159.

interstate law means—

(a) a law that, under a notice under subsection (3) that has not been revoked, is declared to be an interstate law for this chapter; and

(b) a law of a State that corresponds to this chapter.

interstate officer, in relation to a State, means—

(a) the holder of an office or position that, under a notice under subsection (4) that has not been revoked, is declared to be an office or position the holder of which is the interstate officer in relation to the State for this chapter; or

(b) the person holding the office or position to which there is given under the child welfare law of the State, principal responsibility for the protection of children and young people in the State.

participating State means a State where an interstate law is in force.

sending State means the State from which a child care and protection order or proceeding is transferred under this chapter or an interstate law.

State includes a Territory and New Zealand.

State court, of a State, means the court with jurisdiction to hear and decide a child care and protection proceeding in the State at first instance.

welfare body, for a State, means—

(a) an Minister of the State; or

(b) a government department or statutory authority of the State; or

(c) a person who is the child welfare officer of a government department or statutory authority of the State or otherwise holds an office or position in, or is employed in, a government department or statutory authority of the State; or

(d) an organisation, or the child welfare officer (however described) of an organisation, in the State.

(2) The Minister may, in writing, declare a law of a State to be a child welfare law for this chapter if satisfied that the law substantially corresponds to part 5.3 (Care and protection orders and emergency action).

(3) The Minister may, in writing, declare a law of a State to be an interstate law for this chapter if satisfied that the law substantially corresponds to this chapter.

(4) The Minister may, in writing, declare an office or position in a State to be an office or position the holder of which is the interstate officer in relation to the State for this chapter.

Part 6.2 Transfer of certain child care and protection orders

Division 6.2.1 Administrative transfers

146 When child welfare officer may transfer order

(1) The child welfare officer may transfer a child care and protection order (the ***home order***) to a participating State if—

(a) in his or her opinion, a child care and protection order to the same or a similar effect as the home order could be made under the child welfare law of the State; and

(b) the home order is not subject to an appeal to the Supreme Court or affected by a proceeding for judicial review; and

(c) the relevant interstate officer has consented to the transfer and to the proposed terms of the child care and protection order to be transferred (the ***interstate order***); and

(d) if the child welfare officer is satisfied that the child or young person who is the subject of the order is capable of understanding the proposal to transfer the order—the child welfare officer has sought and considered the views of the child or young person; and

(e) anyone whose consent to the transfer is required under section 147(1) has consented.

(2) The child welfare officer may include in the interstate order a condition that could be included in a child care and protection order of that type made in the relevant participating State.

(3) In deciding whether a child care and 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 child welfare officer may not take into account the period for which it is possible to make such an order in the State.

(4) The period for which an interstate order is to remain in force must be decided by the child welfare officer and stated in the order.

(5) The period must be—

(a) if the remaining period of the home order at the date of registration of the interstate order in the participating State is a period for which an order may be made under the child welfare law of the State—the remaining period; or

(b) in any other case—as similar a period as may be made under that law but in no case longer than the period of the home order.

147 People whose consent is required

(1) For section 146(1)(e), consent to a transfer under this Division is required from—

(a) in relation to the proposed transfer of a young person who is 15 or over—the young person; and

(b) each person with parental responsibility for the child or young person; and

(c) each person who has a contact order in relation to the child or young person in his or her favour; and

(d) each person not included in paragraph (a) or (b) who has a residence order in relation to the child or young person in his or her favour.

(2) If the child or young person lives in a State with someone who has a residence order in relation to the child or young person in his or her favour, it is sufficient if each person required to consent consents to the child or young person living in the State and their consent to the transfer is not required.

(3) If someone with parental responsibility for, or a residence order in relation to, the child or young person lives in, or is intending to live in, the relevant participating State, it is sufficient if each other person with parental responsibility or a residence order in relation to the child or young person consents to the child or young person living in the State and the consent of the person to the transfer is not required.

(4) However, a person's consent is not required if—

(a) the person cannot, after reasonable inquiry, be found; or

(b) the person is incapable of consenting.

148 Notification to child or young person and people with parental responsibility

(1) If the child welfare officer has decided to transfer a child care and protection order to a participating State under this Division, the child welfare officer must serve—

(a) each person with parental responsibility for the child or young person who is the subject of the order; and

(b) if the order relates to a young person—the young person;

with notice of the decision as soon as practicable but in any event no later than 3 working days after making it.

(2) Service of a notice on someone is not required if it cannot be effected after making all reasonable efforts.

149 Limited period for review of decision

(1) A proceeding for judicial review of a decision of the child welfare officer to transfer a child care and protection order to a participating State must be commenced, and originating process must be served on the child welfare officer, within 10 working days after the date of the child welfare officer's decision.

(2) A proceeding for judicial review must be brought in accordance with the rules of the Supreme Court.

(3) However, the Supreme Court cannot extend the time fixed by subsection (1).

(4) The lodging (or filing) and service on the child welfare officer of an originating process mentioned in subsection (1) stays the operation of the decision until the proceeding is determined.

Division 6.2.2 Judicial transfers

150 When court may make order under Division 6.2.2

The court may make an order transferring a child care and protection order to a participating State if—

(a) the child welfare officer applies for the making of the order; and

(b) the child care and protection order is not subject to an appeal to the Supreme Court; and

(c) the relevant interstate officer has consented to the transfer and the proposed terms of the child care and protection order to be transferred.

151 Service of application

The child welfare officer must as soon as possible cause a copy of an application for an order transferring a child care and protection order to a participating State to be sent by post or given to each person to whom he or she would have been required under Part 5.3 (Care and protection orders and emergency action) to send or give a copy of an application by him or her for the variation of the order sought to be transferred.

