

**Version No. 063**  
**Children and Young Persons Act 1989**

**Act No. 56/1989**

Version incorporating amendments as at 15 December 2000

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**Version No. 063**

**Children and Young Persons Act 1989**

**Act No. 56/1989**

Version incorporating amendments as at 15 December 2000

**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1. *Purposes***

The main purposes of this Act are—

- (a) to establish The Children's Court of Victoria as a specialist court dealing with matters relating to children and young persons; and
- (b) to provide for the protection of children and young persons; and
- (c) to make provision in relation to children and young persons who have been charged with, or who have been found guilty of, offences; and
- (d) to amend and consolidate for the purposes of the new Court the law relating to the jurisdiction and procedure of children's courts.

**2. *Commencement***

This Act comes into operation on a day or days to be proclaimed.

**3. *Definitions***

(1) In this Act—

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

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**"Aborigine"** means a person who—

- (a) is descended from an Aborigine or Torres Strait Islander; and
- (b) identifies as an Aborigine or Torres Strait Islander; and
- (c) is accepted as an Aborigine or Torres Strait Islander by an Aboriginal or Torres Strait Island community;

**"access"** means the contact of a child with a person who does not have custody of the child by way of—

- (a) a visit by or to that person, including attendance for a period of time at a place other than the child's usual place of residence; or
- (b) communication with that person by letter, telephone or other means and includes overnight access;

**"accountable undertaking"** means a sentencing order referred to in section 137(1)(c);

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

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

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

**"authorised bail justice"** means a person who—

- (a) is appointed under section 120 of the **Magistrates' Court Act 1989** as a bail justice or is a bail justice by virtue of holding a prescribed office within the meaning of section 121 of that Act; and

S. 3(1) def. of  
 "access"  
 amended by  
 No. 69/1992  
 s. 4(a).

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(b) is authorised by the Attorney-General to perform functions for the purposes of the provision in which the expression is used;

**"bail justice"** means bail justice appointed under section 120 of the **Magistrates' Court Act 1989**;

**"care"**, in relation to a child, means the daily care and control of the child, whether or not involving custody of the child;

**"case plan"** means a statement of any decision concerning a child made by the Secretary after the making of an order by the Family Division in respect of the child;

S. 3(1) def. of "case plan" amended by No. 46/1998 s. 7(Sch. 1).

**"case planning process"** means the process of decision-making by the Secretary concerning a child, beginning when a protective intervener receives a notification about the child under section 64(1) or 64(1A) and including—

S. 3(1) def. of "case planning process" amended by Nos 10/1993 s. 6(a), 46/1998 s. 7(Sch. 1).

- (a) decisions made in the course of investigations conducted after a notification under section 64(1) or 64(1A) is received; and
- (b) decisions made in the course of preparing a protection report or disposition report; and
- (c) decisions made in assessing whether or not a protection application should be made; and
- (d) decisions relating to the placement or supervision of the child, whether made before or after a protection application or protection order is made; and

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- (e) the holding of meetings for the purpose of formulating a case plan;

**"Chief Magistrate"** means the Chief Magistrate appointed under section 7(2) of the **Magistrates' Court Act 1989** and includes an Acting Chief Magistrate appointed under section 8 of that Act;

**"child"** means—

- (a) in the case of a person who is alleged to have committed an offence, a person who at the time of the alleged commission of the offence was under the age of 17 years but of or above the age of 10 years but does not include any person who is of or above the age of 18 years at the time of being brought before the Court; and
- (b) in any other case, a person who is under the age of 17 years or, if a protection order continues in force in respect of him or her, a person who is under the age of 18 years;

**"Children's Court"** means The Children's Court of Victoria;

**"community service"** means—

- (a) a community service established under section 57; or
- (b) a community service approved under section 58(1);

**"Court"** means The Children's Court of Victoria;

**"court liaison officer"** means a court liaison officer appointed under section 36(2);

S. 3(1) def. of  
 "child"  
 amended by  
 No. 69/1992  
 s. 4(b).



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**"court official"** means—

- (a) the principal registrar of the Court; or
- (b) a registrar or deputy registrar of the Court; or
- (c) a court liaison officer; or
- (d) any person employed in any of the offices of the Court;

**"custody"** means custody as defined in section 5;

**"custody to Secretary order"** means an order referred to in section 85(1)(a)(v);

S. 3(1) def. of "custody to Director-General order" amended as "custody to Secretary order" by No. 46/1998 s. 7(Sch. 1).

**"custody to third party order"** means an order referred to in section 85(1)(a)(iii);

**Department"** means the Department of Human Services;

S. 3(1) def. of "Department" amended by Nos 69/1992 s. 4(c), 19/1994 s. 38(1)(a)(i)(ii), substituted by No. 46/1998 s. 7(Sch. 1). S. 3(1) def. of "Director-General" substituted by No. 69/1992 s. 4(d), repealed by No. 46/1998 s. 7(Sch. 1).

\* \* \* \* \*

**"disposition report"** means a report referred to in section 48;

**"Division"** means Division of the Court;

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S. 3(1) def. of  
 "employee"  
 inserted by  
 No. 69/1992  
 s. 31(1)(a),  
 amended by  
 No. 10/1993  
 s. 6(b)(i),  
 substituted by  
 No. 46/1998  
 s. 7(Sch. 1).

**"employee"** means a person employed under Part 3 of the **Public Sector Management and Employment Act 1998** in the Department;

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

**"fund"** means the State Guardianship Fund established under section 125(1);

**"guardianship"** means guardianship as defined in section 4;

**"guardianship to Secretary order"** means an order referred to in section 85(1)(a)(vi);

S. 3(1) def. of  
 "guardianship  
 to Director-  
 General  
 order"  
 amended as  
 "guardianship  
 to Secretary  
 order" by  
 No. 46/1998  
 s. 7(Sch. 1).

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

**"interim accommodation order"** means an order under section 73;

**"interim protection order"** means an order under section 85(1)(b);

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**"interpreter"** means—

- (a) an interpreter accredited with the National Accreditation Authority for Translators and Interpreters Limited; or
- (b) a competent interpreter;

**"irreconcilable difference application"** means an application under section 71;

*	*	*	*	*	S. 3(1) def. of "legal practitioner" repealed by No. 35/1996 s. 453(Sch. 1 item 9.1(a)).
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**"legal representation"** means representation by a legal practitioner;

S. 3(1) def. of "legal representation" amended by No. 35/1996 s. 453(Sch. 1 item 9.1(b)).

**"magistrate"** means a magistrate for the Court;

*	*	*	*	*	S. 3(1) def. of "officer" amended by No. 19/1994 s. 38(1)(b), repealed by No. 46/1998 s. 7(Sch. 1).
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**"order"**, in relation to the Criminal Division, includes judgment and conviction;

**"parent"**, in relation to a child, includes—

- (a) the father and mother of the child; and
- (b) the spouse of the father or mother of the child; and
- (c) a person who is living with the father or mother of the child as if she were his

S. 3(1) def. of "parent" amended by No. 43/1996 s. 65(Sch. item 3.1).

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wife or he were her husband (as the case requires) although not married to him or her; and

- (d) a person who has custody of the child; and
- (e) a person whose name is entered as the father of the child in the register of births in the Register maintained by the Registrar of Births, Deaths and Marriages under Part 7 of the **Births, Deaths and Marriages Registration Act 1996**; and
- (f) a person who acknowledges that he is the father of the child by an instrument of the kind described in section 8(2) of the **Status of Children Act 1974**; and
- (g) a person in respect of whom a court has made a declaration of, or a finding or order regarding, the paternity of the child;

**"parole order"** means an order under Subdivision 4 or 5 of Division 10 of Part 4;

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

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

**"permanent care order"** means an order under section 112;

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

**"pre-sentence report"** means a report referred to in Subdivision 4 of Division 8 of Part 2;

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

**"probation officer"** includes the Secretary and every honorary probation officer;

S. 3(1) def. of "probation officer" amended by No. 46/1998 s. 7(Sch. 1).

**"proceeding"** means any matter in the Court, including a committal proceeding;

**"process"** includes witness summons, charge-sheet, summons to answer to a charge, warrant to arrest, remand warrant, search warrant, warrant to seize property, warrant to imprison, warrant to detain in a youth residential centre or a youth training centre, warrant of delivery and any process by which a proceeding in the Court is commenced;

**"proper venue"**—

S. 3(1) def. of "proper venue" amended by No. 93/1990 s. 24(a).

- (a) in relation to a proceeding in the Family Division, means the venue of the Court that is nearest to—
  - (i) the place of residence of the child; or
  - (ii) the place where the subject-matter of the application arose; and
- (b) in relation to a proceeding in the Criminal Division, means the venue of the Court that is nearest to—
  - (i) the place of residence of the child; or
  - (ii) the place where the offence is alleged to have been committed;

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

**"protection order"** means an order referred to in section 85(1)(a);

**"protection report"** means a report referred to in Subdivision 2 of Division 8 of Part 2;

**"protective intervener"** means a person referred to in section 64(2);

**"publish"** means—

- (a) insert in a newspaper or other periodical publication; or
- (b) disseminate by broadcast, telecast or cinematograph; or
- (c) otherwise disseminate to the public by any means;

**"register"** means the register kept under section 28(1);

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

**"remand centre"** means a remand centre established under section 249(a);

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

**"safe custody"** means placement in accordance with section 69(7);

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

- (a) to break, enter and search any place where the person named or described in the warrant is suspected to be; and
- (b) to take into safe custody or arrest the person and—
  - (i) bring the person before a bail justice or the Court as soon as practicable to be dealt with according to law; or
  - (ii) release the person on an interim accommodation order in accordance with the endorsement on the warrant;

**"Secretary"** means the Secretary to the Department;

S. 3(1) def. of "Secretary" inserted by No. 69/1992 s. 4(e).

**"secure welfare service"** means a community service that has lock-up facilities;

**"sentencing order"** means any order made by the Criminal Division following a finding of guilt and includes—

S. 3(1) def. of "sentencing order" amended by No. 19/1994 s. 4.

- (a) any order made under Division 7 of Part 4 (other than an order granting bail made under section 194(1)); and
- (b) the recording of a conviction;

**"subordinate instrument"** has the same meaning as in the **Interpretation of Legislation Act 1984**;

**"supervised custody order"** means an order referred to in section 85(1)(a)(iv);

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**"supervision order"** means an order referred to in section 85(1)(a)(ii);

**"victim"**, in relation to an offence, means a person who, or body that, has suffered injury, loss or damage as a direct result of the offence, whether or not that injury, loss or damage was reasonably foreseeable by the child found guilty of the offence;

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

**"youth attendance order"** means an order made under section 170(1);

**"Youth Parole Board"** means the Youth Parole Board established by section 215(1);

**"youth parole officer"** includes an honorary youth parole officer;

**"Youth Residential Board"** means the Youth Residential Board established by section 204(1);

**"youth residential centre"** means a youth residential centre established under section 249(b);

**"youth residential centre order"** means an order referred to in section 137(1)(i);

**"youth supervision order"** means an order referred to in section 137(1)(g);

**"youth supervision unit"** means—

- (a) a youth supervision unit established under section 249(d); or
- (b) a youth supervision unit approved under section 250(1);



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**"youth training centre"** means a youth training centre established under section 249(c);

**"youth training centre order"** means an order referred to in section 137(1)(j).

- (2) If under the **Public Sector Management and Employment Act 1998** the name of the Department is changed, the reference in the definition of "Department" in sub-section (1) to the "Department of Human Services" is from the date when the name is changed to be taken to be a reference to the Department by its new name.
- (3) If by or under this Act a person is required or permitted to serve a document, the person may serve the document by causing it to be served by another person.
- (4) In this Act a reference to an Act of the Commonwealth is, if that Act has been re-enacted or amended, a reference to that Act as re-enacted or amended and in force for the time being.
- (5) Except for the purposes of appeals this Act applies, with any necessary modifications, in relation to an order made by the Supreme Court or the County Court of a type that could be made by the Children's Court under this Act, whether the order was made on appeal or under section 276 or otherwise, as if it were an order made by the Children's Court.

S. 3(2)  
amended by  
Nos 19/1994  
s. 38(2)(a)(b),  
46/1998  
s. 7(Sch. 1).

S. 3(5)  
inserted by  
No. 19/1994  
s. 5.

#### 4. *Guardianship*

A person (including the Secretary) who has, or under this Act is granted, guardianship of a child, has responsibility for the long-term welfare of the child and has, in relation to the child, all the powers, rights and duties that are, apart from this Act, vested by law or custom in the guardian of a child, other than—

S. 4  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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- (a) the right to have the daily care and control of the child; and
- (b) the right and responsibility to make decisions concerning the daily care and control of the child.

**5. Custody**

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

- (a) the right to have the daily care and control of the child; and
- (b) the right and responsibility to make decisions concerning the daily care and control of the child.

**6. Aboriginal agency**

- (1) The Governor in Council may, by Order published in the Government Gazette, declare an organisation to be an Aboriginal agency.
- (2) An organisation may only be declared to be an Aboriginal agency if the Secretary is satisfied—
  - (a) that the organisation is managed by Aborigines; and
  - (b) that its activities are carried on for the benefit of Aborigines; and
  - (c) that it has experience in child and family welfare matters.
- (3) An Order in Council made under sub-section (1) with respect to an organisation must state that the Secretary is satisfied as to the matters referred to in sub-section (2).

S. 5  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 6(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 6(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**7. Delegation**

- (1) The Secretary may, by instrument, delegate to any employee or class of employees any function or power of the Secretary under this Act or the regulations, except the power to make authorisations under sub-section (2) or section 82(3)(c) or 271(3) or (4), the power to approve under section 256C(3) a period of isolation of more than 24 hours and this power of delegation.
- (1A) The Secretary may, by instrument, delegate to an executive within the meaning of the **Public Sector Management and Employment Act 1998** the power to make authorisations under sub-section (2) or section 271(3) or (4).
- (2) The Secretary may authorise the person in charge of a community service approved under section 58(1) or any person for the time being acting in or performing the duties of that person to—
  - (a) exercise any power on his or her behalf; or
  - (b) perform any function on his or her behalf—

conferred on the Secretary by or under section 93, 98 (to the extent that that section applies to section 93), 112(2) (to the extent that it applies to the approval of persons as suitable to have custody and guardianship of a child) or 114(1).

S. 7 amended by Nos 93/1990 s. 4(a), 69/1992 ss 30(2), 31(2), 10/1993 s. 6(c). S. 7(1) amended by Nos 19/1994 s. 6(a)(i)(ii), 46/1998 s. 7(Sch. 1).

S. 7(1A) inserted by No. 19/1994 s. 6(b), amended by Nos 46/1998 s. 7(Sch. 1), 12/1999 s. 4(Sch. 2 item 3.1). S. 7(2) inserted by No. 93/1990 s. 4(b), amended by Nos 19/1994 s. 6(c)(i)(ii), 46/1998 s. 7(Sch. 1), 74/2000 s. 3(Sch. 1 item 18.1).

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s. 7(3)  
inserted by  
No. 93/1990  
s. 4(b),  
amended by  
No. 19/1994  
s. 6(d).

- (3) An authorisation under sub-section (2) must be made by instrument and with the agreement of the person in charge of the community service, or of the person acting in or performing the duties of that person, at the time the authorisation is made.
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**PART 2—THE CHILDREN'S COURT OF VICTORIA**

**Division 1—Establishment**

**8. *Establishment of the Children's Court***

- (1) There shall be a court called "The Children's Court of Victoria".
- (2) The Court shall consist of a President, the magistrates and the registrars of the Court.
- (3) The Court has the following Divisions—
  - (a) the Family Division;
  - (b) the Criminal Division.
- (4) Every proceeding in the Court must be commenced, heard and determined in one of those Divisions.
- (5) The Court must not sit as both Divisions at the same time in the same room.
- (6) Each Division has such of the powers of the Court as are necessary to enable it to exercise its jurisdiction.
- (7) The Court, in either Division, shall be constituted by the President or a magistrate except in the case of any proceeding for which provision is made by any Act for the Court to be constituted by a registrar.

S. 8(2)  
amended by  
No. 36/2000  
s. 4(1).

S. 8(7)  
amended by  
No. 36/2000  
s. 4(2).

**9. *Where and when Court to be held***

- (1) The Court is to be held—
  - (a) at the places at which the Magistrates' Court is to be held under section 5(1) of the **Magistrates' Court Act 1989**; and

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s. 10

S. 9(1)(b)  
substituted by  
No. 44/1996  
s. 12(1),  
amended by  
No. 36/2000  
s. 4(3).

(b) on such days and at such times as the President, after consulting the Chief Magistrate, from time to time appoints by notice published in the Government Gazette.

S. 9(1A)  
inserted by  
No. 44/1996  
s. 12(2),  
amended by  
No. 36/2000  
s. 4(3).

(1A) The President, after consulting the Chief Magistrate, may from time to time by notice published in the Government Gazette alter the days and times appointed for the holding of the Court at any place.

(2) The Court must not be held at any time in the same building as that in which the Magistrates' Court is at the time sitting unless the Governor in Council, by Order published in the Government Gazette, otherwise directs with respect to any particular building.

(3) The Court may, subject to sub-section (2), sit and act at any time and place.

S. 10  
amended by  
Nos 44/1996  
s. 13, 36/2000  
s. 4(3).

**10. *Magistrate or acting magistrate to be in attendance***

The President, after consulting the Chief Magistrate, must make arrangements for a magistrate or an acting magistrate to attend on the day and at the time and place at which the Court is to be held.

**11. *Assignment of magistrates or acting magistrates***

(1) The President, after consulting the Chief Magistrate, may assign any person who is appointed as a magistrate under section 7 of the **Magistrates' Court Act 1989** or as an acting magistrate under section 9 of that Act to be a magistrate for the Court, whether exclusively or in addition to any other duties.

S. 11(1)  
amended by  
Nos 44/1996  
s. 14(1),  
36/2000  
s. 4(3).

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s. 12
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| <p>(2) In assigning a magistrate or acting magistrate to be a magistrate for the Court, the President must have regard to the experience of the magistrate or acting magistrate in matters relating to child welfare.</p>  | <p>S. 11(2)<br/>amended by<br/>Nos 44/1996<br/>s. 14(2)(a)(b),<br/>36/2000<br/>s. 4(4).<br/>S. 11(3)<br/>amended by<br/>Nos 44/1996<br/>s. 14(3),<br/>36/2000<br/>s. 4(3).</p> |
| <p>(3) The President, after consulting the Chief Magistrate, may at any time revoke the assignment of a magistrate or acting magistrate.</p>   | <p>S. 11(3)<br/>amended by<br/>Nos 44/1996<br/>s. 14(3),<br/>36/2000<br/>s. 4(3).</p>  |
| <p>(4) Unless his or her assignment is revoked under sub-section (3), a magistrate or acting magistrate who is assigned to be a magistrate for the Court continues to be a magistrate for the Court for so long as he or she holds the office of magistrate or acting magistrate under the <b>Magistrates' Court Act 1989</b>.</p> | <p>S. 11(4)<br/>amended by<br/>No. 44/1996<br/>s. 14(4).</p>   |
| <p>(5) A magistrate or acting magistrate who is for any period suspended from office under section 11 of the <b>Magistrates' Court Act 1989</b> is, for that period and by virtue of that suspension, also suspended from the office of magistrate for the Court.</p>  | <p>S. 11(5)<br/>amended by<br/>No. 44/1996<br/>s. 14(5).</p>   |
| <p><b>12. President</b></p>  |  |
| <p>(1) There is to be an office of President of the Children's Court.</p>  | <p>S. 12<br/>substituted by<br/>No. 36/2000<br/>s. 5.</p>  |
| <p>(2) The President must be a judge of the County Court who is appointed by the Governor in Council on the recommendation of the Attorney-General made after consultation with the Chief Judge.</p>   |  |
| <p>(3) Subject to this Act, the President holds office—</p> <p style="margin-left: 20px;">(a) for the term (not exceeding 5 years) that is specified in his or her instrument of appointment, and is eligible for re-appointment; and</p>  |  |
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- (b) on any other terms and conditions that are specified in his or her instrument of appointment.
- (4) The appointment of a judge of the County Court as President does not affect his or her tenure of office or status as a judge nor the payment of his or her salary or allowances as a judge nor any other rights or privileges that he or she has as a judge.
- (5) Nothing in sub-section (4) limits the power of the Governor in Council to specify in the instrument of appointment of the President terms and conditions of appointment (other than as to salary or allowances), whether or not inconsistent with rights or privileges that he or she has as a judge.
- (6) Service in the office of President must be taken for all purposes to be service in the office of judge of the County Court.
- (7) Nothing in this Act prevents a judge of the County Court appointed as President from constituting the County Court for the purpose of the exercise by the County Court of any of its functions.
- (8) The President may exercise any power conferred on a magistrate by or under this or any other Act.
- (9) The **Public Sector Management and Employment Act 1998** does not apply to the President in respect of the office of President.
- (10) The office of President becomes vacant if he or she ceases to hold the office of judge of the County Court.



**12A. Acting President**

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|   | <p><b>S. 12A</b><br/>inserted by<br/>No. 43/1998<br/>s. 4.</p>  |
| <p>(1) The Governor in Council may appoint a magistrate nominated by the President to be Acting President during any period when—</p> <p style="padding-left: 20px;">(a) there is a vacancy in the office of President;<br/>or</p> <p style="padding-left: 20px;">(b) the President is absent on leave or for any reason is temporarily unable to perform the duties of the office of President.</p> <p>(2) The Chief Magistrate or a magistrate nominated by the President shall act as President if there is—</p> <p style="padding-left: 20px;">(a) a vacancy in the office of the President; or</p> <p style="padding-left: 20px;">(b) a period when the President is absent on leave or for any reason is temporarily unable to perform the duties of the office of President—</p> <p style="padding-left: 40px;">and the Governor in Council has not appointed an Acting President under sub-section (1).</p> <p>(3) The Chief Magistrate or a magistrate nominated by the President shall not act under sub-section (2) as President for a term exceeding 3 months.</p> <p>(4) A magistrate who is appointed as Acting President under sub-section (1) or who acts as President under sub-section (2) has, during the period of the appointment or the period of acting as President, the same powers and duties as the President.</p> | <p><b>S. 12A(1)</b><br/>amended by<br/>No. 36/2000<br/>s. 6(1)(a)(b).</p> <p><b>S. 12A(1)(a)</b><br/>amended by<br/>No. 36/2000<br/>s. 6(1)(c).</p> <p><b>S. 12A(1)(b)</b><br/>amended by<br/>No. 36/2000<br/>s. 6(1)(d).</p> <p><b>S. 12A(2)</b><br/>amended by<br/>No. 36/2000<br/>s. 6(2)(a)(b).</p> <p><b>S. 12A(2)(a)</b><br/>amended by<br/>No. 36/2000<br/>s. 6(2)(b).</p> <p><b>S. 12A(2)(b)</b><br/>amended by<br/>No. 36/2000<br/>s. 6(2)(b).</p> <p><b>S. 12A(3)</b><br/>amended by<br/>No. 36/2000<br/>s. 6(3)(a)(b).</p> <p><b>S. 12A(4)</b><br/>amended by<br/>No. 36/2000<br/>s. 6(4).</p> |

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s. 13

S. 12A(5)  
inserted by  
No. 36/2000  
s. 6(5).

S. 13  
amended by  
No. 44/1996  
s. 15,  
substituted by  
No. 43/1998  
s. 5.

S. 13(1)  
amended by  
No. 36/2000  
s. 7(1).

S. 13(2)  
amended by  
No. 36/2000  
s. 7(1).

S. 13(3)  
inserted by  
No. 36/2000  
s. 7(2).

S. 13A  
inserted by  
No. 43/1998  
s. 5, amended  
by No.  
36/2000  
s. 7(3).

S. 13B  
inserted by  
No. 36/2000  
s. 8.

S. 14  
amended by  
No. 44/1996  
s. 16.

- (5) Service in the office of Acting President must not be taken to be service in the office of judge of the County Court.

**13. *Assignment of duties***

- (1) The President may assign duties to a magistrate for the Court.
- (2) A magistrate for the Court must carry out the duties that are from time to time assigned to him or her by the President.
- (3) Nothing in section 13 of the **Magistrates' Court Act 1989** gives the Chief Magistrate any power to assign duties to a magistrate for the Court in respect of his or her office as a magistrate for the Court.

**13A. *Delegation by the President***

The President, by instrument, may delegate to any magistrate for the Court any of his or her powers under sections 10 and 13.

**13B. *Protection of President***

The President has in the performance of his or her duties as President the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

**14. *Protection of magistrates or acting magistrates***

A magistrate or acting magistrate has in the performance of his or her duties as a magistrate for the Court the same protection and immunity as

a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

**14A. *Annual report***

S. 14A  
inserted by  
No. 36/2000  
s. 9.

As soon as practicable in each year but not later than 31 October, the President must submit to the Governor a report containing—

- (a) a review of the operation of the Court during the 12 months ending on the preceding 30 June; and
- (b) such other matters as are prescribed by regulations made under this Act.

**Division 2—Jurisdiction**

**15. *Jurisdiction of Family Division***

S. 15  
amended by  
No. 17/1990  
s. 5(4)(a)(b).

- (1) The Family Division has jurisdiction to hear and determine an application for—
  - (a) an interim accommodation order; or
  - (b) a finding that a child is in need of protection; or
  - (c) a finding that there is a substantial and presently irreconcilable difference between the person who has custody of a child and the child to such an extent that the care and control of the child are likely to be seriously disrupted; or
  - (d) a permanent care order; or
  - (e) the variation of an interim accommodation order; or
  - (f) the variation or revocation of a supervision order, a custody to third party order, a supervised custody order, a custody to Secretary order or a permanent care order; or

S. 15(1)(f)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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S. 15(1)(g)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(g) the extension of a custody to Secretary order or a guardianship to Secretary order; or

S. 15(1)(h)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(h) the revocation of a guardianship to Secretary order; or

(i) an order in respect of a failure to comply with an interim accommodation order, an interim protection order, a supervision order or a supervised custody order; or

(j) an order regarding the exercise of any right, power or duty vested in a person as joint custodian or guardian of a child.

S. 15(2)  
inserted by  
No. 17/1990  
s. 5(4)(b).

(2) The jurisdiction given by sub-section (1) is additional to the jurisdiction given to the Family Division by the **Crimes (Family Violence) Act 1987**.

**16. Jurisdiction of Criminal Division**

(1) The Criminal Division has jurisdiction—

(a) to hear and determine all charges against children for summary offences; and

(b) subject to section 134, to hear and determine summarily all charges against children for indictable offences, other than murder, attempted murder, manslaughter, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death); and

S. 16(1)(b)  
amended by  
No. 48/1997  
s. 50(1).

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- (c) to conduct committal proceedings into all charges against children for indictable offences and either—
- (i) direct the defendant to be tried and order that the defendant be remanded in custody until trial or grant bail; or
  - (ii) discharge the defendant; and
- (d) to grant or refuse bail to, or extend, vary or revoke the bail of, a child who is charged with an offence; and
- (e) subject to Part 4, to deal with a breach of a sentencing order or variation of a sentencing order.
- (2) The Criminal Division has the jurisdiction referred to in sub-section (1) despite anything to the contrary in any other Act.
- (3) The jurisdiction given by sub-section (1) is additional to any other jurisdiction given to the Criminal Division by or under this or any other Act.
- (4) If before or during the hearing of a charge for an offence it appears to the Children's Court that the defendant is not a child, the Court must discontinue the proceeding and order that it be transferred to the Magistrates' Court and in the meantime it may—
- (a) permit the defendant to go at large; or
  - (b) grant the defendant bail conditioned for the appearance of the defendant before the Magistrates' Court at the time and place at which the proceeding is to be heard; or
  - (c) remand the defendant in prison or a police gaol or in accordance with section 49 of the **Magistrates' Court Act 1989** until the
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proceeding is heard by the Magistrates'  
Court.

**17. *Court has exclusive jurisdiction***

- (1) Despite anything to the contrary in any Act, the jurisdiction of the Court in relation to any matter over which it has jurisdiction is exclusive.
- (2) The exercise by a court of jurisdiction in relation to any matter in contravention of sub-section (1) does not have the effect that any order made by that court in relation to that matter is invalid.

