# Children, Young Persons and Their Families Act 1997 (No. 28 of 1997)

**Requested:**22 Jun 2017

**Consolidated:**As Made

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INFORMATION

Notes: Not specified

Links: Not specified

Table of Amending Instruments: (click to view Table of Amendments)

Responsible Minister and Department: Not specified

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TASMANIA

# Children, Young Persons and Their Families Act 1997

**An Act to provide for the care and protection of children and for related purposes**

**[Royal Assent 5 November 1997]**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## PART 1 - Preliminary

### 1. Short title

This Act may be cited as the *Children, Young Persons and Their Families Act 1997*.

**2. Commencement**

This Act commences on a day to be proclaimed.

**3. Interpretation**

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

***Aboriginal child*** means a child who is an Aboriginal person within the meaning of the *Aboriginal and Torres Strait Islander Commission Act 1989* of the Commonwealth;

***abuse or neglect*** means –

**(a)** sexual abuse; or

**(b)** physical or emotional injury or other abuse, or neglect, to the extent that –

**(i)** the injured, abused or neglected person has suffered, or is likely to suffer, physical or psychological harm detrimental to the person's wellbeing; or

**(ii)** the injured, abused or neglected person's physical or psychological development is in jeopardy –

and "**abused or neglected**" has a corresponding meaning;

***advisory panel*** means a panel established under section 84;

***amend*** means –

**(a)** omit matter; and

**(b)** insert matter; and

**(c)** omit matter and substitute other matter;

***another State*** includes a Territory;

***assessment order*** means an order made under section 22(2);

***at risk*** has the meaning given by section 4;

***authorised officer*** means –

**(a)** a police officer assisting the Secretary in an assessment of a child's circumstances; and

**(b)** an employee of the Department authorised by the Secretary to take action under section 20 as an authorised officer;

***authorised police officer*** means a police officer who –

**(a)** is of or above the rank of sergeant; or

**(b)** is in charge of a police station; or

**(c)** has been designated as an authorised police officer by the Commissioner of Police for the purposes of this Act;

***care agreement*** means an agreement entered into under section 11;

***care and protection order*** means an order made under section 42;

***child*** means a person under 18 years of age;

***child care*** means the provision of care or accommodation to a child by a person other than the child's parent or a member of the child's extended family;

***child care service*** means operations concerned with child care, including a person or agency that is involved with organising or arranging placements for children in child care or placements of child carers with children;

***Children and Young Persons Advisory Council*** means the committee established under section 81(1)(b);

***Children and Young Persons Consultative Council*** means the committee established under section 81(1)(a);

***Commissioner*** means the Commissioner for Children appointed under section 78;

***committee*** means –

**(a)** the Children and Young Persons Advisory Council; or

**(b)** the Children and Young Persons Consultative Council; or

**(c)** any other committee established under section 81;

***comply with*** includes not contravene;

***contravene*** includes fail to comply with;

***contribution order*** means an order under section 74;

***Court*** means the Magistrates Court (Children's Division);

***district registrar*** means a district registrar appointed under section 16A of the *Magistrates Court Act 1987*;

***employee of the Department*** means a person engaged or employed for the purposes of the Department;

***enactment*** means an Act, order or other instrument of a legislative character of Tasmania, another State, the Commonwealth, another country or any other place;

***extended family*** means –

**(a)** all persons, other than the child's immediate family, to whom the child is or has been related by blood, adoption or marriage; and

**(b)** if a child is an Aboriginal child who has traditional Aboriginal kinship ties, those persons held to be related to the child according to Aboriginal kinship rules; and

**(c)** if the child is a member of a community that accepts relationships other than those referred to in paragraph (a) or (b) as kinship ties, those persons held to be related to

the child by that community;

***facilitator*** means a person approved as a facilitator under section 86;

***family*** means a child's immediate family and extended family;

***family group conference*** means a conference convened under section 30, 39 or 53;

***function*** includes duty;

***Fund*** means the Tasmanian Guardianship Fund established and maintained under section 72;

***Government Agency*** means –

**(a)** a Government department within the meaning of the *Tasmanian State Service Act 1984*; and

**(b)** an incorporated or unincorporated body that –

**(i)** is established, constituted or continued by or under an Act or under the royal prerogative; and

**(ii)** is, or has a governing authority that is, wholly or partly comprised of a person or persons appointed by the Governor, a Minister of the Crown or another such body;

***Government authority of another State*** means a Minister of the Crown, or a person appointed by the Crown, in right of another State;

***guardian*** means –

**(a)** a parent of a child; and

**(b)** a person (other than the Secretary) who is the legal guardian of a child; and

**(c)** a person (other than the Secretary) who has the legal custody of a child; and

**(d)** any other person (other than the Secretary) who generally acts in the place of a parent of a child and has done so for a significant length of time;

***immediate family***, in relation to a child, includes all of a child's guardians;

***interim assessment order*** means an order made under section 26(1);

***interim care and protection order*** means an order made under section 46(1);

***parent*** includes a stepmother or stepfather of the child;

***police officer*** has the same meaning as in the *Police Regulation Act 1898*;

***recognised Aboriginal organisation*** means an organisation declared to be a recognised Aboriginal organisation under section 106;

***regulations*** means regulations made and in force under section 112;

***Secretary*** means the Secretary of the Department;

***State*** includes a Territory;

***working day*** means any day other than –

**(a)** a Saturday; or

**(b)** a Sunday; or

**(c)** a bank holiday, within the meaning of the *Bank Holidays Act 1919*;

***young person*** means a child who is 16 or 17 years old.

**(2)** For the purposes of this Act, a person is married to another person if –

**(a)** he or she is legally married; or

**(b)** he or she is generally recognised as the *de facto* husband or wife of the other person although not legally married to that other person.

**4. Meaning of "at risk"**

For the purposes of this Act, a child is at risk if –

**(a)** the child has been, is being, or is likely to be, abused or neglected; or

**(b)** any person with whom the child resides or who has frequent contact with the child (whether the person is or is not a guardian of the child) –

**(i)** has threatened to kill or abuse or neglect the child and there is a reasonable likelihood of the threat being carried out; or

**(ii)** has killed or abused or neglected some other child or an adult and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or

**(c)** the guardians of the child are –

**(i)** unable to maintain the child; or

**(ii)** unable to exercise adequate supervision and control over the child; or

**(iii)** unwilling to maintain the child; or

**(iv)** unwilling to exercise adequate supervision and control over the child; or

**(v)** dead, have abandoned the child or cannot be found after reasonable inquiry; or

**(vi)** are unwilling or unable to prevent the child from suffering abuse or neglect; or

**(d)** the child is under 16 years of age and does not, without lawful excuse, attend school regularly.

**5. Responsibilities and powers of guardian**

A person (including the Secretary) who has guardianship, or has been granted guardianship, of a child under this Act –

**(a)** is the guardian of the child and administrator of the estate of the child to the exclusion of any person who does not have guardianship, or has not been granted guardianship, under this Act; and

**(b)** has the same rights, powers, duties, obligations and liabilities as a natural parent of the child would have.

**6. Responsibilities and powers of person who has custody**

A person (including the Secretary) who has custody, or has been granted custody, of a child under this Act –

**(a)** has the right to have, and the responsibility for, the daily care and control of the child; and

**(b)** has the right to make, and the responsibility for making, decisions concerning the daily care and control of the child.

**7. Object**

**(1)** The object of this Act is to provide for the care and protection of children in a manner that maximises a child's opportunity to grow up in a safe and stable environment and to reach his or her full potential.

**(2)** The Minister must seek to further the object of this Act and, to that end, should endeavour –

**(a)** to promote, and assist in the development of, a partnership approach between the Government, local government, non-Government agencies and families in taking responsibility for and dealing with the problem of child abuse and neglect; and

**(b)** to promote and assist in the development of coordinated strategies for dealing with the problem of child abuse and neglect; and

**(c)** to provide, or assist in the provision of, services for dealing with the problem of child abuse and neglect and for the care and protection of children; and

**(d)** to provide, or assist in the provision of, preventative and support services directed towards strengthening and supporting families and reducing the incidence of child abuse and neglect; and

**(e)** to assist recognised Aboriginal organisations to establish and provide preventative and support services directed towards strengthening and supporting families and reducing the incidence of child abuse and neglect within the Aboriginal community; and

**(f)** to provide, or assist in the provision of, information or education services for guardians, prospective guardians and other members of the community in relation to the developmental, social and safety requirements of children; and

**(g)** to provide, or assist in the provision of, education to persons who are required to notify the Secretary if they know or reasonably believe or suspect that a child is being, or is likely to be, abused or neglected; and

**(h)** to provide, or assist in the provision of, services to help persons who have been under the guardianship or in the custody of the Secretary during childhood to make a successful transition to adulthood; and

**(i)** to collect and publish relevant data or statistics or to assist in their collection or publication; and

**(j)** to promote, encourage and undertake research into child abuse and neglect; and

**(k)** to encourage the provision, by educational institutions, of courses offering instruction about child abuse and neglect and its prevention and treatment; and

**(l)** generally to do such other things which the Minister believes will further the object of this Act.

**8. Principles to be observed in dealing with children**

**(1)** The administration of this Act is to be founded on the following principles:

**(a)** the primary responsibility for a child's care and protection lies with the child's family;

**(b)** a high priority is to be given to supporting and assisting the family to carry out that primary responsibility in preference to commencing proceedings under Division 2 of Part 5;

**(c)** if a family is not able to meet its responsibilities to the child and the child is at risk, the Secretary may accept those responsibilities.

**(2)** In any exercise of powers under this Act in relation to a child –

**(a)** the best interests of the child must be the paramount consideration; and

**(b)** serious consideration must be given to the desirability of –

**(i)** keeping the child within his or her family; and

**(ii)** preserving and strengthening family relationships between the child and the child's guardians and other family members, whether or not the child is to reside within his or her family; and

**(iii)** not withdrawing the child unnecessarily from the child's familiar environment, culture or neighbourhood; and

**(iv)** not interrupting unnecessarily the child's education or employment; and

**(v)** preserving and enhancing the child's sense of ethnic, religious or cultural identity, and making decisions and orders that are consistent with ethnic traditions or religious or cultural values; and

**(vi)** preserving the child's name; and

**(vii)** not subjecting the child to unnecessary, intrusive or repeated assessments; and

**(c)** the powers, wherever practicable and reasonable, must be exercised in a manner that takes into account the views of all persons concerned with the welfare of the child.

**(3)** In any exercise of powers under this Act in relation to a child, if a child is able to form and express views as to his or her ongoing care and protection, those views must be sought and given serious consideration, taking into account the child's age and maturity.

**(4)** In any proceeding under this Act that may lead to any separation of a child from his or her family, other than a proceeding under Part 4, the child's family and other persons interested in the child's wellbeing must be given the opportunity to present their views in respect of the child's wellbeing.

**(5)** In any proceeding under this Act in relation to a child, the child's family and other persons interested in the child's wellbeing should be provided with information sufficient to enable them to participate fully in the proceeding.

**(6)** All proceedings under this Act must be dealt with expeditiously, with due regard to the degree of urgency of each particular case.

**9. Principles relating to dealing with Aboriginal children**

**(1)** A decision or order as to where or with whom an Aboriginal child will reside may not be made under this Act except where a recognised Aboriginal organisation has first been consulted.

**(2)** In making any decision or order under this Act in relation to an Aboriginal child, a person or the Court must, in addition to complying with the principles set out in section 8 –

**(a)** have regard to any submissions made by or on behalf of a recognised Aboriginal organisation consulted in relation to the child; and

**(b)** if a recognised Aboriginal organisation has not made any submissions, have regard to Aboriginal traditions and cultural values (including kinship rules) as generally held by the Aboriginal community; and

**(c)** have regard to the general principle that an Aboriginal child should remain within the Aboriginal community.

**10. Determining age**

**(1)** In determining the age of a person, the Court, the Secretary or any other person involved in the administration of this Act –

**(a)** must act on the best evidence or information that is reasonably available; but

**(b)** in the absence of any such evidence or information, may estimate the age of the person and act on that estimate.

**(2)** For the purposes of subsection (1), a statement in an application under this Act that a person is of a particular age is evidence that the person is that age.

## PART 2 - Care agreements

**11. Voluntary care agreement**

**(1)** The guardians of a child, acting together, and the Secretary –

**(a)** may enter into an agreement under which the Secretary will have the care and custody of the child for the period not exceeding 3 months specified in the agreement; and

**(b)** before the termination of a care agreement, may extend the agreement.

**(2)** Despite subsection (1) –

**(a)** if the whereabouts of a guardian of a child cannot be ascertained after reasonable enquiries; or

**(b)** if a guardian of a child has failed to respond within a reasonable period of time to a request that he or she enter into a care agreement; or

**(c)** if a guardian of a child does not have ongoing contact with the child; or

**(d)** if it is not, in all the circumstances of the case, reasonably practicable to request a particular guardian of a child to enter into a care agreement –

the remaining guardians may enter into a care agreement in respect of the child.