152 Type of order

(1) If the court decides to transfer a child care and protection order (the ***home order***), the form of the child care and protection order to be transferred (the ***interstate order***) is to be a child care and protection order that could be 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 home order; or

(b) otherwise in the best interests of the child or young person.

(2) The court may include in the interstate order a condition that could be included in a child care and protection order of that type made in the relevant participating State.

(3) In deciding 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 should not take into account the period for which it is possible to make such an order in that State.

(4) The period for which an interstate order is to remain in force must be decided by the court and stated in the order.

(5) The period must be a period—

(a) for which a child care and protection order of the type of the interstate order may be made under the child welfare law of the participating State; and

(b) that the court considers appropriate.

153 Court to have regard to certain matters

In deciding what order to make on an application under this Division, the court must have regard to—

(a) whether the child welfare officer or an interstate officer is in the better position to exercise powers and responsibilities under a child care and protection order relating to the child or young person; and

(b) the desirability of a child care and protection order being an order under the child welfare law of the State where the child or young person lives.

154 Court must consider report from child welfare officer

(1) The court may not make an order under this Division unless it has received and considered a care plan prepared by the child welfare officer in relation to the proposed transfer.

(2) Unless the court orders otherwise, the child welfare officer must provide a copy of the care plan to each person who was a party to the proceeding in which the original order was made.

155 Appeals

(1) A party to an application for an order under this Division may appeal to the Supreme Court, on a question of law, from a final order made in that proceeding transferring a child care and protection order to a participating State.

(2) An appeal under subsection (1)—

(a) must be instituted, and originating process must be served on the child welfare officer, within 10 working days after the day the order complained of was made; and

(b) operates as stay of the order.

(3) An appeal under subsection (1) must be brought in accordance with the rules of the Supreme Court.

(4) However, the Supreme Court cannot extend the time fixed by subsection (2)(a).

(5) The Supreme Court must hear and decide the appeal as expeditiously as possible.

(6) After deciding the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for rehearing to the court with or without a direction in law.

(7) An order made by the Supreme Court on an appeal under subsection (1), other than an order remitting the case for rehearing to the court, may be enforced as an order of the Supreme Court.

(8) The Supreme Court may make any interim short care and protection order pending the hearing of the appeal that the court has jurisdiction to make.

Part 6.3 Transfer of child care and protection proceedings

156 When court may make order under Part 6.3

(1) The court may make an order (the ***transfer order***) under this part transferring a child care and protection proceeding pending in the court to the State court of a participating State if—

(a) the child welfare officer applies for the making of the order; and

(b) the relevant interstate officer has consented to the transfer.

(2) The proceeding is discontinued in the court when the transfer order is registered in the State court of the participating State in accordance with the interstate law.

157 Service of application

The child welfare officer must as soon as possible serve a copy of an application for a transfer order transferring a child care and protection proceeding to the State court of a participating State on—

(a) each person with parental responsibility for the child or young person; and

(b) if the order relates to a young person—the young person.

158 Court to have regard to certain matters

In deciding whether to make an order transferring a proceeding under this Part, the court must have regard to—

(a) whether another proceeding relating to the child or young person is pending, or has previously been heard and decided, under the child welfare law in the participating State; and

(b) the place where any matter giving rise to the proceeding in the court happened; and

(c) the place where the child or young person, each person with parental responsibility for the child or young person and anyone else who is significant to the child or young person lives or is likely to live.

159 Interim order

(1) If the court makes an order transferring a proceeding under this Part, the court must also make an interim order that relates to the care, welfare or development of the child or young person.

(2) An interim order may—

(a) give responsibility for an aspect of parental responsibility for the child or young person, or allow contact with, a person; and

(b) give responsibility for the supervision of the child or young person to the interstate officer in the participating State or another person in that State to whom responsibility for the supervision of a child or young person could be given under the child welfare law of that State.

(3) An interim order remains in force for the period, not longer than 30 days, that is stated in the order.

(4) The State court of the participating State may vary or revoke, or extend the period of, an interim order.

160 Appeals

(1) A party to an application for an order under this part may appeal to the Supreme Court, on a question of law, from a final order made in the proceeding transferring a child care and protection proceeding to the State court of a participating State.

(2) An appeal—

(a) must be instituted, and originating process must be served on the child welfare officer, within 10 working days after the day the order complained of was made; and

(b) operates as stay of the order but not of any interim order made at the same time as the order.

(3) An appeal under subsection (1) must be brought in accordance with the rules of the Supreme Court.

(4) However, the Supreme Court cannot extend the time fixed by subsection (2)(a).

(5) The Supreme Court must hear and decide the appeal as quickly as possible.

(6) After deciding the appeal, the Supreme Court may make any order it thinks appropriate, including an order remitting the case for rehearing to the court with or without a direction in law.

(7) An order made by the Supreme Court on an appeal under subsection (1), other than an order remitting the case for rehearing 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 an 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 an interim short care and protection order that the court has jurisdiction to make pending the hearing of the appeal.

Part 6.4 Registration

161 Filing and registration of interstate documents

(1) The child welfare officer must as soon as possible file in the court for registration a copy of a child care and protection order transferred to Norfolk Island under an interstate law.

(2) The child welfare officer must as soon as possible file in the court for registration a copy of an order under an interstate law to transfer a child care and protection proceeding to Norfolk Island, together with a copy of any interim order made at the same time.

(3) The child welfare officer may not file in the court a child care and protection order or an order to transfer a child care and protection proceeding if, under the interstate law—

(a) the decision or order to transfer the child care and protection order or the order to transfer the child care and protection proceeding is subject to appeal or review or a stay; or

(b) the time for instituting an appeal or seeking a review has not expired.