**Division 3—Procedure**

**18. *Procedural guidelines to be followed by Court***

- (1) As far as practicable the Court must in any proceeding—
    - (a) take steps to ensure that the proceeding is comprehensible to—
      - (i) the child; and
      - (ii) the child's parents; and
      - (iii) all other parties who have a direct interest in the proceeding; and
    - (b) seek to satisfy itself that the child understands the nature and implications of the proceeding and of any order made in the proceeding; and
    - (c) allow—
      - (i) the child; and
      - (ii) in the case of a proceeding in the Family Division, the child's parents and all other parties who have a direct interest in the proceeding—
- to participate fully in the proceeding; and
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- (d) consider any wishes expressed by the child;  
and
  - (e) respect the cultural identity and needs of—
    - (i) the child; and
    - (ii) the child's parents and other members  
of the child's family; and
  - (f) minimise the stigma to the child and his or  
her family.
- (2) If at any time there are proceedings in both  
Divisions of the Court relating to the same child,  
the Court must, unless it otherwise orders, hear  
and determine the proceeding in the Family  
Division first.
- (3) If the Court makes an order under sub-section (2),  
it must state orally the reasons for the order.
- (4) An order made by the Court in a proceeding is not  
invalidated by, nor liable to be challenged,  
appealed against, reviewed, quashed or called in  
question in any court on account of the failure of  
the Court to comply with sub-section (3) in the  
proceeding.

**19. *Proceedings to be heard in open court***

- (1) Proceedings in the Court are, subject to sub-  
section (2), to be conducted in open court.
- (2) The Court may, on the application of a party or of  
any other person who has a direct interest in the  
proceeding or without any such application—
  - (a) order that the whole or any part of a  
proceeding be heard in closed court; or
  - (b) order that only persons or classes of persons  
specified by it may be present during the  
whole or any part of a proceeding.

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- (3) Any party to the proceeding and any other interested person has standing to support or oppose an application under sub-section (2).
- (4) If an order has been made under this section, the Court must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the Court is being held.
- (5) An order posted under this section must not contain any particulars likely to lead to the identification of the child who is a party to the proceeding.
- (6) A person must not contravene an order made and posted under this section.

Penalty applying to this sub-section:

- (a) In the case of a person of or above the age of 17 years, 25 penalty units or committal for a term of not more than six months to prison; or
- (b) In the case of a child of or above the age of 15 years, 25 penalty units or detention for a period of not more than six months in a youth training centre; or
- (c) In the case of a child under the age of 15 years, 12 penalty units or detention for a period of not more than three months in a youth residential centre.

**20. *Legal representation***

- (1) If at any stage—
  - (a) in a proceeding in the Family Division, a child is not separately legally represented; or
  - (b) in a proceeding in the Criminal Division, a child is not legally represented; or



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- (c) in a proceeding in the Family Division, a child's parents are not legally represented; or
- (d) in a proceeding in the Family Division for the making, variation or revocation of a permanent care order, an applicant for the order or a person named in the application as suitable to have custody and guardianship of a child or a person who was granted custody and guardianship of a child under the order is not legally represented—

S. 20(1)(d)  
 amended by  
 No. 69/1992  
 s. 14(1).

the Court may adjourn the hearing of the proceeding to enable the child or the child's parents or the person referred to in paragraph (d) (as the case requires) to obtain legal representation.

- (2) If a child who, in the opinion of the Court, is mature enough to give instructions is not, subject to section 83, separately legally represented in a proceeding referred to in section 21(1) or a child is not legally represented in a proceeding referred to in section 21(2), the Court must adjourn the hearing of the proceeding to enable the child to obtain legal representation and, subject to sub-section (3), must not resume the hearing unless the child is legally represented.
- (3) The Court may resume a hearing that was adjourned by it in accordance with sub-section (2) even though the child is not legally represented if satisfied that the child has had a reasonable opportunity to obtain legal representation and has failed to do so or, in the case of a proceeding in the Family Division, that the child is otherwise represented pursuant to leave granted under sub-section (7).

S. 20(2)  
 amended by  
 No. 69/1992  
 s. 5(1).

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S. 20(4)  
amended by  
No. 35/1996  
s. 453(Sch. 1  
item 9.2(a)).

- (4) With the leave of the Court, more than one child in the same proceeding may be represented by the same legal practitioner.
- (5) The Court may only grant leave under sub-section (4) if satisfied that no conflict of interest will arise.
- (6) If after having granted leave under sub-section (4) the Court is satisfied in the course of the proceeding that a conflict of interest has arisen, the Court may withdraw the leave previously granted.
- (7) With the leave of the Court, a child may be represented in a proceeding in the Family Division by a person who is not—
  - (a) a legal practitioner; or
  - (b) a parent of the child.
- (8) A person referred to in sub-section (7) who is granted leave to represent a child in a proceeding in the Family Division must act in accordance with any instructions given or wishes expressed by the child so far as it is practicable to do so having regard to the maturity of the child.
- (9) A legal practitioner representing a child in any proceeding in the Court must act in accordance with any instructions given or wishes expressed by the child so far as it is practicable to do so having regard to the maturity of the child.
- (10) Any process served on a child or the parent of a child requiring the child or parent (as the case requires) to attend the Court in a proceeding referred to in section 21(1) or 21(2) must contain or be accompanied by a notice—

S. 20(9)  
amended by  
No. 35/1996  
s. 453(Sch. 1  
item 9.2(b)).

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- (a) setting out the circumstances in which a child is required to be legally represented; and
- (b) stating the desirability of obtaining legal representation; and
- (c) explaining how legal representation may be obtained.

**21. *Proceedings in which child is required to be legally represented***

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| <p>(1) Subject to section 20, a child must be legally represented in the following proceedings in the Family Division—</p> <ul style="list-style-type: none"> <li>(a) application for an interim accommodation order;</li> <li>(b) protection application;</li> <li>(c) irreconcilable difference application;</li> <li>(d) application for a permanent care order;</li> <li>(e) application for the variation of an interim accommodation order;</li> <li>(f) application for the variation or revocation of a supervision order, a custody to third party order, a supervised custody order, a custody to Secretary order or a permanent care order;</li> <li>(g) application in respect of a failure to comply with a supervision order, a supervised custody order, an interim protection order or an interim accommodation order;</li> <li>(h) application for the extension of a custody to Secretary order or a guardianship to Secretary order;</li> <li>(i) application for the revocation of a guardianship to Secretary order;</li> </ul> | <p>S. 21(1) amended by No. 69/1992 s. 5(2).</p>         |
| <p>(f) application for the variation or revocation of a supervision order, a custody to third party order, a supervised custody order, a custody to Secretary order or a permanent care order;</p>   | <p>S. 21(1)(f) amended by No. 46/1998 s. 7(Sch. 1).</p> |
| <p>(h) application for the extension of a custody to Secretary order or a guardianship to Secretary order;</p>   | <p>S. 21(1)(h) amended by No. 46/1998 s. 7(Sch. 1).</p> |
| <p>(i) application for the revocation of a guardianship to Secretary order;</p>  | <p>S. 21(1)(i) amended by No. 46/1998 s. 7(Sch. 1).</p> |

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(j) application for an order regarding the exercise of any right, power or duty vested in a person as joint custodian or guardian of a child.

S. 21(2)  
amended by  
No. 69/1992  
s. 5(2).

S. 21(2)(a)  
amended by  
No. 69/1992  
s. 5(3).

- (2) Subject to section 20, a child must be legally represented in the following proceedings in the Criminal Division—
- (a) proceeding with respect to bail if the informant or prosecutor or any person appearing on behalf of the Crown intends to oppose the grant of bail;
  - (b) proceeding under section 24 of the **Bail Act 1977**;
  - (c) hearing of a charge for an offence punishable, in the case of an adult, by imprisonment;
  - (d) review of a monetary penalty imposed by the Court in respect of an offence punishable, in the case of an adult, by imprisonment;
  - (e) application in respect of a breach of an accountable undertaking, bond, probation order, youth supervision order or youth attendance order imposed by the Court in respect of an offence punishable, in the case of an adult, by imprisonment.

**22. *Interpreter***

If the Court is satisfied that a child, a parent of a child or any other party to a proceeding has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding, or participating in, the

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proceeding, it must not hear and determine the proceeding without an interpreter interpreting it.

**23. *Explanation of and reasons for orders***

- (1) If the Court makes an order, it must explain the meaning and effect of the order as plainly and simply as possible and in a way which it considers the child, the child's parents and the other parties to the proceeding will understand.
- (2) An explanation under sub-section (1) must be given through an interpreter to any person referred to in that sub-section whom the Court considers has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding the explanation given by the Court.
- (3) Immediately after the Court makes an order to which this sub-section applies, the appropriate registrar must provide a written copy of the order in the prescribed form to—
  - (a) the child; and
  - (b) if the order is made by the Family Division—
    - (i) unless the Court otherwise orders, the child's parents; and
    - (ii) if the Court so orders, any other person with whom the child is living; and
  - (c) if the order is made by the Criminal Division—
    - (i) unless the Court otherwise orders, the child's parents if the child is under the age of 15 years; or

S. 23(3)  
 amended by  
 No. 69/1992  
 s. 14(2).

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S. 23(3)(d)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 23(3)(e)  
inserted by  
No. 69/1992  
s. 14(2).

S. 23(4)(d)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 23(4)(e)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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- (ii) if the Court so orders, the child's parents if the child is of or above the age of 15 years; and
- (d) the Secretary, in appropriate cases; and
- (e) in the case of a permanent care order, the person who has, or persons who have, been granted custody and guardianship under the order.
- (4) Sub-section (3) applies to the following orders—
- (a) an interim accommodation order;
- (b) an interim protection order;
- (c) a protection order;
- (d) an order varying a supervision order, a custody to third party order, a supervised custody order or a custody to Secretary order;
- (e) an order extending a custody to Secretary order or a guardianship to Secretary order;
- (f) a permanent care order;
- (g) an order granting or refusing bail;
- (h) a sentencing order;
- (i) an order made in respect of a breach of a sentencing order.
- (5) If the Family Division makes a final order in a proceeding, it must—
- (a) state in writing the reasons for the order; and
- (b) cause the statement of reasons to be entered in the register; and
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- (c) unless the Court otherwise orders, cause a copy of the written statement of reasons to be given or sent by post within 21 days after the making of the order to the child, the child's parents and the other parties to the proceeding.
- (6) A person who receives a document under sub-section (3) or (5) may lodge with the Court a statement to the effect that he or she has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding the document but that he or she could understand it if it were written in another language specified in the statement.
- (7) The Court must, within 1 working day after a person lodges a statement under sub-section (6), cause a copy of the document to be sent by post to a translator for translation into the language specified in the statement.
- (8) The Court must, within 21 days after a person lodges a statement under sub-section (6), cause a copy of the document written in the specified language to be given or sent by post to that person.
- (9) Neither the explanation given of an order nor the statement of reasons for an order is part of the order.
- (10) The explanation given of an order is not part of the reasons for the order.
- (11) An order made by the Court in a proceeding is not invalidated by, nor liable to be challenged, appealed against, reviewed, quashed or called in question in any court on account of the failure of the Court to comply with a provision of this section in the proceeding.

**Division 4—Powers**

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S. 24(2)  
amended by  
No. 69/1992  
s. 6(a)-(c).

#### 24. *Court to have powers of Magistrates' Court*

- (1) The Court has and may exercise in relation to all matters over which it has jurisdiction all the powers and authorities that the Magistrates' Court has in relation to the matters over which it has jurisdiction.
- (2) The **Magistrates' Court Act 1989** (except Part 5) and the regulations made under that Act apply with any necessary modifications, unless the contrary intention appears in this Act or in any other Act, to the Children's Court and the proceedings of both Divisions of the Court and, without limiting the application of section 193, to the issue of process in the same manner and to the same extent as it applies to the Magistrates' Court and the proceedings of that Court and the issue of process.
- (3) In punishing a person for a contempt of court under section 133 or 134 of the **Magistrates' Court Act 1989** (as applied by sub-section (2) of this section) the Court must not order that a person under the age of 17 years be committed to prison but instead be committed to—
  - (a) in the case of a child of or above the age of 15 years, a youth training centre; or
  - (b) in the case of a child under the age of 15 years, a youth residential centre.

#### 25. *Power to adjourn proceeding*<sup>1</sup>

- (1) Subject to this section, the Court may, on the application of a party to a proceeding or without any such application, adjourn the hearing of the proceeding—
  - (a) to such times and places; and
  - (b) for such purposes; and



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- (c) on such terms as to costs or otherwise—  
as it considers necessary or just in the  
circumstances.
- (1A) Without limiting sub-section (1), the Court may, on adjourning the hearing of a proceeding in the Family Division, require the child or his or her parent to enter into (whether orally or in writing) an undertaking to appear, or to produce the child, before the Court on the resumption of the hearing of the proceeding.
- (2) If the Court has adjourned the hearing of a proceeding to a particular time, it may order that the hearing be held or resumed before that time.
- (3) The Court may only make an order under sub-section (2) with the consent of all the parties or on the application of a party who has given reasonable notice of the application to the other party or parties.
- (4) If the Court has adjourned the hearing of a proceeding to a particular time and, in the case of a proceeding in the Criminal Division, has remanded the child in custody or, in the case of a proceeding in the Family Division, has placed the child in a secure welfare service, it may by order direct that the child be brought before, or be brought to another place specified in the order where facilities exist to enable the child (by audio visual link within the meaning of Part IIA of the **Evidence Act 1958**) to appear before, the Court at any time before then in order that the hearing may be held or resumed.
- (5) The officer in charge of the remand centre or secure welfare service or other officer in whose custody the child is must obey an order under sub-section (4).

S. 25(1A)  
inserted by  
No. 19/1994  
s. 7.

S. 25(4)  
amended by  
No. 4/1997  
s. 10(1).

S. 25(5A)  
inserted by  
No. 44/1996  
s. 4, amended  
by No. 4/1997  
s. 10(2).

- (5A) A child being removed from a remand centre or a secure welfare service to be brought before the Court or to another place in compliance with an order under sub-section (4) is, during the time of removal, deemed to be in the legal custody of the member of the police force, protective services officer or other officer having the custody of the child<sup>2</sup>.
- (6) The Court must proceed with as much expedition as the requirements of this Act and a proper hearing of the proceeding permit and, in deciding whether and for how long to adjourn a proceeding under this section, the Court must have regard to these requirements.

#### **Division 5—Restriction on Publication of Proceedings**

##### **26. *Restriction on publication of proceedings***

- (1) A person must not publish or cause to be published—
- (a) except with the permission of the President, a report of a proceeding in the Court or of a proceeding in any other court arising out of a proceeding in the Court that contains any particulars likely to lead to the identification of—
- (i) the particular venue of the Children's Court in which the proceeding was heard; or
- (ii) a child or other party to the proceeding; or
- (iii) a witness in the proceeding; or
- (b) except with the permission of the President, a picture as being or including a picture of a

S. 26(1)(a)  
amended by  
No. 36/2000  
s. 10(1).

S. 26(1)(b)  
amended by  
No. 36/2000  
s. 10(1).

child or other party to, or a witness in, a proceeding referred to in paragraph (a); or

- (c) except with the permission of the Secretary granted in special circumstances in relation to a child who is the subject of a custody to Secretary order or a guardianship to Secretary order, any matter that contains any particulars likely to lead to the identification of a child as being the subject of an order made by the Court.

S. 26(1)(c) amended by No. 46/1998 s. 7(Sch. 1).

Penalty:

- (a) In the case of a body corporate—500 penalty units;
- (b) In any other case—100 penalty units or imprisonment for 2 years.
- (2) The Court in making an order may direct the Secretary not to grant permission under subsection (1)(c) with respect to the order.

S. 26(2) amended by No. 46/1998 s. 7(Sch. 1).

**Division 6—Court Officers**

**27. *Principal registrar, registrars and deputy registrars***

- (1) There are to be the following officers of the Court—
  - (a) a principal registrar employed under Part 3 of the **Public Sector Management and Employment Act 1998**;
  - (b) registrars;
  - (c) deputy registrars.
- (2) Any person who for the time being holds the office of registrar or deputy registrar of the Magistrates' Court also holds the office of registrar or deputy registrar (as the case requires) of the Children's Court.

S. 27(1)(a) amended by No. 46/1998 s. 7(Sch. 1).

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- (3) The principal registrar, registrars and deputy registrars have the duties, powers and functions provided by this Act and the regulations.
- (4) The principal registrar may, by instrument, delegate to any registrar or class of registrar any function or power of the principal registrar under this Act or the regulations, except this power of delegation.
- (5) A deputy registrar may, subject to this Act and the regulations and to any directions of a registrar, exercise any of the powers or perform any of the functions of a registrar.

**28. Register**

- (1) The principal registrar must cause a register to be kept of all the orders of the Court and of such other matters as are directed by this Act to be entered in the register.
  - (2) An order made by the Court must be authenticated by the person who constituted the Court.
  - (3) Any person may, with the approval of a magistrate and on payment of the prescribed fee, inspect that part of the register that contains the final orders of the Court.
  - (4) A party to a proceeding or such a party's legal practitioner may inspect without charge that part of the register that relates to that proceeding.
  - (5) A document purporting to be an extract from the register and purporting to be signed by a registrar who certifies that in his or her opinion the extract is a true extract from the register is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters appearing in the extract.
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**29. Process**

- (1) Process may only be issued out of the Court by a registrar, except where otherwise provided by or under this or any other Act.
- (2) The principal registrar must, subject to the regulations, keep the original of all process issued out of the Court and must issue or cause to be issued as many copies as are necessary.
- (3) Process issued by a registrar may be recalled and cancelled by—
  - (a) that registrar; or
  - (b) if issued by a registrar, the registrar for the time being at the venue of the Court at which it was issued; or
  - (c) if that registrar is dead or has ceased to hold office or cannot be located, a magistrate.
- (4) Service of any process issued out of the Court may be proved in any manner in which service of a summons to answer to a charge may be proved under section 35 of the **Magistrates' Court Act 1989**.

**30. Powers of registrar**

- (1) A registrar has the following powers in addition to those conferred on him or her by this or any other Act—
  - (a) power to issue any process out of the Court;
  - (b) power to administer an oath;
  - (c) with the consent of the parties to a proceeding in the Family Division, power to extend an interim accommodation order of a kind referred to in paragraph (a) or (b) of section 73(3) made in respect of a child

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appearing on a return date in relation to the proceeding;

- (d) power to extend the bail of a person appearing on a return date in relation to a criminal proceeding in respect of which the person has been granted bail;
  - (e) power to endorse a warrant to arrest in accordance with section 62 of the **Magistrates' Court Act 1989**.
- (2) Sub-section (1)(c) does not empower a registrar to vary the amount or conditions of bail.

**31. Fees**

A registrar must demand and receive the prescribed fees.

**32. Extortion by and impersonation of court officials**

The following persons are guilty of an offence and liable to a fine of not more than 20 penalty units or to imprisonment for a term of not more than 2 years or to both—

- (a) a court official who extorts, demands, takes or accepts from any person any unauthorised fee or reward;
- (b) a court official who pretends to be the holder of an office or position in or in relation to the Court which he or she does not hold;
- (c) any person who is not a court official and who pretends to be a court official.

**33. Protection of registrars**

The principal registrar, a registrar and a deputy registrar have in the performance of their duties

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the same protection and immunity as a magistrate has in the performance of his or her duties.

### Division 7—Court Services

#### 34. Probation officers

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| <p>(1) The Secretary—</p> <p style="padding-left: 40px;">(a) has the duty of generally supervising all probation work under this Act; and</p> <p style="padding-left: 40px;">(b) has the powers and duties prescribed by or under this Act.</p>                             | <p>S. 34(1)<br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p> |
| <p>(2) There are to be employed under Part 3 of the <b>Public Sector Management and Employment Act 1998</b> as many stipendiary probation officers for the Court as are necessary.</p>  | <p>S. 34(2)<br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p> |
| <p>(3) A probation officer appointed under sub-section (2) has the powers and duties prescribed by or under this Act.</p>   |  |
| <p>(4) The Secretary may, by instrument published in the Government Gazette, appoint as an honorary probation officer any fit and proper person who is willing to exercise and perform the powers and duties given to honorary probation officers by or under this Act.</p> | <p>S. 34(4)<br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p> |
| <p>(5) An honorary probation officer is not in respect of the office of honorary probation officer subject to the <b>Public Sector Management and Employment Act 1998</b>.</p>  | <p>S. 34(5)<br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p> |
| <p>(6) A probation officer is, in relation to a probation order, subject to the direction of the Court but otherwise he or she is subject to the direction and control of the Secretary.</p>  | <p>S. 34(6)<br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p> |
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S. 34(7)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (7) The Secretary must co-ordinate the activities of probation officers.

### **35. Duties of probation officers**

S. 35(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (1) It is the duty of a probation officer if required by the Criminal Division or the Secretary—
- (a) to give the Court any assistance that it requires in relation to a child who has been found guilty of an offence, including preparing and furnishing it with a pre-sentence report prepared in accordance with section 53; or
  - (b) to visit and supervise any child as directed by the Court and in consultation and co-operation with the child's parents; or
  - (c) to perform such other duties as are prescribed by or under this or any other Act.
- (2) All registrars of the Court and all members of the police force must, in the prescribed manner, supply the Secretary or a probation officer nominated by the Secretary with any information concerning charges before the Criminal Division that are necessary for the purposes of this Act.
- (3) A probation officer must carry out any inquiries required under this section in such manner as to cause as little prejudice as possible to the reputations of the child concerned and of his or her parents.
- (4) A written report prepared under this section must not be tendered to or received by the Court until the Court is satisfied that the child is guilty of the offence charged.

S. 35(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).



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**36. Children's Court Liaison Office**

- (1) A Children's Court Liaison Office is established.
- (2) Subject to the **Public Sector Management and Employment Act 1998**, there are to be appointed to the Children's Court Liaison Office as many court liaison officers and other persons as are necessary for the proper functioning of the Office.
- (3) The Children's Court Liaison Office has the following functions—
  - (a) to provide information and advice about the Court to children, families and the community;
  - (b) to co-ordinate the provision to the Court of any reports that are required;
  - (c) to collect and keep general information and statistics on the operation of the Court;
  - (d) to provide general advice and assistance to the Court;
  - (e) to undertake any research that is required to enable it to carry out its functions.

S. 36(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**37. Children's Court Clinic**

- (1) The Secretary to the Department of Justice may establish and maintain a Children's Court Clinic.
- (2) The Children's Court Clinic has the following functions—
  - (a) to make clinical assessments of children;
  - (b) to submit reports to courts and other bodies;
  - (c) to provide clinical services to children and their families.

S. 37(1)  
amended by  
No. 44/1996  
s. 21(1).

- (3) In addition to the functions mentioned in subsection (2) the Children's Court Clinic has any other functions that are prescribed.

**37A. *Pre-hearing conference convenors*<sup>3</sup>**

- (1) The Governor in Council may appoint as many convenors as are necessary for conducting pre-hearing conferences under section 82A.
- (2) Subject to this section, a convenor holds office for the term, not exceeding 3 years, that is specified in his or her instrument of appointment, and is eligible for re-appointment.
- (3) The Governor in Council may remove a convenor from office at any time.
- (4) A convenor may resign from office by delivering to the Governor in Council a signed letter of resignation.
- (5) A convenor is entitled to be paid the remuneration, travelling and other allowances fixed from time to time by the Governor in Council.
- (6) A convenor is appointed subject to any terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act.
- (7) A convenor is not, in respect of the office of convenor, subject to the **Public Sector Management and Employment Act 1998**.
- (8) A convenor has the following functions—
  - (a) to preside at pre-hearing conferences held under section 82A;

- (b) to report to the Court on the outcome of any pre-hearing conference at which he or she presides.

### **Division 8—Reports to the Court**

#### ***Subdivision 1—General***

#### **38. *Reports to which Division applies***

This Division applies to the following types of reports—

- (a) protection reports;
- (b) disposition reports;
- (c) additional reports;
- (d) pre-sentence reports.

#### **39. *Notification of requirement to submit report***

If the Court orders the Secretary or the Secretary to the Department of Justice or any other person to submit a report to which this Division applies, the registrar at the venue of the Court at which the order is made must, within 1 working day after the making of the order—

- (a) orally notify him or her of the making of the order; and
- (b) forward a copy of the order to him or her.

#### **40. *Warning to be given to persons being interviewed***

The author of a report to which this Division applies must at the beginning of any interview being conducted by him or her in the course of

S. 39  
 amended by  
 Nos 44/1996  
 s. 21(1),  
 46/1998  
 s. 7(Sch. 1).

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preparing the report inform the person being interviewed that any information that he or she gives may be included in the report.

**41. Attendance at Court of author of report**

- (1) The author of a report to which this Division applies may be required to attend to give evidence at the hearing of the proceeding to which the report is relevant by a notice given in accordance with sub-section (2) by—
  - (a) the child in respect of whom the report has been prepared; or
  - (b) a parent of that child if the proceeding is in the Family Division; or
  - (c) the Court.
- (2) A notice under sub-section (1) must be—
  - (a) in writing; and
  - (b) filed with the appropriate registrar or a court liaison officer at the proper venue of the Court as soon as possible and, if practicable, not later than 2 working days before the hearing.
- (3) On the filing of a notice under sub-section (1), the registrar or court liaison officer must immediately notify the author of the report that his or her attendance is required on the return date.
- (4) A person is guilty of contempt of court if, being the author of a report who has been required to attend the Court under sub-section (1), he or she fails, without sufficient excuse, to attend as required.
- (5) The author of a report who has been required under sub-section (1) by the child or a parent of the child to attend at the hearing of a proceeding

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must, if required by the child or parent (as the case requires), be called as a witness and may be cross-examined on the contents of the report.

**42. *Disputed report***

- (1) If any matter in a report to which this Division applies is disputed by the child who is the subject of the report or, if the proceeding is in the Family Division, by a parent of the child, the Court must not take the disputed matter into consideration when determining the proceeding unless satisfied that the matter is true—
  - (a) in the case of a proceeding in the Family Division, on the balance of probabilities; or
  - (b) in the case of a proceeding in the Criminal Division, beyond reasonable doubt.
- (2) If—
  - (a) a report to which this Division applies, or any part of it, is disputed by the child who is the subject of the report or, if the proceeding is in the Family Division, by a parent of the child; and
  - (b) the author of the report does not attend the hearing of the proceeding despite having been required to attend under section 41(1)—

the Court must not take the report or the part in dispute into consideration when determining the proceeding unless the child or parent (as the case requires) consents to the report or the part in dispute being admitted into evidence.

**43. *Confidentiality of reports***

- (1) A person who prepares or receives or otherwise is given or has access to a report to which this Division applies, or any part of such a report, must not, without the consent of the child who is the

subject of the report or that child's parent, disclose any information contained in that report or part report (as the case requires) to any person who is not entitled to receive or have access to that report or that part (as the case requires).

Penalty: 10 penalty units.

(2) Sub-section (1) is subject to any contrary direction by the Court.

(2A) Sub-section (1) does not prevent—

- (a) the Secretary; or
- (b) a legal practitioner representing the Secretary or a protective intervener; or
- (c) an officer or employee representing the Secretary or his or her delegate in accordance with section 82(3)(c); or
- (d) an honorary probation officer or an honorary youth parole officer to the extent necessary in connection with the exercise of his or her powers or the performance of his or her duties—

from being given or having access to a report to which this Division applies, or any part of such a report.

(3) A reference in sub-section (1) to a report includes a reference to a copy of a report.

***Subdivision 2—Protection Reports***

**44. Protection reports**

If the Family Division requires further information to enable it to determine a protection application, it may order the Secretary to submit to the Court a protection report concerning the child who is the subject of the application.

**45. *Secretary to forward report to Court***

If the Court orders the Secretary to submit a protection report to the Court, he or she must do so within 21 days and not less than 3 working days before the hearing.

S. 45  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**46. *Content of protection report***

A protection report must only deal with matters that are relevant to the question of whether the child is in need of protection.

**47. *Access to protection report***

- (1) The Court must, subject to sub-section (2), cause a copy of a protection report to be given within 7 days of its receipt by the Court and before the hearing of the proceeding to each of the following—
  - (a) the child who is the subject of the report;
  - (b) that child's parent;
  - (c) the legal practitioners representing that child;
  - (d) the legal practitioners representing that child's parent;
  - (e) the protective intervener who made the protection application;
  - (f) any other person specified by the Court.
- (2) The Court may by order restrict access to the whole of a protection report, or a part of the report specified in the order, by a person mentioned in sub-section (1)(a), (b) or (f) and specified in the order, if the Court is satisfied that information in the report, or the part of the report, may be prejudicial to the physical or mental health of the child or a parent of the child.