**(3)** Despite subsection (1)(a), the Secretary may not enter into a care agreement if he or she has reasonable grounds for suspecting or believing, or knows, that the child is at risk for any reason other than that the guardian is or will be temporarily unable to maintain the child or exercise adequate supervision and control over the child.

**(4)** Despite subsection (1)(b), a care agreement may not be extended so that it will operate for a total period of more than 3 months.

**(5)** A care agreement relating to a child who is a young person must not be entered into or extended unless the young person consents to the agreement or the extension of the agreement.

**(6)** Subsection (5) does not apply if the Secretary is of the opinion that the young person is unable to understand, or give informed consent to, the care agreement.

**(7)** If a child under the age of 16 years appears to have a sufficient understanding of the consequences of a care agreement, the child must be consulted by the Secretary before a care agreement relating to the child can be entered into or extended.

**(8)** A care agreement and any extension of a care agreement must be –

**(a)** in writing; and

**(b)** signed by –

**(i)** the Secretary; and

**(ii)** the guardians of the child; and

**(iii)** if the child is a young person, the young person.

### 12. Termination of care agreement

**(1)** A care agreement may be terminated at any time by the agreement of –

**(a)** the Secretary; and

**(b)** the guardians who signed the agreement; and

**(c)** if the child is a young person, the young person.

**(2)** The Secretary must not agree to terminate a care agreement unless the Secretary is satisfied that proper arrangements exist for the care of the child.

**(3)** A care agreement will be taken to have been terminated on any order being made under this Act or any other enactment for the guardianship or custody of the child.

**(4)** The Secretary must terminate a care agreement that relates to a young person if –

**(a)** the young person requests it in writing; and

**(b)** the Secretary is satisfied that proper arrangements exist for the care of the young person.

**(5)** Unless the agreement is earlier terminated under this section, a care agreement has effect for a period, not exceeding 3 months, specified in the agreement or an extension of the agreement.

## PART 3 - Informing of concern about abuse or neglect

### 13. Responsibility to prevent abuse or neglect

**(1)** An adult who knows, or believes or suspects on reasonable grounds, that a child is suffering, has suffered or is likely to suffer abuse or neglect has a responsibility to take steps to prevent the occurrence or further occurrence of the abuse or neglect.

**(2)** One step the adult may take to prevent the occurrence of abuse or neglect is to inform the Secretary of his or her knowledge, belief or suspicion.

### 14. Informing of concern about abuse or neglect

**(1)** In this section,

***prescribed person*** means –

**(a)** a registered medical practitioner; and

**(b)** a nurse, within the meaning of the *Nursing Act 1995*; and

**(c)** a dentist registered under the *Dental Act 1982*; and

**(d)** a registered psychologist, within the meaning of the *Psychologists Registration Act 1976*; and

**(e)** a police officer; and

**(f)** a departmental employee, within the meaning of the *Police Regulation Act 1898*; and

**(g)** a probation officer appointed under section 4 of the *Probation of Offenders Act 1973*; and

**(h)** a principal and a teacher in any educational institution (including a kindergarten); and

**(i)** a person who provides child care, or a child care service, for fee or reward; and

**(j)** a person concerned in the management of a child care service licensed under Part 6 of the *Child Welfare Act 1960*; and

**(k)** any other person who is employed or engaged as an employee for, of or in, or who is a volunteer in –

**(i)** a Government Agency that provides health, welfare, education, child care or residential services wholly or partly for children; and

**(ii)** an organisation that receives any funding from the Crown for the provision of such services; and

**(l)** any other person of a class determined by the Minister by notice in the *Gazette* to be prescribed persons.

**(2)** If a prescribed person, in carrying out official duties or in the course of his or her work (whether paid or voluntary), believes, or suspects, on reasonable grounds, or knows –

**(a)** that a child has been or is being abused or neglected; or

**(b)** that there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides –

the prescribed person must inform the Secretary of that belief, suspicion or knowledge as soon as practicable after he or she forms the belief or suspicion or gains the knowledge.

Penalty:

Fine not exceeding 20 penalty units.

**(3)** Whether a person informs the Secretary under subsection (2) verbally or in writing, the person must include in the information a statement of the observations, information, opinions and other grounds upon which the belief, suspicion or knowledge is based.

**(4)** For the purposes of this section, the Secretary may issue or approve guidelines relating to the manner in which a person may inform the Secretary under subsection (2).

**(5)** Without limiting the matters and procedures that may be included in the guidelines, the guidelines may provide that a person may inform the Secretary under subsection (2) by following the procedure set out in the guidelines or by informing another person for or with whom the person works.

**(6)** It is a defence to a charge for an offence against subsection (2) –

**(a)** if the person charged can prove that he or she honestly and reasonably believed that the Secretary had been informed of all the reasonable grounds on which his or her belief, suspicion or knowledge was based by another person; or

**(b)** if the person charged has complied with guidelines issued under subsection (4) that apply to him or her in respect of the organisation, body or other person for whom or in which the person works.

**15. Protection from liability for voluntary or mandatory information**

A person who (whether voluntarily or as required by section 14) informs the Secretary that he or she believes or suspects on reasonable grounds, or knows, that a child has been or is being abused or neglected or that there is a reasonable likelihood of a child being killed or abused or neglected or who provides any further information to the Secretary in respect of such belief, suspicion or knowledge –

**(a)** cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and

**(b)** insofar as he or she has acted in good faith, incurs no civil or criminal liability in respect of –

**(i)** so informing the Secretary; or

**(ii)** the provision of further information.

**16. Confidentiality of person informing of knowledge, belief or suspicion of abuse or neglect**

**(1)** In this section –

***notification*** means information from a person who believes, suspects or knows that a child has been or is being abused or neglected or that there is a reasonable likelihood of a child being killed or abused or neglected;

***notifier*** means a person who provides the Secretary with a notification.

**(2)** Subject to this section, a person who receives a notification from a notifier, or who otherwise becomes aware of the identity of a notifier because he or she is engaged in the administration of this Act, must not disclose the identity of the notifier to any other person unless the disclosure –

**(a)** is made in the course of official duties under this Act to another person acting in the course of official duties; or

**(b)** is made with the consent of the notifier; or

**(c)** is made by way of evidence adduced with leave granted by a court under subsection (3).

Penalty:

Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 12 months, or both.

**(3)** Evidence as to the identity of a notifier, or from which the identity of the notifier could be deduced, must not be adduced in proceedings before any court without leave of that court.

**(4)** Unless a court grants leave under subsection (3), a party or witness in the proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity of, or leading to the identification of, the notifier.

**(5)** A court cannot grant leave under subsection (3) unless –

**(a)** that court is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice; or

**(b)** the notifier consents to the admission of the evidence in the proceedings.

**(6)** An application to a court for leave to adduce evidence under subsection (3) –

**(a)** must not, except as authorised by that court, be heard and determined in public; and

**(b)** must be conducted in a manner which protects, as far as may be practicable, the identity of the notifier pending the determination of the application.

**(7)** The *Freedom of Information Act 1991* does not apply to the identity of a notifier or any information contained in or relating to a notification that may lead to the identification of the notifier.

### 17. Secretary not obliged to take action in certain circumstances

Nothing in this Act requires the Secretary to take or initiate any action under this Act when informed by a person of the belief, suspicion or knowledge that a child has been or is being abused or neglected or that there is a reasonable likelihood of a child being killed or abused or neglected if the Secretary is satisfied –

**(a)** that the information or observations on which the belief, suspicion or knowledge was based were not sufficient to constitute reasonable grounds for the belief, suspicion or knowledge; or

**(b)** that, while there are reasonable grounds for such a belief, suspicion or knowledge, proper arrangements exist for the care and protection of the child and the matter of the apparent abuse or neglect or the likelihood of the child being killed or abused or neglected has been or is being adequately dealt with.

## PART 4 - Assessments

### *Division 1 - Assessments by Secretary*

### 18. Assessment by Secretary

**(1)** If the Secretary believes, or suspects, on reasonable grounds that a child is at risk, the Secretary may carry out an assessment of the circumstances of the child.

**(2)** For the purposes of an assessment, the Secretary may require, by written notice –

**(a)** any person who has previously examined, assessed, carried out tests on or treated the child; or

**(b)** the employer of that person –

to provide the Secretary with a written report on the examination, assessment, tests or treatment.

### 19. Assistance by police officer

**(1)** If the Secretary considers it necessary or appropriate, the Secretary may obtain the assistance of the Commissioner of Police in carrying out the assessment of the circumstances of a child.

**(2)** The Commissioner of Police may give assistance to the Secretary by assigning police officers to assist the Secretary as allowed by this section.

**(3)** For the purposes of an assessment, a police officer assisting the Secretary may, after obtaining 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 any item that the officer believes on reasonable grounds may afford evidence relevant to the assessment;

**(c)** take photographs, films or videos;

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

**(4)** A police officer assisting the Secretary may, even if he or she has not obtained a warrant, exercise the powers specified in subsection (3) if –

**(a)** entry to the premises or place has been refused or cannot be gained; and

**(b)** the police officer believes on reasonable grounds that the delay that would ensue as a result of applying for a warrant would prejudice the assessment or the safety of the child whose circumstances are being assessed.

**(5)** A police officer assisting the Secretary may be accompanied by such other police officers or employees of the Department while exercising powers under this section as may be necessary or desirable.

**(6)** A person must not refuse or fail to comply with a requirement made under subsection (3)(d).

Penalty:

Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 6 months, or both.

**(7)** Despite subsection (6), a person is not required to answer a question if –

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

**(b)** the answer would incriminate the person of an offence.

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

**(9)** If an item is seized under subsection (3), the Commissioner of Police or the Secretary may retain the item until the assessment is complete and any proceedings arising out of the assessment are finalised.

**20. Power to require child to be taken for assessment**

**(1)** For the purposes of an assessment, an authorised officer may require a guardian of a child or a person with whom a child is residing to cause the child to attend the place or person specified in the requirement.

**(2)** An authorised officer may take a child to the place or person specified in a requirement, or that likely would have been specified in a requirement –

**(a)** on the request, or with the agreement, of the person who received the requirement or who could receive a requirement were one to be made; or

**(b)** if an authorised officer has obtained a warrant in respect of the child.

**(3)** An authorised officer may apply for a warrant if –

**(a)** a person fails or refuses to comply with a requirement; or

**(b)** the officer has reasonable grounds for believing that a person would fail or refuse to comply with a requirement were one made.

**(4)** When acting under a warrant, an authorised officer –

**(a)** may be accompanied by such police officers or employees of the Department as may be necessary or desirable; and

**(b)** may use such force as is reasonable.

**21. Power of Secretary to have short-term custody**

**(1)** The Secretary may retain in his or her custody a child who has been taken to attend a place or person under section 20 or a requirement made under that section if the Secretary considers –

**(a)** that there is a reasonable likelihood that the child is at risk; and

**(b)** that further assessment of the matter is warranted; and

**(c)** that –

**(i)** the assessment cannot properly proceed unless the child remains in the Secretary's custody; or

**(ii)** it is desirable that the child be protected while the matter is being assessed.

**(2)** The Secretary's custody of a child under subsection (1) ends 120 hours after the time at which the child arrives at a place or person under section 20 or a requirement made under that section unless, before the end of that period, custody of the child has been granted to the Secretary under an assessment order.

***Division 2 - Assessment orders***

**22. Assessment order**

**(1)** The Secretary may apply to the Court for an assessment order.

**(2)** On the application of the Secretary, the Court may make an assessment order in respect of a child if the Court is satisfied –

**(a)** that there is a reasonable likelihood that a child is at risk; and

**(b)** that further assessment of the matter is warranted or a family group conference should be held; and

**(c)** that –

**(i)** the assessment cannot properly proceed unless an assessment order is made; or

**(ii)** it is desirable that the child be protected while the matter is being assessed or a family group conference is being convened and held; and

**(d)** that it would be in the best interests of the child to make the order.

**(3)** An assessment order may contain one or more of the following orders:

**(a)** an order authorising examination and assessment of the child;

**(b)** an order authorising the Secretary to require –

**(i)** any person to answer, to the best of his or her knowledge, information or belief, questions put by an employee of the Department authorised by the Secretary, either generally or in the particular case, to exercise the power to question; or

**(ii)** any person who has examined, assessed or treated a party to the proceedings, or the employer of that person, to provide the Secretary with a written report of that examination, assessment or treatment;

**(c)** an order granting custody of the child to the Secretary;

**(d)** any other order the Court considers appropriate.

**(4)** An assessment order has effect for the period not exceeding 4 weeks that is specified in the order.

**(5)** An assessment order may, on application by the Secretary, be extended (once only) –

**(a)** for the period not exceeding 8 weeks specified in the order if the Secretary advises the Court that he or she intends to cause a family group conference to be held in respect of the child; or

**(b)** for the period not exceeding 4 weeks specified in the order in any other case.

**(6)** If the hearing of an application under subsection (5) is adjourned, or the application is determined after the date on which the assessment order would cease to have effect if this subsection were not in force, the assessment order continues to have effect until the application is determined.