162 Notification by appropriate Clerk

(1) The Clerk of the court must immediately notify the appropriate officer of the State court of the sending State and the interstate officer in that State of—

(a) the registration of any document filed under section 161; or

(b) the revocation under section 164 of the registration of any document so filed.

(2) If the Clerk of the court is notified under a provision of an interstate law equivalent to subsection (1) that the registration of a copy of a care and protection order or a care and protection proceeding transferred to the State under this chapter has been revoked, the Clerk must notify the child welfare officer.

(3) On being notified, the child welfare officer must notify—

(a) the child or young person concerned; and

(b) each person with parental responsibility for the child or young person concerned; and

(c) the parties to the proceeding in the court in which the decision to transfer the order or proceeding was made.

163 Effect of registration

(1) A child care and protection order registered in the court under this Part—

(a) is for all purposes (except for appeal) a care and protection order of the relevant type made by the court on the day it is registered; and

(b) may be varied or revoked, or the period of the order extended, or a contravention of it dealt with, under this Act.

(2) An interim order registered in the court under this Part—

(a) is for all purposes (except for appeal) an interim short care and protection order made by the court on the day it is registered; and

(b) may be varied, or the period of the order extended, or a contravention of it dealt with, under this Act.

(3) If an order under an interstate law to transfer a child care and protection proceeding to Norfolk Island is registered under this Part, the proceeding is taken to have been commenced in the court on the day the order is registered.

164 Revocation of registration

(1) An application for revocation of the registration of a document filed under section 161 (Filing and registration of interstate documents) may be made to the court by—

(a) the child welfare officer; or

(b) the child or young person concerned; or

(c) someone with parental responsibility for the child or young person concerned; or

(d) a party to the proceeding in the State court in the sending State in which the decision to transfer the order or proceeding was made.

(2) The Clerk of the court must send by post or give a copy of the application as soon as possible to—

(a) the relevant interstate officer; and

(b) each person, other than the applicant, who could have made an application.

(3) The court may revoke the registration of a document filed under section 161 only if satisfied that it was inappropriately registered because, under the interstate law—

(a) the decision of the interstate officer or the order of the State court of the sending State to transfer the order or proceeding was subject to appeal or review, or a stay, at the time of registration; or

(b) the time for beginning an appeal or seeking a review had not ended.

(4) The Clerk of the court must send each document filed under section 161 to the State court of 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 the document.

Part 6.5 Miscellaneous

165 Effect of registration of transferred order

(1) A child care and protection order made by the court under part 5.3 (Care and protection orders and emergency action) in relation to a child or young person ceases to have effect when an order in relation to the child or young person is registered in a participating State under an interstate law.

(2) However, if the registration is revoked in the participating State under the interstate law, the order that ceased to have effect is revived and has effect in accordance with its terms.

166 Transfer of court file

The Clerk of the court must send all documents filed in the court in relation to a child care and protection proceeding, and an extract from any part of the register that relates to a child care and protection proceeding, to the State court of a participating State if, under this chapter—

(a) the child care and protection order or proceeding is transferred to the State court; and

(b) the transfer decision or order is not subject to appeal or review or a stay; and

(c) the time for beginning an appeal or seeking a review has ended.

167 Deciding transferred proceeding

In deciding a child care and protection proceeding transferred to the court under an interstate law, the court—

(a) is not bound by a finding of fact made in the proceeding in the State court of the sending State before its transfer; and

(b) may have regard to the transcript of, or evidence presented in, the proceeding mentioned in paragraph (a).

168 Disclosure of information

(1) The child welfare officer may disclose to an interstate officer information that has come to the child welfare officer's notice in the exercise of functions under this Act if the child welfare officer considers it necessary to disclose the information to allow the interstate officer to exercise functions under a child welfare law or an interstate law.

(2) This section has effect despite any other provision of this Act.

Chapter 7 Appeals and review

169 Meaning of *order*

In this chapter:

order includes decision.

170 Appeal to Supreme Court

(1) An appeal may be made to the Supreme Court under this Act or the *Court of Petty Sessions Act 1960.*

(2) An appeal from one of the following decisions under chapter 5 (Children and young people in need of care and protection) may be made to the Supreme Court only on a question of law or on the ground that a substantial miscarriage of justice has occurred:

(a) the making of an order;

(b) a refusal to make an order applied for;

(c) to extend an order;

(d) a refusal to extend an order;

(e) to vary an order;

(f) a refusal to vary an order;

(g) to revoke an order;

(h) a refusal to revoke an order.

(3) The following people may appeal under subsection (2):

(a) a party to the proceeding in which the decision was made;

(b) a person named in the order.

(4) A person may not appeal to the Supreme Court in relation to a matter arising under this Act except—

(a) in accordance with this section; or

(b) in relation to a protection order made by the court in relation to a child or young person in need of care and protection—in accordance with the *Domestic Violence Act* .

(5) Nothing in this chapter limits or is limited by the operation of the *Court of Petty Sessions Act 1960*, Part 8 (Appeals from decisions of the Court of Petty Sessions) or another Act that makes provision with respect to the appellate jurisdiction of the Supreme Court.

171 Application of Court of Petty Sessions Act

Subject to section 172, the provisions of the *Court of Petty Sessions Act 1960*, Part 8, apply to and in relation to an appeal of the kind mentioned in section 170(2)(a) or (b)

172 Orders that Supreme Court may make

(1) On an appeal of the kind mentioned in section 170(2)(a), (b) or (2),the Supreme Court may not make an order other than an order that could have been made by the court in the proceeding appealed from.