(3) An application for an order under sub-section (2) may be made by—

(a) the Secretary; or

(b) a party to the proceeding; or

(c) a person mentioned in sub-section (1); or

(d) with the leave of the Court, any other person—

and must be made not less than 2 working days before the hearing of the proceeding.

(4) If the Court makes an order under sub-section (2), it must cause a copy of the order to be served on the persons mentioned in sub-section (1).

(5) A person who receives a copy of a protection report or of part of a protection report under this section (part or all of which was not given to the child who is the subject of the report or to that child's parent on account of an order made under sub-section (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report or the part of it (as the case requires) that was not given to that child or parent.

Penalty applying to this sub-section: 10 penalty units.

***Subdivision 3—Disposition Reports and Additional Reports***

**48. Disposition reports**

(1) The Secretary must prepare and submit to the Family Division a disposition report if—

(a) the Court becomes satisfied that—

S. 47(3)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 48(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).



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- (i) a child is in need of protection; or
- (ii) there is a substantial and presently irreconcilable difference between the person who has custody of a child and the child to such an extent that the care and control of the child are likely to be seriously disrupted; or
- (iii) there has been a failure to comply with a supervision order, a supervised custody order or an interim protection order; or

(ab) he or she applies for a permanent care order;  
or

S. 48(1)(ab) inserted by No. 69/1992 s. 14(3)(a).

(b) he or she applies, or is notified that a person has applied—

\*            \*            \*            \*            \*

S. 48(1)(b)(i) repealed by No. 69/1992 s. 14(3)(b).

(ii) for the variation or revocation of a supervision order, a custody to third party order, a supervised custody order, a custody to Secretary order, an interim protection order or a permanent care order; or

S. 48(1)(b)(ii) amended by Nos 19/1994 s. 9(a), 46/1998 s. 7(Sch. 1).

(iii) for the extension of a custody to Secretary order or a guardianship to Secretary order; or

S. 48(1)(b)(iii) amended by No. 46/1998 s. 7(Sch. 1).

(iv) for the revocation of a guardianship to Secretary order; or

S. 48(1)(b)(iv) amended by No. 46/1998 s. 7(Sch. 1).

S. 48(1)(ba)  
inserted by  
No. 19/1994  
s. 9(b).

(ba) an interim protection order has expired or is about to expire; or

(c) the Court orders him or her to do so.

S. 48(2)  
amended by  
No. 12/1999  
s. 4(Sch. 2  
item 3.2).

(2) Unless the Court otherwise orders, the Secretary is not required under sub-paragraph (i) or (ii) of paragraph (a) of sub-section (1) to prepare and submit to the Court a disposition report if the Court states that it does not propose to make a protection order or an interim protection order or that it only proposes to make an order requiring a person to give an undertaking.

#### **49. *Content of disposition report***

A disposition report must include—

S. 49(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(a) the draft case plan, if any, prepared for the child; and

(b) recommendations, where appropriate, concerning the order which the Secretary believes the Court ought to make and concerning the provision of services to the child and the child's family; and

S. 49(c)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(c) if the report recommends that the child be removed from the custody or guardianship of his or her parent, a statement setting out the steps taken by the Secretary to provide the services necessary to enable the child to remain in the custody or under the guardianship of the parent; and

(d) any other information—

(i) that the Court directs to be included; or

(ii) that the regulations require to be included.

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**50. Additional report**

If in any proceeding in which a disposition report is required under section 48(1) the Family Division is of the opinion that an additional report is necessary to enable it to determine the proceeding, it may order the preparation and submission to the Court of an additional report by—

- (a) the Secretary; or
- (b) the Secretary to the Department of Justice; or
- (c) another person specified by the Court.

S. 50(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 50(b)  
amended by  
No. 44/1996  
s. 21(1).

**51. Access to disposition and additional reports**

- (1) If a disposition report is required under section 48(1) or the Court orders a disposition report or an additional report, the author of the report must, subject to sub-section (2), within 21 days and not less than 3 working days before the hearing forward the report to the proper venue of the Court and a copy—
  - (a) to the child who is the subject of the report; and
  - (b) to that child's parent; and
  - (c) to the legal practitioners representing that child; and
  - (d) to the legal practitioners representing that child's parent; and
  - (e) to any other person specified by the Court.

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- (2) The author of a report is not under sub-section (1) required to forward copies of the report in accordance with paragraph (a), (b) or (e) of that sub-section if—
- (a) he or she is of the opinion that information contained in the report may be prejudicial to the physical or mental health of the child or a parent of the child; or
  - (b) the child or a parent of the child or another party to the proceeding notifies him or her of his or her objection to the forwarding of copies of the report.
- (3) If because of sub-section (2) the author of a report is not required to forward a copy of the report to a person in accordance with sub-section (1), he or she may forward to that person a copy of part of the report.
- (4) If because of sub-section (2) the author of a report does not forward copies of the report in accordance with sub-section (1)(a), (b) or (e)—
- (a) he or she must inform the appropriate registrar or the other persons referred to in that sub-section of that fact; and
  - (b) the Court may by order direct the appropriate registrar to forward a copy of the report or of a specified part of the report, together with a copy of the order, to a person named or described in the order as soon as possible and before the hearing.
- (5) A person who receives a copy of a report or of part of a report under this section (part or all of which was not forwarded to the child who is the subject of the report or to that child's parent because of sub-section (2)) must not, unless otherwise directed by the Court, disclose to that child or
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parent any information contained in the report or the part of it (as the case requires) that was not forwarded to that child or parent.

Penalty applying to this sub-section: 10 penalty units.

- (6) The Court may dispense with compliance with the time requirements of sub-section (1) in a case where a disposition report is required under section 48(1).

***Subdivision 4—Pre-Sentence Reports***

**52. Court may order pre-sentence report**

- (1) If the Criminal Division finds a child guilty of an offence it may, before passing sentence, order a pre-sentence report in respect of the child and adjourn the proceeding to enable the report to be prepared.

S. 52 amended by No. 93/1990 s. 5(a)(b).

- (1A) The Criminal Division must order a pre-sentence report if it is considering making a youth residential centre order or a youth training centre order.

S. 52(1A) inserted by No. 69/1992 s. 22(3).

- (2) If it appears to the Court that a child found guilty of an offence is intellectually disabled, the Court must, before passing sentence, order a pre-sentence report in respect of the child and adjourn the proceeding to enable the report to be prepared.

S. 52(2) inserted by No. 93/1990 s. 5(b).

- (3) If a declaration of eligibility in respect of the child has been issued under section 8 of the **Intellectually Disabled Persons' Services Act 1986**, a pre-sentence report prepared in

S. 52(3) inserted by No. 93/1990 s. 5(b).

accordance with an order under sub-section (2) must include a copy of that declaration and specify services which are available under that Act and appropriate for the child and which are designed to reduce the likelihood of the child committing further offences.

**53. *Who prepares pre-sentence reports?***

A pre-sentence report must be prepared by—

- (a) the Secretary; or
- (b) the Secretary to the Department of Justice.

**54. *Contents of pre-sentence report***

- (1) A pre-sentence report may set out all or any of the following matters but no others—
  - (a) the sources of information on which the report is based;
  - (b) the circumstances of the offence of which the child has been found guilty;
  - (c) any previous sentencing orders in respect of the child involving the Secretary;
  - (d) the family circumstances of the child;
  - (e) the education of the child;
  - (f) the employment history of the child;
  - (g) the recreation and leisure activities of the child;

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- (h) medical and health matters relating to the child.
- (2) Any statement made in a pre-sentence report must be relevant—
- (a) to the offence of which the child has been found guilty in the proceeding before the Court; and
  - (b) to the sentencing order (if any) recommended in the report.
- (3) The author of a pre-sentence report may, in his or her report, recommend an appropriate sentencing order for the child who is the subject of the report.
- (4) If a recommendation is made under sub-section (3) for a probation order, a youth supervision order or a youth attendance order, it must state—
- (a) whether, and if so where, the recommended service or program is available; and
  - (b) the proposed date of commencement of the child's participation in the recommended service or program; and
  - (c) the child's suitability for the recommended service or program; and
  - (d) the child's attitude towards the recommended service or program.

**55. *Pre-sentence report to be filed with registrar***

A pre-sentence report must be filed with the appropriate registrar at least 4 working days before the return date and in any event no later than 21 days after the report was ordered by the Court.

**56. *Access to pre-sentence reports***

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- (1) The author of a pre-sentence report must, within the period referred to in section 55, send a copy of the report to—
    - (a) the child who is the subject of the report; and
    - (b) the legal practitioners representing the child; and
    - (c) any other person whom the Court has ordered is to receive a copy of the report.
  
  - (2) The author of a pre-sentence report is not under sub-section (1) required to send copies of the report in accordance with paragraph (a) or (c) of that sub-section if—
    - (a) he or she is of the opinion that information contained in the report may be prejudicial to the physical or mental health of the child; or
    - (b) the child notifies him or her of the child's objection to the forwarding of copies of the report.
  
  - (3) If because of sub-section (2) the author of a pre-sentence report is not required to send a copy of the report to a person in accordance with sub-section (1), he or she may forward to that person a copy of part of the report.
  
  - (4) If because of sub-section (2) the author of a pre-sentence report does not send copies of the report in accordance with paragraph (a) or (c) of sub-section (1)—
    - (a) he or she must inform the appropriate registrar of that fact; and
    - (b) the Court may by order direct the appropriate registrar to forward a copy of the report or of
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a specified part of the report, together with a copy of the order, to a person named or described in the order as soon as possible and before the hearing.

- (5) A person who receives a copy of a pre-sentence report or of part of a pre-sentence report under this section (part or all of which was not sent to the child who is the subject of the report because of sub-section (2)) must not, unless otherwise directed by the Court, disclose to that child any information contained in the report or the part of it (as the case requires) that was not sent to that child.

**S. 56(5)**  
**amended by**  
**No. 93/1990**  
**s. 24(b).**

Penalty applying to this sub-section: 10 penalty units.

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**PART 3—PROTECTION OF CHILDREN**

**Division 1—Services for Children**

**57. *Establishment of community services and secure welfare services***

The Governor in Council may, by Order published in the Government Gazette, establish or abolish community services and secure welfare services to be operated by the Department to meet the needs of children requiring protection, care or accommodation.

**58. *Approval of community services***

- (1) The Secretary may approve a service operated by any person or body of persons (other than the Department) as a community service to meet the needs of children requiring protection, care or accommodation.
- (2) An approval under sub-section (1)—
  - (a) may be of general or limited application; and
  - (b) is given by sending by post to the person or body of persons concerned a notice of approval; and
  - (c) may, if at any time the Secretary is satisfied that the service is unable to provide services of an adequate standard, be withdrawn by sending by post to the person or body of persons concerned a notice of withdrawal of approval.
- (3) The Secretary may out of money available for the purpose make a grant to an approved community service to assist the service in carrying out its functions.

S. 58(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 58(2)(c)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 58(3)  
amended by  
Nos 31/1994  
s. 3(Sch. 1  
item 8.1),  
46/1998  
s. 7(Sch. 1).

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- (4) A grant under sub-section (3) may be made on any terms and conditions that are determined by the Secretary.

S. 58(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**59. *Standard of services to be provided by community services***

The Minister may issue directions relating to the standard of services to be provided by community services or any class of community services and take steps to ensure that they are complied with.

**60. *Minister to determine rates***

- (1) The Minister must determine the rates to be paid in respect of children—
- (a) of whom the Secretary has guardianship or custody; or
- (b) who are the subject of a custody to third party order, a supervised custody order or a permanent care order; or
- (c) who are the subject of an order with respect to custody or guardianship and custody made under the Family Law Act 1975 of the Commonwealth and who—
- (i) for a period of not less than 2 years before the making of that order, were the subject of—
- (A) a custody to Secretary order; or
- (B) a guardianship to Secretary order; or

S. 60(1)  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 18.2).

S. 60(1)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 60(1)(b)  
substituted by  
No. 93/1990  
s. 6.

S. 60(1)(c)  
inserted by  
No. 93/1990  
s. 6.

S.  
60(1)(c)(i)(A)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S.  
60(1)(c)(i)(B)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(C) a child care agreement or a long-term child care agreement under the **Community Services Act 1970**; or

(ii) before the making of that order were the subject of a permanent care order—

that ceased to be in force on the making of the order under the Family Law Act 1975 of the Commonwealth.

- (2) The Minister may determine special rates to be paid in respect of persons under the age of 21 years in particular circumstances specified by the Minister.

**61. *Inspection of community services***

- (1) The Secretary may at any time visit any community service and make any examinations and inspections that appear to be necessary regarding the state and management of the service and the condition and treatment of the children to whom it provides services.
- (2) The person in charge of a community service must provide the Secretary when visiting the service under sub-section (1) with all reasonable facilities for making any examination or inspection authorised by that sub-section.

**62. *Restrictions on who may provide long-term care of children***

- (1) A person must not, for fee or reward, provide care for a period longer than 24 hours for a child who is under 15 years of age.

Penalty: 15 penalty units.

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- (2) Sub-section (1) does not apply to the provision of care for a child—
- (a) by a parent or relative of the child; or
  - (b) by a community service or secure welfare service; or
  - (c) by a person under a child care agreement under section 13A of the **Community Services Act 1970** or a long-term child care agreement under section 13C of that Act; or
  - (d) by an institution or establishment conducted wholly for educational purposes or as a hospital or convalescent home; or
  - (e) by an institution or establishment conducted wholly as a holiday camp or for another similar purpose; or
  - (f) in a private house (including a boarding house) in which the child is temporarily accommodated; or
  - (g) by an institution or establishment or an institution or establishment included in a class of institutions or establishments exempted from the operation of sub-section (1) by the Secretary by notice sent by post to the institution or establishment concerned.

S. 62(2)(c)  
amended by  
No. 93/1990  
s. 24(c).

S. 62(2)(g)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**Division 2—Children in Need of Protection**

**63. *When is a child in need of protection?***

For the purposes of this Act a child is in need of protection if any of the following grounds exist—

- (a) the child has been abandoned by his or her parents and after reasonable inquiries—
  - (i) the parents cannot be found; and

- (ii) no other suitable person can be found who is willing and able to care for the child;
- (b) the child's parents are dead or incapacitated and there is no other suitable person willing and able to care for the child;
- (c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (e) the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (f) the child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care.

**64. Notification to protective intervener**

- (1) Any person who believes on reasonable grounds that a child is in need of protection may notify a protective intervener of that belief and of the reasonable grounds for it.

S. 64(1)  
amended by  
No. 19/1994  
s. 11(1).

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- (1A) A person referred to in any of the paragraphs of sub-section (1C) to whom this sub-section applies who, in the course of practising his or her profession or carrying out the duties of his or her office, position or employment as described in that paragraph, forms the belief on reasonable grounds that a child is in need of protection on a ground referred to in paragraph (c) or (d) of section 63 must notify the Secretary of that belief and of the reasonable grounds for it as soon as practicable—
- (a) after forming the belief; and
  - (b) after each occasion on which he or she becomes aware of any further reasonable grounds for the belief.

**S. 64(1A)**  
inserted by  
No. 10/1993  
s. 4.

Penalty applying to this sub-section: 10 penalty units.

- (1B) Grounds for a belief referred to in sub-section (1) or (1A) are—
- (a) matters of which a person has become aware; and
  - (b) any opinions based on those matters.

**S. 64(1B)**  
inserted by  
No. 10/1993  
s. 4,  
amended by  
No. 19/1994  
s. 11(2).

- (1C) Sub-section (1A) applies to a person referred to in any of the following paragraphs on and from the relevant date—

**S. 64(1C)**  
inserted by  
No. 10/1993  
s. 4.

- (a) a registered medical practitioner within the meaning of the **Medical Practice Act 1994**<sup>4</sup>;
- (b) a registered psychologist within the meaning of the **Psychological Practices Act 1965** or the **Psychologists Registration Act 1987** or a person registered as a probationary

**S. 64(1C)(a)**  
substituted by  
No. 23/1994  
ss 116,  
118(Sch. 1  
item 8.1).

- psychologist under the **Psychologists Registration Act 1987**;
- (c) a person registered under the **Nurses Act 1993**<sup>5</sup>;
- (d) a person registered as a teacher under Part III of the **Education Act 1958** or permitted to teach under that Part (including by virtue of section 44(4) and (5) of that Act)<sup>6</sup>;
- (da) a person appointed to an office in the teaching service under the **Teaching Service Act 1981** or employed under Division 4 of Part II of that Act<sup>7</sup>;
- (db) a person employed under section 15B(1)(a)(i) of the **Education Act 1958**<sup>8</sup>;
- (e) the head teacher or principal of a State school within the meaning of the **Education Act 1958** or of a school registered under Part III of that Act<sup>9</sup>;
- (f) the proprietor of, or a person with a post-secondary qualification in the care, education or minding of children who is employed by, a children's service to which the **Children's Services Act 1996** applies or a person nominated under section 16(2)(b)(iii) of that Act;
- (g) a person with a post-secondary qualification in youth, social or welfare work who works in the health, education or community or welfare services field and who is not referred to in paragraph (h);



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| <p>(h) a person employed under Part 3 of the <b>Public Sector Management and Employment Act 1998</b> to perform the duties of a youth and child welfare worker;</p> <p>(i) a member of the police force<sup>10</sup>;</p> <p>(j) a probation officer;</p> <p>(k) a youth parole officer;</p> <p>(l) a member of a prescribed class of persons.</p>   | <p>S. 64(1C)(h) substituted by No. 46/1998 s. 7(Sch. 1).</p>                        |
| <p>(1D) In sub-section (1C) "<b>the relevant date</b>", in relation to a person or class of persons referred to in a paragraph of that sub-section, means the date fixed for the purposes of that paragraph by an Order made by the Governor in Council and published in the Government Gazette.</p>   | <p>S. 64(1D) inserted by No. 10/1993 s. 4.</p>                                      |
| <p>(1E) Different dates may be fixed by Order in Council for the purposes of different paragraphs of sub-section (1C) and, in the case of paragraph (l), different prescribed classes of persons.</p>  | <p>S. 64(1E) inserted by No. 10/1993 s. 4.</p>                                      |
| <p>(1F) In paragraphs (f) and (g) of sub-section (1C), "<b>post-secondary qualification</b>" means a qualification from an institution, person or body providing or offering to provide (whether in or outside Victoria) post-secondary education as defined in the <b>Tertiary Education Act 1993</b> (whether or not that institution, person or body has since ceased to exist) and includes a qualification from a post-secondary education provider as defined in that Act.</p> | <p>S. 64(1F) inserted by No. 10/1993 s. 4, substituted by No. 19/1994 s. 11(3).</p> |
| <p>(1G) It is a defence to a charge under sub-section (1A) for the person charged to prove that he or she honestly and reasonably believed that all of the reasonable grounds for his or her belief had been the subject of a notification to the Secretary made by another person.</p>  | <p>S. 64(1G) inserted by No. 10/1993 s. 4.</p>                                      |

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S. 64(1H)  
inserted by  
No. 10/1993  
s. 4.

(1H) The requirement imposed by sub-section (1A)(b) applies to a person even if his or her belief was first formed before the relevant date within the meaning of sub-section (1C).

S. 64(2)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(2) The following persons are protective interveners—

(a) the Secretary;

(b) all members of the police force.

S. 64(3)  
amended by  
No. 10/1993  
s. 6(d).

(3) A notification made under sub-section (1) or (1A)—

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

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

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S. 64(3)(c)  
repealed by  
No. 19/1994  
s. 11(4).

S. 64(3)(d)  
amended by  
No. 69/1992  
s. 8(a).

(d) does not constitute a contravention of section 141 of the **Health Services Act 1988** or section 120A of the **Mental Health Act 1986**.

S. 64(3A)  
inserted by  
No. 19/1994  
s. 11(5).

(3A) In any legal proceeding evidence as to the grounds contained in a notification made under sub-section (1) or (1A) for the belief that the child is in need of protection may be given but evidence that a particular matter is contained in such a notification or evidence that identifies the person who made such a notification as the notifier, or is

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likely to lead to the identification of that person as the notifier is only admissible in the proceeding if the court or tribunal grants leave for the evidence to be given or if the notifier consents in writing to the admission of that evidence.

- (3B) A witness appearing in a proceeding referred to in sub-section (3A) must not be asked and, if asked, is entitled to refuse to answer—
- (a) any question to which the answer would or might identify the person who made a notification under sub-section (1) or (1A) as the notifier or would or might lead to the identification of that person as the notifier; or
  - (b) any question as to whether a particular matter is contained in a notification made under sub-section (1) or (1A)—

S. 64(3B)  
 inserted by  
 No. 19/1994  
 s. 11(5).

unless the court or tribunal grants leave for the question to be asked or the notifier has consented in writing to the question being asked.

- (3C) A court or tribunal may only grant leave under sub-section (3A) or (3B) if—
- (a) in the case of a proceeding in the Court or in any other court arising out of a proceeding in the Court or in the Administrative Appeals Tribunal on a review under section 122, it is satisfied that it is necessary for the evidence to be given to ensure the safety and well-being of the child;
  - (b) in any other case, it is satisfied that the interests of justice require that the evidence be given.

S. 64(3C)  
 inserted by  
 No. 19/1994  
 s. 11(5).

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S. 64(4)  
amended by  
Nos 69/1992  
s. 8(b),  
10/1993  
s. 6(e),  
19/1994  
s. 11(6).

(4) If a notification is made under sub-section (1) or (1A), a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than a protective intervener—

- (a) the name of the person who made the notification; or
- (b) any information that is likely to lead to the identification of the person who made the notification.

Penalty applying to this sub-section: 10 penalty units.

S. 64(5)  
inserted by  
No. 19/1994  
s. 11(7).

(5) Sub-section (4) does not apply to a disclosure made to a court or tribunal in accordance with this section.

**65. Minister to be responsible for children in need of protection**

(1) The Minister has the following responsibilities—

- (a) the establishment and maintenance of child protection services;
- (b) the issuing of directions in respect of the establishment and maintenance of a central register in which there is recorded such information as is required to be recorded under section 68(1A);
- (c) the provision of a consultation and advice service and of information to community services and other persons and bodies working with children and their families in a professional capacity regarding measures to be taken to ensure that children are protected from harm;
- (d) the promotion of the development of a clear definition of the respective responsibilities,

S. 65(1)(b)  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 18.3).

- in relation to children at risk of harm, of protective interveners, community services and other persons and bodies working with children and their families in a professional capacity;
- (e) the preparation and dissemination of information regarding child protection services and actions necessary to ensure the safety and well-being of children.
- (2) The Minister may (after consultation with the Minister administering the **Police Regulation Act 1958** in the case of directions relating to protective interveners who are members of the police force)—
- (a) issue directions to be followed by protective interveners in the exercise of their functions; or
- (b) amend, in whole or in part, any directions previously issued under paragraph (a).
- (3) The Minister must cause any directions issued and any amendments made under sub-section (2) to be published in the Government Gazette.

**66. Investigation by protective intervener**

- (1) A protective intervener must, as soon as practicable after receiving a notification under section 64(1) or (1A), investigate, or cause another protective intervener to investigate, the subject-matter of the notification in a way that will best ensure the safety and well-being of the child.
- (2) A protective intervener who is investigating the subject-matter of a notification—
- (a) must inform the child and the child's parents that any information they give may be used

S. 66(1)  
 amended by  
 No. 10/1993  
 s. 6(f).

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for the purposes of a protection application;  
and

- (b) must not disclose any information arising from the investigation to anyone other than a court or a person referred to in any paragraph of sub-section (4) or a person to whom the protective intervener is authorised by the Secretary to disclose the information.

(2A) The Secretary may only authorise the disclosure of information to a person under sub-section (2)(b) if he or she believes on reasonable grounds that the disclosure is necessary to assist in the investigation of the subject-matter of the notification.

(3) On completing an investigation of a notification, the protective intervener must, as soon as practicable, make a written record of—

- (a) details of the investigation; and  
(b) the results of the investigation.

(4) If after completing an investigation of a notification the protective intervener decides not to make a protection application, a person must not disclose the record of the investigation made under sub-section (3) to anyone other than—

- (a) the child; or  
(b) the child's parents; or  
(c) the Secretary; or

(d) the Chief Commissioner of Police; or

(da) a person in connection with a review by the Administrative Appeals Tribunal or a panel

S. 66(2)(b)  
amended by  
No. 69/1992  
s. 9(1).

S. 66(2A)  
inserted by  
No. 69/1992  
s. 9(2).

S. 66(4)(c)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 66(4)(da)  
inserted by  
No. 69/1992  
s. 9(3).

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appointed under section 121(3) of decisions relating to the recording of information in the central register referred to in section 65(1)(b); or

- (e) a person who is, or is a member of a class of persons who are, authorised in writing by the Secretary or the Chief Commissioner of Police to have access to that record or the class of records to which that record belongs.

S. 66(4)(e)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

Penalty applying to this sub-section: 10 penalty units.

- (5) The Secretary must, on a request made in accordance with any directions of the Minister by a member of the police force who is investigating the subject-matter of a notification under section 64(1), submit a protection report to that member within 21 days.

S. 66(5)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (6) A member of the police force who receives a protection report under sub-section (5) or the author of that report must not disclose any information contained in it to any person other than another protective intervener who is investigating the subject-matter of the notification.

Penalty applying to this sub-section: 10 penalty units.

- (7) Nothing in sub-section (6) prevents the disclosure to a court by a member of the police force of information contained in a protection report received by that member.
- (8) Despite anything to the contrary in the **Freedom of Information Act 1982**, sub-section (4) does

not have the effect of making the record of the investigation an exempt document for the purposes of that Act.

**67. Protection of information**

- (1) The giving of information to a protective intervener during the course of the investigation of the subject-matter of a notification under section 64(1) or (1A)—
- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is given; and
  - (b) if given in good faith, does not make the person by whom it is given subject to any liability in respect of it; and
  - (c) does not constitute a contravention of section 141 of the **Health Services Act 1988** or section 120A of the **Mental Health Act 1986**.
- (2) A protective intervener must not disclose to any person, other than to another protective intervener or to a person in connection with a court proceeding or to a person in connection with a review by the Administrative Appeals Tribunal or a panel appointed under section 121(3) of decisions relating to the recording of information in the central register referred to in section 65(1)(b)—
- (a) the name of a person who gave information in confidence to a protective intervener during the course of the investigation of the subject-matter of a notification under section 64(1) or (1A); or

S. 67(1)  
amended by  
No. 10/1993  
s. 6(g).

S. 67(1)(c)  
amended by  
No. 69/1992  
s. 10(1).

S. 67(2)  
amended by  
No. 69/1992  
s. 10(2)(a)(b).

S. 67(2)(a)  
amended by  
No. 10/1993  
s. 6(h).



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(b) any information that is likely to lead to the identification of a person referred to in paragraph (a)—

without the written consent of the person referred to in paragraph (a) or authorisation by the Secretary.

Penalty: 10 penalty units.

(3) The Secretary may only authorise the disclosure of information to a person under sub-section (2) if he or she believes on reasonable grounds that the disclosure is necessary to ensure the safety and well-being of the child.

**S. 67(3)**  
inserted by  
**No. 69/1992**  
s. 10(3).

**68. Action by protective intervener**

(1) If a protective intervener is satisfied on reasonable grounds that a child is in need of protection, he or she may—

**S. 68(1)**  
amended by  
**No. 93/1990**  
s. 7(1),  
substituted by  
**No. 69/1992**  
s. 11(1).

(a) serve a notice under section 70(1) directing that the child appear, or be produced, before the Court for the hearing of a protection application; or

(b) with or without a warrant, under section 69 take the child into safe custody or cause another protective intervener to take the child into safe custody pending the hearing of a protection application.

(1A) After considering what procedure (if any) to take under sub-section (1) in respect of the child, the protective intervener must record in the central register referred to in section 65(1)(b) such

**S. 68(1A)**  
inserted by  
**No. 69/1992**  
s. 11(1).

information arising from the investigation as the Minister determines should be so recorded.

- (2) If the procedure set out in sub-section (1)(a) or (b) has been taken in respect of a child, a protective intervener must as soon as possible make a protection application to the Court and give a copy of the application to—
- (a) the child's parents, unless they cannot be found after reasonable inquiries; and
  - (b) the child, if he or she is of or above the age of 12 years.