**(7)** Where an application under subsection (5) is determined after the date on which the assessment order would cease to have effect if subsection (6) were not in force, the period specified in subsection (5) is to be reckoned from that date.

**(8)** A party to an application for an assessment order who has been served personally with an order or was present in the Court when the order was made must not contravene the order.

Penalty:

Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 12 months, or both.

**23. Restraint order**

**(1)** On receipt of the application of the Secretary for an assessment order, the Court may make, in addition to or instead of making an assessment order –

**(a)** a restraint order against a person under Part XA of the *Justices Act 1959* if the Court is satisfied that the person has been served with a copy of the application; or

**(b)** an interim restraint order against a person under Part XA of the *Justices Act 1959* and such ancillary orders as the Court considers appropriate.

**(2)** An application for an assessment order is taken to be an application for a restraint order under Part XA of the *Justices Act 1959* made by a person granted leave to apply by the justices –

**(a)** for the purposes of subsection (1); and

**(b)** for the purposes of the application of the *Justices Act 1959* in relation to a restraint order or an interim restraint order made under that subsection.

**24. Variation or discharge of assessment order**

**(1)** The Secretary may apply to the Court for an order to vary or discharge an assessment order.

**(2)** On the application of the Secretary under subsection (1), the Court may –

**(a)** vary the terms of the assessment order; or

**(b)** discharge the assessment order; or

**(c)** dismiss the application.

**25. Limited adjournment only**

**(1)** The Court must not, unless it is satisfied that there are exceptional circumstances, adjourn the hearing of an application made under this Division for a period exceeding 14 days.

**(2)** The Court may not adjourn the hearing of an application made under this Division more than once.

**26. Interim assessment order on adjournment**

**(1)** If the Court adjourns the hearing of an application for an assessment order, the Court may also make an interim assessment order.

**(2)** An interim assessment order may contain one or more of the following orders:

**(a)** an order granting custody of the child to the Secretary;

**(b)** an order directing a guardian of the child to take the steps specified in the order to secure the proper care and protection of the child;

**(c)** an order directing that the person specified in the order be allowed, or not be allowed, access to the child or to reside with the child;

**(d)** an order authorising the examination and assessment of the child;

**(e)** an order authorising the Secretary to require –

**(i)** any person to answer, to the best of his or her knowledge, information or belief, questions put by an employee of the Department authorised by the Secretary, either generally or in the particular case, to exercise the power to question; or

**(ii)** any person who has examined, assessed or treated a party to the proceedings (other than the child), or the agency for whom the person works, to provide the Secretary with a written report of that examination, assessment or treatment;

**(f)** any other order the Court considers appropriate.

**(3)** An interim assessment order has effect only during the period of the adjournment.

**(4)** A party to the application for an assessment order who has been served personally with the interim assessment order or was present in the Court when the interim assessment order was made must not contravene the order.

Penalty:

Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 12 months, or both.

**27. Restraint order on adjournment**

**(1)** If the Court adjourns the hearing of an application for an assessment order, the Court may make, in addition to or instead of making an interim assessment order –

**(a)** a restraint order against a person under Part XA of the *Justices Act 1959* if the Court is satisfied that the person has been served with a copy of the application; or

**(b)** an interim restraint order against a person under Part XA of the *Justices Act 1959* and such ancillary orders as the Court considers appropriate.

**(2)** An application for an assessment order is taken to be an application for a restraint order under Part XA of the *Justices Act 1959* made by a person granted leave to apply by the justices –

**(a)** for the purposes of subsection (1); and

**(b)** for the purposes of the application of the *Justices Act 1959* in relation to a restraint order or interim restraint order made under that subsection.

**28. Effect of appeal against assessment order or interim assessment order**

If an appeal is brought against an assessment order or an interim assessment order, the order continues to have effect unless otherwise ordered by a judge.

***Division 3 - Examination and assessment of children***

**29. Examination and assessment of child**

**(1)** An employee of the Department may take a child to a person or place (including admitting the child to hospital) for the purpose of having the child medically or otherwise professionally treated or professionally examined, tested or assessed if –

**(a)** the child is in the Secretary's custody under section 21; or

**(b)** an assessment order, or an interim assessment order, authorising examination and assessment of the child is in force.

**(2)** If a child is taken to a person or place under subsection (1), the person who is to treat, examine, test or assess the child may do so even though the child's guardians have not consented.

**(3)** A person who treats, examines, tests or assesses a child as allowed under subsection (2), or the employer of that person, must provide the Secretary with a written report on the treatment, examination, test or assessment of the child as soon as practicable after the treatment, examination, test or assessment is completed.

**(4)** A person who in good faith provides a report as required by subsection (3) does not incur any civil liability in respect of the provision of the report.

## PART 5 - Children in need of care and protection

***Division 1 - Family group conferences***

**30. Family group conference held in certain circumstances**

**(1)** The Secretary may cause a family group conference to be convened in respect of a child if the Secretary is of the opinion –

**(a)** that the child is at risk; and

**(b)** that arrangements should be made to secure the child's care and protection; and

**(c)** after considering any report of an advisory panel relating to the child, that a family group conference is a suitable means of determining what those arrangements should be.

**(2)** For the purposes of subsection (1)(c), the Secretary may require an assessment panel to consider and report on the circumstances of a child within the time specified by the Secretary.

**(3)** The Secretary must cause a family group conference to be convened if the Court has adjourned proceedings and referred a matter to a family group conference for consideration and report.

**31. Purpose of family group conference**

**(1)** The purpose of a family group conference convened under section 30(1) is to provide an opportunity for a child's family and other persons attending the conference –

**(a)** to make informed recommendations as to the arrangements for best securing the care and protection of the child; or

**(b)** to review those arrangements and make further recommendations in respect of those arrangements from time to time.

**(2)** The purposes of a family group conference convened under section 30(3) are –

**(a)** to consider the matter referred to it by the Court; and

**(b)** to make recommendations to the Court in respect of that matter.

**32. Convening family group conference**

**(1)** If a family group conference is to be held, the Secretary must consult with the child and the child's immediate family in relation to the assignment of a facilitator.

**(2)** After consulting with the child and the child's immediate family, the Secretary must assign a facilitator to convene and facilitate the family group conference.

**(3)** Except where the facilitator is satisfied that the child is mature enough to make, and has made, an independent decision to waive his or her right to be represented by a suitable person at the family group conference, the facilitator must ensure that a person whom the facilitator considers suitable is representing the child as his or her advocate.

**(4)** The facilitator –

**(a)** must consult with the child, the child's guardians and, in the case of an Aboriginal child, with an appropriate recognised Aboriginal organisation as to who should be invited to attend the family group conference and the time and place of the meeting; and

**(b)** must fix a time and place for the family group conference; and

**(c)** must issue a notice specifying the time and place of the family group conference.

**(5)** If reasonably practicable, the time fixed for a family group conference must be within 3 weeks after the Secretary has determined that the conference is to be held.

**(6)** The facilitator must invite the following persons to attend the family group conference and provide each of them with a copy of the notice issued under subsection (4)(c):

**(a)** the child;

**(b)** the guardians of the child;

**(c)** the child's advocate, if one has been appointed;

**(d)** an employee of the Department authorised by the Secretary, either generally or in respect of that child, to present a report into the child's circumstances to the conference;

**(e)** if the conference is convened as a result of an order of the Court, any person whom the order specifies is to be invited.

**(7)** Despite subsection (6), the facilitator is not required to invite any person specified in that subsection to the family group conference if the attendance of that person at the conference could result in the contravention of a restraint order made under the *Justices Act 1959* or any other order of a court.

**(8)** Despite subsection (6)(a) and (b), the facilitator is not required to invite the child or any guardian of the child to the family group conference if the facilitator is of the opinion that it would not be in the best interests of the child for the child or that other person to attend.

**(9)** Despite subsection (6)(a), the facilitator is not required to invite the child to the family group conference if the facilitator is of the opinion that the child is unable to understand or participate in the proceedings of the conference by reason of his or her age or for any other reason.

**(10)** The facilitator may invite one or more of the following persons to attend the family group conference and provide them with a copy of the notice issued under subsection (4)(c):

**(a)** members of the child's immediate family whom the facilitator considers should attend;

**(b)** members of the child's extended family whom the child or the child's guardians have requested the facilitator to invite;

**(c)** other members of the child's extended family whom the facilitator considers should attend;

**(d)** any other person who has had a close association with the child and whom the facilitator considers should attend;

**(e)** any person who has been counselling, advising or aiding the child or the child's guardians and whom the facilitator considers should attend;

**(f)** if the child is an Aboriginal child, a person nominated by a recognised Aboriginal organisation;

**(g)** any person who has examined, assessed, counselled or treated the child in the course of the assessment of the child's circumstances and whom the facilitator considers should attend;

**(h)** if there are concerns about the child's education and the child attends a Government school, a person nominated by the Secretary of the responsible Department in relation to the *Education Act 1994*;

**(i)** if there are concerns about the child's education and the child attends a non-Government school, a person nominated by the principal of the school.

**(11)** In determining whether a person is to be invited or not to be invited to a family group conference under subsection (10), the facilitator must take into account any relevant restraint order made under the *Justices Act 1959* or any other relevant order of a court.

**33. Constitution of and attendance at family group conference**

**(1)** A family group conference consists of –

**(a)** the facilitator; and

**(b)** those persons who attend the conference in response to the invitation of the facilitator.

**(2)** The child and each guardian of the child is entitled to be accompanied by one or more persons of his or her choice, being persons who are also approved by the facilitator, to provide support and assistance to the child or guardian.

**(3)** A person may, with the permission of the facilitator, attend a family group conference for the purpose of providing expert advice or information on matters relevant to the conference.

**34. Procedure at family group conference**

**(1)** The facilitator must take reasonable steps to ascertain and provide to the family group conference the views of the following persons in relation to the steps that should be taken to ensure the care and protection of the child or in relation to the matter referred by the Court:

**(a)** the child (so far as his or her views are ascertainable) if he or she has not been invited, or refuses, to attend;

**(b)** those persons invited to attend the conference but who are unable to attend;

**(c)** any guardian or other family member who has not been invited to attend the conference but whose views the facilitator considers appropriate to provide to the conference.

**(2)** At a family group conference convened under section 30(1), the facilitator must ensure that sufficient information as to the child's circumstances and the grounds for believing the child to be at risk is presented to the family group conference.

**(3)** The facilitator must allow the child and the child's guardians and other family members present at a family group conference an opportunity to hold discussions in private for the purpose of formulating the family's recommendations in relation to the arrangements for securing the care and protection of the child or in relation to the matter referred by the Court if the facilitator thinks it appropriate to do so.

**(4)** A family group conference should reach a decision by the consensus of the child and the child's guardians and other family members.

**(5)** A family group conference fails to reach a decision unless all of the following persons agree:

**(a)** the child, if present and, in the opinion of the facilitator, capable of making an independent, rational and informed decision as to his or her own care and protection;

**(b)** the child's advocate, if one is appointed;

**(c)** the child's representative, if one is appointed under an order made under section 59;

**(d)** all the child's guardians that are present;

**(e)** the facilitator.

**(6)** If the facilitator considers it appropriate, the facilitator may adjourn the family group conference from time to time and from place to place.

**(7)** If the child does not have an advocate or a representative and the facilitator considers that it is in the best interests of the child to have the advice and representation of an advocate, the facilitator must adjourn the family group conference to allow for the appointment of such an advocate.

**35. Power of facilitator to appoint child's advocate**

**(1)** At any time the facilitator may appoint a person whom the facilitator considers suitable to represent the child and be the child's advocate at a family group conference if the facilitator considers it in the best interests of the child to do so and a representative has not been appointed under an order made under section 59.

**(2)** If the child is capable of participating in making a decision as to representation in an independent, rational and informed manner, the facilitator may not appoint a person as advocate for the child without the agreement of the child.

**36. Finalising family group conference**

**(1)** Before the facilitator declares the family group conference ended, a decision of the conference in relation to the arrangements for securing the care and protection of the child or in relation to the recommendations to be made to the Court must be put in writing and signed by –

**(a)** the facilitator; and

**(b)** each of the following persons who are attending the conference and concur in the decision:

**(i)** the child, if present and not excused by the facilitator from the obligation and, in the opinion of the facilitator, capable of participating in making the decision in an independent, rational and informed manner;

**(ii)** the child's advocate, if one is appointed;

**(iii)** the child's guardians, and other family members, if present.

**(2)** The decision of the family group conference must include the following information:

**(a)** the names of the persons who attended the family group conference;

**(b)** details of the time and place at which the conference was held;

**(c)** if the conference was convened under section 30(1), recommendations for the review of the arrangements for securing the care and protection of the child;

**(d)** if the conference was convened under section 30(3), the recommendations to be made to the Court in respect of the matter referred to the conference.