(2) On an appeal of the kind mentioned in section 170(2)(d), (e) or (h), the Supreme Court may make an order that could have been made by the court in the proceeding appealed from.

Chapter 8 General offences

173 Presumption of age

If—

(a) a person is charged with an offence against this Act in relation to someone who is alleged in the charge to be under a stated age (the ***supposed child or young person***); and

(b) the supposed child or young person appears to the court hearing the charge to be under that age;

there is a rebuttable presumption that the supposed child or young person is under that age.

174 Offences in relation to child or young person subject to an order

(1) If a child or young person is the subject of an order under this Act, a person must not, without lawful authority or other reasonable excuse—

(a) enter the place in which the child or young person has been placed or is being accommodated for the purpose of contacting the child or young person; or

(b) contact the child or young person otherwise than as mentioned in paragraph (a); or

(c) remove the child or young person from the care of someone—

(i) who has a residence order in relation to him or her; or

(ii) into whose care or custody or under whose temporary control the child or young person has been placed, or by whom the child or young person is detained, under this Act; or

(d) help the child or young person to leave the care of someone who has a residence order in relation to him or her; or

(e) lurk or loiter around the place in which the child or young person has been placed or is being accommodated for the purpose of contacting the child or young person or removing the child or young person from someone who has a residence order in relation to him or her.

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

(2) This section applies whether the conduct occurs wholly within or wholly outside Norfolk Island or partly within and partly outside Norfolk Island.

(3) If conduct constitutes an offence under 2 or more laws, someone who is convicted or found guilty or acquitted of the offence under a law mentioned in the definition of ***law***, paragraph (b) or (c) in subsection (4) is not liable to be prosecuted for the offence under this section.

(4) In subsection (3):

law means—

(a) this section; or

(b) a law of a State or Territory; or

(c) a law of New Zealand.

(5) A prosecution for an offence against this section may only be commenced after the child welfare officer has been consulted about the matter.

175 Offence to harbour or conceal child or young person

A person must not—

(a) harbour or conceal, or assist in harbouring or concealing, a child or young person; or

(b) prevent, or assist in preventing, a child or young person from returning to a place of care;

if the person knows that the child or young person is absent without lawful authority or excuse from a place where the child or young person has been placed or the person in whose care the child or young person has been placed under the authority of a care and protection order or an interim care and protection order.

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

Chapter 9 Powers of entry and search

176 Things *connected* with offences

For this chapter, a thing is ***connected*** with a particular offence if it is—

(a) a thing with respect to which the offence has been connected; or

(b) a thing that will afford evidence of the commission of the offence; or

(c) a thing that was used, or intended to be used, for the purpose of committing the offence.

177 Extended meaning of offence

In this chapter:

offence includes an offence that there are reasonable grounds for believing has been, or is to be, committed.

178 Search and seizure

The child welfare officer or a police officer may enter on land or on or into premises or a vessel or vehicle, and may search for and seize anything that he or she reasonably believes to be connected with an offence against this Act that is found on the land, or on or in the premises, vessel or vehicle if, and only if, the search and seizure is made by the child welfare officer or police officer—

(a) under a warrant issued under section 179; or

(b) in circumstances of seriousness and urgency, in accordance with section 180; or

(c) after obtaining the consent of the occupier of the land or premises or of the person in charge of the vessel or vehicle to the entry.

179 Search warrants

(1) If an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be on any land or on or in any premises, vessel or vehicle a thing of a particular kind connected with a particular offence against a provision of this Act, and the information sets out those grounds, a magistrate may issue a search warrant authorising the person named in the warrant, with reasonable and necessary assistance and the force that is necessary and reasonable—

(a) to enter on the land or on or into the premises, vessel or vehicle; and

(b) to search the land, premises, vessel or vehicle for things of that kind; and

(c) to seize anything of that kind found on the land or on or in the premises, vessel or vehicle that he or she reasonably believes to be connected with that offence.

(2) A magistrate may not issue a warrant under subsection (1) unless—

(a) the informant or some other person has given the magistrate, either orally or by affidavit, any further information the magistrate requires about the grounds on which the issue of the warrant is being sought; and

(b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) A warrant issued under this section must state—

(a) the purpose for which the warrant is issued, which must include a reference to the nature of the offence in relation to which entry and search are authorised; and

(b) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and

(c) a description of the kind of things authorised to be seized; and

(d) the date, not later than one month after the date of issue of the warrant, when the warrant ceases to have effect.

180 Entry in emergencies

The child welfare officer or a police officer may enter on any land, or on or into any premises, vessel or vehicle, on or in which the child welfare officer or police officer reasonably believes that anything connected with an offence against this Act is situated and may search for and seize any such thing that he or she finds in the course of that search, or on the land or on or in the premises, vessel or vehicle, if—

(a) the child welfare officer or police officer reasonably believes that it is necessary to do so for this Act; and

(b) the search or entry is made in circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of a warrant issued.

181 Consent to entry

(1) Before obtaining the consent of someone for section 178(c)—the child welfare officer or police officer must tell the person that the person may refuse to give his or her consent.

(2) If the child welfare officer or police officer obtains the consent of someone, he or she must ask the person to sign a written acknowledgment—

(a) that the person has been told that he or she may refuse to give his or her consent; and

(b) that the person has given his or her consent; and

(c) of the day and time when the person gave his or her consent.

(3) Entry by the child welfare officer or a police officer following the consent of a person is not lawful unless the person voluntarily consented to the entry.

(4) If it is material, in a proceeding—

(a) for a court to be satisfied of the voluntary consent of someone for section 178(c); and

(b) an acknowledgment, in accordance with subsection (2), signed by the person is not provided in evidence;

the court must assume, unless the contrary is proved, that the person did not voluntarily give consent.