**69. *Protective intervener may take child in need of protection into safe custody***

- (1) If a protective intervener is satisfied on reasonable grounds that a child is in need of protection and that it is inappropriate to take the procedure set out in section 68(1)(a), he or she may—
- (a) without a warrant, take the child into safe custody or cause another protective intervener to take the child into safe custody; or
  - (b) apply to a magistrate or, despite anything to the contrary in the **Magistrates' Court Act 1989**, to an authorised bail justice for the issue of a search warrant.
- (2) A search warrant issued under sub-section (1)—
- (a) may only be directed to a named member of the police force or generally all members of the police force; and
  - (b) may be endorsed by the person issuing it with a direction that the child be released on an interim accommodation order of the type referred to in paragraph (a) or (b) of section 74(1) as specified in the endorsement.

S. 68(2)  
 amended by  
 No. 93/1990  
 s. 7(2).

S. 69(1)  
 amended by  
 No. 69/1992  
 s. 11(2)(a).

S. 69(1)(a)  
 amended by  
 No. 69/1992  
 s. 11(2)(b).

S. 69(2)(b)  
 amended by  
 No. 19/1994  
 s. 12(1).

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- (3) A protective intervener must on taking a child into safe custody give to—
- (a) the child's parents, unless they cannot be found after reasonable inquiries; and
  - (b) the child, if he or she is of or above the age of 12 years—
- a written statement containing the prescribed information relating to the taking of children into safe custody under this section.
- (4) Subject to sub-section (6), a child taken into safe custody under this section must be brought before the Court for the hearing of an application for an interim accommodation order as soon as practicable and, in any event, within one working day after the child was taken into safe custody.
- (5) Unless a child is brought before the Court under sub-section (4) within 24 hours after the child was taken into safe custody, he or she must, subject to sub-section (6), be brought before a bail justice as soon as possible within that period of 24 hours for the hearing of an application for an interim accommodation order.
- (6) A child of tender years need not be brought before the Court under sub-section (4) or a bail justice under sub-section (5) unless the Court or bail justice otherwise orders but the Court or bail justice may deal with the application in the absence of the child.
- (7) Until a child taken into safe custody under this section is brought before the Court or a bail justice for the making of an interim accommodation order, the child may only be placed—
- (a) in a community service; or

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S. 69(7)(b)  
amended by  
No. 69/1992  
s. 11(3).

(b) if there is a substantial and immediate risk of harm to the child, in a secure welfare service; or

S. 69(7)(c)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(c) in any other accommodation approved by the Secretary.

(8) This section applies with any necessary modifications—

S. 69(8)(a)  
amended by  
No. 19/1994  
s. 12(2)(a)(i)(ii).

(a) to the taking of a child into safe custody under sections 79(5), 80(3) and (4), 80A(5) and (6), 95(3), 95(4) (including sections 95(3) and 95(4) as applied to a supervised custody order by section 98(3)), 110(2A), 111(3) and 111(4); and

S. 69(8)(b)  
amended by  
No. 19/1994  
s. 12(2)(b)(i)(ii).

(b) to the issue and execution of a warrant under sections 79(5), 80(3) and (4), 80A(5) and (6), 95(3), 95(4) (including sections 95(3) and 95(4) as applied to a supervised custody order by section 98(3)), 110(2A), 111(3) and 111(4).

**70. *Making a protection application without taking child into safe custody***

(1) If a protective intervener is satisfied on reasonable grounds that a child is in need of protection, he or she may by notice direct—

(a) the child to appear; and

(b) the child's parent to produce the child—

before the Court for the hearing of a protection application.

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- (2) A notice under sub-section (1) must—
- (a) be issued out of the Court by the appropriate registrar; and
  - (b) set out the grounds on which a protective intervener intends to make a protection application; and
  - (c) be served on the child's parent and, if the child is of or above the age of 12 years, the child—
    - (i) by posting, not less than 14 days before the hearing date stated in the notice, a true copy of the notice addressed to the parent or the child (as the case requires) at the last known place of residence or business of the parent or the child; or
    - (ii) by delivering, not less than 5 days before the hearing date stated in the notice, a true copy of the notice to the parent or the child (as the case requires); or
    - (iii) by leaving, not less than 5 days before the hearing date stated in the notice, a true copy of the notice for the parent or the child (as the case requires) at the last known place of residence or business of the parent or the child with a person who apparently resides or works there and who apparently is not less than 16 years of age.
- (3) If a notice under sub-section (1) is served in accordance with sub-section (2)(c) and the child does not appear before the Court at the time stated in the notice, the Court may, if satisfied that the notice has come to the attention of the child's parent or, if the child is of or above the age of

S. 70(2)(b)  
amended by  
No. 93/1990  
s. 7(3).

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12 years, the child and, if practicable, the child's parent, issue a search warrant for the purpose of having the child taken into safe custody and the provisions of section 69 apply to the issue and execution of the warrant as if it were a warrant issued under sub-section (1) of that section.

**Division 3—Irreconcilable Differences**

**71. *Application if there is an irreconcilable difference***

- (1) A person who has custody of a child and who believes that there is a substantial and presently irreconcilable difference between himself or herself and the child to such an extent that the care and control of the child are likely to be seriously disrupted may, subject to section 72, make an application to the Court for a finding that such a difference exists.
- (2) A child who believes that there is a substantial and presently irreconcilable difference between himself or herself and the person who has custody of him or her to such an extent that the care and control of him or her are likely to be seriously disrupted may, subject to section 72, make an application to the Court for a finding that such a difference exists.
- (3) The appropriate registrar must cause a copy of an irreconcilable difference application to be given or sent by post to all other parties to the application and to the Secretary at least 5 days before the hearing date.

S. 71(3)  
amended by  
No. 69/1992  
s. 12(1).

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- (4) With the leave of the Court, the Secretary may appear or be represented on the hearing of the irreconcilable difference application and may call and examine or cross-examine witnesses and make submissions.

S. 71(4)  
inserted by  
No. 69/1992  
s. 12(2).

**72. Conciliation counselling**

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

S. 72(1)  
amended by  
Nos 69/1992  
s. 12(3),  
46/1998  
s. 7(Sch. 1).

- (2) If an application for conciliation counselling is lodged with the Secretary, he or she must—

S. 72(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(a) cause information relating to conciliation counselling and appropriate support services to be given or sent by post to the child, the person who has custody of the child and any other relevant parties; and

(b) ensure that conciliation counselling is provided to those persons—

as soon as possible within the period of 21 days after that lodgement.

- (3) The purpose of conciliation counselling is to assist the parties in the resolution of their differences and thereby avoid proceedings in the Court.
- (4) The person conducting conciliation counselling must—
- (a) undertake conciliation counselling with each of the parties separately; and
- (b) hold at least one conference involving all the parties.

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**S. 72(5)**  
amended by  
**No. 46/1998**  
**s. 7(Sch. 1).**

(5) At the end of the period of 21 days referred to in sub-section (2) the Secretary must provide a certificate of conciliation counselling to each party who participated in the conciliation counselling.

**S. 72(6)**  
amended by  
**No. 46/1998**  
**s. 7(Sch. 1).**

(6) The Secretary may provide a certificate of conciliation counselling to a party even if a conference involving all the parties did not take place if—

(a) that party was willing to attend a conference involving all the parties but one or more other parties refused to attend; or

(b) the Secretary determined that exceptional circumstances existed which would have the effect that attendance at a conference involving all the parties would subject one of the parties to extreme duress or emotional distress.

**S. 72(6)(b)**  
amended by  
**No. 46/1998**  
**s. 7(Sch. 1).**

(7) If the child does not appear before the Court for the hearing of the irreconcilable difference application, the Court may issue a search warrant for the purpose of having the child taken into safe custody and the provisions of section 69 apply to the issue and execution of the warrant as if it were a warrant issued under sub-section (1) of that section.

(8) If the person who has custody of the child does not appear before the Court for the hearing of the irreconcilable difference application, the Court may proceed to hear and determine the application in that person's absence if satisfied that a copy of the application was given or sent by post to that person in accordance with section 71(3).



**Division 4—Interim Accommodation Orders**

Pt 3 Div. 4  
 (Heading and  
 ss 73–80)  
 amended by  
 No. 69/1992  
 s. 13(1)(3)–(6),  
 substituted as  
 Pt 3 Div. 4  
 (Heading and  
 ss 73–80B) by  
 No. 19/1994  
 s. 13.  
 S. 73  
 substituted by  
 No. 19/1994  
 s. 13.

**73. *Interim accommodation order***

- (1) The Court may make an interim accommodation order in respect of a child if—
- (a) the child has been taken into safe custody by a protective intervener under this Part; or
  - (b) a protection application is filed with the appropriate registrar; or
  - (c) an irreconcilable difference application is filed with the appropriate registrar; or
  - (d) an application for conciliation counselling is lodged with the Secretary under section 72; or
  - (e) the hearing by the Court of a proceeding in the Family Division (including a proceeding under this section) is adjourned; or
  - (f) an application for an extension or further extension of the period of an interim accommodation order has been made to the Court under section 78; or
  - (g) an application for variation of an interim accommodation order has been made to the Court under section 79(1); or
  - (h) an interim accommodation order or any condition attached to an interim

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- accommodation order has not been complied with; or
- (i) an application for a new interim accommodation order has been made to the Court under section 80A(1); or
  - (j) the child is taken into safe custody on a warrant issued under this Part; or
  - (k) an appeal has been instituted under this Part to the Supreme Court or the County Court against an order made by the Court under this Part.
- (2) An application for an interim accommodation order may be made—
- (a) by the child or a parent of the child; or
  - (b) by a protective intervener.
- (3) The Supreme Court or the County Court may also make an interim accommodation order in respect of a child if the hearing by it of an appeal against an order made by the Children's Court under this Part is adjourned.
- (4) Without limiting any other power to make an interim accommodation order that is expressly conferred on a bail justice by this Division, a bail justice may also make an interim accommodation order in respect of a child in the circumstances referred to in sub-section (1)(a) and (j).
- (5) If a bail justice makes an interim accommodation order—
- (a) he or she must cause a written copy of the order to be given to every party to the application for the order at the time the order is made; and
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- (b) the protective intervener or, if there is no protective intervener involved, the bail justice must cause a copy of the order to be filed with the appropriate registrar as soon as possible.

**74. *Conditions of interim accommodation order***

- (1) An interim accommodation order may provide for—
- (a) the release of the child on the signing by the child of an undertaking to appear on the hearing, or the resumption of the hearing, of the relevant proceeding; or
  - (b) the release of the child into the care of his or her parent pending that hearing or resumption on the entering into (whether orally or in writing) by that parent of an undertaking to produce the child before the Court for the hearing, or the resumption of the hearing, of the relevant proceeding; or
  - (c) the placement of the child with a suitable person or suitable persons pending that hearing or resumption on the entering into (whether orally or in writing) by that person or those persons of an undertaking to produce the child before the Court for the hearing, or the resumption of the hearing, of the relevant proceeding and following a report (whether oral or written) from the Secretary on that person's or those persons' suitability; or
  - (d) the placement of the child in a community service pending that hearing or resumption; or
  - (e) the placement of the child in a secure welfare service pending that hearing or resumption if

S. 74  
substituted by  
No. 19/1994  
s. 13.

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there is a substantial and immediate risk of harm to the child.

- (2) The Court or bail justice may determine not to require a suitable person referred to in sub-section (1)(c) to attend on the hearing of the application for an interim accommodation order if the undertaking required under that sub-section is given by that person by statutory declaration in the prescribed form.
- (3) An interim accommodation order must not be made providing for the placement of a child in a secure welfare service in any case referred to in section 73(1)(c) or (d) unless the Court or bail justice making the order is of the opinion that the placement is necessary to ensure the attendance of the child on the hearing of the irreconcilable difference application.
- (4) The fact that the child does not have adequate accommodation is not by itself a sufficient reason for the making of an order providing for the placement of a child in a secure welfare service.
- (5) An interim accommodation order may include any conditions that the Court or bail justice considers should be included in the interests of the child.
- (6) Conditions included in an interim accommodation order may relate to the access of a parent or other person to the child.

**75. *Duration of interim accommodation order***

- (1) Subject to this section, an interim accommodation order remains in force for the period (not exceeding 21 days in the case of an order of a kind referred to in paragraph (c), (d) or (e) of section 74(1)) specified in the order.

S. 75  
substituted by  
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- (2) An interim accommodation order made by a bail justice only remains in force until the application is heard by the Court on the next working day.
  - (3) An interim accommodation order made in any case referred to in section 73(1)(d) only remains in force until an irreconcilable difference application has been made to the Court or for the period of 21 days, whichever is the shorter.

**76. *Parent entitled to know child's whereabouts***

**S. 76  
substituted by  
No. 19/1994  
s. 13.**

- (1) A parent is entitled to be given details of the child's whereabouts under an interim accommodation order unless the Court or bail justice making the order directs that those details be withheld from the parent.
- (2) The Court or a bail justice may only give a direction under sub-section (1) if of the opinion that—
  - (a) special circumstances exist which justify withholding those details; or
  - (b) the safety or well-being of the child may be in jeopardy if those details are not withheld.

**77. *Power of Secretary to transfer child***

**S. 77  
substituted by  
No. 19/1994  
s. 13.**

- (1) If an interim accommodation order provides for the placement of a child in a community service or a secure welfare service, the Secretary may from time to time, if he or she believes that it is advisable in the interests of the child, transfer the child from one community service or secure welfare service to another community service or secure welfare service, as the case requires.

- (2) If the whereabouts of a child are changed under sub-section (1) the Secretary must, unless a direction has been given under section 76(1), notify the child's parents and the appropriate registrar of that change.

**78. *Extension of interim accommodation order***

- (1) Subject to sub-section (2), at any time while an interim accommodation order made by the Court is in force an application for an extension or further extension of the period of the order may be made to the Court by a protective intervener or a person with whom the child has been placed in accordance with section 74(1)(c).
- (2) On an application under sub-section (1) the Court may—
- (a) except in the case of an order of a kind referred to in paragraph (e) of section 74(1), extend the order for the period (not exceeding 21 days in the case of an order of a kind referred to in paragraph (c) or (d) of section 74(1)) specified in the order if it is satisfied that it is in the best interests of the child to do so;
  - (b) in the case of an order of a kind referred to in paragraph (e) of section 74(1), extend the order (if it has not previously been extended) for one further period not exceeding 21 days if it is satisfied that exceptional circumstances exist which justify it in doing so—

but may not vary or revoke the order or make a new interim accommodation order.

- (3) The Court may, if in its opinion special circumstances exist which justify it in doing so, refuse to hear an application under sub-section (1)

unless the applicant has given notice of the application to—

- (a) the person who applied for the interim accommodation order; and
  - (b) any other party to the proceeding in which that order was made; and
  - (c) any person with whom the child is living—  
a reasonable time before the hearing of the application.
- (4) If the Court proceeds to hear an application under sub-section (1) without requiring notice of it to be given as specified in sub-section (3), it must cause a written copy of any order made by it on the application to be given as soon as possible to the persons and parties referred to in paragraphs (a), (b) and (c) of that sub-section.

**79. *Application for variation of interim accommodation order***

S. 79  
substituted by  
No. 19/1994  
s. 13.

- (1) If the Court makes an interim accommodation order in respect of a child, the child or a parent of the child may apply to the Court for variation of the conditions attached to the order if—
  - (a) the applicant was not legally represented at the hearing of the application for the order;  
or
  - (b) new facts or circumstances have arisen since the making of the order.
- (2) If—
  - (a) the Court makes an interim accommodation order in respect of a child; and

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- (b) new facts or circumstances have arisen since the making of the order—  
a protective intervener or a person with whom the child has been placed in accordance with section 74(1)(c) may apply to the Court for variation of the conditions attached to the order.
- (3) On an application under sub-section (2) by a protective intervener, he or she may by notice direct—
- (a) the child to appear; and
  - (b) the parent or other person with whom the child is living to produce the child—  
before the Court.
- (4) A notice under sub-section (3) must be served on the child's parent or other person with whom the child is living and, if the child is of or above the age of 12 years, the child a reasonable time before the hearing of the application.
- (5) If a notice under sub-section (3) is served in accordance with sub-section (4) and the child does not appear before the Court at the time stated in the notice, a protective intervener may, without a warrant, take the child into safe custody or the Court may, if satisfied that the notice has come to the attention of the child's parent or other person with whom the child is living or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent or other person with whom the child is living, issue a search warrant for the purpose of having the child taken into safe custody.
- (6) On the child appearing or being brought before the Court under this section, the Court may vary the conditions attached to the order.
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**80. Procedure on breach of interim accommodation order**

**S. 80**  
**substituted by**  
**No. 19/1994**  
**s. 13.**

- (1) If a protective intervener has reasonable grounds for believing that an interim accommodation order or any condition attached to an interim accommodation order has not been, or is not being, complied with, he or she may by notice direct—
  - (a) the child to appear; and
  - (b) the parent or other person with whom the child is living to produce the child—

before the Court.
- (2) A notice under sub-section (1) must be served on the child's parent or other person with whom the child is living and, if the child is of or above the age of 12 years, the child a reasonable time before the commencement of the hearing under this section.
- (3) If a notice under sub-section (1) is served in accordance with sub-section (2) and the child does not appear before the Court at the time stated in the notice, a protective intervener may, without a warrant, take the child into safe custody or the Court may, if satisfied that the notice has come to the attention of the child's parent or other person with whom the child is living or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent or other person with whom the child is living, issue a search warrant for the purpose of having the child taken into safe custody.
- (4) If a protective intervener—
  - (a) is satisfied that there is good reason not to proceed as specified in sub-section (1) or that

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service of a notice under sub-section (1) cannot be carried out; and

- (b) is satisfied on reasonable grounds that there has been a failure to comply with the interim accommodation order or any condition attached to it—

he or she may, without a warrant, take the child into safe custody or apply to a magistrate or, despite anything to the contrary in the **Magistrates' Court Act 1989**, to an authorised bail justice for the issue of a search warrant.

- (5) A child taken into safe custody under sub-section (4) must be brought before the Court or a bail justice as soon as possible after being taken into safe custody and in any event within 24 hours after that event.
- (6) On the child appearing or being brought before the Court or a bail justice under this section, the Court or bail justice—
- (a) may revoke the interim accommodation order and make another interim accommodation order; or
- (b) may refuse to revoke the interim accommodation order; or
- (c) may make another interim accommodation order if the interim accommodation order expired after the notice was served under sub-section (1) or the protective intervener proceeded as specified in sub-section (4), as the case requires.
- (7) Subject to section 75(1), a new interim accommodation order made under sub-section (6)(a) remains in force for the period for which the revoked order would have remained in force had it not been revoked.
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**80A. Application for new interim accommodation order**

S. 80A  
inserted by  
No. 19/1994  
s. 13.

- (1) If an interim accommodation order is in force in respect of a child, the child or a parent of the child may apply to the Court for a new interim accommodation order if—
  - (a) the applicant was not legally represented at the hearing of the application for the order; or
  - (b) new facts or circumstances have arisen since the making of the order.
- (2) If the Court makes an interim accommodation order in respect of a child, a protective intervener (whether or not the order is still in force) or (if the order is still in force) a person with whom the child has been placed in accordance with section 74(1)(c) may apply to the Court for a new interim accommodation order if—
  - (a) new facts or circumstances have arisen since the making of the order; or
  - (b) in the case of an application by a protective intervener, the protective intervener is satisfied on reasonable grounds that the child is living in conditions which are unsatisfactory in terms of the safety and well-being of the child.
- (3) On an application under sub-section (2) by a protective intervener, he or she may by notice direct—
  - (a) the child to appear; and
  - (b) the parent or other person with whom the child is living to produce the child—
 before the Court.
- (4) A notice under sub-section (3) must be served on the child's parent or other person with whom the

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child is living and, if the child is of or above the age of 12 years, the child a reasonable time before the commencement of the hearing under this section.

- (5) If a notice under sub-section (3) is served in accordance with sub-section (4) and the child does not appear before the Court at the time stated in the notice, a protective intervener may, without a warrant, take the child into safe custody or the Court may, if satisfied that the notice has come to the attention of the child's parent or other person with whom the child is living or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent or other person with whom the child is living, issue a search warrant for the purpose of having the child taken into safe custody.
- (6) If on an application under sub-section (2) by a protective intervener in the circumstances set out in paragraph (b) of that sub-section, the protective intervener is satisfied that there is good reason not to proceed as specified in sub-section (3) or that service of a notice under sub-section (3) cannot be carried out, he or she may, without a warrant, take the child into safe custody or apply to a magistrate or, despite anything to the contrary in the **Magistrates' Court Act 1989**, to an authorised bail justice for the issue of a search warrant.
- (7) A child taken into safe custody under sub-section (6) must be brought before the Court or a bail justice as soon as possible after being taken into safe custody and in any event within 24 hours after that event.
- (8) On the child appearing or being brought before the Court or a bail justice under this section, the Court

or bail justice may make a new interim accommodation order.

- (9) Nothing in this section limits the power of the Court to make another interim accommodation order where the existing order was made by a bail justice or was made by the Court on an adjournment of a proceeding.

**80B. *Appeal against interim accommodation order***

**S. 80B**  
 inserted by  
 No. 19/1994  
 s. 13.

- (1) If the Court makes an interim accommodation order in respect of a child or dismisses an application for an interim accommodation order in respect of a child, then—
- (a) the child; or
  - (b) a parent of the child; or
  - (c) a protective intervener—

may appeal to the Supreme Court against the order or the dismissal.

- (2) On an appeal under this section against an interim accommodation order, the Supreme Court must—
- (a) if it thinks that a different interim accommodation order should have been made—
    - (i) set aside the order of the Children's Court; and
    - (ii) make any other order which it thinks ought to have been made; or
  - (b) in any other case, dismiss the appeal.
- (3) On an appeal under this section against the dismissal of an application for an interim accommodation order, the Supreme Court must—

- (a) if it thinks that the application should not have been dismissed, make the order which it thinks ought to have been made; or
- (b) in any other case, dismiss the appeal.

### **Division 5—Procedures in Family Division**

#### **81. *How proceeding in Family Division commenced***

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

#### **82. *Conduct of proceedings in Family Division***

- (1) The Family Division—
  - (a) must conduct proceedings before it in an informal manner; and
  - (b) must proceed without regard to legal forms; and
  - (c) must consider evidence on the balance of probabilities; and
  - (d) may inform itself on a matter in such manner as it thinks fit, despite any rules of evidence to the contrary.
- (2) The Attorney-General may appear or be represented in any proceeding before the Family Division and may call and examine or cross-examine witnesses and make submissions.
- (3) Despite anything to the contrary in this or any other Act, the Secretary or his or her delegate, in the capacity of being a party to any proceeding before the Family Division whether as a protective intervener or otherwise, may appear—
  - (a) personally; or

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<b>s. 82A</b>
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| <p>(b) by a legal practitioner; or</p>  | <p><b>S. 82(3)(b)</b><br/>amended by<br/>No. 35/1996<br/>s. 453(Sch. 1<br/>item 9.3).</p>  |
| <p>(c) by an officer or employee (whether or not admitted as a barrister and solicitor of the Supreme Court) who is authorised by the Secretary to appear in proceedings before the Family Division.</p>  |  |
| <p>(4) An authorisation under sub-section (3)(c)—</p> <p style="padding-left: 20px;">(a) must be made by instrument;</p> <p style="padding-left: 20px;">(b) may be of a particular officer or employee or of a class of officers or employees;</p> <p style="padding-left: 20px;">(c) may be subject to any conditions or limitations that the Secretary may specify in it.</p> | <p><b>S. 82(4)</b><br/>inserted by<br/>No. 10/1993<br/>s. 5.</p>   |
| <p>(5) For the purposes of sections 28(4) and 82B(5)(b) and (c), an officer or employee representing a party in accordance with sub-section (3)(c) must be taken to be that party's legal practitioner or legal representative.</p>   | <p><b>S. 82(5)</b><br/>inserted by<br/>No. 10/1993<br/>s. 5.</p>   |
| <p>(6) Nothing in sub-section (3) affects any right of the Secretary or his or her delegate to appear in any other matter in the Court personally or by a legal practitioner.</p>   | <p><b>S. 82(6)</b><br/>inserted by<br/>No. 10/1993<br/>s. 5,<br/>amended by<br/>No. 35/1996<br/>s. 453(Sch. 1<br/>item 9.3).</p> |
| <p><b>82A. <i>Pre-hearing conferences</i></b><sup>11</sup></p> <p>(1) The Family Division may, on the application of a party or without any such application, order that a protection application be referred for a pre-hearing conference to a convenor appointed under section 37A.</p>   | <p><b>S. 82A</b><br/>inserted by<br/>No. 69/1992<br/>s. 7(2).</p>  |
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- (2) The Court may fix a time and place for the holding of the pre-hearing conference or may direct that a convenor fix, within 7 working days, a time and place.
- (3) A pre-hearing conference is to be attended by the child's parents and the Secretary.
- (4) The Court may, in addition, order that any of the following attend—
  - (a) the child;
  - (b) a relative or relatives of the child;
  - (c) in the case of a child from an ethnic background, a member of the appropriate ethnic community who is chosen or agreed to by the child or by his or her parent.
- (5) A legal representative of a parent of the child may attend and, if the child is mature enough to give instructions, a separate legal representative of the child may attend.
- (6) Nothing in section 20 or 21 applies to a pre-hearing conference.

**82B. Confidentiality of pre-hearing conference<sup>12</sup>**

- (1) Subject to this section, the proceedings of a pre-hearing conference shall be confidential.
- (2) Evidence of anything said or done, or of any admission made, at a pre-hearing conference is only admissible in any proceeding before a court (including the proceeding on the protection application) if the court grants leave or all the parties to the pre-hearing conference consent.
- (3) A court may only grant leave under sub-section (2) if satisfied that it is necessary to do so to ensure the safety and well-being of the child.

S. 82B  
inserted by  
No. 69/1992  
s. 7(2).



- (4) Subject to sub-section (5), a person (other than the child or a parent or relative of the child) who attends a pre-hearing conference must not disclose any statement made at, or information furnished to, the conference without the leave of the Court or the consent of the person who made the statement or furnished the information.

Penalty applying to this sub-section: 10 penalty units.

- (5) Nothing in sub-section (4) prevents—
- (a) the convenor making a record of the proceedings at the pre-hearing conference;
  - (b) discussions taking place between a person who attended the conference and his or her legal representative;
  - (c) discussions taking place between the legal representatives of persons who attended the conference;
  - (d) discussions taking place between protective interveners about the conference;
  - (e) the disclosure, in connection with a review of the operation of the pre-hearing conference system, of information that does not identify any person who attended the conference or, if that person consents, information that does identify him or her;
  - (f) a disclosure of information made by a person in the reasonable belief that it was necessary to disclose it in order to prevent or minimise injury to any person or damage to any property.

**83. *Power of Family Division to make certain orders by consent in absence of parties***

S. 83  
amended by  
No. 46/1998  
s. 7(Sch. 1).

If on an application to the Family Division for the extension of a custody to Secretary order or a guardianship to Secretary order the Court is satisfied that the parties to the proceeding have agreed on the terms of the order and that the making of the order is in the best interests of the child, the Court may make the order without requiring the parties to attend, or be represented at, the proceeding.

#### **Division 6—Protection Orders**

##### ***Subdivision 1—General***

#### **84. *When Court may make order under this Division***

The Court may make an order under this Division in respect of a child if the Court finds—

- (a) that the child is in need of protection; or
- (b) that there is a substantial and irreconcilable difference between the person who has custody of the child and the child to such an extent that the care and control of the child are likely to be seriously disrupted.

#### **85. *Types of order***

- (1) If the Court makes a finding under section 84, it may make—
  - (a) any one of the following protections orders—
    - (i) an order requiring a person to give an undertaking;
    - (ii) a supervision order;
    - (iii) a custody to third party order;
    - (iv) a supervised custody order;

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(v) a custody to Secretary order; S. 85(1)(a)(v)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(vi) a guardianship to Secretary order; or S. 85(1)(a)(vi)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(b) an interim protection order.

(2) A protection order may continue in force after the child attains the age of 17 years but ceases to be in force when the child attains the age of 18 years.