**(3)** As soon as practicable after a family group conference ends, the facilitator must do the following:

**(a)** if the family group conference failed to reach a decision, prepare a written report stating that fact and containing a summary of any proposals for recommendations discussed at the conference and the reasons, in the facilitator's opinion, for that failure;

**(b)** if the conference was convened under section 30(1), provide a copy of the decision of the family group conference or the report referred to in paragraph (a) to –

**(i)** the Secretary; and

**(ii)** the child; and

**(iii)** any advocate or representative who represented the child at the conference; and

**(iv)** each guardian of the child; and

**(v)** any other person involved in implementing the arrangements for securing the care and protection of the child recommended in the decision; and

**(vi)** any other person the facilitator considers appropriate;

**(c)** if the conference was convened under section 30(3), provide a copy of the decision of the family group conference or the report referred to in paragraph (a) to –

**(i)** the Court; and

**(ii)** the child; and

**(iii)** any advocate or representative who represented the child at the conference; and

**(iv)** each party to the proceedings.

**37. Action by Secretary after family group conference**

**(1)** On receipt of the decision of a family group conference convened under section 30(1), the Secretary may –

**(a)** if the Secretary considers the arrangements for securing the care and protection of the child recommended in that decision to be suitable, approve those arrangements; or

**(b)** if the Secretary does not consider those arrangements suitable –

**(i)** reconvene the family group conference for the purpose of reconsidering those arrangements and recommending other or further arrangements; or

**(ii)** take action under Division 2 in relation to the child.

**(2)** On receipt of the report as to the failure of a family group conference to reach a decision, the Secretary may –

**(a)** reconvene the family group conference for the purpose of reaching a decision recommending arrangements for securing the care and protection of the child; or

**(b)** take action under Division 2 in relation to the child.

**(3)** The Secretary must provide notice, in writing, of his or her decision under subsection (1) or (2) to the facilitator and –

**(a)** to –

**(i)** the child; and

**(ii)** any advocate or representative who represented the child at the family group conference; and

**(iii)** each guardian of the child; and

**(iv)** any other person involved in implementing the arrangements for securing the care and protection of the child which were recommended in the decision of the family group conference if the Secretary approves those arrangements; or

**(b)** each person who was invited to attend a family group conference if the Secretary does not consider the arrangements for securing the care and protection of the child recommended by the conference suitable and decides to reconvene the family group conference or take action under Division 2 in relation to the child; or

**(c)** each person who was invited to attend a family group conference that failed to reach a decision if the Secretary decides to reconvene the family group conference.

**38. Effect of approving recommended arrangements**

If the Secretary approves the arrangements for securing the care and protection of a child recommended in a decision of a family group conference convened under section 30(1) or reconvened under section 37(1) or (2), the Secretary must take such action as is necessary to implement and maintain those arrangements.

**39. Review of arrangements for care and protection of child**

A family group conference must be convened for the purpose of reviewing the arrangements for the care and protection of a child implemented following the approval of those arrangements by the Secretary under section 37 in any of the following circumstances:

**(a)** if the Secretary is required to convene such a conference under those arrangements;

**(b)** if the Secretary –

**(i)** has been requested by the child or any 2 or more members of the child's family to convene such a conference; or

**(ii)** considers it necessary or desirable to convene such a conference.

**40. Publication of discussion at, and reports on, family group conference**

**(1)** Except as allowed by this Act, a person must not publish in any manner –

**(a)** a decision of a family group conference; or

**(b)** any report relating to a family group conference; or

**(c)** anything said or done at a family group conference.

Penalty:

Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 18 months, or both.

**(2)** Evidence of anything said at a family group conference is not admissible in any proceedings.

**(3)** Despite subsection (2), the written record of the decision made by a family group conference, or the written report of the facilitator made following the failure of a family group conference to reach a decision, is admissible in proceedings under Division 2 for the purpose of establishing that a decision was or was not made.

**(4)** The *Freedom of Information Act 1991* does not apply in relation to –

**(a)** any report on a family group conference; or

**(b)** the written record of the decision of a family group conference; or

**(c)** the written report of a facilitator following the failure of a family group conference to reach a decision.

**41. Guardians whose whereabouts are unknown**

This Division does not apply in relation to a guardian whose whereabouts cannot, after reasonable inquiry, be ascertained.

***Division 2 - Care and protection orders***

**42. Care and protection order**

**(1)** In this section,

***specified*** means specified in a care and protection order.

**(2)** The Secretary may apply to the Court for a care and protection order.

**(3)** On the application of the Secretary, the Court may make a care and protection order if –

**(a)** the Court is satisfied –

**(i)** that a child is at risk; and

**(ii)** that a care and protection order should be made to secure the care and protection of the child; or

**(b)** the Court is satisfied that –

**(i)** proper arrangements exist for the care and protection of a child (whether pursuant to the Secretary approving the arrangements recommended in a decision of a family group conference or otherwise); and

**(ii)** the child would be likely to suffer significant psychological harm if the arrangements were to be disturbed; and

**(iii)** it would be in the best interests of the child for the arrangements to be incorporated in a care and protection order.

**(4)** A care and protection order may contain one or more of the following orders:

**(a)** an order requiring the child or a guardian of the child, for a specified period not exceeding 12 months, to do any specified thing or to refrain from doing any specified thing;

**(b)** an order granting custody of the child, for a specified period not exceeding 12 months, to one of the following persons:

**(i)** a guardian of the child;

**(ii)** a member of the child's family;

**(iii)** the chief executive officer of a non-Government organisation that provides facilities for the residential care of children, or a person who holds a position similar in nature to that of chief executive officer in such an organisation;

**(iv)** the Secretary;

**(v)** any other person that the Court considers appropriate in the circumstances;

**(c)** an order placing the child, for a specified period not exceeding 12 months, under the guardianship of the Secretary or one or 2 other persons as the Court considers appropriate in the circumstances;

**(d)** an order placing the child, until the child attains 18 years of age, under the guardianship of the Secretary or one or 2 other persons as the Court considers appropriate in the circumstances;

**(e)** an order providing for access to the child;

**(f)** an order providing for the way in which a person who has custody or guardianship of the child under an order of the Court is to deal with matters relating to the care, protection, health, welfare or education of the child;

**(g)** any other order the Court considers appropriate.

**(5)** A care and protection order may include conditions to be observed by one or more of the following persons:

**(a)** the child;

**(b)** a guardian of the child;

**(c)** a person with whom the child is living;

**(d)** the Secretary;

**(e)** a person who is to supervise the child;

**(f)** a person who is granted custody of the child;

**(g)** any other person who is involved with the care and protection of the child.

**43. Restraint order**

**(1)** On the application of the Secretary for a care and protection order, the Court may make in addition to or instead of making the care and protection order –

**(a)** a restraint order against a person under Part XA of the *Justices Act 1959* if the Court is satisfied that the person has been served with a copy of the application; or

**(b)** an interim restraint order against a person under Part XA of the *Justices Act 1959* and such ancillary orders as the Court considers appropriate.

**(2)** An application for a care and protection order is taken to be an application for a restraint order under Part XA of the *Justices Act 1959* made by a person granted leave to apply by the justices –

**(a)** for the purposes of subsection (1); and

**(b)** for the purposes of the application of the *Justices Act 1959* in relation to a restraint order or interim restraint order made under that subsection.

**44. Extension of care and protection order**

**(1)** On the application of the Secretary made before a care and protection order under section 42(4)(a), (b) or (c) ceases to have effect, the Court may extend that order if –

**(a)** a family group conference has been held to review the arrangements for securing the care and protection of the child implemented under that order; and

**(b)** the Court is satisfied –

**(i)** that the child would be at risk if the order were to cease to have effect; or

**(ii)** that it is in the best interests of the child for those arrangements to continue to be the subject of a care and protection order.

**(2)** A care and protection order may not be extended so that the total period of the order exceeds 3 years.

**(3)** If an application is made for the extension of a care and protection order before the day on which the order is due to cease to have effect but is not determined before that day, the order continues in force until the application is determined.

**45. Limited adjournment only**

The Court must not, unless it is satisfied that there are exceptional circumstances, grant adjournments in relation to an application for a care and protection order or the variation or revocation of a care and protection order so that the period between the lodging of the application and the commencement of the hearing exceeds 10 weeks.

**46. Interim care and protection order on adjournment**

**(1)** If the Court adjourns the hearing of an application for a care and protection order, the Court may also make an interim care and protection order.

**(2)** An interim care and protection order may contain one or more of the following orders:

**(a)** an order requiring the child or a guardian of the child to do any specified thing or refrain from doing any specified thing;

**(b)** an order granting custody of the child to one or more of the following persons:

**(i)** a guardian of the child;

**(ii)** a member of the child's family;

**(iii)** the chief executive officer of a non-Government organisation that provides facilities for the residential care of children, or a person who holds a position similar in nature to that of chief executive officer in such an organisation;

**(iv)** the Secretary;

**(v)** any other person that the Court considers appropriate in the circumstances;

**(c)** an order placing the child under the guardianship of the Secretary or one or 2 other persons as the Court considers appropriate in the circumstances;

**(d)** an order providing for access to the child;

**(e)** an order providing for the way in which a person who has custody or guardianship of the child under an order of the Court is to deal with matters relating to the care, protection, health, welfare or education of the child;

**(f)** any other order the Court considers appropriate.

**(3)** An interim care and protection order may include conditions to be observed by one or more of the following persons:

**(a)** the child;

**(b)** a guardian of the child;

**(c)** a person with whom the child is living;

**(d)** the Secretary;

**(e)** a person who is to supervise the child;

**(f)** a person who is granted custody of the child;

**(g)** any other person who is involved with the care and protection of the child.

**(4)** An interim care and protection order has effect for the period of the adjournment and any subsequent adjournment.

**(5)** This section does not prevent the Court from varying or revoking an interim care and protection order or from making a further interim care and protection order on any subsequent adjournment.

**47. Restraint order on adjournment**

**(1)** If the Court adjourns the hearing of an application for a care and protection order, the Court may make, in addition to or instead of making an interim care and protection order –

**(a)** a restraint order against a person under Part XA of the *Justices Act 1959* if the Court is satisfied that the person has been served with a copy of the application; or

**(b)** an interim restraint order against a person under Part XA of the *Justices Act 1959* and such ancillary orders as the Court considers appropriate.

**(2)** An application for a care and protection order is taken to be an application for a restraint order under Part XA of the *Justices Act 1959* made by a person granted leave to apply by the justices –

**(a)** for the purposes of subsection (1); and

**(b)** for the purposes of the application of the *Justices Act 1959* in relation to a restraint order or interim restraint order made under that subsection.

**48. Variation, revocation, suspension and end of care and protection order or interim care and protection order**

**(1)** A care and protection order or an interim care and protection order –

**(a)** may be varied or revoked by the Court at any time on the application of a person who was a party to the application for the order; and

**(b)** ceases to have effect when the child attains 18 years of age.

**(2)** A care and protection order under section 42(4)(d) granting guardianship of a child to a person until the child attains 18 years of age ceases to have effect on the making of an application for a parenting order under *Part VII of the Family Law Act 1975* of the Commonwealth in respect of the child or an application for registration of a parenting plan under that Part of that Act if that application is made –

**(a)** by a person who is not the parent of the child; and

**(b)** with the consent of the Secretary and all parties to the proceedings.

**(3)** A care and protection order that has ceased to have effect under subsection (2) is revived if –

**(a)** the application for the parenting order or registration of a parenting plan is withdrawn; or

**(b)** the order sought or registration is refused; or

**(c)** the parenting order made or the parenting plan registered is not in the terms to which the Secretary and parties to the proceedings agreed.

**49. Effect of order granting custody or guardianship**

**(1)** If a care and protection order or interim care and protection order grants custody of a child to a person –

**(a)** that grant does not affect the guardianship of the child; and

**(b)** that person has the sole right to the custody of the child.

**(2)** If a care and protection order or interim care and protection order grants guardianship of a child to a person –

**(a)** that grant is a grant of both custody and guardianship of the child to that person; and

**(b)** that person is the guardian of the child and his or her estate to the exclusion of all other persons; and

**(c)** that person has the same rights, powers, duties, obligations and liabilities as a natural parent of the child would have.

**(3)** If, when considering an application for a care and protection order, the Court finds that a child is at risk because a person other than a guardian with whom the child resides has abused or neglected or threatened the child, or is likely to do so, the Court must not make an order removing the child from the guardianship or custody of the guardians with whom the child resides unless satisfied that –

**(a)** they knew, or ought to have known, of the abuse or neglect or threats; or

**(b)** once they are informed of the abuse or neglect or threats, they would be unlikely or unable to prevent further abuse or neglect or threats.