182 Power to conduct personal search of child or young person

(1) In this section:

personal search means a search of a child or young person or of articles in the possession of a child or young person that may include—

(a) requiring the child or young person to remove all of his or her garments; and

(b) an examination of the child's or young person's body (but not of his or her body cavities) and of those garments.

(2) This section applies to a child or young person—

(a) who is under a therapeutic protection order; or

(b) who is detained at a shelter or hospital because he or she has been charged with an offence and not admitted to bail.

(3) A personal search of a child or young person to whom this section applies may only be conducted if—

(a) the child welfare officer reasonably suspects that the child or young person has in his or her possession a thing that may, if used or allowed to remain there—

(i) cause serious damage to the health of the child or young person or of someone else; or

(ii) threaten the life of the child or young person or of someone else; and

(b) the child welfare officer reasonably suspects that it is necessary to conduct a personal search of the child or young person to recover that thing.

(4) Subject to section 183, a personal search may be conducted in the presence of a medical practitioner who may assist in the search.

(5) A person conducting a personal search may use the force that is necessary and reasonable in the circumstances.

(6) Anything of a kind mentioned in subsection (3)(a) that is found during a personal search may be seized.

183 Rules for conduct of personal search

(1) A personal search of a child or young person under section 182—

(a) must be conducted in a private area; and

(b) must be conducted by the child welfare officer or, if the child welfare officer is not of the same sex as the child or young person, by someone who is of the same sex as the child or young person; and

(c) may not be conducted in the presence or view of someone who is of the opposite sex to the child or young person being searched; and

(d) may not be conducted in the presence or view of someone whose presence is not necessary for the search; and

(e) may not be conducted on a child who is under 10 years old; and

(f) if the child or young person being searched is 10 years old or older—must be conducted in the presence of—

(i) someone with parental responsibility for the child or young person; or

(ii) if that is not acceptable to the child or young person—someone else (other than the child welfare officer) who is capable of representing the interests of the child or young person and who, as far as is practicable in the circumstances, is acceptable to the child or young person; and

(g) may not involve a search of a child's or young person's body cavities; and

(h) may not involve the removal of more garments than the child welfare officer conducting the search reasonably believes to be necessary to decide whether the person has in his or her possession the thing searched for; and

(j) may not involve more visual inspection than the child welfare officer reasonably believes to be necessary to decide whether the child or young person has a thing of the type sought on his or her body.

(2) For subsection (1)(b), if a personal search of a child or young person is to be conducted and the child welfare officer is not of the same sex as the child or young person, anyone else of the same sex as the child or young person who has been requested to conduct the search by the child welfare officer may conduct the search.

(3) No action or proceeding, civil or criminal, lies against someone who conducts a personal search on request under subsection (2) if the search would have been lawful if conducted by the child welfare officer.

(4) Despite subsection (1)(c), a personal search may be conducted in the presence of a medical practitioner of the opposite sex to the child or young person searched if a medical practitioner of the same sex as the child or young person is not available within a reasonable time.

(5) Subsection (1)(d) does not apply to someone with parental responsibility for, or a personal representative of, the child or young person being searched if the child or young person has no objection to the person being present.

(6) If a garment of a child or young person is seized as a result of a personal search, the child or young person is to be provided with adequate clothing.

(7) However, if a child or young person who is a transgender or intersex person is searched under section 183, the child or young person may require that the search be conducted by either a male or a female.

Note 1 For the meaning of ***transgender person***, see dictionary.
Note 2 For the meaning of ***intersex person***, see dictionary.

(8) If the child or young person requires that the search be conducted by a male, the child or young person is taken, for this section, to be male.

(9) If the child or young person requires that the search be conducted by a female, the child or young person is taken, for this section, to be female.

184 Safekeeping of things seized

(1) If the child welfare officer seizes anything as a result of a personal search of a child or young person, he or she must make a record of the thing seized, including a description of it and the date when it was seized.

(2) The child welfare officer is responsible for the safekeeping of anything seized as a result of a personal search of a child or young person.

(3) The child welfare officer must, when the child or young person from whom a thing was seized is released from therapeutic protection or from detention at the shelter, take reasonable steps to return the thing to the child or young person or, if the child or young person is not entitled to possession, to the owner of the thing.

(4) However, the child welfare officer is not required to return to a child or young person a thing that, in the possession of the child or young person, is likely—

(a) to cause serious damage to the health of the child or young person or the health of someone else; or

(b) to threaten the life of the child or young person or the life of someone else.

(5) If a thing is not returned to the child or young person from whom it was seized or the owner, the child welfare officer must—

(a) make a note on the record indicating the thing has been retained; and

(b) take reasonable steps to give a copy of that record to the child or young person from whom the thing was seized.

Chapter 10 Standards

185 Standard-making power

(1) The Minister may, in writing, make standards for this Act.

(2) The standards may make provision in relation to the care to be provided by the child welfare officer for children or young people for whom the child welfare officer has parental responsibility.

Chapter 11 Confidentiality and immunity

186 Confidentiality generally

(1A) A person who acquires information or a document under this Act may:

(a) make a record of the information or document; or

(b) divulge or communicate the information or document to any person;

if the recording, divulging or communication is for the purposes of this Act or as required by law.

(1) A person must not, other than for this Act or as required by law, make a record of or divulge or communicate to anyone else information or a document that the person acquired under this Act.

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

(2) This section does not affect the operation of section 187 or any other law relating to the confidentiality of information or documents.