**86. *Restrictions on the making of protection orders***

(1) Subject to section 48(2), the Court must not make a protection order or an interim protection order unless— S. 86(1)  
amended by  
No. 93/1990  
s. 8(1).

(a) it has received and considered a disposition report; and S. 86(1)(a)  
inserted by  
No. 93/1990  
s. 8(1).

(b) it is satisfied that all reasonable steps have been taken by the Secretary to provide the services necessary to ensure the safety and well-being of the child. S. 86(1)(b)  
inserted by  
No. 93/1990  
s. 8(1),  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(2) The Court must not make a protection order that has the effect of removing a child from the custody of his or her parent unless—

(a) the Court has considered and rejected as being contrary to the safety and well-being of the child, an order allowing the child to remain in the custody of his or her parent; and

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S. 86(2)(b)  
amended by  
Nos 93/1990  
s. 8(2),  
12/1999 s.  
4(Sch. 2 item  
3.3).

- (b) the Court is satisfied by a statement contained in a disposition report in accordance with section 49(c) that all reasonable steps have been taken by the Secretary to provide the services necessary to enable the child to remain in the custody of his or her parent; and
- (c) the Court considers that the making of the order is in the best interests of the child.

S. 86(3)  
inserted by  
No. 93/1990  
s. 8(3).

- (3) The fact that the child does not have adequate accommodation is not by itself a sufficient reason for the making of an order referred to in subsection (2).

S. 87  
amended by  
No. 69/1992  
s. 7(3)(a).

**87. *Court to have regard to certain matters***

- (1) In determining what finding or order to make on a protection application or an irreconcilable difference application the Court, as far as practicable<sup>13</sup> —

S. 87(1)(aa)  
inserted by  
No. 19/1994  
s. 14(a).

- (aa) must have regard to the need to protect children from harm and to protect their rights and to promote their welfare; and
- (a) must have regard to the need to give the widest possible protection and assistance to the family as the fundamental group unit of society and, accordingly, must ensure that intervention into family life should be to the minimum extent that is necessary to secure the protection of the child; and
- (b) must have regard to the need to strengthen and preserve the relationship between the child and the child's family; and
- (c) must have regard to the desirability of allowing the child to live at home; and

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- (d) must have regard to the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and
- (e) must take into consideration the effect of the finding or order on the stability of family relationships and the welfare and interests of the child; and
- (f) must have regard to the need, when the child is removed from his or her family, to plan the re-unification of the child with his or her family, wherever practicable; and

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S. 87(1)(g)  
repealed by  
No. 19/1994  
s. 14(b).

- (h) must ensure that, if there is a conflict between the interests of the child and some other person, the welfare and interests of the child are the paramount considerations; and
- (i) must consider any wishes expressed by the child and give those wishes such weight as the Court considers appropriate in the circumstances; and
- (j) must ensure that a child is only removed from his or her family if there is an unacceptable risk of harm to the child; and
- (k) must have regard to the suitability of the order in terms of the welfare and interests of the child.

S. 87(1)(k)  
amended by  
No. 19/1994  
s. 14(c).

(1A) In considering the matters referred to in subsection (1), the Court must treat the matters

S. 87(1A)  
inserted by  
No. 19/1994  
s. 14(d).

referred to in paragraph (aa) of that sub-section as paramount considerations.

- (2) In determining what finding or order to make on a protection application, the Court may consider the convenor's report on any pre-hearing conference held under section 82A<sup>14</sup>.

**88. *Service of applications and orders***

- (1) The appropriate registrar or, if he or she is the applicant, the Secretary, must as soon as possible cause a copy of an application for—
- (aa) the variation of an undertaking or of any conditions contained in an undertaking or for the revocation of an undertaking; or
  - (a) the variation or revocation of a supervision order; or
  - (b) the variation or revocation of a custody to third party order or a supervised custody order; or
  - (c) the extension of the period of a custody to Secretary order or a guardianship to Secretary order; or
  - (d) the variation or revocation of a custody to Secretary order; or
  - (e) the revocation of a guardianship to Secretary order; or
  - (f) an order in respect of a failure to comply with a supervision order, a supervised custody order, an interim protection order or an interim accommodation order; or

S. 87(2)  
inserted by  
No. 69/1992  
s. 7(3)(b).

S. 88(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 88(1)(aa)  
inserted by  
No. 19/1994  
s. 15.

S. 88(1)(c)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 88(1)(d)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 88(1)(e)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 88(1)(f)  
amended by  
No. 93/1990  
s. 24(d).

(g) an order regarding the exercise of any right, power or duty vested in a person as joint custodian or guardian of a child—

to be given or sent by post to any person by or on behalf of whom such an application could have been made and, in the case of an application referred to in paragraph (c) or an application under section 107(1), to the child and the parent of the child.

- (2) The appropriate registrar must cause a copy of an order varying or revoking a supervision order to be given or sent by post as soon as possible after the making of the order to any person by or on behalf of whom an application for the order could have been made.

***Subdivision 2—Undertaking***

**89. Undertaking**

- (1) By an order referred to in section 85(1)(a)(i) the Court may require—

- (a) the child; or  
(b) the child's parent; or  
(c) the person with whom the child is living—

to enter into an undertaking in writing to do or refrain from doing the thing or things specified in the undertaking for the period specified in the undertaking, being a period not exceeding 6 months or, if the Court is satisfied that there are special circumstances which warrant the making of an order for such a period, exceeding 6 months but not exceeding 12 months.

- (2) An undertaking may contain any conditions that the Court considers to be in the interests or for the welfare of the child.

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- (3) The Court may only make an order requiring a person to enter into an undertaking if that person consents to the making of the order.

**90. *Variation or revocation of undertaking***

- (1) An application for a variation of an undertaking or of any conditions contained in an undertaking or for the revocation of an undertaking may be made to the Court by—
- (a) the child; or
  - (b) the child's parent; or
  - (c) the person with whom the child is living.
- (2) On an application under sub-section (1) the Court may—
- (a) if the application is for a variation of an undertaking or of any conditions contained in an undertaking, vary the undertaking or any of the conditions contained in the undertaking or add or substitute a condition but must not extend the period of the undertaking; or
  - (b) if the application is for the revocation of an undertaking, revoke the undertaking.

***Subdivision 3—Supervision Order***

**91. *Supervision order***

- (1) A supervision order—
- (a) gives the Secretary responsibility for the supervision of the child; and
  - (b) does not affect the guardianship or custody of the child.

S. 91(1)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).



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- (2) A supervision order remains in force for the period specified in the order which must either be a period—
- (a) not exceeding 12 months; or
  - (b) exceeding 12 months but not exceeding 2 years, if the Court is satisfied that there are special circumstances which warrant the making of an order for such a period.
- (3) If under sub-section (2)(b) the Court specifies a period exceeding 12 months for a supervision order to remain in force it must direct the Secretary to review the operation of the order before the end of the period of 12 months after the making of the order and to notify the Court, the child, the child's parent and such other persons as the Court directs before the end of that period if he or she considers that, to ensure the safety and well-being of the child, the order should continue for the duration of the period specified in the order.
- (4) Unless the Secretary makes a notification in accordance with sub-section (3) the supervision order ceases to be in force at the end of the period of 12 months after it was made.

S. 91(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 91(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**92. *Supervision order may impose conditions***

- (1) A supervision order may include conditions to be observed by—
- (a) the child in respect of whom it is made; or
  - (b) a parent of the child; or
  - (c) the person with whom the child is living—
- being conditions that the court considers to be in the interests or for the welfare of the child.

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- (2) A supervision order must not include any condition as to where the child lives, unless the condition relates to the child living with a specified parent.

**93. Powers of Secretary under supervision order**

- (1) If the Court makes a supervision order in respect of a child, the parent or other person with whom the child is living must permit the Secretary to visit the child at his or her place of residence and to carry out the duties of the Secretary under the order.
- (2) The Secretary may, by notice in the prescribed form, give to—
- (a) the child in respect of whom a supervision order is made; or
  - (b) a parent of the child; or
  - (c) the person with whom the child is living—
- any direction that the Secretary considers to be in the interests or for the welfare of the child and that is both reasonable and lawful.

**94. Variation or revocation of supervision order**

- (1) An application for a variation of the conditions of a supervision order or for the revocation of a supervision order may be made to the Court—
- (a) by or on behalf of the child in respect of whom the order is made; or
  - (b) by a parent of the child; or
  - (c) by a person with whom the child is living; or
  - (d) by the Secretary.

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- (2) On an application under sub-section (1) the Court may—
- (a) if the application is for a variation of the conditions of a supervision order, vary any of the conditions included in the order or add or substitute a condition but must not extend the period of the order; or
  - (b) if the application is for the revocation of a supervision order, revoke the order.

**95. Breach of supervision order etc.**

- (1) If at any time while a supervision order is in force the Secretary is satisfied on reasonable grounds that—

S. 95(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (a) there has been a failure to comply with any condition of the order; or
- (b) there has been a failure to comply with any direction given by the Secretary under section 93(2); or
- (c) the child is living in conditions which are unsatisfactory in terms of the safety and well-being of the child—

S. 95(1)(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

the Secretary may by notice direct—

- (d) the child to appear; and
- (e) the parent or other person with whom the child is living to produce the child—

before the Court.

- (2) A notice under sub-section (1) must be served on the child's parent, or other person with whom the child is living and, if the child is of or above the age of 12 years, the child in accordance with section 70(2)(c) as though it were a notice under section 70(1).

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S. 95(3)  
amended by  
Nos 19/1994  
s. 16(1),  
46/1998  
s. 7(Sch. 1).

(3) If a notice under sub-section (1) is served in accordance with sub-section (2) and the child does not appear before the Court at the time stated in the notice, the Secretary may, without a warrant, take the child into safe custody or the Court may, if satisfied that the notice has come to the attention of the child's parent or other person with whom the child is living or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent or other person with whom the child is living, issue a search warrant for the purpose of having the child taken into safe custody.

(4) If—

S. 95(4)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(a) the Secretary is satisfied that there is good reason not to proceed as specified in sub-section (1) or that service of a notice under sub-section (1) cannot be carried out; and

S. 95(4)(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(b) the Secretary is satisfied on reasonable grounds that—

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

(ii) there has been a failure to comply with any direction given by the Secretary under section 93(2); or

(iii) the child is living in conditions which are unsatisfactory in terms of the safety and well-being of the child—

the Secretary may, without a warrant, take the child into safe custody or apply to a magistrate or, despite anything to the contrary in the **Magistrates' Court Act 1989**, to an authorised bail justice for the issue of a search warrant.

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| <p>(4A) If the Secretary proceeds as specified in sub-section (1) or (4), the supervision order continues in force until the matter is determined by the Court under sub-section (5).</p>   | <p><b>S. 95(4A)</b><br/>inserted by<br/>No. 19/1994<br/>s. 16(2).</p>   |
| <p>(5) On the child being brought before the Court the Court may, if satisfied that there has been a failure to comply with any condition of the supervision order or that there has been a failure to comply with any direction given by the Secretary under section 93(2) or that the child is living in conditions which are unsatisfactory in terms of the safety and well-being of the child—</p> <p style="margin-left: 20px;">(a) confirm the supervision order as originally made; or</p> <p style="margin-left: 20px;">(b) vary any of the conditions included in the supervision order or add or substitute a condition but must not extend the period of the order; or</p> <p style="margin-left: 20px;">(c) revoke the supervision order and, if satisfied that the grounds for the finding under section 84 still exist, make another supervision order or any other protection order in respect of the child.</p> | <p><b>S. 95(5)</b><br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p> |
| <p>(6) If the Court makes another supervision order under sub-section (5)(c), it must not specify as the period for which the order is to remain in force a period that would result in the child being subject to a supervision order for an aggregate period exceeding 2 years.</p>   | <p><b>S. 95(5)(c)</b><br/>amended by<br/>No. 19/1994<br/>s. 16(3).</p>  |
| <p>(6) If the Court makes another supervision order under sub-section (5)(c), it must not specify as the period for which the order is to remain in force a period that would result in the child being subject to a supervision order for an aggregate period exceeding 2 years.</p>   | <p><b>S. 95(6)</b><br/>inserted by<br/>No. 19/1994<br/>s. 16(4).</p>    |

***Subdivision 4—Custody to Third Party Order***

**96. Custody to third party order**

- (1) A custody to third party order—
- (a) grants sole or joint custody of the child to the person or persons named in the order; and

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S. 96(1)(b)(i)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (b) must not be made in favour of—
  - (i) the Secretary in his or her official capacity; or
  - (ii) a person employed by a community service in his or her official capacity; or
  - (iii) a parent of the child; and
- (c) does not affect the guardianship of the child; and
- (d) remains in force for the period (not exceeding 12 months) specified in the order; and
- (e) may include any conditions that the Court considers to be in the interests or for the welfare of the child, including a condition concerning access by a parent or other person; and
- (f) must not include any condition that gives powers or duties to, or otherwise involves, the Secretary.

S. 96(1)(f)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (2) The Court must not make a custody to third party order unless the Court—
  - (a) has considered the effect of the order on the likelihood of the re-unification of the child with his or her family; and
  - (b) is satisfied that, so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child.
- (3) If two persons who have been granted joint custody of a child under a custody to third party order cannot agree on the exercise or performance

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of a right, power or duty vested in them as custodian of the child, either of them may apply to the Court and the Court may make such orders regarding the exercise of the right or power or the performance of the duty as it thinks fit.

**97. *Variation or revocation of custody to third party order***

- (1) An application for the variation of a custody to third party order may be made to the Court by—
  - (a) the child in respect of whom the order is made; or
  - (b) a person who has been granted custody of the child; or
  - (c) a parent of the child.
- (2) On an application under sub-section (1) the Court may vary any of the conditions included in the order or add or substitute a condition but must not make any change in the custody of the child or extend the period of the order.
- (3) An application for the revocation of a custody to third party order may be made to the Court by—
  - (a) the child in respect of whom the order is made; or
  - (b) a person who has been granted custody of the child; or
  - (c) a parent of the child.
- (4) On an application under sub-section (3) the Court may revoke the order and, if satisfied that the grounds for the finding under section 84 still exist, make any other protection order in respect of the child.

***Subdivision 5—Supervised Custody Order***

**98. *Supervised custody order***

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S. 98(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 98(2)  
amended by  
No. 93/1990  
s. 24(e).

- (1) A supervised custody order is a custody to third party order that, despite section 96(1)(f), includes a condition that gives powers or duties to the Secretary or otherwise involves the Secretary in the supervision of the order.
- (2) A supervised custody order remains in force for the period (not exceeding 12 months) specified in the order and that period cannot be extended.
- (3) In making a supervised custody order the Court must have regard to the fact that the ultimate objective is the re-unification of the child with his or her parent and must by the order direct the parties to it to take all appropriate steps to enable the re-unification of the child with his or her parent before the end of the period for which the order remains in force.
- (4) Sections 93 and 95 apply to a supervised custody order as if—
  - (a) any references in those sections to a supervision order were references to a supervised custody order; and
  - (b) any references in those sections to the parent of the child were references to the person who has custody of the child; and
  - (c) in section 95(5)(b) after "but must not" there were inserted "make any change in the custody of the child or".
- (5) Section 97 applies to a supervised custody order as if—
  - (a) any references in that section to a custody to third party order were references to a supervised custody order; and



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- (b) the following paragraph were inserted at the end of sub-sections (1) and (3)—  
"(d) the Secretary."

S. 98(5)(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

***Subdivision 6—Custody to Director-General Order***

**99. Custody to Secretary order**

- (1) A custody to Secretary order—

S. 99(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (a) grants sole custody of the child to the Secretary; and
- (b) does not affect the guardianship of the child; and
- (c) subject to this Subdivision, remains in force for the period (not exceeding 12 months) specified in the order; and
- (d) may include any conditions that the Court considers to be in the interests or for the welfare of the child, including a condition concerning access by a parent or other person.

S. 99(1)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (2) The Court may only make a custody to Secretary order if the Secretary is satisfied that the making of such an order is a workable option.

S. 99(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**100. Extension of custody to Secretary order by up to 12 months**

- (1) At any time while a custody to Secretary order is in force an application for an extension of the period of the order may be made to the Court by the Secretary.

S. 100(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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**S. 100(2)**  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**S. 100(2A)**  
inserted by  
No. 19/1994  
s. 17(1).

- (2) If an application is made under sub-section (1) the custody to Secretary order continues in force until the application is determined.
- (2A) On an application under sub-section (1) the Court—
- (a) must give due consideration to the following matters in the following order—
    - (i) the likelihood of the re-unification of the child with his or her parent;
    - (ii) the benefits for the child of remaining in the custody of the Secretary;
  - (b) must take into account—
    - (i) the safety and well-being of the child; and
    - (ii) the nature of the relationship of the child with his or her parent, including the nature of the access between the child and the parent during the period of the order; and
    - (iii) the capacity of the parent to fulfil the responsibilities and duties of parenthood, including the capacity to provide adequately for the emotional, intellectual, educational and other needs of the child; and
    - (iv) any action taken by the parent to give effect to the goals set out in the case plan; and
    - (v) the effects on the child of continued separation from the parent; and
    - (vi) any other fact or circumstance that, in the opinion of the Court, should be

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taken into account in considering the welfare and interests of the child.

- (3) On an application under sub-section (1) the Court—
- (a) must extend the order for a period not exceeding 12 months if it is satisfied that—
    - (i) the Secretary, the child and the child's parent have agreed to the extension; and
    - (ii) the extending of the order is in the best interests of the child; and
  - (b) in any other case, may extend the order for a period not exceeding 12 months if it is satisfied that it is in the best interests of the child to do so.
- (4) The Court must not under this section make an order that would result in the period of the custody to Secretary order being more than 2 years.

**S. 100(3)(a)(i)**  
**amended by**  
**No. 46/1998**  
**s. 7(Sch. 1).**

**S. 100(4)**  
**amended by**  
**No. 46/1998**  
**s. 7(Sch. 1).**

**101. *Extension of custody to Secretary order beyond 2 years***

- (1) If—

**S. 101(1)**  
**amended by**  
**No. 46/1998**  
**s. 7(Sch. 1).**

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S. 101(1)(a)  
amended by  
Nos 19/1994  
s. 17(2),  
46/1998  
s. 7(Sch. 1).

(a) a custody to Secretary order has been in force for a period of more than 12 months but less than 2 years; and

(b) the order is still in force—

the Secretary may apply to the Court for an extension of the period of the order.

S. 101(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(2) If an application is made under sub-section (1) the custody to Secretary order continues in force until the application is determined.

(3) On an application under sub-section (1) the Court must give due consideration to the following matters in the following order—

(a) the likelihood of the re-unification of the child with his or her parent;

(b) the appropriateness of making a permanent care order in respect of the child;

S. 101(3)(c)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(c) the benefits for the child of remaining in the custody of the Secretary.

S. 101(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(4) In determining whether or not to extend the period of a custody to Secretary order on an application under sub-section (1), the Court must take into account—

(a) the safety and well-being of the child; and

(b) the nature of the relationship of the child with his or her parent, including the nature of the access between the child and the parent during the period of the order; and

(c) the capacity of the parent to fulfil the responsibilities and duties of parenthood, including the capacity to provide adequately

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- for the emotional, intellectual, educational and other needs of the child; and
- (d) any action taken by the parent to give effect to the goals set out in the case plan; and
- (e) the effects on the child of continued separation from the parent; and
- (f) any other fact or circumstance that, in the opinion of the Court, should be taken into account in considering the welfare and interests of the child.
- (5) On an application under sub-section (1) the Court, if satisfied that it would not be in the best interests of the child to be returned to the custody of his or her parent, may—
- (a) if satisfied that a permanent care order or similar order made by another court would be in the best interests of the child and that there is no likelihood of re-unification of the child with his or her parent, extend the custody to Secretary order for a period not exceeding 12 months and direct the Secretary to take steps to ensure that at the end of the period of the order a person other than the child's parent applies to a court for an order relating to—
- (i) the custody; or
- (ii) the custody and guardianship; or
- (iii) the custody and joint guardianship—
- of the child; and
- (b) in any other case, extend the order for a period not exceeding 2 years if it is satisfied

**S. 101(5)(a)**  
**amended by**  
**Nos 69/1992**  
**s. 14(4),**  
**46/1998**  
**s. 7(Sch. 1).**

that it is in the best interests of the child to do so.

(6) On an application under sub-section (1) the Court must make the order applied for if it is satisfied that—

- (a) the Secretary and the child's parent have agreed on the terms of the order; and
- (b) the extending of the custody to Secretary order accords with the wishes and feelings of the child so far as they have been capable of being ascertained having regard to the age and understanding of the child; and
- (c) the extending of the custody to Secretary order is in the best interests of the child.

(7) The Court must not make an order under this section unless it has received and considered a disposition report.

**102. *Additional extensions of custody to Secretary order***

(1) If—

- (a) a custody to Secretary order has been in force for a period of more than 2 years; and
- (b) the order is still in force; and
- (c) the order has not been extended under sub-section (5)(a) of section 101 or under that sub-section as applied to this section by sub-section (2)—

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the Secretary may from time to time apply to the Court for further extensions of the period of the order.

- (2) Sub-sections (2) to (7) of section 101 apply to an application under sub-section (1) of this section in the same manner as they apply to an application under sub-section (1) of that section.

**103. *Lapsing of custody to Secretary order***

- (1) A custody to Secretary order—

S. 103(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (a) is, subject to sub-section (2), suspended on the making, with the prior consent of the Secretary, of an application under the Family Law Act 1975 of the Commonwealth by a person who is not a parent of the child, seeking an order with respect to the custody or the guardianship and custody of the child, on the terms of which the parties to the application have agreed; and

S. 103(1)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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

S. 103(1)(b)  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 18.4).

- (2) A custody to Secretary order that has been suspended under sub-section (1)(a) revives if—

S. 103(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (a) the application for the order sought under the Family Law Act 1975 of the Commonwealth is withdrawn; or

S. 103(2)(a)  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 18.4).

(b) the order sought is refused.

**104. *Variation of custody to Secretary order***

(1) An application for a variation of a custody to Secretary order may be made to the Court by—

(a) the Secretary; or

(b) the child in respect of whom the order is made; or

(c) a parent of the child.

(2) On an application under sub-section (1) the Court may vary any of the conditions included in the order or add or substitute a condition but must not make any change in the custody of the child or extend the period of the order.

**105. *Revocation of custody to Secretary order***

(1) An application for the revocation of a custody to Secretary order may be made to the Court by—

(a) the Secretary; or

(b) the child in respect of whom the order is made; or

(c) a parent of the child.

(2) On an application under sub-section (1) the Court—



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| <p>(a) must revoke the order if it is satisfied that—</p> <p style="margin-left: 40px;">(i) the Secretary, the child and the child's parent have agreed to the revocation; and</p> <p style="margin-left: 40px;">(ii) the revocation of the order is in the best interests of the child—</p> <p style="margin-left: 40px;">but may, if satisfied that the grounds for the finding under section 84 still exist, make an order requiring a person to give an undertaking or a supervision order in respect of the child or, if the application is by the Secretary and the Court is satisfied that the changed circumstances justify it in doing so, make a guardianship to Secretary order in respect of the child; and</p> <p>(b) in any other case, may revoke the order if it is satisfied that it is in the best interests of the child to do so but may, if satisfied that the grounds for the finding under section 84 still exist, make an order requiring a person to give an undertaking or a supervision order in respect of the child or, if the Court is satisfied that the changed circumstances justify it in doing so, make a guardianship to Secretary order in respect of the child.</p> <p>(3) An order requiring a person to give an undertaking or a supervision order or a guardianship to Secretary order made under sub-section (2) remains in force for the period for which the revoked order would have remained in force had it not been revoked.</p> | <p><b>S. 105(2)(a)</b><br/>amended by<br/><b>No. 46/1998</b><br/>s. 7(Sch. 1).</p> <p><b>S. 105(2)(a)(i)</b><br/>amended by<br/><b>No. 46/1998</b><br/>s. 7(Sch. 1).</p> <p><b>S. 105(2)(b)</b><br/>amended by<br/><b>No. 46/1998</b><br/>s. 7(Sch. 1).</p> <p><b>S. 105(3)</b><br/>amended by<br/><b>No. 46/1998</b><br/>s. 7(Sch. 1).</p> |
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***Subdivision 7—Guardianship to Director-General Order***

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**106. *Guardianship to Secretary order***

(1) A guardianship to Secretary order—

- (a) grants custody and guardianship of the child to the Secretary to the exclusion of all other persons; and
- (b) subject to this Subdivision, remains in force for the period (not exceeding 2 years) specified in the order; and
- (c) ceases to be in force—
  - (i) when the child attains the age of 18 years; or
  - (ii) when the child marries—whichever happens first.

(2) If the Court specifies in a guardianship to Secretary order a period exceeding 12 months for the order to remain in force it must direct the Secretary to review the operation of the order before the end of the period of 12 months after the making of the order and to notify the Court, the child, the child's parent and such other persons as the Court directs before the end of that period if he or she considers that, to ensure the safety and well-being of the child, the order should continue for the duration of the period specified in the order.

(3) Unless the Secretary makes a notification in accordance with sub-section (2), the guardianship to Secretary order ceases to be in force at the end of the period of 12 months after it was made.

**107. *Extension of guardianship to Secretary order up to 2 years***

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S. 106(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 106(1)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 106(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 106(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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| <p>(1) If the Court specifies in a guardianship to Secretary order a period not exceeding 12 months for the order to remain in force, then, at any time while the order is in force the Secretary may apply to the Court for an extension of the period of the order for a period not exceeding 12 months.</p> | <p><b>S. 107(1)</b><br/> <b>amended by</b><br/> <b>No. 46/1998</b><br/> <b>s. 7(Sch. 1).</b></p> |
| <p>(2) If an application is made under sub-section (1) the guardianship to Secretary order continues in force until the application is determined.</p>   | <p><b>S. 107(2)</b><br/> <b>amended by</b><br/> <b>No. 46/1998</b><br/> <b>s. 7(Sch. 1).</b></p> |
| <p>(3) The Secretary must not apply under sub-section (1) unless he or she has reviewed the operation of the order and is of the opinion that an extension of the order is in the best interests of the child.</p>   | <p><b>S. 107(3)</b><br/> <b>amended by</b><br/> <b>No. 46/1998</b><br/> <b>s. 7(Sch. 1).</b></p> |
| <p>(4) On an application under sub-section (1) the Court—</p>  |  |
| <p>(aa) must give due consideration to the following matters in the following order—</p>   | <p><b>S. 107(4)(aa)</b><br/> <b>inserted by</b><br/> <b>No. 19/1994</b><br/> <b>s. 18.</b></p>   |
| <p style="padding-left: 40px;">(i) the likelihood of the re-unification of the child with his or her parent;</p>   |  |
| <p style="padding-left: 40px;">(ii) the benefits for the child of remaining in the custody and guardianship of the Secretary; and</p>  |  |
| <p>(ab) must take into account—</p>  | <p><b>S. 107(4)(ab)</b><br/> <b>inserted by</b><br/> <b>No. 19/1994</b><br/> <b>s. 18.</b></p>   |
| <p style="padding-left: 40px;">(i) the safety and well-being of the child; and</p>   |  |
| <p style="padding-left: 40px;">(ii) the nature of the relationship of the child with his or her parent, including the nature of the access between the child and the parent during the period of the order; and</p>  |  |
| <p style="padding-left: 40px;">(iii) the capacity of the parent to fulfil the responsibilities and duties of parenthood, including the capacity to provide adequately for the emotional,</p>   |  |
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S. 107(4)(a)(i)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 107(5)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 108  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- intellectual, educational and other needs of the child; and
- (iv) any action taken by the parent to give effect to the goals set out in the case plan; and
  - (v) the effects on the child of continued separation from the parent; and
  - (vi) any other fact or circumstance that, in the opinion of the Court, should be taken into account in considering the welfare and interests of the child; and
- (a) must extend the order for a period not exceeding 12 months if it is satisfied that—
    - (i) the Secretary, the child and the child's parent have agreed to the extension; and
    - (ii) the extending of the order is in the best interests of the child; and
  - (b) in any other case, may extend the order for a period not exceeding 12 months if it is satisfied that it is in the best interests of the child to do so.

- (5) The Court must not under this section make an order that would result in the period of the guardianship to Secretary order being more than 2 years.
- (6) The Court must not make an order under this section unless it has received and considered a disposition report.