**(4)** The Court should not, as a general rule, consider making an order under section 42(4)(d) placing a child under guardianship until he or she attains 18 years of age unless satisfied that no other order would be appropriate in all the circumstances of the case.

**(5)** If custody or guardianship, or custody and then guardianship, of a child has been granted to a person under one or more care and protection orders and interim care and protection orders for a continuous period of 2 or more years and an application for another such order or an extension of that order is before the Court, the Court must, in the interests of securing a settled and permanent living arrangement for the child and despite subsection (4), consider making a care and protection order under section 42(4)(d) granting guardianship of the child until the child attains 18 years of age.

**50. Non-compliance with order**

A person who has been personally served with a care and protection order or an interim care and protection order or was present in the Court when the care and protection order or interim care and protection order was made must not contravene the order.

Penalty:

Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 12 months, or both.

**51. Right of other interested persons to be heard**

In any proceedings under this Division, on the application of –

**(a)** a member of a child's family; or

**(b)** a person who has at any time had care of a child; or

**(c)** a person who has counselled, advised or aided a child; or

**(d)** if the child is an Aboriginal child, a recognised Aboriginal organisation or a representative of such an organisation; or

**(e)** any other person who appears to the Court to have a proper interest in the matter –

the Court may hear submissions and take evidence from the applicant in respect of the child, even though the applicant is not a party to the proceedings.

**52. Conference of parties**

**(1)** If the Court considers it desirable to do so, the Court may, before or during the hearing of proceedings under this Division, convene a conference between the parties to the proceedings for the purpose of determining what matters are in dispute or resolving any matters in dispute.

**(2)** A magistrate or an officer of the Court nominated by the magistrate is to preside over the conference.

**(3)** Legal representatives for parties to the proceedings are to be admitted to the conference.

**(4)** Evidence of anything said or done at the conference is inadmissible in the proceedings except where all parties to the proceedings agree to the evidence being admitted.

**53. Review of arrangements for care and protection of child**

A family group conference must be convened for the purpose of reviewing the arrangements for the care and protection of a child implemented under a care and protection order in any of the following circumstances:

**(a)** if the order requires the Secretary to convene such a conference;

**(b)** if the Secretary has been requested by the child or any 2 or more members of the child's family to convene such a conference;

**(c)** if the Secretary considers it necessary or desirable to convene such a conference.

## PART 6 - Procedural matters

**54. Matters Court must consider**

In any proceedings under this Act, the Court must –

**(a)** consider the best interests of the child to be the paramount consideration; and

**(b)** observe the principles set out in sections 8 and 9.

**55. Determining what is child's best interests**

**(1)** In determining what is in the child's best interests, the Court must consider the following matters:

**(a)** any wishes expressed by the child and any factors (such as the child's maturity or level of understanding) that the Court considers relevant to the weight it should give to the child's wishes;

**(b)** the nature of the relationship of the child with each of the child's guardians and with other persons;

**(c)** the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from –

**(i)** either of his or her guardians; and

**(ii)** any other child, or other person, with whom he or she has been living;

**(d)** the practical difficulty and expense of a child having contact with a guardian and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with each guardian on a regular basis;

**(e)** the capacity of each guardian, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;

**(f)** the child's maturity, sex, background and culture (including any need to maintain a connection with the lifestyle, culture and traditions of the Aboriginal community) and any other characteristics of the child that the Court considers relevant;

**(g)** the need to protect the child from physical or psychological harm;

**(h)** the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's guardians;

**(i)** any other fact or circumstance that the Court considers relevant.

**(2)** If the Court is considering whether to make an order with the consent of all the parties to the proceedings, the Court may, but is not required to, have regard to all or any of the matters set out in subsection (1).

**56. Allowing opportunity for child to express wishes**

Whether or not the child is represented by a legal practitioner in any proceedings under this Act, the Court must allow the child a reasonable opportunity to give his or her own views personally to the Court as to his or her ongoing care and protection unless the Court is satisfied that the child is not capable of doing so.

**57. How wishes of child are expressed**

The Court may inform itself of wishes expressed by a child –

**(a)** by having regard to anything said by the child personally to the Court on being allowed an opportunity under section 56; and

**(b)** by having regard to anything contained in a report given to the Court; and

**(c)** by any other means the Court considers appropriate.

**58. Children not required to express wishes**

Nothing in this Act permits the Court or any person to require the child to express his or her wishes in relation to any matter.

**59. Court orders for separate representation of child**

**(1)** The Court must not proceed to hear an application under this Act unless –

**(a)** the child is represented in the proceedings by a legal practitioner; or

**(b)** the Court is satisfied that the child has made an informed and independent decision not to be so represented.

**(2)** Subsection (1) does not apply if the Court is of the opinion that it is in the best interests of the child to proceed with the hearing in the absence of the child's representative.

**(3)** In proceedings in respect of an application under this Act, if –

**(a)** the child is not represented by a legal practitioner; and

**(b)** the Court is not satisfied that the child has made an informed and independent decision not to be so represented –

the Court may make such orders as it considers necessary or appropriate to secure legal representation for the child and any orders it could make on adjournment of those proceedings were the child represented by a legal practitioner.

**(4)** In any proceedings under this Act, whether or not the child is represented by a legal practitioner, if it appears to the Court that the child ought to be separately represented, the Court may –

**(a)** order that the child is to be separately represented; and

**(b)** make such other orders as it considers necessary or appropriate to secure that separate representation.

**(5)** The Court may make an order under this section –

**(a)** on its own initiative; or

**(b)** on the application of –

**(i)** the child; or

**(ii)** the Secretary; or

**(iii)** a guardian of the child; or

**(iv)** any other person.

**60. Order that child be made available for examination**

If a child is separately represented in any proceedings, the Court on the application of that representative may order the child's guardian or a person with whom the child is residing to make the child available, as specified in the order, for a medical, psychiatric or psychological examination to be made for the purpose of preparing a report about the child for use by the child's representative in connection with the proceedings.

**61. Order that report be made**

**(1)** In any proceedings under this Act, the Court may –

**(a)** order the Secretary or another person to report on a matter relevant to the proceedings which is specified in the order; and

**(b)** adjourn the proceedings to enable the making of the report; and

**(c)** make such other orders as the Court considers appropriate for the purpose of facilitating the preparation of the report.

**(2)** A report prepared under an order made under subsection (1) may, in addition to the matter required to be included in it, include other matters that relate to the care, protection and development of the child.

**(3)** If a person contravenes an order under subsection (1)(c), the Secretary or other person required to prepare the report must notify the Court of that contravention.

**(4)** On receiving notification of a contravention of an order, the Court may make such further orders in relation to the preparation of the report as it considers appropriate.

**62. Court may refer a matter to a family group conference**

**(1)** In any proceedings under this Act, the Court may –

**(a)** order that a family group conference be convened to consider and report to the Court on a matter relevant to the proceedings which is specified in the order; and

**(b)** adjourn the proceedings to enable a family group conference to consider and report to the Court on that matter.

**(2)** An order may specify persons who are to be invited to attend the family group conference.

**(3)** The district registrar is to provide the Secretary with a copy of the order.

**63. Evidence**

**(1)** In any proceedings under this Act, the Court is bound by the rules of evidence except where the Court determines otherwise.

**(2)** The Court may determine that it is not bound by the rules of evidence in any proceedings if it is satisfied that it would not be in the best interests of the child to be bound by those rules.

**(3)** In proceedings where the Court is not bound by the rules of evidence, the Court may inform itself in any way it considers appropriate.

**(4)** A fact to be proved in proceedings under this Act is sufficiently proved if proved on the balance of probabilities.

**64. Parties to application**

**(1)** The following persons are parties to an application for an assessment order or a care and protection order:

**(a)** the Secretary;

**(b)** the child the subject of the application;

**(c)** each guardian of the child.

**(2)** If an application to vary, extend or revoke an assessment order, a care and protection order or an interim care and protection order is made, all persons who were parties to that order and all persons who are bound by that order are parties to the application.

**65. Service of applications on parties**

**(1)** After filing with the Court an application for an assessment order, a care and protection order or the variation, extension or revocation of an assessment order, a care and protection order or an interim care and protection order, a copy of that application and notice of the time and place of the hearing of the application must be served –

**(a)** on the child the subject of the application or order, if the child is 10 or more years old; and

**(b)** on the child's advocate or representative, if one has been appointed; and

**(c)** on each other party to the application; and

**(d)** if the Secretary is the applicant, on any person whom the Secretary considers has an interest in the welfare of the child; and

**(e)** if the Secretary is the applicant, on any person whom the Secretary considers may be affected by the order or the variation, extension or revocation of the order.

**(2)** If a copy of the application and a notice of the time and place of the hearing is to be served on the child who is the subject of the application or the order to which the application relates, they must be served personally.

**(3)** The copy of the application and a notice of the time and place of the hearing to be served on a party, other than the child who is the subject of the application or the order to which the application relates, must be served –

**(a)** personally; or

**(b)** by post addressed to the party at his or her last known place of residence or employment; or

**(c)** in any other manner authorised by the Court if –

**(i)** it is not practicable to serve the copy and notice personally; or

**(ii)** the whereabouts of the party cannot, after reasonable enquiries, be ascertained.

**66. Hearings in absence of a party**

The Court may hear and determine an application for an assessment order, a care and protection order or the variation, extension or revocation of an assessment order, care and protection order or interim care and protection order –

**(a)** in the absence of a party to the application; and

**(b)** whether or not all parties to the application have been served with a copy of the application and the notice of the time and place of the hearing of the application.

**67. Joinder of parties**

In any proceedings on an application for an assessment order or a care and protection order, if the Court is of the opinion that it should make an order binding upon a person who is not a party to the proceedings, the Court –

**(a)** may join that person as a party to the proceedings; and

**(b)** must allow that person a reasonable opportunity to make representations to the Court as to why such an order should not be made.

**68. Orders for costs**

If the Court dismisses an application under this Act by the Secretary, the Court may make such order for costs against the Crown in favour of any other party to the proceedings as the Court considers appropriate.

## PART 7 - Children under guardianship or in custody of secretary

**69. Powers and duties of Secretary in relation to children under guardianship or in custody of Secretary generally**

**(1)** Subject to this Act, the Secretary may provide for the care of a child who is under the guardianship, or in the custody, of the Secretary under this Act or any other enactment in any one or more of the following ways:

**(a)** by placing the child, or permitting the child to remain, in the care of a guardian of the child or a member of the child's family;

**(b)** by placing the child in the care of any person the Secretary considers suitable;

**(c)** by giving such directions as to the care of the child in the place in which the child resides as the Secretary considers appropriate;

**(d)** by making arrangements for the education of the child;

**(e)** by making arrangements (including admission to hospital) for the medical or dental examination or treatment of the child or for such other professional examination or treatment as may be necessary or desirable;

**(f)** by making such other provision for the care of the child (including financial assistance) as the Secretary considers appropriate.

**(2)** In making provision for the care of a child, the Secretary must –

**(a)** consider the best interests of the child to be the paramount consideration; and

**(b)** have regard to the principles set out in sections 8 and 9; and

**(c)** make provision for the physical, intellectual, psychological and emotional development of the child; and

**(d)** have regard to the desirability of securing settled and permanent living arrangements for the child.

**(3)** Unless the Secretary considers that it would not be in the best interests of a child to do so, the Secretary must –

**(a)** notify the guardians of the child about where the child is placed and the circumstances of the child as soon as reasonably practicable after the child is placed in the custody of the Secretary; and

**(b)** keep the guardians of the child informed about where the child is placed and how the child is being cared for.

**70. Power of Secretary to consent to adoption of child**

**(1)** The Secretary may consent to the adoption of a child under the *Adoption Act 1988* if the child is under the guardianship of the Secretary until the child reaches 18 years of age by reason of –

**(a)** a care and protection order under section 42(4)(d); or

**(b)** a similar order made under an enactment; or

**(c)** an assumption of guardianship by the Secretary under Part 8 of this Act; or

**(d)** an enactment.

**(2)** In deciding whether to consent to the adoption of a child, the Secretary must –

**(a)** consider the best interests of the child to be the paramount consideration; and

**(b)** have regard to the principles set out in sections 8 and 9; and

**(c)** have regard to the desirability of securing settled and permanent living arrangements for the child.

**71. Review of circumstances of child under long-term guardianship of Secretary**

**(1)** Where a child is subject to a care and protection order under section 42(4)(d) placing the child under the guardianship of the Secretary until the child reaches 18 years of age, the Secretary must periodically review the circumstances of the child and do so at least once –

**(a)** in each year during the first 3 years of that guardianship; and

**(b)** in each 2 year period following those first 3 years until the child reaches 18 years of age or the Secretary otherwise ceases to be the child's guardian.