187 Information required not to be disclosed

A person who is or has been the child welfare officer, a delegate of the child welfare officer, an officer or an authorised person must not directly or indirectly (except in the exercise of a function under this Act make a record of, or divulge or communicate to anyone else, information that—

(a) is contained in—

(i) a report under section 40 or 41 (a ***Norfolk Island report***); or

(ii) a record of a child protection appraisal made because of a report under section 40 or 41 (an ***appraisal record***); or

(iii) a report made under a provision of a law of a State or Territory corresponding to section 40 or 41 that is provided to the child welfare officer under a section corresponding to section 27 or 168 (an ***interstate report***); or

(b) identifies, or tends to identify—

(i) material contained in a Norfolk Island report, an appraisal record or an interstate report; or

(ii) the person who made a Norfolk Island report or an interstate report; or

(iii) anything said or done at a family group conference; or

(iv) information or a report provided to the conference; or

(c) is prescribed under the Regulations for this section.

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

188 Civil liability

A person is not subject to civil liability for answering a question, producing a document or providing a report under this Act in good faith and no action may be taken or claim or demand made against the person for taking the relevant action.

189 Immunity from suit

(1) This section applies to a person who is or has been—

(a) the child welfare officer; or

(b) an officer; or

(c) an authorised person; or

(d) someone acting under the direction or authority of the child welfare officer, an officer or an authorised person.

(2) No civil proceeding lies against a person to whom this section applies in relation to—

(a) an act done or omitted to be done honestly and without negligence by the person in the exercise, or purported exercise, of a function under or in relation to this Act; or

(b) the provision by the person, in good faith and without negligence, of information or advice in relation to this Act or another Act, including an Act of the Commonwealth, a State or another Territory.

(3) Subsection (2) does not affect any liability that the Administration would, but for that subsection, have in respect of an act or omission mentioned in that subsection.

Chapter 12 Miscellaneous

190 Understanding proceedings

In a proceeding under this Act or another law of Norfolk Island in any court having jurisdiction in Norfolk Island to which a child or young person is a party, the court must endeavour to ensure that the child or young person and any other party present at the hearing of the proceeding—

(a) understand the nature and purpose of the proceeding and of any order that the court proposes to make or has made; and

(b) if any relevant right of appeal exists—are aware of the existence of a right of appeal against the relevant finding or order of the court.

191 Right of appearance

(1) At the hearing in any court—

(a) of an information or complaint against a child or young person; or

(b) of an application, proceeding or matter under this Act or in relation to which this Act applies;

the child welfare officer or someone authorised by the child welfare officer for this section, is entitled to appear and be heard and may call witnesses.

(2) However, nothing in subsection (1) applies to an application, proceeding or matter under Part 5.3 (Care and protection orders and emergency action) or to which that Part applies.

192 Power of person without parental responsibility

A person who provides care, whether regular and substantial care or otherwise, for a child or young person may do what is reasonable in the circumstances to safeguard or promote the care, welfare and development of the child or young person.

193 Notification of location of child or young person

If the person in charge, or occupier, of a hospital, police station or refuge (the ***place***) reasonably believes, reasonably suspects or knows that nobody with parental responsibility for a child or young person who has voluntarily entered the place is aware of the child's or young person's location, he or she may—

(a) tell anyone with parental responsibility for the child or young person of the location of the child or young person; and

(b) if the place is not at a police station—notify a police officer that the child or young person is at the hospital or refuge, or cause such notice to be given.

193A Notifying child welfare officer of certain convictions

(1) If a person is convicted in the court of Petty Sessions of an offence covered by subsection (3), the Clerk of the court must, as soon as practicable, notify the child welfare officer of the conviction.

(2) If a person is convicted in the Supreme Court of an offence covered by subsection (3), the Registrar of the court must, as soon as practicable, notify the child welfare officer of the conviction.

(3) An offence is covered by this subsection if it is an offence against any of the following provisions of the *Criminal Code 2007* that is committed against or with a child or young person:

(a) Part 3.6 (sexual offences);

(b) Part 3.7 (child pornography);

(c) Part 3.9 (female genital mutilation);

(d) Part 3.10 (sexual servitude).

194 Evidentiary certificates

(1) In a proceeding under this Act, a certificate purporting to be signed by a police officer stating that—

(a) he or she was, on a date or during a period stated in the certificate, an authorised officer; and

(b) on the date stated in the certificate, he or she consented to the prosecution of the person named in the certificate for the offence stated in the certificate and that consent has not been revoked;

is evidence of the matters stated in the certificate.

(2) In a proceeding under this Act, a certificate purporting to be signed by the child welfare officer stating—

(a) that, on a date or during a period stated in the certificate, the child welfare officer had parental responsibility for the person named in the certificate is evidence of the matters stated in the certificate; or

(b) that—

(i) on the date stated in the certificate, the person named in the certificate was committed to the shelter, institution or State or Territory institution named in the certificate; and

(ii) on the date stated in the certificate, the period for which the person was so committed had not expired or been reduced; and

(iii) on the date or during the period stated in the certificate, the child welfare officer had not granted leave of absence to the person or had granted the leave of absence at the times or during the periods stated in the certificate;

is evidence of the matters stated in the certificate.

195 Determination of fees

The Minister may, in writing, determine fees for this Act.

Note The *Interpretation Act 1979* contains provisions about the use of fees units s. 12B.

196 Approval of forms by Minister

(1) The Minister may, in writing, approve forms for this Act (other than for use in relation to the court).

(2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

197 Regulation-making power

(1) The Administrator may make Regulations for this Act.

(2) The Regulations may also prescribe offences for contraventions of the Regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the Regulations.

198 Repeal

The *Child Welfare Act 1937* and *Child Welfare Agreement Act 1941* are repealed.

Dictionary

(see s 2)

Note 1 The *Interpretation Act 1979* contains definitions and other provisions relevant to this Act.