**108. *Additional extensions and lapsing of guardianship to Secretary order***

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Sections 101, 102 and 103 apply to a guardianship to Secretary order as if—

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| (a) any references in those sections to a custody to Secretary order were references to a guardianship to Secretary order; and | S. 108(a)<br>amended by<br>No. 46/1998<br>s. 7(Sch. 1). |
| (b) any references in those sections to the custody of the child included references to the guardianship of the child.         |   |

**109. *Revocation of guardianship to Secretary order***

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| (1) An application for the revocation of a guardianship to Secretary order may be made to the Court by—  | S. 109(1)<br>amended by<br>No. 46/1998<br>s. 7(Sch. 1).    |
| (a) the Secretary; or  | S. 109(1)(a)<br>amended by<br>No. 46/1998<br>s. 7(Sch. 1). |
| (b) subject to sub-section (2), the child in respect of whom the order is made or a parent of the child.   |  |
| (2) A person referred to in sub-section (1)(b) may only apply to the Court under that sub-section if—  |  |
| (a) circumstances have changed since the making of the guardianship to Secretary order and the person has asked the Secretary to review the case plan and the Secretary has either refused to review the case plan or has reviewed it in a way which the person finds unsatisfactory; or | S. 109(2)(a)<br>amended by<br>No. 46/1998<br>s. 7(Sch. 1). |
| (b) the Secretary makes a notification in accordance with section 106(2) in respect of the order.  | S. 109(2)(b)<br>amended by<br>No. 46/1998<br>s. 7(Sch. 1). |

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S. 109(3)(a)(i)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (3) On an application under sub-section (1) the Court—
- (a) must revoke the order if it is satisfied that—
- (i) the Secretary, the child and the child's parent have agreed to the revocation; and
- (ii) the revocation of the order is in the best interests of the child; and
- (b) in any other case, may revoke the order if it is satisfied that it is in the best interests of the child to do so—
- but may, if satisfied that the grounds for the finding under section 84 still exist, make an order requiring a person to give an undertaking or a supervision order in respect of the child.
- (4) An order requiring a person to give an undertaking or a supervision order made under sub-section (3) remains in force for the period stated by the Court which must be no greater than the period for which the revoked order would have remained in force had it not been revoked.

***Subdivision 8—Interim Protection Orders***

**110. *Interim protection order***

- (1) If the Court in hearing and determining a protection application or an irreconcilable difference application is satisfied—

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- (a) that the child is in need of protection or that there is a substantial and presently irreconcilable difference between the person who has custody of the child and the child to such an extent that the care and control of the child are likely to be seriously disrupted; and
- (b) that it is desirable, before making a protection order, to test the appropriateness of a particular course of action—

it may make an interim protection order.

(2) An interim protection order—

- (a) makes the Secretary accountable to the Court for the implementation of the order; and

**S. 110(2)(a)**  
amended by  
**No. 46/1998**  
s. 7(Sch. 1).

- (b) states who has responsibility for the supervision of the child; and

- (c) may direct the preparation and submission to the Court of an additional report by a person specified in the order; and

- (ca) must require the child and his or her parent or other person with whom the child is living to appear before the Court before the expiry of the order at the time specified in the order or in any notice caused by the Court to be served on the child's parent or other person with whom the child is living and, if the child is of or above the age of 12 years, the child a reasonable time before the hearing date specified in the notice; and

**S. 110(2)(ca)**  
inserted by  
**No. 19/1994**  
s. 19(1).

- (d) remains in force for the period (not exceeding 3 months) specified in the order; and

- (e) may include any conditions to be observed by—

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- (i) the child in respect of whom the order is made; or
- (ii) the parent of the child; or
- (iii) the person with whom the child is living—

that the Court considers to be in the interests or for the welfare of the child, including conditions as to where the child lives or concerning access by a parent or other person.

**S. 110(2A)**  
inserted by  
No. 19/1994  
s. 19(2).

(2A) If the child does not appear before the Court at the time required in accordance with sub-section (2)(ca), the Secretary may, without a warrant, take the child into safe custody or the Court may issue a search warrant for the purpose of having the child taken into safe custody.

**S. 110(3)**  
amended by  
No. 19/1994  
s. 19(3)(a)(b).

(3) On the child appearing or being brought before the Court under this section the Court, after considering a further disposition report, must make, or refuse to make, a protection order but must not extend the interim protection order or make a new interim protection order (if it is still in force).

**S. 110A**  
inserted by  
No. 19/1994  
s. 20.

**110A. *Variation or revocation of interim protection order***

- (1) An application for the variation of an interim protection order may be made to the Court by—
  - (a) the Secretary; or
  - (b) the child in respect of whom the order is made; or
  - (c) a parent of the child or other person with whom the child is living.
- (2) On an application under sub-section (1) the Court may vary any of the conditions included in the



order or add or substitute a condition but must not extend the period of the order.

- (3) An application for the revocation of an interim protection order may be made to the Court by—
  - (a) the Secretary; or
  - (b) the child in respect of whom the order is made; or
  - (c) a parent of the child or other person with whom the child is living.
- (4) On an application under sub-section (3) the Court may revoke the order and, if satisfied that the grounds for the finding under section 84 still exist, make a protection order in respect of the child but must not make another interim protection order.

**111. *Breach of interim protection order etc.***

- (1) If at any time while an interim protection order is in force the Secretary is satisfied on reasonable grounds that there has been a failure to comply with any condition of the order or that the child is living in conditions which are unsatisfactory in terms of the safety and well-being of the child, the Secretary may by notice direct—
  - (a) the child to appear; and
  - (b) the parent or other person with whom the child is living to produce the child—
 before the Court.
- (2) A notice under sub-section (1) must be served on the child's parent or other person with whom the child is living and, if the child is of or above the age of 12 years, the child in accordance with section 70(2)(c) as though it were a notice under section 70(1).

**S. 111(1)**  
**amended by**  
**No. 46/1998**  
**s. 7(Sch. 1).**

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s. 111

S. 111(3)  
amended by  
Nos 19/1994  
s. 21, 46/1998  
s. 7(Sch. 1).

(3) If a notice under sub-section (1) is served in accordance with sub-section (2) and the child does not appear before the Court at the time stated in the notice, the Secretary may, without a warrant, take the child into safe custody or the Court may, if satisfied that the notice has come to the attention of the child's parent or other person with whom the child is living or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent or other person with whom the child is living, issue a search warrant for the purpose of having the child taken into safe custody.

S. 111(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(4) If—

S. 111(4)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(a) the Secretary is satisfied that there is good reason not to proceed as specified in sub-section (1) or that service of a notice under sub-section (1) cannot be carried out; and

S. 111(4)(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(b) the Secretary is satisfied on reasonable grounds that there has been a failure to comply with any condition of the interim protection order or that the child is living in conditions which are unsatisfactory in terms of the safety and well-being of the child—

the Secretary may, without a warrant, take the child into safe custody or apply to a magistrate or, despite anything to the contrary in the **Magistrates' Court Act 1989**, to an authorised bail justice for the issue of a search warrant.

(5) On the child being brought before the Court the Court may, if satisfied that there has been a failure to comply with any condition of the interim protection order or that the child is living in

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conditions which are unsatisfactory in terms of the safety and well-being of the child—

- (a) confirm the interim protection order as originally made; or
- (b) vary any of the conditions included in the interim protection order or add or substitute a condition but must not extend the period of the order; or
- (c) revoke the interim protection order and, if satisfied that the grounds for the finding under section 84 still exist, make a protection order in respect of the child.

#### **Division 7—Permanent Care Orders**

#### **112. *When Court may make permanent care order***

- (1) The Court may make a permanent care order in respect of a child if—
  - (a) the child's parent has not had care of the child for a period of at least 2 years or for periods that total at least 2 of the last 3 years; and
  - (b) it is satisfied that—
    - (i) the parent is unable or unwilling to resume custody and guardianship of the child; or
    - (ii) it would not be in the best interests of the child for the parent to resume custody and guardianship of the child; and

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s. 112

S. 112(1)(c)  
amended by  
No. 69/1992  
s. 14(5)(a).

S. 112(1)(d)  
amended by  
No. 69/1992  
s. 14(5)(b).

S. 112(2)  
amended by  
Nos 69/1992  
s. 14(6),  
46/1998  
s. 7(Sch. 1).

S. 112(2A)  
inserted by  
No. 69/1992  
s. 14(7).

- (c) it is satisfied that the person or persons named in the application as suitable to have custody and guardianship of the child is or are suitable having regard to—
    - (i) any prescribed matters; and
    - (ii) any wishes expressed by the parent in relation to those prescribed matters; and
  - (d) it is satisfied that the person or persons named in the application is or are willing and able to assume responsibility for the permanent care of the child by having custody and guardianship of the child; and
  - (e) in the case of an Aboriginal child, it has received a report from an Aboriginal agency that recommends the making of the order; and
  - (f) it is satisfied that, so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child; and
  - (g) it is satisfied that the welfare and interests of the child will be promoted by the making of the order.
- (2) An application for a permanent care order may be made by the Secretary in relation to a person who is, or persons who are, approved by the Secretary as suitable to have custody and guardianship of the child.
- (2A) With the leave of the Court, the person or persons named in the application as suitable to have custody and guardianship of the child may appear, and be legally represented at, the hearing of the application and may call and examine or cross-examine witnesses and make submissions.

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*Act No. 56/1989*

s. 112
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| <p>(2B) The person or persons referred to in sub-section (2A) must be taken to be a party to a proceeding in the Court for the purposes of section 18, 19, 22 or 23.</p>  | <p><b>S. 112(2B)</b><br/>inserted by<br/>No. 69/1992<br/>s. 14(7).</p>   |
| <p>(3) A permanent care order—</p> <p style="padding-left: 20px;">(a) subject to paragraph (b), grants custody and guardianship of the child to the person or persons named in the order (not being the child's parent or the Secretary) to the exclusion of all other persons; and</p> <p style="padding-left: 20px;">(b) may vest guardianship of the child jointly in the person or persons named in the order and the child's parent if the Court is satisfied that—</p> <p style="padding-left: 40px;">(i) the Secretary, the child and the persons to be named in the order as guardians have agreed on the terms of the order; and</p> <p style="padding-left: 40px;">(ii) special circumstances exist which justify the making of such an order; and</p> <p style="padding-left: 20px;">(c) may continue in force after the child attains the age of 17 years but ceases to be in force—</p> <p style="padding-left: 40px;">(i) when the child attains the age of 18 years; or</p> <p style="padding-left: 40px;">(ii) when the child marries—</p> <p style="padding-left: 20px;">whichever happens first; and</p> <p style="padding-left: 20px;">(d) must include conditions that the Court considers to be in the interests of the child concerning access by the child's parent.</p> | <p><b>S. 112(3)(a)</b><br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p> <p><b>S. 112(3)(b)</b><br/>amended by<br/>No. 69/1992<br/>s. 14(8).</p> <p><b>S. 112(3)(b)(i)</b><br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p> |
| <p>(4) The appropriate registrar must cause a copy of an application under this section to be given or sent by post as soon as possible to—</p> <p style="padding-left: 20px;">(a) the child who is the subject of the application; and</p>   |  |
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S. 112(4)(c)  
amended by  
No. 93/1990  
s. 9,  
substituted by  
No. 69/1992  
s. 14(9).

- (b) the parent of the child; and
  - (c) the person or persons named in the application as suitable to have custody and guardianship of the child; and
  - (d) such other persons as the Court directs.
- (5) On the making of a permanent care order any protection order then in force in respect of the child ceases to be in force.
- (6) If two persons who have been granted joint custody or guardianship of a child under a permanent care order cannot agree on the exercise or performance of a right, power or duty vested in them as custodian or guardian of the child, either of them may apply to the Court and the Court may make such orders regarding the exercise of the right or power or the performance of the duty as it thinks fit.

**113. *Restrictions on the making of permanent care orders***

- (1) The Court must not make a permanent care order unless it has received and considered a disposition report.
- (2) The Court must not make a permanent care order if—
  - (a) a protection order is in force in respect of the child but an application to the Court to revoke it has been made but not yet determined; or
  - (b) there is a current proceeding under the Family Law Act 1975 of the Commonwealth seeking an order (on the terms of which the

parties to the proceeding have agreed) with respect to the custody and guardianship of the child, being a proceeding commenced by a person who is not a parent of the child.

**114. *Lapsing of permanent care order***

(1) A permanent care order—

- (a) is, subject to sub-section (2), suspended on the making, with the prior consent of the Secretary, of an application under the Family Law Act 1975 of the Commonwealth by a person who is not a parent of the child in respect of whom the permanent care order is made, seeking an order with respect to the custody and guardianship of the child, on the terms of which the parties to the proceeding have agreed; and
- (b) ceases to be in force on the making of that order under the Family Law Act 1975 of the Commonwealth.

S. 114(1)(a) amended by No. 46/1998 s. 7(Sch. 1).

S. 114(1)(b) amended by No. 74/2000 s. 3(Sch. 1 item 18.5).

(2) A permanent care order that has been suspended under sub-section (1)(a) revives if—

- (a) the application for the order sought under the Family Law Act 1975 of the Commonwealth is withdrawn; or
- (b) the order sought is refused.

S. 114(2)(a) amended by No. 74/2000 s. 3(Sch. 1 item 18.5).

**115. *Variation or revocation of permanent care order***

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s. 116

S. 115(1)  
amended by  
No. 69/1992  
s. 14(10).

S. 115(1)(d)  
inserted by  
No. 69/1992  
s. 14(10).

- (1) An application for a variation of a permanent care order or for the revocation (in whole or in part) of such an order may be made to the Court by—
  - (a) the child in respect of whom the order is made; or
  - (b) a parent of the child; or
  - (c) a person granted custody and guardianship of the child under the order; or
  - (d) the Secretary.
- (2) The appropriate registrar must cause a copy of an application under sub-section (1) to be given or sent by post as soon as possible to any person by whom such an application could have been made under this section.
- (3) On an application under sub-section (1) the Court may, if satisfied that it is in the best interests of the child to do so—
  - (a) if the application is for a variation of the order, vary any of the conditions included in the order or add or substitute a condition but must not make any change in the custody or guardianship of the child; or
  - (b) if the application is for the revocation of the order, revoke the order in whole or in part.

**Division 8—Appeals**

**116. *Appeal to County Court or Supreme Court***

- (1) A person to whom this section applies may appeal to the County Court or, if the Court was constituted by the President, to the Trial Division of the Supreme Court against—
  - (a) a protection order; or

S. 116(1)  
amended by  
No. 36/2000  
s. 11(1).



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<b>s. 116</b>
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- (b) the dismissal of a protection application or an irreconcilable difference application; or
  - (c) an interim protection order; or
  - (d) an order varying or revoking a supervision order, a custody to third party order, a supervised custody order, a custody to Secretary order or a permanent care order; or S. 116(1)(d) amended by No. 46/1998 s. 7(Sch. 1).
  - (e) an order extending a custody to Secretary order or a guardianship to Secretary order; or S. 116(1)(e) amended by No. 46/1998 s. 7(Sch. 1).
  - (f) an order revoking a guardianship to Secretary order; or S. 116(1)(f) amended by No. 46/1998 s. 7(Sch. 1).
  - (g) an order made under section 95(5) (breach of supervision order or supervised custody order) or an order made under section 111(5) (breach of interim protection order); or S. 116(1)(g) substituted by No. 93/1990 s. 10(1)(a).
  - (h) the dismissal of an application for an order referred to in paragraph (d), (e), (f) or (g); or S. 116(1)(h) amended by No. 93/1990 s. 10(1)(b).
  - (i) a permanent care order; or
  - (j) the dismissal of an application for a permanent care order.
- (2) This section applies to—
- (a) the child who is the subject of the order or application; or
  - (b) the parent of that child; or
  - (c) the protective intervener, if one has been involved in the proceeding; or

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- S. 116(2)(ca)  
inserted by  
No. 93/1990  
s. 10(2),  
amended by  
No. 69/1992  
s. 14(11).
- S. 116(2)(cb)  
inserted by  
No. 93/1990  
s. 10(2).
- S. 116(2)(d)  
amended by  
No. 46/1998  
s. 7(Sch. 1).
- S. 116(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1).
- S. 116(5)  
amended by  
No. 36/2000  
s. 11(2).
- S. 116(6)  
amended by  
Nos 19/1994  
s. 22(1),  
36/2000  
s. 11(3).
- Victorian Legislation and Parliamentary Documents
- (ca) in the case of a permanent care order or the dismissal of an application for a permanent care order, the applicant for the order or, if a person is authorised under section 7(2) for the purposes of section 112(2), that person or the person or persons named in the application as suitable to have custody and guardianship of the child; or
- (cb) the person who has been granted custody and guardianship in a permanent care order; or
- (d) the Secretary; or
- (e) the Attorney-General, if he or she appeared or was represented in the proceeding under section 82(2).
- (3) If the appellant is a child under the age of 15 years an appeal may be made on the child's behalf and in the name of the child by the child's parent.
- (4) If a protective intervener wishes to appeal under this section, the appeal must be brought by the Secretary on behalf of the protective intervener.
- (5) If a person appeals under this Act to the Supreme Court on a question of law, that person is deemed to have abandoned finally and conclusively any right under this or any other Act to appeal to the County Court or any right under this section to appeal to the Trial Division of the Supreme Court.
- (6) Subdivision 1 of Division 4 of Part 4 (except sections 83, 84, 87 and 90) of, and Schedule 6 (except clauses 3, 4 and 8) to, the **Magistrates' Court Act 1989** apply, with any necessary
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<b>s. 116</b>
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modifications, to appeals to the County Court under this section as if—

- (a) a reference to the Magistrates' Court were a reference to the Children's Court; and
- (b) a reference to section 83 or 84 were a reference to this section; and
- (c) in section 85 for the words "and the appellant is not bound by the plea entered in the Magistrates' Court" there were substituted the words "and the appellant is not bound by the fact that he or she did not contest the application"; and
- (d) a reference to the sentencing order were a reference to the order or the dismissal of the application referred to in sub-section (1).

(6AA) The provisions of the **Magistrates' Court Act 1989** that apply to appeals to the County Court under this section by virtue of sub-section (6) (as modified by that sub-section) apply, with any other necessary modifications, to appeals to the Trial Division of the Supreme Court under this section as if—

- (a) a reference to the County Court were a reference to the Trial Division of the Supreme Court;
- (b) in section 86(2) the reference to section 74 of the **County Court Act 1958** were a reference to section 17(2) of the **Supreme Court Act 1986**;
- (c) in section 88AA(2) the reference to the **County Court Act 1958** were a reference to the **Supreme Court Act 1986**;

S. 116(6AA)  
 inserted by  
 No. 36/2000  
 s. 11(4).

S. 116(6A)  
inserted by  
No. 19/1994  
s. 22(2).

S. 116(6B)  
inserted by  
No. 19/1994  
s. 22(2).

S. 116(7)  
amended by  
No. 19/1994  
s. 22(3)(a).

S. 116(7)(a)  
amended by  
No. 36/2000  
s. 11(5)(a).

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- (d) in clause 1(4) of Schedule 6 the reference to rules of the County Court were a reference to rules of the Supreme Court;
  - (e) a reference to the registrar of the County Court were a reference to the prothonotary of the Supreme Court.
- (6A) An appeal under this section does not operate as a stay of any order made by the Court unless the Court so orders with respect to the whole or any part of the order.
  - (6B) The Court must hear and determine as expeditiously as possible an application for a stay of an order made by a person who has filed a notice of appeal and signed the undertaking referred to in clause 2(1) of Schedule 6 to the **Magistrates' Court Act 1989** (as applied by sub-section (6)).
  - (7) Sections 18(1) (except paragraph (c)), 20, 22, 23, 26, 38 to 51 and 87 apply, with any necessary modifications, to appeals under this section as if—
    - (a) a reference to the Court or the Family Division were a reference to the County Court or the Supreme Court (as the case requires); and
    - (b) a reference to a proceeding to which section 21(1) applies were a reference to an appeal under this section; and
    - (c) the reference in section 23(3) to an order to which that sub-section applies were a reference to a final order made on the hearing of the appeal; and
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<b>s. 117</b>
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(ca) a reference in section 26(1) to the President were a reference to the County Court or the Supreme Court (as the case requires); and

S. 116(7)(ca) inserted by No. 19/1994 s. 22(3)(b), amended by No. 36/2000 ss 10(2), 11(5)(a).

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

S. 116(7)(d) amended by No. 36/2000 s. 11(5)(b).

**117. *Appeal to Supreme Court on a question of law***

(1) A party to a proceeding before the Family Division or the Attorney-General, if he or she appeared or was represented in the proceeding under section 82(2), may appeal to the Supreme Court, on a question of law, from a final order of the Court in that proceeding.

(1A) The person or persons named in an application for a permanent care order as suitable to have custody and guardianship of a child must, for the purposes of this section, be taken to be a party to the proceeding for the permanent care order.

S. 117(1A) inserted by No. 69/1992 s. 14(12).

(2) If a protective intervener wishes to appeal under this section, the appeal must be brought by the Secretary on behalf of the protective intervener.

S. 117(2) amended by No. 46/1998 s. 7(Sch. 1).

(3) An appeal under sub-section (1)—

(a) must be instituted not later than 30 days after the day on which the order complained of was made; and

(b) does not operate as a stay of any order made by the Court unless the Supreme Court so orders.

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- (4) Subject to sub-section (3), an appeal under sub-section (1) must be brought in accordance with the rules of the Supreme Court.
- (5) An appeal instituted after the end of the period referred to in sub-section (3)(a) is deemed to be an application for leave to appeal under sub-section (1).
- (6) The Supreme Court may grant leave under sub-section (5) and the appellant may proceed with the appeal if the Supreme Court—
  - (a) is of the opinion that the failure to institute the appeal within the period referred to in sub-section (3)(a) was due to exceptional circumstances; and
  - (b) is satisfied that the case of any other party to the appeal would not be materially prejudiced because of the delay.
- (7) After hearing and determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court with or without any direction in law.
- (8) An order made by the Supreme Court on an appeal under sub-section (1), other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.
- (9) The Supreme Court may, as it thinks fit, provide for a stay of the order or may make any interim accommodation order pending the hearing of the appeal that the Children's Court has jurisdiction to make.

**118. *Appeals to be heard in open court***

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- (1) Proceedings on an appeal under section 116 or 117 are, subject to sub-section (2), to be conducted in open court.
- (2) The Supreme Court or County Court (as the case requires) may, on the application of a party or of any other person who has a direct interest in the proceeding or without any such application—
  - (a) order that the whole or any part of a proceeding be heard in closed court; or
  - (b) order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.
- (3) Any party to the proceeding and any other interested person has standing to support or oppose an application under sub-section (2).
- (4) If an order has been made under this section, the Supreme Court or County Court (as the case requires) must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the Court is being held.
- (5) An order posted under this section must not contain any particulars likely to lead to the identification of the child who is a party to the proceeding.
- (6) A person must not contravene an order made and posted under this section.

Penalty applying to this sub-section:

- (a) In the case of a person of or above the age of 17 years, 25 penalty units or committal for a term of not more than six months to prison; or
  - (b) In the case of a child of or above the age of 15 years, 25 penalty units or detention for a
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- period of not more than six months in a youth training centre; or
- (c) In the case of a child under the age of 15 years, 12 penalty units or detention for a period of not more than three months in a youth residential centre.

**Division 9—Powers and Responsibilities of Director-General**

**119. Principles of case planning**

- (1) Decisions made by the Secretary as part of the case planning process must, as far as possible, be made according to the following principles—
- (a) the welfare and interests of the child must be given paramount importance;
  - (b) if the child is not living with his or her family, a primary goal is to reunite the child with his or her family if that is for the welfare and in the interests of the child;
  - (c) when considering the welfare and interests of the child, due consideration must be given to immediate and long-term effects of decisions on the welfare and interests of the child and on the maintenance of the family relationships of the child;
  - (d) any decisions made to protect the safety and well-being of the child must not be more than sufficient to achieve this;
  - (e) the child (except if his or her participation would be detrimental to his or her safety or well-being) and the family of the child (except where its participation would be detrimental to the safety or well-being of the child) must be encouraged and (through consultation and discussion) given adequate

s. 119(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).



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- opportunity to participate fully in the case planning process and must be given a copy of any proposed case plan and sufficient notice of any meeting proposed to be held;
- (f) the child and the family of the child must be provided with the opportunity and assistance to involve other persons to assist them to participate fully in the case planning process in accordance with paragraph (e);
  - (g) the case planning process must be conducted in such a way that the persons involved are able to understand it;
  - (h) the case planning process must take into account the views of all persons who are directly involved;
  - (i) decisions are to be reached by collaboration and consensus;
  - (j) decisions are to be made with as much speed as a proper consideration of the case permits;
  - (k) if a person attending meetings occurring as part of the case planning process has difficulty in communicating in the English language, an interpreter must be present;
  - (l) if meetings are held as part of the case planning process and the child comes from an ethnic background, a member of the appropriate ethnic community who is chosen or agreed to by the child or by his or her parent may attend;
- (m) in the case of an Aboriginal child—
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- (i) decision-making should involve relevant members of the Aboriginal community to which the child belongs; and
  - (ii) in recognition of the principle of Aboriginal self-management and self-determination, arrangements concerning the child, and his or her care, supervision, custody or guardianship, or access to the child, must be made in accordance with the principles listed in sub-section (2).
- (2) For the purpose of sub-section (1)(m)(ii) the principles are:
- (a) Persons involved in the arrangements mentioned in sub-section (1)(m)(ii) must be, or at least one of them must be, a member of the Aboriginal community to which the child belongs; or
  - (b) If a person or persons of the class mentioned in paragraph (a) is or are not reasonably available for that purpose, the persons involved in those arrangements must be members of, or at least one of them must be a member of, an Aboriginal community; or
  - (c) If a person or persons of the classes mentioned in paragraphs (a) and (b) is or are not reasonably available for that purpose, the persons involved in those arrangements must be persons approved by the Secretary and by an Aboriginal agency as suitable persons for that purpose.

S. 119(2)(c)  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

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**120. Preparation of case plan**

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| (1) The Secretary must ensure—   | S. 120(1)<br>amended by<br>No. 46/1998<br>s. 7(Sch. 1).    |
| (a) that a case plan is prepared in respect of a child within 6 weeks after the making by the Court of a supervision order, a supervised custody order, a custody to Secretary order or a guardianship to Secretary order; and | S. 120(1)(a)<br>amended by<br>No. 46/1998<br>s. 7(Sch. 1). |
| (b) that a copy of the case plan is given to the child and his or her parent within 14 days after its preparation; and   |  |
| (c) that the case plan is reviewed from time to time by the Secretary as appears necessary.  | S. 120(1)(c)<br>amended by<br>No. 46/1998<br>s. 7(Sch. 1). |
| (2) A case plan must contain all decisions made by the Secretary concerning a child which—   | S. 120(2)<br>amended by<br>No. 46/1998<br>s. 7(Sch. 1).    |
| (a) the Secretary considers to be significant decisions; and   | S. 120(2)(a)<br>amended by<br>No. 46/1998<br>s. 7(Sch. 1). |
| (b) relate to the present and future care and well-being of the child, including the placement of, and access to, the child.   |  |

**121. *Internal review***

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| (1) The Secretary must prepare and implement procedures for the review within the Department of decisions made as part of the case planning process following the making of a protection order or an interim protection order. | S. 121(1)<br>amended by<br>No. 46/1998<br>s. 7(Sch. 1). |
| (2) The Secretary must ensure that a copy of the procedures prepared under sub-section (1) is given to the child and his or her parent together with the   | S. 121(2)<br>amended by<br>No. 46/1998<br>s. 7(Sch. 1). |
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copy of the case plan required to be given under section 120(1)(b).

- (3) The Secretary, in consultation with the Chief Commissioner of Police, must prepare and implement procedures for the review by a panel that comprises—

(a) a nominee of the Attorney-General (who shall be the chairperson); and

(b) a nominee of the Secretary; and

(c) a nominee of the Chief Commissioner of Police—

of decisions relating to the recording of information in the central register referred to in section 65(1)(b).

- (3A) A person with the right to nominate a person under sub-section (3) may nominate another person as an alternate member of the panel and the person so nominated under this sub-section is entitled to attend a meeting of the panel and to act for the other person in the absence from duty of that other person.

- (4) The Secretary must ensure that a copy of the procedures prepared under sub-section (3) is given to every person directly affected by a decision referred to in that sub-section.