**(2)** On finalising a review, the Secretary must determine whether or not the existing arrangements for the care and protection of the child continue to be in the best interests of the child.

**(3)** The Secretary must provide a copy of his or her determination to –

**(a)** the child; and

**(b)** the child's guardians; and

**(c)** every person who was a guardian of the child immediately before the child was placed under the guardianship of the Secretary, whether that placement is made by the order made under section 42(4)(d) or a previous order made under section 42(4)(c) or 46; and

**(d)** any person who has the daily care of the child and with whom the child resides; and

**(e)** if the child is an Aboriginal child, the appropriate recognised Aboriginal organisation.

**(4)** Despite subsection (3), the Secretary is not obliged to give a copy of his or her determination to a particular person if –

**(a)** the Secretary considers that it would not be in the best interests of the child to do so; or

**(b)** the whereabouts of the person cannot be ascertained after reasonable enquiries.

**72. Dealing with child's estate as guardian**

**(1)** All money received by the Secretary as guardian of the estate of a child must be paid to the credit of an account established and maintained in a bank, building society or credit union by the Secretary under the name of the "Tasmanian Guardianship Fund".

**(2)** The Secretary must keep an account showing the current amount at credit in the Fund on account of each child.

**(3)** Money standing to the credit of a child in the Fund which is not immediately required for use by the child may be invested in any manner in which trust money may be invested by a trustee under the *Trustee Act 1898*.

**(4)** Interest earned by the use of money invested under subsection (3) must be credited to the account of the child at least once each year.

**(5)** The Secretary may, with the approval of the Auditor-General, transfer to the Consolidated Fund from money standing to the credit of a child in the Fund an amount representing the reasonable cost of administering the Fund in respect of that child.

**(6)** Except as provided by subsection (5), money standing to the credit of a child in the Fund may be used only for the benefit of the child.

**(7)** On a child ceasing to be under the guardianship of the Secretary –

**(a)** all money standing to the credit of the child in the Fund must be paid to the child if the child is 18 or more years of age; and

**(b)** in any other case, if the Secretary considers it in the best interests of the child to do so, all or any money standing to the credit of the child in the Fund –

**(i)** may be paid to the child or a person who has custody of the child; or

**(ii)** may be retained in the Fund until the child is 18 years of age.

**(8)** On a child ceasing to be under the guardianship of the Secretary, the Secretary must notify the child of the amount standing to his or her credit in the Fund.

**73. Maintenance of child**

The following persons have a duty to maintain, financially, a child who is under the guardianship or in the custody of the Secretary under this Act or any other enactment:

**(a)** the child's parents;

**(b)** the child's guardians;

**(c)** the persons who were the child's guardians immediately before –

**(i)** the child was placed under the guardianship of the Secretary; or

**(ii)** the child was placed under the guardianship of a Government authority of another State under laws dealing with the care and protection of children, if the child was placed under the guardianship of the Secretary by notice filed with the Court under section 76.

**74. Contribution order**

**(1)** On the application of the Secretary, the Court may order one or more persons specified in section 73 to pay to the Secretary in respect of the maintenance of a child who is under the guardianship or in the custody of the Secretary the contributions specified in the order in the manner specified in the order.

**(2)** In determining whether to make a contribution order or the amount of the contributions to be specified in the order, the Court must have regard to –

**(a)** any contributions paid or being paid in respect of the maintenance of the child by any person; and

**(b)** the relationship to the child of the person against whom the order will be or is made and his or her ability to make contributions.

**(3)** A contribution order may be made in respect of any period during which the child is under the guardianship or in the custody of the Secretary whether or not the child is under the guardianship or in the custody of the Secretary when the application or order is made.

**(4)** On the application of a party to a contribution order, the Court may vary or revoke the contribution order.

**(5)** A statement in an application by the Secretary under this section that –

**(a)** a particular person is able to make contributions towards the maintenance of a child; or

**(b)** an amount is being or has been expended, or is owing, for or in respect of the maintenance of a child –

is evidence of that fact.

**(6)** A contribution order is taken to be a judgment of the Magistrates Court (Civil Division) and is enforceable under the *Magistrates Court (Civil Division) Act 1992*.

**(7)** The Secretary may determine in which court of requests the contribution order is to be enforced.

**75. Contribution agreement**

**(1)** A person specified in section 73 may agree, in writing, to pay to the Secretary in the manner specified in the agreement contributions towards the maintenance of a child who is or has been under the guardianship or in the custody of the Secretary.

**(2)** The Secretary may file a contribution agreement with the Court.

**(3)** A contribution agreement filed with the Court is taken to be a contribution order.

**(4)** A contribution agreement may be varied or revoked, in writing, by the agreement of the persons who made the contribution agreement.

**(5)** A variation or revocation of a contribution agreement filed with the Court may be filed with the Court and, after being so filed, is taken to be an order of the Court.

## PART 8 - Interstate transfers of children under guardianship, &c.

### 76. Guardianship, custody or supervision of child from another State

**(1)** The Secretary may, by notice filed with the Court, assume the guardianship, custody or supervision of a child if –

**(a)** the child is under the guardianship, in the custody or under the supervision of a Government authority of another State under laws dealing with the care or protection of children; and

**(b)** the child has entered or is about to enter Tasmania; and

**(c)** that authority agrees to the assumption of guardianship, custody or supervision by the Secretary.

**(2)** A notice under subsection (1) –

**(a)** must be on terms that are similar in effect (as far as practicable) to the corresponding terms that apply to the child in the other State; and

**(b)** ceases to have effect when the first of the following occurs:

**(i)** the child leaves Tasmania and the Secretary has agreed to guardianship, custody or supervision being assumed by a Government authority of another State;

**(ii)** the period for which the child would have been under the guardianship, in the custody or under the supervision of the Government authority from which the child was received ends;

**(iii)** the child reaches 18 years of age;

**(iv)** the Secretary files with the Court a notice stating that he or she is no longer the child's guardian.

**(3)** If a notice is filed under subsection (1), the Secretary –

**(a)** may make financial or other arrangements with the Government authority of another State for the care, maintenance, accommodation or supervision of the child; and

**(b)** subject to those arrangements, may cause the child to be removed from this State and returned to the other State; and

**(c)** subject to any agreement with that Government authority of another State, is the sole guardian of the child.

**(4)** A notice made and filed with the Court under subsection (1) is taken to be a care and protection order granting guardianship or custody to the Secretary or requiring the Secretary to supervise the child (as the case requires).

**(5)** A notice made and filed with the Court under subsection (2)(b)(iv) is taken to be an order of the Court revoking a care and protection order that granted guardianship or custody of the child to the Secretary or required the child to be under the supervision of the Secretary.

**77. Transfer of guardianship, custody or supervision to an interstate Government authority**

**(1)** If a child –

**(a)** is under the guardianship, in the custody or under the supervision of the Secretary by reason of –

**(i)** an order made under this Act or another enactment; or

**(ii)** the assumption of guardianship, custody or supervision by the Secretary under this Part; or

**(iii)** this Act or another enactment; and

**(b)** has moved or is about to move to another State –

the Secretary may arrange for a Government authority of another State to have the guardianship, custody or supervision of the child.

**(2)** The Secretary must not make an arrangement under subsection (1) if it would not be in the best interests of the child to do so.

**(3)** If an arrangement is made under this section, the Secretary may –

**(a)** make financial or other arrangements with the Government authority of another State for the care, maintenance, accommodation or supervision of the child; and

**(b)** make financial or other arrangements for the return of the child to this State if or when it is appropriate to do so.

**(4)** Except as specified in subsection (5), the Secretary must provide a written notice of any transfer of guardianship, custody or supervision under this section to the following persons:

**(a)** all guardians of the child or all persons who were the guardians of the child immediately before the child was placed under the guardianship of the Secretary, whether by an order under section 42(4)(d) or a previous order under section 42(4)(c);

**(b)** if the child is an Aboriginal child, the appropriate recognised Aboriginal organisation.

**(5)** Subsection (4)(a) does not apply if –

**(a)** the Secretary considers that it would not be in the best interests of the child to give the guardians that notice; or

**(b)** the whereabouts of the guardians cannot be ascertained after reasonable inquiry.

**(6)** Except as otherwise specified in an arrangement under subsection (1), the Secretary's guardianship, custody or supervision of the child ends when the later of the following occurs:

**(a)** the arrangement is made;

**(b)** the child leaves Tasmania.

## PART 9 - Commissioner for children, advisory panels and facilitators

### *Division 1 - Commissioner for Children*

### 78. Commissioner for Children

**(1)** The Governor may appoint a person to be the Commissioner for Children.

**(2)** Schedule 1 has effect with respect to the Commissioner and his or her appointment.

### 79. Functions of Commissioner

**(1)** The Commissioner has the following functions:

**(a)** on the request of the Minister, to investigate a decision or recommendation made, or an act done or omitted, under this Act in respect of a child, other than a decision or recommendation made by the Court;

**(b)** to encourage the development, within the Department, of policies and services designed to promote the health, welfare, care, protection and development of children;

**(c)** on the request of the Minister, to inquire generally into and report on any matter, including any enactment, practice and procedure, relating to the health, welfare, care, protection and development of children;

**(d)** to increase public awareness of matters relating to the health, welfare, care, protection and development of children;

**(e)** on the Commissioner's own initiative or on the request of the Minister, to advise the Minister on any matter relating to the administration of this Act and the policies and practices of the Department, another Government department or any other person which affect the health, welfare, care, protection and development of children;

**(f)** on the Commissioner's own initiative or on the request of the Minister, to advise the Minister on any matter relating to the health, welfare, education, care, protection and development of children placed in the custody, or under the guardianship, of the Secretary under this or any other Act;

**(g)** any other functions imposed by this or any other Act.

**(2)** If the Commissioner advises the Minister on any matter relating to the policies and practices of another Government department, the Commissioner must provide that advice also to the Minister to whom that Government department is responsible in relation to the administration of those policies and practices.

**(3)** In performing his or her functions, the Commissioner must act independently, impartially and in the public interest.

### 80. Powers of Commissioner

**(1)** The Commissioner has power to do all things necessary or convenient to be done in connection with the performance and exercise of his or her functions and powers under this or any other Act.

**(2)** Without limiting the powers of the Commissioner under subsection (1), the Commissioner may require any person to answer questions or to produce documents so far as may be relevant to the administration of this Act.

### 81. Committees

**(1)** The Commissioner –

**(a)** must establish as a committee the Children and Young Persons Consultative Council; and

**(b)** must establish as a committee the Children and Young Persons Advisory Council; and

**(c)** may establish such other committees as he or she considers appropriate –

to assist the Commissioner in the performance and exercise of his or her functions and powers under this or any other Act.

**(2)** Schedule 2 has effect with respect to the members and meetings of the committees established under subsection (1).

**82. Adverse comment**

Despite anything in this Part, the Commissioner must not make a report that is adverse to any person unless the Commissioner has first given the person an opportunity to make representations to the Commissioner.

**83. Annual report**

**(1)** Within 3 months after the end of each financial year, the Commissioner must provide a report on the performance and exercise of the Commissioner's functions and powers during that financial year to the Minister and the Secretary.

**(2)** The Minister on or before 30 November in each year must cause a copy of the report to be laid before each House of Parliament.

**(3)** If the Minister is unable to comply with subsection (2) for any reason other than that a House of Parliament is not sitting, he or she must cause to be laid before each House of Parliament a statement specifying the reasons for the failure to comply with that subsection and an estimate of the day by which a copy of the annual report will be ready to be laid before each House of Parliament.

**(4)** If the Minister is unable to comply with subsection (2) because a House of Parliament is not sitting, the Minister must –

**(a)** as soon as practicable after that day, forward a copy of the annual report to the Clerk of that House of Parliament; and

**(b)** within the next 7 sitting days of that House, cause a copy of the annual report to be laid before that House.

***Division 2 - Advisory panels***

**84. Advisory panels**

**(1)** The Secretary must establish one or more advisory panels as he or she considers appropriate.

**(2)** Schedule 3 has effect with respect to the members of, the appointment of members to and the meetings of advisory panels.

**85. Functions of advisory panel**

An advisory panel has the following functions:

**(a)** to provide advice to the Secretary on all cases of abuse or neglect or suspected abuse or neglect referred to it by the Secretary;

**(b)** on the Secretary's request, provide advice to the Secretary;

**(c)** any other function imposed on advisory panels by this or any other Act.

### *Division 3 - Facilitators*

**86. Facilitators**

**(1)** The Secretary may approve persons as facilitators for the purposes of this Act.

**(2)** A facilitator who is not an employee, within the meaning of the *Tasmanian State Service Act 1984*, is entitled to be paid such remuneration and allowances as the Secretary determines.