Note 2 For example, the *Interpretation Act 1979*, s. 12, defines the following terms:

- administrative review tribunal
- penalty unit (see s 12B)
- State

Note 3 Some definitions relevant to this Act are to be found in the *Norfolk Island Act 1979* (Cwlth) such as:

- Administration
- Administrator
- Territory of Norfolk Island

abuse—see section 33.

adult means someone who is 18 years old or older.

attendance centre means a place nominated by the Minister to be an attendance centre.

best interests principle—see sections 12(1)(a) and 13.

body includes an agency or organisation.

care and protection application, for part 5.3 (Care and protection orders and emergency action)—see section 59.

care and protection order, for part 5.3 (Care and protection orders and emergency action)—see section 59.

care plan—see section 127

carer—see section 5.

child—see section 7.

child care and protection order, for chapter 6 (Transfer of child care and protection orders and proceedings)—see section 145.

child care and protection proceeding, for chapter 6 (Transfer of child care and protection orders and proceedings)—see section 145.

child protection appraisal means assessment under section 54.

child welfare law, for chapter 6 (Transfer of child care and protection orders and proceedings)—see section 145.

court means the court of Petty Sessions exercising its jurisdiction in connection with children and young persons under this Act or the *Court of Petty Sessions Act 1960.*

court order, for part 2.3 (Parental responsibility)—see section 14.

decision-maker includes any court exercising jurisdiction under this Act.

drug of dependence—see the *Dangerous Drugs Act 1927*.

emergency action means action taken by the child welfare officer or a police officer under Division 5.3.4 (Emergency action).

enduring parental responsibility order—see section 59.

final care and protection order—see section 59.

final protection order, for chapter 5 (Children and young people in need of care and protection)—see section 59 (Definitions for chapter 5).

former caregiver, for chapter 5 (Children and young people in need of care and protection)—see section 35.

in favour of—see section 4.

interim order—

(a) for part 5.3 (Care and protection orders and emergency action), means an order under section 119(1)(e); and

(b) for chapter 6 (Transfer of child care and protection orders and proceedings)—see section 145.

interim protection order, for chapter 5 (Children and young people in need of care and protection)—see section 59 (Definitions for chapter 5).

intersex person is a person who, because of a genetic condition, was born with reproductive organs or sex chromosomes that are not exclusively male or female

interstate law means—

(a) a law that, under a declaration under section 145(3) that has not been revoked, is declared to be an interstate law for chapter 6 (Transfer of child care and protection orders and proceedings); and

(b) a law of a State that corresponds to chapter 6.

interstate officer, for chapter 6 (Transfer of child care and protection orders and proceedings)—see section 156.

mental dysfunction—see the *Mental Health Act 1996*, section 4.

mental health order—see the *Mental Health Act 1996*, section 4.

mental illness—see the *Mental Health Act 1996*, section 4.

neglect—see section 33.

offence—

(a) includes an offence against a Commonwealth law; and

(b) for chapter 9 (Powers of entry and search)—see section 176.

order, for chapter 7 (Appeals and review), includes a decision.

parental responsibility— see section 15.

participating State, for chapter 6 (Transfer of child care and protection orders and proceedings)—see section 145.

personal search, for chapter 9 (Powers of entry and search)—see section 182.

place includes premises.

police officer means a member of the Norfolk Island Police Force and ***chief police officer*** means the police officer in charge for the time being of the Norfolk Island Police.

power includes authority.

reasonably believes means believes on reasonable grounds.

reasonably suspects means suspects on reasonable grounds.

representative, for a child or young person, means a lawyer or other person representing the child or young person, but does not include a child or young person who represents himself or herself.

school means a government school (within the meaning of the *Education Act 1990* (NSW) (NI)).

short care and protection order, for part 5.3 (Care and protection orders and emergency action)—see section 59.

special assessment means an assessment of a person that may include the matters mentioned in section 55.

specific issues order, for part 5.3 (Care and protection orders and emergency action)—see section 59.

State includes Territory and in chapter 6 (Transfer of child care and protection orders and proceedings) includes New Zealand.

State court, for chapter 6—see section 145.

supervision order, in relation to a child or young person, means an order made by a court placing the child or young person under the supervision of—

(a) the child welfare officer or someone else designated by the child welfare officer; or

(b) a person named in the order;

for the period stated in the order.

supervisor, for a child or young person in relation to whom a probation order or a supervision order is in force, means the person under whose supervision the child or young person is placed by order.

suitable carer—see section 28.

therapeutic protection—see section 101.

therapeutic protection order means an order under section 103.

transgender person—

(1) Means a person who—

(a) identifies as a member of a different sex by living, or seeking to live, as a member of that sex; or

(b) has identified as a member of a different sex by living as a member of that sex;

whether or not the person is a recognised transgender person; and

(2) includes a person who is thought of as a transgender person,

whether or not the person is a recognised transgender person.

voluntary care agreement, for 5.2.1 (Voluntary care agreements), means an agreement entered into under section 47.

welfare body, for chapter 6 (Transfer of child care and protection orders and proceedings)—see section 145(1)(Definitions for chapter 6).

young person—see section 8.