**122. *Review by Victorian Civil and Administrative Tribunal***

Victorian Legislation and Parliamentary Documents

S. 121(3)  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

S. 121(3)(b)  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

S. 121(3A)  
 inserted by  
 No. 69/1992  
 s. 15(1).

S. 121(4)  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

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| <p>(1) A child or a child's parent may apply to the Victorian Civil and Administrative Tribunal for review of—</p> <p style="margin-left: 40px;">(a) a decision contained in a case plan prepared in respect of the child under section 120 or any other decision made by the Secretary concerning the child; or</p> <p style="margin-left: 40px;">(b) a decision relating to the recording of information in the central register referred to in section 65(1)(b).</p>   | <p>S. 122(1) substituted by No. 52/1998 s. 311(Sch. 1 item 13.1), amended by No. 46/1998 s. 7(Sch. 1).</p> |
| <p>(2) An application for review must be made within 28 days after the later of—</p> <p style="margin-left: 40px;">(a) the day on which the decision is made;</p> <p style="margin-left: 40px;">(b) if, under the <b>Victorian Civil and Administrative Tribunal Act 1998</b>, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.</p> | <p>S. 122(2) substituted by No. 52/1998 s. 311(Sch. 1 item 13.1).</p>                                      |
| <p>(3) Before a person is entitled to apply to the Victorian Civil and Administrative Tribunal for the review of a decision referred to in sub-section (1), the person must have exhausted all available avenues for the review of the decision under section 121.</p>  | <p>S. 122(3) amended by No. 52/1998 s. 311(Sch. 1 item 13.2).</p>  |

**123. Powers of Secretary as guardian or custodian**

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| <p>(1) The Secretary, in relation to a child who is under his or her guardianship—</p> <p style="margin-left: 40px;">(a) is the guardian of the person and estate of the child to the exclusion of all other persons; and</p> | <p>S. 123(1) amended by No. 46/1998 s. 7(Sch. 1).</p> |
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S. 123(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (b) has the same rights, powers, duties, obligations and liabilities as a natural parent of the child would have.
- (2) The Secretary, in relation to a child who is in the custody or under the guardianship of the Secretary—
- (a) has the sole right to the custody of the child; and
- (b) may demand, sue for and recover any money due to the child; and
- (c) in the name and on behalf of the child may commence and prosecute any proceeding relating to any property or rights of the child.
- (3) The Secretary may detain without warrant any child who is in the custody or under the guardianship of the Secretary.
- (4) This section applies except as otherwise expressly provided by this Part or by any order made under this Part.

S. 123(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

#### 124. *Placement of children*

S. 124(1)  
amended by  
Nos 19/1994  
s. 23, 46/1998  
s. 7(Sch. 1).

- (1) The Secretary may deal with a child who is in the custody or under the guardianship of the Secretary under this Act or of whom the Secretary is the guardian under the **Adoption Act 1984** or the **Adoption of Children Act 1964** or in respect of whom the Secretary has authority under the **Adoption Act 1984** to exercise any rights of custody in any of the following ways—
- (a) place him or her in a community service;
- (b) place him or her in a secure welfare service for a period not exceeding 21 days (and, in exceptional circumstances, for one further period not exceeding 21 days) if the Secretary is satisfied that there is a

S. 124(1)(b)  
amended by  
Nos 93/1990  
s. 11, 46/1998  
s. 7(Sch. 1).

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- substantial and immediate risk of harm to the child;
- (c) place him or her for adoption under the **Adoption Act 1984** if he or she is under the guardianship of the Secretary and available for adoption;
- (d) place him or her in any other suitable situation as circumstances require.
- (2) In dealing with a child under sub-section (1), the Secretary—
- (a) must have regard to the welfare of the child as the first and paramount consideration; and
- (b) must make provision for the physical, intellectual, emotional and spiritual development of the child in the same way as a good parent would; and
- (c) must have regard to the fact that the child's lack of adequate accommodation is not by itself a sufficient reason for placing the child in a secure welfare service.

**125. State Guardianship Fund**

- (1) All money received by the Secretary as guardian of the estate of a child must be paid to the credit of an account established and kept in a bank by the Secretary under the name of the "State Guardianship Fund".
- (2) The Secretary must keep an account showing the current amount at credit in the Fund on account of each child.
- (3) Money standing to the credit of a child in the Fund which is not immediately required for use by the child may be invested in any manner in which trust money may be invested by a trustee under the **Trustee Act 1958** and interest earned must be

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credited to the account of the child at least once a year.

- (4) Money standing to the credit of a child in the Fund may only be used for the benefit of the child and with the approval of the Secretary.
- (5) On the child ceasing to be under the guardianship of the Secretary all money standing to the credit of the child in the Fund—
  - (a) if the child is over 18 years of age, must be paid to the child; and
  - (b) in any other case, may be paid to the child or may, if the Secretary considers it to be in the interests of the child to do so, be retained (wholly or in part) in the Fund until the child is 18 years of age.
- (6) The Secretary must, on a child ceasing to be under the guardianship of the Secretary, notify the child of the amount standing to his or her credit in the Fund.

**126. *Interstate movement of children***

- (1) In this section "**State**" means a State or Territory of the Commonwealth.
- (2) The Secretary may, on request by or on behalf of the Minister or other person in another State exercising guardianship in that State over a child under an enactment corresponding to this Part, declare the child to be under the guardianship of the Secretary if the child has entered or is about to enter Victoria.
- (3) A declaration under sub-section (2) is for all purposes to be deemed to be a guardianship to Secretary order of 12 months duration commencing from—

Victorian Legislation and Parliamentary Documents

S. 125(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 125(5)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 125(5)(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 125(6)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 126(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 126(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).



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- (a) the date when the Minister or other person in the other State was last granted guardianship of the child or the period of that guardianship was last extended; or
- (b) if the date referred to in paragraph (a) occurred more than 12 months before the date of the declaration under sub-section (2), the latter date.
- (4) A deemed guardianship to Secretary order referred to in sub-section (3) may be extended or revoked in accordance with the provisions of Subdivision 7 of Division 6. S. 126(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1).
- (5) Subject to sub-sections (3) and (4), a deemed guardianship to Secretary order referred to in sub-section (3) remains in force— S. 126(5)  
amended by  
No. 46/1998  
s. 7(Sch. 1).
- (a) until the child leaves Victoria; or
- (b) until the child would have ceased to be under the guardianship of the Minister or other person in the other State if the child had remained in the other State.
- (6) The Secretary may make financial or other arrangements with the Minister or other person in another State exercising guardianship in that State over a child under an enactment corresponding to this Part— S. 126(6)  
amended by  
No. 46/1998  
s. 7(Sch. 1).
- (a) for the care of that child in Victoria and may, subject to those arrangements, cause the child while he or she is under the guardianship of the Secretary to be removed from Victoria and returned to that other State; and S. 126(6)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).
- (b) for the care in that other State of a child who is under the guardianship of the Secretary under this Act or of whom the Secretary is the guardian under the **Adoption Act 1984**. S. 126(6)(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).
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**S. 126(7)**  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(7) The Minister may enter into a general agreement with a Minister in another State for the transfer of children in the custody or under the supervision of the Secretary—

- (a) into or out of Victoria; or
- (b) through Victoria from one State to another.

**S. 126(8)**  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(8) If the Minister enters into an agreement with a Minister in another State under sub-section (7), the Secretary—

(a) may make an arrangement with that Minister, or with a person authorised by that Minister for the purpose in the agreement, for the transfer of a particular child—

- (i) to that State from Victoria; or
- (ii) to Victoria from that State; and

(b) in relation to any particular child who is in the custody of the Secretary, may make financial arrangements with that Minister, or with a person authorised by that Minister for the purpose in the agreement, for the care of the child in that other State.

**S. 126(8)(b)**  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**PART 4—CHILDREN AND THE CRIMINAL LAW**

**Division 1—Criminal Responsibility of Children**

**127. *Children under 10 years of age***

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

**Division 2—Custody and Bail**

**128. *Children to be proceeded against by summons except in exceptional circumstances***

- (1) On the filing of a charge against a child a registrar must not issue in the first instance a warrant to arrest unless satisfied by evidence on oath or by affidavit that the circumstances are exceptional.
- (2) This section has effect despite anything to the contrary in section 28 of the **Magistrates' Court Act 1989**.

**129. *Child in custody to be brought before Court or bail justice***

- (1) Subject to this section, the provisions of Subdivision (30A) of Division 1 of Part III of the **Crimes Act 1958** apply to the custody and investigation of a child.
- (2) A child taken into custody must be—
  - (a) released unconditionally; or
  - (ab) released on bail under section 10 of the **Bail Act 1977**; or
  - (b) brought before the Court; or

S. 129(2)  
amended by  
No. 69/1992  
s. 16(1)(a)(i).

S. 129(2)(ab)  
inserted by  
No. 69/1992  
s. 16(1)(a)(ii).

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- (c) if the Court is not sitting at any convenient venue, brought before a bail justice—  
within a reasonable time of being taken into custody but not later than 24 hours after being taken into custody.
- (3) If a child is brought before the Court under sub-section (2)(b), the Court may—
- (a) grant bail; or
  - (b) refuse bail and remand the child in custody for a period not exceeding 21 days.
- (4) If a child is brought before a bail justice under sub-section (2)(c), the bail justice may only—
- (a) grant bail; or
  - (b) refuse bail and remand the child in custody to appear before the Court on the next working day or, if the proper venue is in a prescribed region of the State, within 2 working days.
- (5) The **Bail Act 1977** (to the extent that it is not inconsistent with this section) applies to an application for bail by a child.
- (6) If a member of the police force inquires into a case under section 10 of the **Bail Act 1977**, a parent or guardian of the child in custody or an independent person must be present.
- (6A) An independent person present in accordance with sub-section (6) may take steps to facilitate the granting of bail, for example, by arranging accommodation.
- (7) Bail must not be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation.

S. 129(5)  
amended by  
No. 69/1992  
s. 16(1)(b).

S. 129(6A)  
inserted by  
No. 69/1992  
s. 16(1)(c).

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- (8) If, in the opinion of the Court or bail justice or member of the police force, the child does not have the capacity or understanding to enter into an undertaking within the meaning of the **Bail Act 1977**, the child may be released on bail if the child's parent or some other person enters into an undertaking, in any amount which the Court or bail justice or member of the police force thinks fit, to produce the child at the venue of the Court to which the charge is adjourned or the court to which the child is committed for trial.

S. 129(8)  
amended by  
No. 69/1992  
s. 16(1)(d).

**130. *Child in custody to be placed in remand centre***

- (1) If a child is remanded in custody by a court or a bail justice, the child must be placed in a remand centre except as otherwise provided by the regulations with respect to prescribed regions of the State.
- (2) If any children are remanded in custody in a police gaol under this section, they—
- (a) are entitled to be kept separate from adults who are detained there;
  - (b) are entitled to be kept separate according to their sex;
  - (c) subject to the **Corrections Act 1986** and the regulations made under that Act, are entitled to receive visits from parents, relatives, legal practitioners, persons acting on behalf of legal practitioners and other persons;
  - (d) are entitled to have reasonable efforts made to meet their medical, religious and cultural needs including, in the case of Aboriginal children, their needs as members of the Aboriginal community;

S. 130  
amended by  
No. 69/1992  
s. 26(2)(a).

S. 130(2)  
inserted by  
No. 69/1992  
s. 26(2)(b).

- (e) are entitled to complain to the Chief Commissioner of Police or the Ombudsman about the standard of care, accommodation or treatment which they are receiving in the police gaol;
  - (f) are entitled to be advised of their entitlements under this sub-section.
- (3) It is the responsibility of the Chief Commissioner of Police to make sure that sub-section (2) is complied with.

### **131. Breach of bail**

Despite section 24(3) of the **Bail Act 1977**, if a child is arrested under section 24(1) of that Act and is brought before the Court, the Court must not remand the child in custody for a period longer than 21 days.

## **Division 3—Referral for Investigation**

### **132. Referral to Secretary**

- (1) If—
- (a) a child appears as a defendant in a criminal proceeding in the Court; and
  - (b) the Court considers that there is prima facie evidence that grounds exist for the making of a protection application in respect of the child—

the Court may refer the protective matter to the Secretary for investigation.

- (2) If a matter is referred to the Secretary under this section, the Secretary must enquire into the matter and provide, within 21 days of the referral, a report on the matter to the Court.

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- (3) A report provided under sub-section (2) must—
- (a) confirm that the Secretary has enquired into the matter referred; and S. 132(3)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).
  - (b) advise that—
    - (i) a protection application has been made by the Secretary; or S. 132(3)(b)(i)  
amended by  
No. 46/1998  
s. 7(Sch. 1).
    - (ii) the Secretary is satisfied that no protection application is required. S. 132(3)(b)(ii)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**133. Report to Court**

- (1) If a matter is referred to the Secretary under section 132, the Court may order the Secretary to prepare a pre-sentence report in respect of the child and may, subject to section 18(2), defer sentencing the child until the Secretary provides the pre-sentence report (if any) and a report under section 132(3)(b)(ii) or sub-section (2)(a) of this section. S. 133(1)  
amended by  
Nos 69/1992  
s. 17(a)(i)(ii),  
46/1998  
s. 7(Sch. 1).
- (2) If a protection application is made by the Secretary, the Secretary, as soon as possible after the determination of the application, must— S. 133(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).
  - (a) report to the Criminal Division—
    - (i) that the protection application was dismissed; or
    - (ii) that a protection order was made and state the terms of the order; and
  - (b) at the same time, forward a pre-sentence report on the child to the Criminal Division if one has been ordered by the Court. S. 133(2)(b)  
amended by  
No. 69/1992  
s. 17(b).

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**Division 4—Procedure for Indictable Offences Triable  
Summarily**

**134. Procedure for indictable offences triable summarily**

- (1) If a child is charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death), the Court must, before the hearing of any evidence, inform the child and his or her parent, if present, that the child may object to the charge being heard and determined summarily.
- (2) If the parent of a child who—
  - (a) is charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death); and
  - (b) is under the age of 15 years—is not present before the Court, the Court may adjourn the hearing of the proceeding for the purpose of securing the parent's attendance or may proceed to hear and determine the proceeding in the parent's absence.
- (3) If a child is charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing

S. 134(1)  
amended by  
No. 48/1997  
s. 50(2).

S. 134(2)(a)  
amended by  
No. 48/1997  
s. 50(2).

S. 134(3)  
amended by  
No. 48/1997  
s. 50(2).



death), the Court must hear and determine the charge summarily unless—

- (a) before the hearing of any evidence the child objects; or
- (b) at any stage the Court considers that the charge is unsuitable by reason of exceptional circumstances to be determined summarily—

and the Court must conduct a committal proceeding into the charge and, in the circumstances mentioned in paragraph (b), must give reasons for declining to determine the charge summarily.

- (4) If a child charged before the Court with an indictable offence, other than murder, attempted murder, manslaughter, an offence against section 197A of the **Crimes Act 1958** (arson causing death) or an offence against section 318 of the **Crimes Act 1958** (culpable driving causing death), is—

S. 134(4)  
 amended by  
 No. 48/1997  
 s. 50(2).

- (a) under the age of 15 years; and
- (b) not legally represented—

the child's parent may, for the purposes of subsection (3)(a), object on the child's behalf.

- (5) If the Court hears and determines summarily a charge against a child for an indictable offence, the Court may find the child not guilty of the offence charged but guilty of having attempted to commit the offence charged.

#### **Division 5—Standard of Proof**

##### **135. Proof beyond reasonable doubt**

- (1) On the summary hearing of a charge, whether indictable or summary, the Court must be satisfied

of a child's guilt on proof beyond reasonable doubt by relevant and admissible evidence.

- (2) If the Court is not satisfied in accordance with sub-section (1), it must dismiss the charge.

**Division 6—Reports and other Matters to be Taken into Account in Considering Sentence**

**136. *Court may only consider certain reports and other matters***

If the Court finds a child guilty of an offence, the Court may, in considering sentence, take into account only the following—

- (a) a pre-sentence report prepared by the Secretary or the Secretary to the Department of Justice and the evidence, if any, of its author;
- (b) any report, submission or evidence given, made or tendered by or on behalf of the child who is to be sentenced;
- (c) any offences of which the child has been convicted or found guilty before the commission of the offence under consideration;
- (d) any submission on sentencing made by the informant or prosecutor or any person appearing on behalf of the Crown;
- (e) any victim impact statement made, or other evidence given, under section 136A.

**136A. *Victim impact statements***

- (1) If the Court finds a child guilty of an offence, a victim of the offence may make a victim impact

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statement to the Court for the purpose of assisting the Court in determining sentence.

- (2) A victim impact statement may be made—
  - (a) in writing by statutory declaration; or
  - (b) in writing by statutory declaration and orally by sworn evidence.
- (3) A victim impact statement may be made by another person on behalf of a victim—
  - (a) who is under the age of 18 years; or
  - (b) who the Court is satisfied is incapable of making the statement because of mental illness or for any other reason; or
  - (c) that is not an individual.
- (4) A victim impact statement contains particulars of any injury, loss or damage suffered by the victim as a direct result of the offence.
- (5) The Court may rule as inadmissible the whole or any part of a victim impact statement.
- (6) If the victim prepares a victim impact statement, the victim must, a reasonable time before sentencing is to take place—
  - (a) file a copy with the Court; and
  - (b) provide a copy to—
    - (i) the child or the legal practitioner representing the child; and
    - (ii) the prosecutor.
- (7) The Court may, at the request of the child or the prosecutor, call a victim who has made a victim impact statement, or a person who has made a victim impact statement on behalf of a victim, to give evidence.

- (8) A victim or other person who gives evidence under sub-section (7) may be cross-examined and re-examined.
- (9) A victim, or a person who has made a victim impact statement on behalf of a victim, may call a witness to give evidence in support of any matter contained in the victim impact statement.
- (10) A witness who gives evidence under sub-section (9) may be cross-examined and re-examined.
- (11) Any party to the proceeding may lead evidence on any matter contained in a victim impact statement.

#### **Division 7—Sentencing Orders**

##### *Subdivision 1—General*

#### **137. Sentencing orders**

- (1) If the Court finds a child guilty of an offence, whether indictable or summary, the Court may—
  - (a) without conviction, dismiss the charge; or
  - (b) without conviction, dismiss the charge and order the giving of an undertaking under section 140; or
  - (c) without conviction, dismiss the charge and order the giving of an accountable undertaking under section 142; or
  - (d) without conviction, place the child on a good behaviour bond under section 144; or
  - (e) with or without conviction, impose a fine under section 150; or
  - (f) with or without conviction, place the child on probation under section 158; or

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- (g) with or without conviction, release the child on a youth supervision order under section 163; or
  - (h) convict the child and make a youth attendance order under section 170; or
  - (i) convict the child and order that the child be detained in a youth residential centre under section 186; or
  - (j) convict the child and order that the child be detained in a youth training centre under section 188.
- (2) If the Court is of the opinion that sentencing should be deferred, the Court may defer sentencing the child in accordance with section 190.
- (3) In addition to any other sentencing order, the Court may order the child—
- (a) to make restitution or pay compensation in accordance with section 191; or
  - (b) to pay costs.
- (4) If under any Act other than this Act a court is authorised on a conviction for an offence—
- (a) to make an order with respect to any property or thing the subject of or in any way connected with the offence; or
  - (b) to impose any disqualification or like disability on the person convicted—
- then the Court may, if it finds a child guilty of that offence, make any such order or impose any such disqualification or disability despite the child not being convicted of the offence.
- (5) The Court must not pass a sentence that imposes any condition or requirement on a person or body
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that is not a party to the proceeding unless the Court is satisfied that the person or body consents to that condition or requirement.

**138. *Sentencing hierarchy***

The Court must not impose a sentence referred to in any of the paragraphs of section 137(1) unless it is satisfied that it is not appropriate to impose a sentence referred to in any preceding paragraph of that section.

**139. *Matters to be taken into account***

- (1) In determining which sentence to impose on a child, the Court must, as far as practicable, have regard to—
  - (a) the need to strengthen and preserve the relationship between the child and the child's family; and
  - (b) the desirability of allowing the child to live at home; and
  - (c) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and
  - (d) the need to minimise the stigma to the child resulting from a court determination; and
  - (e) the suitability of the sentence to the child; and
  - (f) if appropriate, the need to ensure that the child is aware that he or she must bear a responsibility for any action by him or her against the law; and

- (g) if appropriate, the need to protect the community, or any person, from the violent or other wrongful acts of the child.
- (2) In passing sentence on a child who has appeared before the Family Division or who is or has been the subject of an order of the Family Division, the Court must not impose a sentence more severe than it would have imposed had the child not so appeared or been the subject of such an order.

***Subdivision 2—Undertaking***

**140. *Non-accountable undertaking***

If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, without conviction, dismiss the charge and order that—

- (a) the child; and  
 (b) if required, the child's parent—

give an undertaking, with or without conditions, to do or refrain from doing the act or acts specified in the undertaking for a period not exceeding 6 months or, in exceptional circumstances, 12 months but in no case extending beyond the child's eighteenth birthday.

**141. *Breach of undertaking***

If an undertaking under section 140 is breached, the Court must not take any action.

***Subdivision 3—Accountable Undertaking***

**142. *Accountable undertaking***

If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, without conviction, dismiss the charge in accordance with section 140, and order that on

S. 140  
 amended by  
 No. 69/1992  
 s. 18.

breach of the undertaking by the child, the child be made accountable and dealt with for the breach under section 143.

**143. Breach of undertaking**

- (1) If—
- (a) a child has given an undertaking to the Court under section 142; and
  - (b) it appears to the Court that the child has failed to comply with the undertaking—
- the Court may direct that the child and, if the child is under the age of 15 years, his or her parent be served with a notice to appear before the Court at a specified time.
- (2) If a notice is served under sub-section (1) and the child fails to appear before the Court at the time specified, the Court may direct that a warrant to arrest the child be issued.
- (3) If the Court is satisfied that the child has failed to comply with an undertaking given under section 142, the Court may—
- (a) cancel the undertaking; or
  - (b) continue or vary the undertaking but must not extend the period of the undertaking; or
  - (c) revoke the order dismissing the charge and impose a fine not exceeding 1 penalty unit.

***Subdivision 4—Good Behaviour Bond***

**144. Good behaviour bond**

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- (1) If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, without conviction, adjourn the proceeding if it appears expedient to do so, having regard to all the circumstances of the matter including—
  - (a) the nature of the offence; and
  - (b) the character and antecedents of the child; and
  - (c) whether or not the child pleaded guilty.
- (2) The period of an adjournment under this section must be specified by the Court and must not exceed 1 year or extend beyond the child's eighteenth birthday.
- (3) An adjournment under this section must not be granted unless the child enters into a bond for a nominal amount on the following conditions—
  - (a) that the child appears, if so required by the Court, at the time to which the further hearing is adjourned;
  - (b) that the child appears before the Court, if required to do so, during the period of the adjournment;
  - (c) that the child is of good behaviour during the period of the adjournment;
  - (d) that the child observes any special conditions imposed by the Court.
- (4) Subject to this section, the Court may grant an adjournment under this section to a child who is serving or is about to serve a term of detention in respect of another offence and in such a case the period of the adjournment shall commence on the

S. 144(2)  
amended by  
No. 69/1992  
s. 19.

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discharge of the child from detention by due course of law.

- (5) Subject to sub-section (4), a child who has entered into a bond under this section must be allowed to go at large.

**145. *Dismissal where bond observed***

If, at the further hearing of a proceeding adjourned under section 144, the Court is satisfied that the child has observed the conditions of the bond, the Court must dismiss the charge.

**146. *Child required to appear***

- (1) A child to whom an adjournment under section 144 has been granted may be required to appear before the Court—
- (a) by order of the Court; or
  - (b) by notice issued by the registrar.
- (2) An order or notice under sub-section (1) must be served not less than 14 days before the day on which the child is required to appear.

**147. *Failure to appear***

- (1) If—
- (a) the Court, when granting an adjournment under section 144, specifies that the child is required to appear at the time to which the further hearing is adjourned and the child fails to do so; or
  - (b) a child fails to appear as required by order or notice under section 146; or

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(c) reasonable efforts have been made to serve an order or notice under section 146, but have been unsuccessful—

a warrant to arrest may be issued by the Court, directing that the child be arrested and brought before the Court as soon as possible.

- (2) If a child is brought before the Court under sub-section (1), the Court may remand the child in custody or on bail to be brought or to appear before the Court at a specified time and venue.
- (3) If a child is remanded on bail under sub-section (2) and fails to appear in accordance with the conditions of bail, the Court may issue a further warrant to arrest.

**148. Breach of bond**

- (1) If—
- (a) a child has been released on a bond under section 144; and
- (b) it appears to the Court that the child has failed to be of good behaviour or to observe any condition of the bond—

the Court may direct that the child and, if the child is under the age of 15 years, his or her parent be served with a notice to appear before the Court at a specified time.

- (2) If a notice is served on a child under sub-section (1) and the child fails to appear before the Court at the time specified, the Court may, if satisfied that the notice has come to the attention of the child—
- (a) direct that a warrant to arrest the child be issued; or

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- (b) proceed under sub-section (5) in the absence of the child.
- (3) A child alleged to have failed to be of good behaviour or to observe any condition of a bond must (whether a notice under sub-section (1) has been issued or not) appear or be brought before the Court—
  - (a) constituted by the magistrate who sentenced the child, if he or she still holds the office of magistrate; or
  - (b) constituted by any other magistrate—
    - (i) if the first-mentioned magistrate does not still hold the office of magistrate; or
    - (ii) with the child's consent.
- (4) If a child does not consent to the Court constituted by any other magistrate dealing with the breach, the proceeding must be adjourned for hearing before the Court constituted by the magistrate who sentenced the child, if he or she still holds the office of magistrate.
- (5) If—
  - (a) a child has been released on a bond under section 144; and
  - (b) the Court is satisfied that the child has failed to be of good behaviour or to observe any condition of the bond—the Court may—
  - (c) declare the bond to be forfeited and impose no penalty; or
  - (d) proceed with the further hearing and determination of the charge and deal with the child in any manner in which the child could

have been dealt with before the adjournment was granted.

**149. *Time for application***

If breach of a bond is constituted by any act the subject of a charge before a court, a proceeding for the breach must be commenced not later than 3 months after a finding of guilt in respect of the charge.

***Subdivision 5—Fines***

**150. *Fines***

If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, with or without conviction, impose a fine—

- (a) in respect of each offence, not exceeding—
  - (i) 1 penalty unit, if the child is under the age of 15 years or 5 penalty units in any other case; or
  - (ii) the maximum fine which may be imposed on an adult for the same offence—

S. 150(a)  
substituted by  
No. 69/1992  
s. 20(2).

whichever is the lower amount; and

- (b) in respect of more than one offence, not exceeding an aggregate of 2 penalty units, if the child is under the age of 15 years or 10 penalty units in any other case.

S. 150(b)  
substituted by  
No. 69/1992  
s. 20(2).

**151. *Financial circumstances of child to be considered***

If the Court determines to impose a fine on a child in respect of an offence, the Court must take into consideration, among other things, the financial circumstances of the child when determining the amount of the fine.

**152. *Instalment orders***

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(1) In sections 152 to 157—

**"fine"** means the sum of money payable by a child under an order of the Court made in respect of an offence and includes costs but does not include a sum of money payable by way of restitution or compensation;

**"instalment order"** means an order made under sub-section (2) that a fine be paid by 2 or more instalments and, if such an order has been varied, means the order as so varied.

(2) If the Court determines to impose a fine on a child, the Court—

- (a) must, if the child so requests, order that the fine be paid by instalments; or
- (b) in any other case, may order that the fine be paid by instalments, if the Court deems it appropriate to do so.

**153. *Time to pay***

If the Court does not make an instalment order in respect of a fine, the Court, at the time of imposing the fine, may order that the child be allowed time for the payment of the fine.

**154. *Application for time to pay, for instalment order or for variation of instalment order***

A child who has been ordered by the Court to pay a fine may apply at any time in the prescribed manner to the appropriate registrar for—

- (a) an order that the child be allowed time for the payment of the fine; or
- (b) an order that the fine be paid by instalments;  
or

- (c) an order for the variation of an instalment order.