**(3)** The Secretary may withdraw approval of a person as a facilitator for any just cause or excuse.

**87. Functions of facilitator**

A facilitator has the following functions:

**(a)** to convene and facilitate a family group conference when assigned to do so by the Secretary;

**(b)** to consult with any person having knowledge of or experience in a particular culture if the facilitator considers it appropriate to do so;

**(c)** any other function imposed on facilitators by this or any other Act.

**88. Guidelines for facilitator**

**(1)** The Secretary may issue guidelines in respect of the responsibilities, functions and powers of facilitators when convening, facilitating or reporting on a family group conference and all related matters.

**(2)** A facilitator must comply with the guidelines.

**89. Powers of facilitator**

A facilitator has power to do any act necessary or convenient to be done in connection with the performance and exercise of his or her functions and powers.

**90. Register of facilitators**

**(1)** The Secretary must establish and maintain an accurate register of persons approved as facilitators.

**(2)** For the purposes of maintaining the register, the Secretary may –

**(a)** amend the register; or

**(b)** destroy or move to the archives the register and substitute a new register.

## PART 10 - Miscellaneous

### *Division 1 - Offences*

**91. Offence to fail to protect child from harm**

**(1)** A person who has a duty of care in respect of a child must not intentionally take, or fail to take, action that could reasonably be expected to result in –

**(a)** the child suffering significant harm as a result of physical injury or sexual abuse; or

**(b)** the child suffering emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged; or

**(c)** the child's physical development or health being significantly harmed.

Penalty:

Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

**(2)** Proceedings for an offence under subsection (1) may only be brought after consultation with the Secretary.

**(3)** A person may be guilty of an offence under subsection (1) even though the child was protected from harm by the action of another person.

**92. Offence to leave child unattended**

**(1)** A person who has the control or charge of a child must not leave the child without making reasonable provision for the child's supervision and care for a time which is unreasonable.

Penalty:

Fine not exceeding 15 penalty units or imprisonment for a term not exceeding 3 months, or both.

**(2)** Proceedings for an offence under subsection (1) –

**(a)** must not be brought against a person who is under 16 years of age and is not the parent of the child; and

**(b)** may only be brought after consultation with the Secretary.

**93. Public entertainment by children**

**(1)** In this section –

***entertainment*** includes any performance, exhibition, display, match or contest;

***public entertainment*** means –

**(a)** any entertainment to which persons are admitted on payment; and

**(b)** any entertainment which is open to the public, whether admission to the entertainment is or is not procured by the payment of money or on any other condition; and

**(c)** any entertainment or other activity, the whole or any part of which is, or is intended to be, seen or heard by the general public (whether in this State or elsewhere and whether at the time the entertainment or activity takes place or at some later time) on broadcast receivers or television receivers or by the projection of a film or video;

***restricted public entertainment***, in relation to a child, means a public entertainment which, or which is of a class which, the Minister has declared to be restricted public entertainment in respect of children the same age as the child.

**(2)** The Minister may, by order, declare any public entertainment or class of public entertainment to be restricted public entertainment in respect of children who have not attained the age, not exceeding 14 years, specified in that order in relation to that public entertainment or class of public entertainment.

**(3)** Without limiting subsection (1), a class of public entertainment may be determined by reference to –

**(a)** the nature of the entertainment; and

**(b)** the purpose of the entertainment; and

**(c)** the persons who carry on the entertainment; and

**(d)** the place in which, and the days or times at or during which, the entertainment is carried on.

**(4)** A person must not procure, induce, permit, counsel or assist a child to take part in a public entertainment which, in relation to that child, is a restricted public entertainment, except where the Secretary has given written permission for the child to take part in the public entertainment.

Penalty:

Fine not exceeding 15 penalty units or imprisonment for a term not exceeding 3 months.

**(5)** This section does not apply in relation to a public entertainment –

**(a)** the net proceeds of which are devoted to the benefit of a school or to a charitable purpose; or

**(b)** that takes place on any premises wholly or mainly used for the purpose of conducting religious services.

**(6)** An order under this section is a statutory rule within the meaning of the *Rules Publication Act 1953*.

**94. Trading by children in public places**

**(1)** A person must not procure or induce a child who has not attained the age of 11 years –

**(a)** to offer any thing for sale in a public place; or

**(b)** to be in a public place with any thing for the purpose of offering that thing for sale, either in a public place or elsewhere.

Penalty:

Fine not exceeding 15 penalty units or imprisonment for a term not exceeding 3 months.

**(2)** A person must not procure or induce a child who has not attained the age of 14 years to be in a public place between the hours of 9 p.m. of any day and 5 a.m. of the following day for the purpose of offering any thing for sale (either in that place or elsewhere).

Penalty:

Fine not exceeding 15 penalty units or imprisonment for a term not exceeding 3 months.

**(3)** Nothing in this section prohibits the taking part by a child in any sale the net proceeds of which are devoted to the benefit of a school or a charitable purpose.

**95. Offence to harbour or conceal child, &c.**

Knowing that a child is absent without lawful authority or excuse from the place in which the child has been placed or the person in whose custody the child has been placed by or under the authority of an assessment order, interim assessment order, care and protection order or interim care and protection order, a person must not –

**(a)** harbour or conceal, or assist in harbouring or concealing, the child; or

**(b)** prevent, or assist in preventing, the child from returning to that place or custody.

Penalty:

Fine not exceeding 15 penalty units or imprisonment for a term not exceeding 3 months, or both.

**96. Offence to remove, counsel or induce child to be absent without lawful authority, &c.**

If a child has been placed in a place or in the custody of a person by or under the authority of an assessment order, interim assessment order, care and protection order or interim care and protection order, a person must not directly or indirectly –

**(a)** without lawful authority or excuse, withdraw the child from that place or custody; or

**(b)** counsel, induce or assist a child to absent himself or herself from that place or custody.

Penalty:

Fine not exceeding 15 penalty units or imprisonment for a term not exceeding 3 months, or both.

**97. Circumstances in which child may be taken into safe custody**

**(1)** A magistrate may issue a warrant for the purpose of having a child taken into safe custody if the magistrate is satisfied by evidence on oath or by the affidavit of the Secretary, an employee of the Department or a police officer that a child is absent without lawful authority or excuse from the place in which the child has been placed or the person in whose custody the child has been placed by or under the authority of an assessment order, interim assessment order, care and protection order or interim care and protection order.

**(2)** An application for a warrant may be made by an employee of the Department or a police officer.

**(3)** When acting under a warrant, the employee of the Department or police officer –

**(a)** may be accompanied by such police officers and employees of the Department as may be necessary or desirable; and

**(b)** may use such force as is reasonable.

**(4)** A child taken into safe custody under a warrant issued under subsection (1) must be brought before the Court as soon as practicable and, in any event, within one working day after the child was taken into safe custody.

**(5)** A child taken into safe custody under this section must, until the child can be brought before the Court, be placed by the person who executed the warrant –

**(a)** in the place specified in the warrant; or

**(b)** if no place is so specified, in a place determined by the Secretary.

**98. Court's powers in respect of child taken into safe custody**

If a child is brought before the Court under section 97, the Court may –

**(a)** make or vary an assessment order or interim assessment order if the child was absent from –

**(i)** the place in which the child was placed; or

**(ii)** the person in whose custody the child was placed –

by or under the authority of an assessment order or interim assessment order; and

**(b)** make or vary a care and protection order or an interim care and protection order if the child was absent from –

**(i)** the place in which the child was placed; or

**(ii)** the person in whose custody the child was placed –

by or under the authority of a care and protection order or interim care and protection order; and

**(c)** make such other orders as it considers necessary or appropriate.

**99. Offences in relation to visiting child, &c.**

If a child has been placed in a place or in the custody of a person by or under the authority of an assessment order, interim assessment order, care and protection order or interim care and protection order, a person must not without lawful authority or excuse –

**(a)** enter the place in which the child has been placed or is being accommodated; or

**(b)** convey to or cause to be conveyed to the child any article or thing in contravention of the regulations; or

**(c)** lurk or loiter about the place in which the child has been placed or is being accommodated for a purpose specified in paragraph (a) or (b).

Penalty:

Fine not exceeding 15 penalty units or imprisonment for a term not exceeding 3 months, or both.

**100. Hindering a person in execution of duty**

**(1)** A person must not hinder or obstruct the Secretary, a police officer or any other person in the performance or exercise of a function or power under this Act.

Penalty:

Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

**(2)** A police officer may arrest without warrant a person who he or she has reasonable grounds for believing is hindering or obstructing the Secretary, a police officer or another person in the performance or exercise of a function or power under this Act.

**101. Offence to fail to answer question or provide report**

**(1)** A person must not fail to answer a question or provide a report if so required –

**(a)** by an assessment order; or

**(b)** by an interim assessment order; or

**(c)** by the Secretary under the authority of an assessment order or interim assessment order; or

**(d)** otherwise under this Act.

Penalty:

Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 6 months, or both.

**(2)** Despite subsection (1), a person is not required to answer a question or provide a report if to do so would –

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

**(b)** incriminate the person of an offence.

**(3)** A person who in good faith answers a question or provides a report where so required –

**(a)** by an assessment order; or

**(b)** by an interim assessment order; or

**(c)** by the Secretary under the authority of an assessment order or interim assessment order; or

**(d)** otherwise under this Act –

does not incur any liability.

**102. False or misleading statement**

When answering a question or providing information under an order made under this Act, when required to do so by the Secretary under the authority of an order made under this Act or otherwise under this Act, a person must not make a statement or provide information that the person knows or has reasonable grounds for believing is false or misleading in a material particular except where the person also states to the questioner or the person to whom the information is provided that the person knows or believes the answer or information to be false or misleading.

Penalty:

Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

**103. Duty to maintain confidentiality**

**(1)** A person engaged in the administration of this Act who, in the course of that administration, obtains personal information relating to –

**(a)** a child; or

**(b)** a guardian of a child; or

**(c)** a family member of a child; or

**(d)** any person alleged to have abused, neglected or threatened a child –

must not divulge that information.

Penalty:

Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

**(2)** A person who attends a family group conference must not divulge any personal information obtained at the conference relating to the child, his or her guardian or a member of the child's family.

Penalty:

Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

**(3)** This section does not prevent a person –

**(a)** from divulging information if authorised or required to do so by law; or

**(b)** from divulging statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates; or

**(c)** engaged in the administration of this Act from divulging information if it is necessary or appropriate to do so for the proper administration of this Act.

*Division 2 - General provisions*

**104. Power of police officer to enforce order by removing child**

For the purposes of enforcing any order of the Court, an authorised police officer may, after obtaining a warrant, remove from any place a child who is under the guardianship, or in the custody, of any person (including the Secretary) using such force (including breaking into premises) as is reasonably necessary for that purpose.

**105. Officers must produce evidence of authority**

An employee of the Department authorised to exercise powers under this Act must, before exercising those powers in relation to a person, produce evidence of that authority to the person.

Penalty:

Fine not exceeding 10 penalty units.

**106. Declaration of recognised Aboriginal organisation**

**(1)** After consulting with the Aboriginal community or a section of the Aboriginal community, the Minister may declare an organisation to be a recognised Aboriginal organisation or may vary or revoke such a declaration.

**(2)** A declaration, or the variation or revocation of a declaration, is to be made by notice published in the *Gazette*.

**107. Warrants**

Schedule 4 has effect with respect to warrants under this Act.

**108. Evidentiary matters**

A statement in an application to the Court by the Secretary, or a report provided to the Court, under this Act to the effect that –

**(a)** a child is the child of the person specified in the application or report; or

**(b)** the person specified in the application or report is the parent or guardian of a child; or

**(c)** the person specified in the application or report is an employee of the Department, a facilitator or the Secretary –

is evidence of that fact.

**109. Limit on prosecuting**

Proceedings for an offence against this Act may be commenced within 2 years after the occurrence of the act or omission which constitutes the subject of the offence.

**110. Delegation by Minister, Secretary and Commissioner**

**(1)** The Minister may delegate any of his or her functions and powers under this Act, other than this power of delegation.

**(2)** The Secretary may delegate any of his or her functions and powers under this Act, other than this power of delegation.

**(3)** The Commissioner may delegate any of his or her functions and powers under this Act, other than this power of delegation.

**111. Protection from liability**

**(1)** A person engaged in the administration of this Act does not incur any personal liability in respect of any act done, or omitted, in good faith in the performance or exercise, or purported performance or exercise, of a function or power under this Act.

**(2)** A liability that would, but for subsection (1), attach to a person attaches to the Crown.

**112. Regulations**

**(1)** The Governor may make regulations for the purposes of this Act.

**(2)** Without limiting the generality of subsection (1), the regulations may provide for fees payable under this Act.

**(3)** Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

**(4)** The regulations may –

**(a)** provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

**(b)** in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 1 penalty unit for each day during which the offence continues.

**(5)** The regulations may exempt a person from compliance with or the effect of all or any of the regulations.

**(6)** The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.

**(7)** The regulations may adopt –

**(a)** wholly or in part; and

**(b)** with or without modification; and

**(c)** specifically or by reference –

any standards, rules, codes and specifications, whether those standards, rules, codes or specifications are published or issued before or after the commencement of this Act.