NOTES

The *Child Welfare Act 2009* as shown in this consolidation comprises Act No. 13 of 2009 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
Child Welfare Act 2009	13, 2009	Part 1.1, Part 2.1, sections 195, 196,197, and the dictionary commenced on the day on which notification of assent to this Act was published in the Gazette, ie 11.9.09. The remaining provisions of this Act commenced the day following the expiration of 90 days after the date of commencement of Part 1.1, ie 11.12.09.	
Child Welfare (Amendment) Act 2010	2, 2010	12.3.10	
[Previously consolidated as at 25 March 2010]			
Child Welfare (Amendment No. 2) Act 2010	7, 2010	16.7.10	
[Previously consolidated as at 17 July 2010]			
Interpretation (Amendment) Act 2012 [to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]	14, 2012	28.12.12	
[Previously consolidated as at 23 December 2013]			
Child Welfare (Amendment) Act 2014	4, 2014	4.4.14	
[Previously consolidated as at 5 May 2014]			

Ordinance	Registration	Commencement	Application, saving and transitional provision
Norfolk Island Continued Laws Amendment Ordinance 2015 (No. 2, 2015) (now cited as Norfolk Island Continued Laws Ordinance 2015 (see F2015L01491))	17 June 2015 (F2015L00835)	Sch 1 (items 29–37, 344, 345): 18 June 2015 (s 2(1) item 1)	Sch 1 (items 344–375)
as amended by			
Norfolk Island Continued Laws Amendment (2016 Measures No. 2) Ordinance 2016 (No. 5, 2016)	10 May 2016 (F2016L00751)	Sch 4 (item 12): 1 July 2016 (s 2(1) item 4)	—

Ordinance	Registration	Commencement	Application, saving and transitional provision
Norfolk Island Continued Laws Amendment (2017 Measures No. 1) Ordinance 2017 (No. 2, 2017)	23 May 2017 (F2017L00581)	Sch 1 (items 1–4, 12): 24 May 2017 (s 2(1) item 2)	—
Norfolk Island Continued Laws Amendment (2017 Measures No. 3) Ordinance 2017	20 Nov 2017 (F2017L01499)	Sch 1 (items 1–5): 21 Nov 2017 (s 2(1) item 1)	—
Norfolk Island Legislation Amendment (Public Sector Employment and Education) Ordinance 2018	21 Mar 2018 (F2018L00342)	Sch 2 (items 9–12): 22 Mar 2018 (s 2(1) item 3)	—
Norfolk Island Continued Laws Amendment (Child Welfare Officer) Ordinance 2018	8 June 2018 (F2018L00745)	9 June 2018 (s 2(1) item 1)	—

Table of Amendments

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

Provisions affected	How affected	
12	am	4, 2014
15	am	Ord No 2, 2015
23A	ad	Ord No 2, 2015 (as am by F2017L01499)
24	am	Ord No 2, 2015; Ord No 2, 2015 (as am by Ord No 5, 2016, Ord No 2, 2017 and F2018L00745)
26	am	Ord No 2, 2015 (as am by F2018L00745)
27	am	14, 2012; 4, 2014; Ord No 2, 2015 (as am by F2017L01499 and F2018L00745)
28	am	Ord No 2, 2015 (as am by Ord No 2, 2017)
32	am	Ord No 2, 2015; Ord No 2, 2015 (as am by Ord No 2, 2017)
	rs	Ord No 2, 2015 (as am by F2017L01499)
	am	Ord No 2, 2015 (as am by F2018L00745)
33	am	4, 2014; Ord No 2, 2015 (as am by F2018L00342)
40A	ad	4, 2014
41	am	5, 2010; 4, 2014
42	am	5, 2010; 4, 2014
43	am	Ord No 2, 2015 (as am by Ord No 2, 2017)
44	am	7, 2010; 4, 2014; Ord No 2, 2015 (as am by Ord No 2, 2017)
45	am	4, 2014; 4, 2014
47	am	Ord No 2, 2015 (as am by F2018L00342)
48	am	Ord No 2, 2015 (as am by F2018L00342)
49	am	Ord No 2, 2015 (as am by F2018L00342)
71	am	7, 2010
85	am	4, 2014; Ord No 2, 2015 (as am by Ord No 2, 2017)
90	am	Ord No 2, 2015 (as am by F2017L01499)
92	am	4, 2014; Ord No 2, 2015 (as am by Ord No 2, 2017)
93	am	Ord No 2, 2015 (as am by Ord No 2, 2017)
103	am	4, 2014; Ord No 2, 2015 (as am by Ord No 2, 2017)
109	am	7, 2010
111	am	Ord No 2, 2015 (as am by Ord No 2, 2017)
113	am	14, 2012
114	am	4, 2014; Ord No 2, 2015 (as am by Ord No 2, 2017)
116	am	Ord No 2, 2015 (as am by Ord No 2, 2017)
131	am	Ord No 2, 2015 (as am by Ord No 2, 2017)
138	am	14, 2012
143A	ad	4, 2014
143B	ad	4, 2014
143C	ad	4, 2014
143D	ad	4, 2014
143E	ad	4, 2014
143F	ad	4, 2014

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

Provisions affected	**How affected**	
143G	ad	4, 2014
143H	ad	4, 2014
143I	ad	4, 2014
143J	ad	4, 2014
143K	ad	4, 2014
143L	ad	4, 2014
143M	ad	4, 2014
145	am	14, 2012; Ord No 2, 2015; Ord No 2, 2015 (as am by F2018L00342)
147	am	Ord No 2, 2015 (as am by F2018L00342)
185	am	14, 2012; Ord No 2, 2015; Ord No 2, 2015 (as am by F2018L00342)
186	am	Ord No 2, 2015 (as am by F2018L00745)
187	am	Ord No 2, 2015 (as am by F2018L00745)
193A	ad	Ord No 2, 2015 (as am by F2017L01499)
195	am	14, 2012; Ord No 2, 2015
196	am	14, 2012; Ord No 2, 2015
197	am	Ord No 2, 2015
Dictionary	am	14, 2012; Ord No 2, 2015; Ord No 2, 2015 (as am by F2018L00342)