**(8)** A reference in subsection (7) to standards, rules, codes or specifications includes a reference to an amendment of those standards, rules, codes or specifications whether the amendment is published or issued before or after the commencement of this Act.

**113. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

**(a)** the administration of this Act is assigned to the Minister for Community and Health Services; and

**(b)** the Department responsible to the Minister for Community and Health Services in relation to the administration of this Act is the Department of Community and Health Services.

**SCHEDULE 1 - Provisions relating to Commissioner and his or her appointment**

Section 78(2)

**1. Term of office**

The Commissioner holds office for such term, not exceeding 3 years, as is specified in the instrument of appointment.

**2. Conditions of appointment**

**(1)** The Commissioner is entitled to be paid the remuneration and allowances determined by the Governor.

**(2)** The Commissioner holds office on such conditions relating to matters, including superannuation, not provided for by this Act as are specified in the instrument of appointment.

**3. Devotion of whole time to duties**

**(1)** Where the holder of an office under an Act is required, by or under any Act, to devote the whole of his or her time to the duties of that office, that requirement does not operate to disqualify the holder from holding that office in conjunction with the office of Commissioner.

**(2)** The Commissioner may hold the office of Commissioner in conjunction with a position or office held under the *Tasmanian State Service Act 1984*.

**4. *Tasmanian State Service Act 1984* inapplicable**

The *Tasmanian State Service Act 1984* does not apply in relation to the Commissioner.

**5. Resignation**

The Commissioner may resign by signed notice given to the Minister.

**6. Removal of Commissioner**

The Governor, on the recommendation of the Minister, may remove the Commissioner from office for any reason that he or she thinks sufficient.

**7. Defect does not invalidate appointment**

An appointment of a person as Commissioner is not invalid merely because of a defect or irregularity in relation to the appointment.

## SCHEDULE 2 - Committees

Section 81(2)

**1. Membership of committees**

**(1)** A committee consists of 5 or more persons as the Commissioner determines.

**(2)** The Commissioner must appoint a member of a committee as chairperson of the committee.

**(3)** In appointing the members of the Children and Young Persons Advisory Council, the Commissioner must have regard to the desirability of having as members of the committee a range of persons –

**(a)** from non-Government and community organisations; and

**(b)** from cultural and community groups; and

**(c)** employed for the purposes of Government Agencies concerned with the health, welfare, education, care, protection, development or legal rights of children; and

**(d)** employed in a private practice that is relevant to the health, welfare, education, care, protection, development or legal rights of children.

**2. Children and Young Persons Consultative Council**

All members of the Children and Young Persons Consultative Council are to be children representing, as far as possible, diverse cultural and ethnic backgrounds.

**3. Conditions of appointment**

**(1)** A member of a committee is entitled to be paid such remuneration and allowances as determined by the Commissioner.

**(2)** A member of a committee holds office for the term, and on the conditions, determined by the Commissioner.

**4. Meetings**

**(1)** Meetings of a committee are to be held in accordance with any written directions given by the Commissioner.

**(2)** A committee may obtain assistance, information and advice from any person.

**(3)** Except as otherwise provided by this Schedule, a committee may regulate the calling of, and the conduct of business at, its meetings.

**5. Disclosure of interests**

**(1)** If –

**(a)** a member of a committee or the spouse of a member of a committee has a direct or indirect interest in a matter being considered, or about to be considered, by the committee; and

**(b)** the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter –

the member, as soon as practicable after the relevant facts come to the member's knowledge, must disclose the nature of the interest to a meeting of the committee.

Penalty:

Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

**(2)** A disclosure under subclause (1) is to be recorded in the minutes of the meeting and, unless the committee otherwise determines, the member who made the disclosure must not –

**(a)** be present during any deliberation of the committee in relation to the matter; or

**(b)** take part in any decision of the committee in relation to the matter.

**(3)** For the purpose of making a determination under subclause (2), the member of the committee to whom the determination relates must not –

**(a)** be present during any deliberation of the committee for the purpose of making the determination; or

**(b)** take part in making the determination.

**(4)** Subclause (1) does not apply in respect of an interest that arises only because the member of a committee also holds an office under the *Tasmanian State Service Act 1984*.

## SCHEDULE 3 - Advisory panels

Section 84(2)

### PART 1 - Preliminary

#### 1. Interpretation

In this Schedule,

***member*** means a person appointed as a member of an advisory panel under clause 2.

### PART 2 - Membership of advisory panels

#### 2. Membership of advisory panels

**(1)** An advisory panel consists of 5 or more persons as the Secretary determines.

**(2)** The members of an advisory panel are appointed by the Secretary.

**(3)** In appointing the members of an advisory panel, the Secretary must –

**(a)** ensure that the advisory panel contains –

**(i)** at least one member who is not otherwise employed for the purposes of a Government Agency or by, or for the purposes of, the Government of another State or the Commonwealth; and

**(ii)** wherever possible, at least one member who is a representative from a recognised Aboriginal organisation or a member of the Aboriginal community; and

**(b)** have regard to the desirability of having as members persons from various occupations, various non-Government and community organisations and various Government Agencies that are concerned with the health, welfare, education, care, protection, development or legal rights of children; and

**(c)** have regard to the desirability of having as members persons with experience or skills in –

**(i)** education; or

**(ii)** child and adolescent health, mental health or development; or

**(iii)** law; or

**(iv)** child care.

**(4)** The Secretary must appoint a member as chairperson of the advisory panel.

#### 3. Term of office

A member holds office for such term, not exceeding 3 years, as is specified in the instrument of appointment.

#### 4. Conditions of appointment

**(1)** A member is entitled to be paid the remuneration and allowances determined by the Secretary.

**(2)** A member holds office on the conditions in relation to matters not provided for by this Act specified in the instrument of appointment.

**5. Devotion of whole time to duties**

**(1)** Where the holder of an office under an Act is required, by or under any Act, to devote the whole of his or her time to the duties of that office, that requirement does not operate to disqualify the holder from holding that office in conjunction with the office of a member.

**(2)** A member may hold the office of member in conjunction with a position or office held under the *Tasmanian State Service Act 1984*.

**6. *Tasmanian State Service Act 1984* inapplicable**

The *Tasmanian State Service Act 1984* does not apply in relation to a member.

**7. Leave of absence**

The Secretary may grant leave of absence to a member on such conditions as the panel considers appropriate.

**8. Resignation**

A member may resign by signed notice given to the Secretary.

**9. Removal of member**

The Secretary may remove a member from office for any just cause or excuse.

**10. Filling of vacancy**

**(1)** A member vacates office if he or she –

**(a)** dies; or

**(b)** resigns; or

**(c)** is removed from office under clause 9.

**(2)** The Secretary may appoint a person to a vacant office of a member for the remainder of the predecessor's term of office if the Secretary is satisfied that the person has the experience, skills and qualifications necessary to be eligible for appointment as a member in that vacant office.

**11. Defect does not invalidate appointment**

An appointment of a person as a member is not invalid merely because of a defect or irregularity in relation to the appointment.

## PART 3 - Meetings of advisory panels

**12. Convening of meetings**

**(1)** Subject to subclause (2), meetings of an advisory panel are to be held at the times and places determined by the chairperson.

**(2)** A chairperson, after giving each member reasonable notice of a meeting, may convene a meeting at any time.

**(3)** If a chairperson is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given, by –

**(a)** 2 or more other members; or

**(b)** a person authorised by the advisory panel to do so.

**(4)** For the purposes of subclauses (2) and (3), what constitutes reasonable notice is to be determined by the advisory panel.

**13. Presiding at meetings**

**(1)** A chairperson must preside at all meetings of the advisory panel at which he or she is present.

**(2)** If the chairperson is not present at a meeting, a member chosen by the members present at the meeting must preside.

**14. Quorum and voting at meetings**

**(1)** At a meeting of an advisory panel a quorum is constituted by a majority of the total number of members appointed to that panel.

**(2)** At a meeting –

**(a)** a question is decided by a majority of votes of the members present and voting; and

**(b)** the member presiding has a deliberative vote.

**(3)** At a meeting where a member is excluded from being present and taking part in the consideration and decision of the advisory panel in relation to a matter, a quorum for the purposes of considering and making a decision in relation to that matter is constituted by the number of members specified as constituting a quorum in subclause (1) less the number of members so excluded.

**15. Conduct of meetings**

**(1)** Subject to this Act and any written direction given by the Secretary, an advisory panel may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.

**(2)** An advisory panel may permit members to participate in a particular meeting or all meetings by –

**(a)** telephone; or

**(b)** television conference; or

**(c)** any other means of communication approved by the panel.

**(3)** A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.

**(4)** Without limiting subclause (1), an advisory panel may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

**16. Resolutions without meetings**

**(1)** If all members sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the advisory panel held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last of the members signs the document.

**(2)** If a resolution is taken to have been passed under subclause (1), each member is to be –

**(a)** advised immediately of the matter; and

**(b)** given a copy of the terms of the resolution.

**(3)** For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

**17. Minutes**

An advisory panel must keep minutes of its proceedings.

**18. Disclosure of interests**

**(1)** If –

**(a)** a member, or the spouse of a member, has a direct or indirect interest in a matter being considered, or about to be considered, by the advisory panel; and

**(b)** the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter –

the member, as soon as practicable after the relevant facts come to the member's knowledge, must disclose the nature of the interest to a meeting of the panel.

Penalty:

Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months, or both.

**(2)** Unless the advisory panel otherwise determines, a member who has made a disclosure under subclause (1) in respect of a matter must not –

**(a)** be present during any deliberation of the panel in relation to the matter; or

**(b)** take part in any decision of the panel in relation to the matter.

**(3)** For the purpose of making a determination under subclause (2), the member to whom the determination relates must not –

**(a)** be present during any deliberation of the advisory panel for the purpose of making the determination; or

**(b)** take part in making the determination.

**(4)** Subclause (1) does not apply in respect of an interest that arises only because the member also holds an office under the *Tasmanian State Service Act 1984*.

**19. Validity of proceedings, &c.**

**(1)** An act or proceeding of an advisory panel is not invalidated or prejudiced by reason only of the fact that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the membership of the panel.

**(2)** All acts and proceedings of an advisory panel are, notwithstanding the subsequent discovery of any defect in the appointment of a member or that any person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member and as if the panel had been fully constituted.

## SCHEDULE 4 - Warrants

Section 107

**1. Application for warrant**

**(1)** An application for a warrant under section 19, 20, 97 or 104 may be made in person or by telephone.

**(2)** An application for a warrant must not be made by telephone unless the applicant is of the opinion that the warrant is urgently required and there is insufficient time to make the application in person.

**(3)** The following provisions apply in relation to an application made by telephone:

**(a)** the applicant must inform the magistrate of his or her name and rank or position in the Department and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant has the authority to make the application;

**(b)** the applicant must inform the magistrate of the grounds on which the issue of the warrant is sought.

**2. Issue of warrant on personal application**

If a police officer or authorised officer applies in person for a warrant, the magistrate may issue a warrant for the purposes of section 19, 20, 97 or 104 if satisfied on information given on oath, personally or by affidavit that there are reasonable grounds for the issue of the warrant.

**3. Issue of warrant on application by telephone**

**(1)** If a police officer or authorised officer applies by telephone for a warrant, the magistrate may issue a warrant for the purposes of section 19, 20, 97 or 104 if it appears to the magistrate from the information provided by the applicant that there are proper grounds for the issue of the warrant.

**(2)** When issuing a warrant under subclause (1), the magistrate –

**(a)** must inform the applicant of the facts that, in the opinion of the magistrate, justify the issue of the warrant; and

**(b)** must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and

**(c)** must record in writing –

**(i)** the name and rank or position in the Department of the applicant; and

**(ii)** the address or description of the premises or place to which the warrant relates; and

**(iii)** the facts that justify, in his or her opinion, the issue of the warrant; and

**(iv)** the date and time the warrant was issued; and

**(d)** must sign that record or a copy of the record and file it, or that copy, and any supporting affidavit with the Court.

**(3)** The warrant is issued when its terms are communicated by the magistrate to the applicant.

**(4)** The applicant for the warrant must –

**(a)** record in writing the name of the magistrate who issued the warrant and the information specified in subclause (2)(c); and

**(b)** as soon as reasonably practicable after the issue of the warrant, provide the magistrate with an affidavit in accordance with his or her undertaking made under subclause (2)(b).

**(5)** The record made by an applicant under subclause (4)(a) is taken to be a warrant.

**4. Protection from liability**

A person who provides an affidavit for the purposes of clause 2 or 3 does not incur any civil liability in doing so if he or she acts in good faith.

**[Second reading presentation speech made in:**

**House of Assembly on 1 OCTOBER 1997**

**Legislative Council on 20 AUGUST 1997]**