**155. *Default in payment of fine or instalment***

- (1) If for a period of more than one month a child defaults in the payment of a fine or of any instalment under an instalment order, the Court may—
- (a) adjourn the hearing or further hearing of the matter for up to 6 months on any terms that the Court thinks fit; or
  - (b) if the default is in the payment of an instalment under an instalment order, order that the instalment order be varied as specified in the order of the Court; or
  - (c) order that the fine then unpaid be levied by a warrant to seize property; or
  - (d) release the child on a youth supervision order or youth attendance order for a period not exceeding 3 months; or
  - (e) order that the child be detained in a youth residential centre or a youth training centre on weekend detention for a time fixed in accordance with section 156, unless the Court is satisfied that the child did not have the capacity to pay the fine or the instalment.
- (2) The Court must not make an order under subsection (1) unless the child has been served by post or otherwise with a notice to appear before the Court in respect of the default in payment.
- (3) If—
- (a) a notice is served on a child under subsection (2) and the child fails to appear before the Court at the time specified and the

S. 155(2)  
 amended by  
 No. 69/1992  
 s. 20(4).

S. 155(3)(a)  
 substituted by  
 No. 69/1992  
 s. 20(5).

Court is satisfied that the notice has come to the attention of the child; or

- (b) service of a notice under sub-section (2) cannot be effected—

the Court may adjourn the proceeding and order that a warrant to arrest the child be issued.

**156. *Weekend detention***

- (1) For the purposes of section 155(1)(e) "**weekend detention**" means detention in a youth residential centre or a youth training centre—
- (a) from 7 p.m. Friday until 7 p.m. Sunday; or
- (b) if the Court is satisfied that it is inappropriate by reason of employment or special circumstances that the order be served in accordance with paragraph (a), for 48 hours from 7 p.m. on a week day or from 7 p.m. on any day for the number of hours obtained by multiplying 48 by the number of weekends in the term.
- (2) The term for which a child in default of payment of a fine or an instalment under an instalment order may be detained under section 155(1)(e) is—
- (a) if the amount of the fine then unpaid does not exceed an amount equal to 4 penalty units—not more than 3 weekends (or their equivalent under paragraph (b) of the definition of "weekend detention" in sub-section (1)); or
- (b) if the amount of the fine then unpaid exceeds an amount equal to 4 penalty units—not more than 6 weekends (or their equivalent



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under paragraph (b) of the definition of  
"weekend detention" in sub-section (1)).

**156A. Breach of weekend detention order**

S. 156A  
inserted by  
No. 69/1992  
s. 20(8).

(1) If—

(a) the Court has made an order under section 155(1)(e) or in accordance with sub-section (3) of this section; and

(b) it appears to the Court or the Secretary that the child has breached the order—

the Court or the Secretary may cause the child and, if the child is under the age of 15 years, his or her parent to be served, by post or otherwise, with a notice to appear before the Court at a specified time.

(2) If—

(a) a notice is served on a child under sub-section (1) and the child fails to appear before the Court at the time specified and the Court is satisfied that the notice has come to the attention of the child; or

(b) service of a notice under sub-section (1) cannot be effected—

the Court may direct that a warrant to arrest the child be issued.

(3) On the child appearing before it under this section, the Court, if satisfied that the child has failed to comply with the weekend detention order, may revoke the order and make another such order in accordance with section 156 and may increase the number of weekends by 1 for each weekend during which the child was in breach of the previous order.

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- (4) In making a weekend detention order in accordance with sub-section (3) the Court may take into account the extent to which and the manner in which the child has complied with the previous order.

**157. *Reduction of detention or order by payment of portion of fine***

- (1) Section 71 of the **Magistrates' Court Act 1989** applies as if—
- (a) a reference to a warrant to imprison were a reference to a warrant to detain in a youth residential centre or a youth training centre; and
  - (b) a reference to the Court were a reference to the Children's Court; and
  - (c) a reference to imprisoned were a reference to detained; and
  - (d) a reference to prison or police gaol were a reference to youth residential centre or youth training centre; and
  - (e) a reference to the principal registrar were a reference to the principal registrar of the Children's Court.
- (2) If—
- (a) a youth supervision order or youth attendance order has been made under section 155(1)(d); and
  - (b) before the expiry of the term of the order, it appears to the Court that part of the fine has been paid—

the total term of the order must be reduced by the number of days bearing as nearly as possible the same proportion to the total number of days in the

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term as the amount paid bears to the whole amount of the fine.

***Subdivision 6—Probation Orders***

**158. *Court may order probation***

(1) If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, with or without conviction, place the child on probation for a specified term—

S. 158(1) amended by No. 19/1994 s. 24(b).

(a) not exceeding 12 months; or

(b) if the offence is punishable by imprisonment for a term of more than 10 years, not exceeding 18 months—

S. 158(1)(b) amended by No. 19/1994 s. 24(a).

and not extending beyond his or her nineteenth birthday.

(2) The Court may only make an order under subsection (1) if the child has consented to the order being made.

**159. *Conditions of probation orders***

(1) If a person is released on probation, the probation order is subject to the following conditions—

S. 159(1) amended by No. 19/1994 s. 25.

(a) the person must report to the Secretary within 2 working days after the order is made;

S. 159(1)(a) amended by Nos 19/1994 s. 25, 46/1998 s. 7(Sch. 1).

(b) the person must, during the period of the probation order, report to the assigned probation officer as required by the probation officer;

S. 159(1)(b) amended by No. 19/1994 s. 25.

(c) the person must not re-offend during the period of the probation order;

S. 159(1)(c) amended by No. 19/1994 s. 25.

S. 159(1)(d)  
amended by  
Nos 19/1994  
s. 25, 46/1998  
s. 7(Sch. 1).

(d) the person must not leave the State without the written permission of the Secretary;

S. 159(1)(e)  
amended by  
No. 19/1994  
s. 25.

(e) the person must notify the assigned probation officer of any change of residence, school or employment within 48 hours after the change;

S. 159(1)(f)  
amended by  
No. 19/1994  
s. 25.

(f) the person must obey the reasonable and lawful instructions of the assigned probation officer.

S. 159(2)  
amended by  
No. 19/1994  
s. 25.

(2) Subject to sub-sections (3) and (4), the Court may order the person to observe any special condition for the whole or any part of the period of probation.

(3) A special condition ordered under sub-section (2) must relate to the offence and the Court must, in its statement of reasons for the sentence, give its reason for ordering the special condition.

(4) A special condition which may be ordered under sub-section (2) may be—

S. 159(4)(a)  
amended by  
No. 19/1994  
s. 25.

(a) that the person attend school, if the child is under school-leaving age; or

S. 159(4)(b)  
amended by  
No. 19/1994  
s. 25.

(b) that the person abstain from alcohol; or

S. 159(4)(c)  
amended by  
No. 19/1994  
s. 25.

(c) that the person abstain from the use of illegal drugs; or

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| <p>(d) that the person reside at a specified address;<br/>or</p>   | <p>S. 159(4)(d)<br/>amended by<br/>No. 19/1994<br/>s. 25.</p>   |
| <p>(e) that the person not leave his or her place of<br/>residence between specified hours on<br/>specified days; or</p>   | <p>S. 159(4)(e)<br/>amended by<br/>No. 19/1994<br/>s. 25.</p>   |
| <p>(f) that the person undergo medical, psychiatric,<br/>psychological or drug counselling or<br/>treatment; or</p>  | <p>S. 159(4)(f)<br/>amended by<br/>No. 19/1994<br/>s. 25.</p>   |
| <p>(fa) if a pre-sentence report includes a declaration<br/>of eligibility in respect of the person issued<br/>under section 8 of the <b>Intellectually<br/>Disabled Persons' Services Act 1986</b>, that<br/>the person participate in services available<br/>under that Act as directed by the Secretary;<br/>or</p> | <p>S. 159(4)(fa)<br/>inserted by<br/>No. 93/1990<br/>s. 12,<br/>amended by<br/>Nos 19/1994<br/>s. 25, 46/1998<br/>s. 7(Sch. 1).</p> |
| <p>(g) any other condition that the Court considers<br/>necessary or desirable.</p>  |   |
| <p>(5) A probation order may at any time during the<br/>period of the order be varied or revoked by the<br/>Court in accordance with section 195.</p>  |   |

**160. Breach of probation**

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| <p>(1) If—</p>   | <p>S. 160(1)<br/>amended by<br/>Nos 19/1994<br/>s. 25, 46/1998<br/>s. 7(Sch. 1).</p>    |
| <p>(a) a person has been placed on probation under<br/>section 158; and</p>  | <p>S. 160(1)(a)<br/>amended by<br/>No. 19/1994<br/>s. 25.</p>                           |
| <p>(b) at any time during the probation period it<br/>appears to the Court or to the Secretary that<br/>the person has failed to observe any</p> | <p>S. 160(1)(b)<br/>amended by<br/>Nos 19/1994<br/>s. 25, 46/1998<br/>s. 7(Sch. 1).</p> |

condition, or amended condition, of the  
probation order—

the Court or the Secretary may cause the person  
and, if the person is under the age of 15 years, his  
or her parent to be served, by post or otherwise,  
with a notice to appear before the Court at a  
specified time.

(2) If—

- (a) a notice is served on a person under sub-section (1) and the person fails to appear before the Court at the time specified and the Court is satisfied that the notice has come to the attention of the person; or
- (b) service of a notice under sub-section (1) cannot be effected—

the Court may direct that a warrant to arrest the  
person be issued.

(3) If—

- (a) a person has been placed on probation; and
- (b) the person is brought or appears before the Court (whether a notice under sub-section (1) has been issued or not); and

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<b>s. 160</b>
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- (c) the Court is satisfied that the person has failed to observe any condition, or amended condition, of the probation order—
- the Court may—
- (d) confirm the probation order; or
- (e) vary, add or substitute any special condition of the probation order but must not extend the period of the order; or
- (f) revoke the probation order and impose any other sentencing order that the Court thinks just.
- (4) In considering what order to make under sub-section (3), the Court may take into account—
- (a) a report on the person prepared by the Secretary; and
- (b) the fact of the making of the probation order; and
- (c) the extent to which and the manner in which the person has complied with the probation order.
- (5) If before or during the hearing of a proceeding under sub-section (3) it appears to the Court that the person appearing before the Court is of or above the age of 18 years, the Court must discontinue the proceeding and order that it be transferred to the Magistrates' Court and in the meantime it may—
- (a) permit the person to go at large; or
- (b) grant the person bail conditioned for the appearance of the person before the Magistrates' Court at the time and place at which the proceeding is to be heard; or

**S. 160(3)(c)**  
**amended by**  
**No. 19/1994**  
**s. 25.**

**S. 160(4)(a)**  
**amended by**  
**Nos 19/1994**  
**s. 25, 46/1998**  
**s. 7(Sch. 1).**

**S. 160(4)(c)**  
**amended by**  
**No. 19/1994**  
**s. 25.**

**S. 160(5)**  
**inserted by**  
**No. 93/1990**  
**s. 13.**

- (c) remand the person in prison or a police gaol or in accordance with section 49 of the **Magistrates' Court Act 1989** until the proceeding is heard by the Magistrates' Court—

as if the person were accused of an offence and were being held in custody in relation to that offence and, for this purpose, the **Bail Act 1977** (with any necessary modifications) applies.

- (6) If a proceeding is transferred to the Magistrates' Court under sub-section (5), the Magistrates' Court may deal with the person as if the Court had just been satisfied of the person's guilt of the offence in respect of which the person was placed on probation.

**161. Secretary or probation officer may apply for warrant to arrest**

Despite anything to the contrary in this Act, if—

- (a) a person has been placed on probation; and

- (b) at any time during the probation period it appears to the Secretary or to the probation officer assigned to supervise the person that the person has failed to observe any condition, or amended condition, of the probation order—

the Secretary or, with the written consent of the Secretary, the assigned probation officer may apply to the Court for the issue of a warrant to



arrest the person and the Court may direct that a warrant to arrest be issued.

**162. *Time for application***

If a breach of a probation order is constituted by—

- (a) any act the subject of a charge before a Court, any proceeding for the breach must be commenced not later than 3 months after a finding of guilt in respect of the charge; or
- (b) any other act, any proceeding for the breach must be commenced not later than 14 working days after the alleged breach and before the expiry of the probation order.

***Subdivision 7—Youth Supervision Orders***

**163. *Court may impose youth supervision order***

- (1) If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, with or without conviction, release the child on a youth supervision order for a specified term—
  - (a) not exceeding 12 months; or
  - (b) if the offence is punishable by imprisonment for a term of more than 10 years, not exceeding 18 months—

and not extending beyond his or her nineteenth birthday.
- (2) The Court may make an order under sub-section (1) only if—
  - (a) the venue at which the Court is then sitting is in a prescribed region of the State; and
  - (b) the child has consented to the order being made.

S. 163(1)  
 amended by  
 No. 19/1994  
 s. 26(1)(b).

S. 163(1)(b)  
 amended by  
 No. 19/1994  
 s. 26(1)(a).

**164. *Youth supervision orders***

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s. 164

S. 164(1)  
amended by  
No. 19/1994  
s. 26(2).

S. 164(1)(a)  
amended by  
Nos 19/1994  
s. 26(2),  
46/1998  
s. 7(Sch. 1).

S. 164(1)(b)  
amended by  
Nos 19/1994  
s. 26(2),  
46/1998  
s. 7(Sch. 1).

S. 164(1)(c)  
amended by  
No. 19/1994  
s. 26(2).

S. 164(1)(d)  
amended by  
Nos 19/1994  
s. 26(2),  
46/1998  
s. 7(Sch. 1).

S. 164(1)(e)  
amended by  
Nos 19/1994  
s. 26(2),  
46/1998  
s. 7(Sch. 1).

S. 164(1)(f)  
amended by  
No. 19/1994  
s. 26(2).

S. 164(1)(g)  
amended by  
Nos 19/1994  
s. 26(2),  
46/1998  
s. 7(Sch. 1).

- (1) If a person is released on a youth supervision order, the order is subject to the following conditions—
- (a) the person must report to the Secretary within 2 working days after the order is made;
  - (b) the person must, during the period of the youth supervision order, report to the Secretary as required by the Secretary;
  - (c) the person must not re-offend during the period of the youth supervision order;
  - (d) the person must not leave the State without the written permission of the Secretary;
  - (e) the person must notify the Secretary of any change of residence, school or employment within 48 hours after the change;
  - (f) the person must attend a youth supervision unit or any other place specified in the youth supervision order;
  - (g) the person must participate in a community service program or any other program, if so directed by the Secretary;

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s. 164
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| <p>(h) the person must obey the reasonable and lawful instructions of the Secretary.</p>   | <p><b>S. 164(1)(h)</b><br/>inserted by<br/>No. 93/1990<br/>s. 14(1),<br/>amended by<br/>Nos 19/1994<br/>s. 26(2),<br/>46/1998<br/>s. 7(Sch. 1).<br/><b>S. 164(2)</b><br/>amended by<br/>No. 19/1994<br/>s. 26(2).</p> |
| <p>(2) Subject to sub-section (3), the Court may order the person to observe any special condition for the whole or any part of the period of a youth supervision order.</p>   |   |
| <p>(3) Sub-sections (3) and (4) of section 159 apply to a special condition ordered under sub-section (2) of this section in the same manner as they apply to a special condition ordered under sub-section (2) of that section.</p> |   |
| <p>(4) A youth supervision order may at any time during the period of the order be varied or revoked by the Court in accordance with section 195.</p>  |   |
| <p>(5) A direction given by the Secretary under sub-section (1)(g)—</p>  | <p><b>S. 164(5)</b><br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p>  |
| <p style="padding-left: 40px;">(a) may require a person to engage in community service activities—</p>   | <p><b>S. 164(5)(a)</b><br/>amended by<br/>No. 19/1994<br/>s. 26(2).</p>   |
| <p style="padding-left: 80px;">(i) at or in relation to a community service organisation; or</p>   |   |
| <p style="padding-left: 80px;">(ii) at the home of any old, infirm or disabled person; or</p>  |   |
| <p style="padding-left: 80px;">(iii) on any Crown land or land occupied by the Crown or owned, leased or occupied by any person or body under any Act for a public purpose; and</p>  |   |
| <p style="padding-left: 40px;">(b) must not require a person to engage in any community service activities so as to take the</p>   | <p><b>S. 164(5)(b)</b><br/>amended by<br/>No. 19/1994<br/>s. 26(2).</p>   |
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place of some other person who would usually be engaged in those activities for hire or reward if that other person is absent from those activities because of an industrial dispute involving that other person's employer or is otherwise available and willing to perform the work required in those activities.

(6) If a direction under sub-section (1)(g) requires a person to engage in community service activities—

- (a) the person is, for the purposes of the **Accident Compensation Act 1985** or any other Act or law, to be taken to be a worker employed by the Crown; and
- (b) for the purposes of the **Accident Compensation Act 1985** the weekly earnings of the person are to be taken to be an amount equivalent to the weekly earnings of the person in any full-time employment in which the person is engaged at that time or, if the person is not then engaged in full-time employment, an amount which the Minister administering the **Accident Compensation Act 1985** considers reasonable in the circumstances of the case; and
- (c) the person is not entitled to receive any remuneration in respect of any work performed in those community service activities.

**165. Breach of youth supervision order**

S. 164(6)  
amended by  
No. 19/1994  
s. 26(2).

S. 164(6)(a)  
amended by  
No. 19/1994  
s. 26(2).

S. 164(6)(b)  
amended by  
No. 19/1994  
s. 26(2).

S. 164(6)(c)  
amended by  
No. 19/1994  
s. 26(2).

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| <p>(1) If—</p>  | <p>S. 165(1)<br/>amended by<br/>Nos 19/1994<br/>s. 26(2),<br/>46/1998<br/>s. 7(Sch. 1).</p>    |
| <p style="padding-left: 40px;">(a) a person has been released on a youth supervision order; and</p>   | <p>S. 165(1)(a)<br/>amended by<br/>Nos 93/1990<br/>s. 14(2),<br/>19/1994<br/>s. 26(2).</p>     |
| <p style="padding-left: 40px;">(b) at any time during the period of the order it appears to the Court or the Secretary that the person has failed to observe any condition, or amended condition, of the order—</p> <p style="padding-left: 40px;">the Court or the Secretary may cause the person and, if the person is under the age of 15 years, his or her parent to be served, by post or otherwise, with a notice to appear before the Court at a specified time.</p> | <p>S. 165(1)(b)<br/>amended by<br/>Nos 19/1994<br/>s. 26(2),<br/>46/1998<br/>s. 7(Sch. 1).</p> |
| <p>(2) A supervisor must, at the request of the Secretary, provide to the Secretary—</p>  | <p>S. 165(2)<br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p>                              |
| <p style="padding-left: 40px;">(a) a certificate of attendance in the prescribed form in respect of the person; and</p>   | <p>S. 165(2)(a)<br/>amended by<br/>No. 19/1994<br/>s. 26(2).</p>                               |
| <p style="padding-left: 40px;">(b) a report on the person and on the extent to and the manner in which the person has complied with the youth supervision order—</p> <p style="padding-left: 40px;">to enable the Secretary to determine whether a notice under sub-section (1) should be served.</p>   | <p>S. 165(2)(b)<br/>amended by<br/>No. 19/1994<br/>s. 26(2).</p>                               |
| <p>(3) For the purposes of sub-section (2) "<b>supervisor</b>" means a person appointed by the Secretary to be the person responsible for a youth supervision program.</p>  | <p>S. 165(3)<br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p>                              |
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s. 165

S. 165(4)  
substituted by  
No. 93/1990  
s. 14(3),  
amended by  
No. 19/1994  
s. 26(2).

S. 165(4)(a)  
amended by  
No. 19/1994  
s. 26(2).

S. 165(5)  
amended by  
No. 19/1994  
s. 26(2).

S. 165(5)(a)  
amended by  
No. 19/1994  
s. 26(2).

S. 165(5)(b)(ii)  
amended by  
No. 19/1994  
s. 26(3).

S. 165(6)  
amended by  
No. 19/1994  
s. 26(2).

(4) If—

- (a) a notice is served on a person under sub-section (1) and the person fails to appear before the Court at the time specified and the Court is satisfied that the notice has come to the attention of the person; or
- (b) service of a notice under sub-section (1) cannot be effected—

the Court may direct that a warrant to arrest the person be issued.

(5) A person alleged to have failed to observe any condition, or amended condition, of a youth supervision order must appear or be brought before the Court—

- (a) constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate; or
- (b) constituted by any other magistrate—
  - (i) if the first-mentioned magistrate does not still hold the office of magistrate; or
  - (ii) with the person's consent.

(6) If a person does not consent to the Court constituted by any other magistrate dealing with the breach, the proceeding must be adjourned for hearing before the Court constituted by the magistrate who sentenced the person, if he or she still holds the office of magistrate.

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<b>s. 166</b>
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**166. Penalties for breach**

(1) If—

(a) a person has been released on a youth supervision order; and

S. 166  
amended by  
No. 93/1990  
s. 14(4)(a).

(b) the person is brought or appears before the Court (whether a notice under section 165(1) has been issued or not); and

S. 166(1)(a)  
amended by  
No. 19/1994  
s. 26(2).

S. 166(1)(b)  
amended by  
Nos 93/1990  
s. 14(4)(b),  
19/1994  
s. 26(2).

(c) the Court is satisfied that the person has failed to observe any condition, or amended condition, of the order—

S. 166(1)(c)  
amended by  
No. 19/1994  
s. 26(2).

the Court may make an order—

(d) varying the youth supervision order; or

(e) directing the person to comply with the youth supervision order; or

S. 166(1)(e)  
amended by  
No. 19/1994  
s. 26(2).

(f) revoking the youth supervision order and imposing any other sentencing order that the Court thinks just.

(2) If before or during the hearing of a proceeding under sub-section (1) it appears to the Court that the person appearing before the Court is of or above the age of 18 years, the Court must discontinue the proceeding and order that it be transferred to the Magistrates' Court and in the meantime it may—

S. 166(2)  
inserted by  
No. 93/1990  
s. 14(4)(c).

(a) permit the person to go at large; or

(b) grant the person bail conditioned for the appearance of the person before the

Magistrates' Court at the time and place at which the proceeding is to be heard; or

- (c) remand the person in prison or a police gaol or in accordance with section 49 of the **Magistrates' Court Act 1989** until the proceeding is heard by the Magistrates' Court—

as if the person were accused of an offence and were being held in custody in relation to that offence and, for this purpose, the **Bail Act 1977** (with any necessary modifications) applies.

- (3) If a proceeding is transferred to the Magistrates' Court under sub-section (2), the Magistrates' Court may deal with the person as if the Court had just been satisfied of the person's guilt of the offence in respect of which the youth supervision order was made.

**167. *Matters to be taken into account***

- (1) In considering what order to make under section 166, the Court may take into account—
- (a) a report on the person prepared by the Secretary under sub-section (2); and
- (b) the fact of the making of the youth supervision order; and
- (c) the extent to and the manner in which the person has complied with the youth supervision order.



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| <p>(2) If a person is brought or appears before the Court under section 166, the Secretary must prepare a report on the person including—</p> <p style="margin-left: 40px;">(a) the nature and circumstances of the breach of the youth supervision order; and</p> <p style="margin-left: 40px;">(b) the extent to which and the manner in which the person has complied with the order; and</p> <p style="margin-left: 40px;">(c) the recommendation of the Secretary with respect to an appropriate sentencing order for the person; and</p> <p style="margin-left: 40px;">(d) any other relevant matter.</p> <p>(3) Any statement made in a report under sub-section (2) must be relevant to—</p> <p style="margin-left: 40px;">(a) the breach of the youth supervision order; and</p> <p style="margin-left: 40px;">(b) the sentencing order (if any) recommended in the report.</p> <p>(4) A report under sub-section (2) must be provided, after the Court is satisfied that a person has failed to observe any condition, or amended condition, of the order and before the Court makes an order under section 166, to—</p> <p style="margin-left: 40px;">(a) the Court; and</p> <p style="margin-left: 40px;">(b) the person who is the subject of the report; and</p> <p style="margin-left: 40px;">(c) the legal practitioners representing the person; and</p> | <p>S. 167(2) amended by Nos 19/1994 s. 26(2), 46/1998 s. 7(Sch. 1).</p> <p>S. 167(2)(b) amended by No. 19/1994 s. 26(2).</p> <p>S. 167(2)(c) amended by Nos 19/1994 s. 26(2), 46/1998 s. 7(Sch. 1).</p> <p>S. 167(4) amended by No. 19/1994 s. 26(2).</p> <p>S. 167(4)(b) amended by No. 19/1994 s. 26(2).</p> <p>S. 167(4)(c) amended by No. 19/1994 s. 26(2).</p> |
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- (d) any other person whom the Court has ordered is to receive a copy of the report.

**168. Time for application**

If a breach of a youth supervision order is constituted by—

- (a) any act the subject of a charge before a court, any proceeding for the breach must be commenced not later than 3 months after a finding of guilt in respect of the charge; or
- (b) any other act, any proceeding for the breach must be commenced not later than 14 working days after the alleged breach and before the expiry of the youth supervision order.

**Subdivision 8—Youth Attendance Orders**

**169. Definitions**

In this Subdivision—

\* \* \* \* \*

S. 169 def. of "manager" repealed by No. 19/1994 s. 27(1).

**"project"** means employment or other activities or any combination of employment or other activities considered suitable for a youth attendance project by the Secretary;

S. 169 def. of "project" amended by No. 46/1998 s. 7(Sch. 1).

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S. 169 def. of "relevant manager or responsible officer" repealed by No. 19/1994 s. 27(1).  
S. 169 def. of "responsible officer" repealed by No. 19/1994 s. 27(1).

**"week"** means the period of 7 days commencing on a Monday;

**"working day"** does not include a Saturday, Sunday or public holiday;

**"youth attendance project"** means a project appointed as a youth attendance project under section 180(1).

**170. Youth attendance order**

(1) If—

(a) the Court convicts a child of an offence for which the Court considers that the child would otherwise be sentenced to detention in a youth training centre as a result of the gravity or habitual nature of the child's unlawful behaviour; and

(b) on the day of sentencing, the child is of or above the age of 15 years but under 18 years—

the Court may make a youth attendance order in respect of the child with a specified term not exceeding 12 months and not extending beyond his or her nineteenth birthday.

(2) The power to make a youth attendance order is subject to the restrictions set out in section 171.

S. 170(1) amended by Nos 93/1990 s. 15, 19/1994 s. 27(2)(a)(b).

**171. Restrictions on power to make youth attendance order**

The Court does not have power to make a youth attendance order under section 170(1) unless—

- (a) the offence is punishable by imprisonment; and
- (b) it has made inquiries of the Secretary, and is satisfied that—
  - (i) the child is a suitable person to participate in a youth attendance project; and
  - (ii) a place in a youth attendance project will be available to the child at the time when the child is required to first report; and
- (c) the child has consented to the order being made.

S. 171(b)  
amended by  
No. 19/1994  
s. 27(3)(a).

S. 171(b)(i)  
amended by  
No. 19/1994  
s. 27(3)(b).

S. 171(b)(ii)  
amended by  
No. 19/1994  
s. 27(3)(b).

**172. Sentencing court to impose requirements**

- (1) The Court, when making a youth attendance order, must impose on the person the following requirements—
  - (a) that the person does not commit another offence during the period that the order is in force;
  - (b) that the person attend at a youth attendance project for the number of weeks specified by the Court (not being more than 52 weeks);

S. 172  
amended by  
No. 93/1990  
s. 16(a).

S. 172(1)  
amended by  
No. 19/1994  
s. 27(4)(a).

S. 172(1)(a)  
amended by  
No. 19/1994  
s. 27(4)(a).

S. 172(1)(b)  
amended by  
No. 19/1994  
s. 27(4)(a).

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| (c) that, unless the person is in custody at the time of the making of the order, the person report to the Secretary within 2 working days after the order is made;           | S. 172(1)(c) amended by No. 19/1994 s. 27(4)(a)(b).                                       |
| (d) that the person does not leave the State without the written permission of the Secretary;   | S. 172(1)(d) inserted by No. 69/1992 s. 21(1) (as amended by No. 19/1994 s. 40(1)(a)).    |
| (e) that the person notify the Secretary of any change of residence, school or employment within 48 hours after the change;   | S. 172(1)(e) inserted by No. 69/1992 s. 21(1) (as amended by No. 19/1994 s. 40(1)(a)).    |
| (f) that the person comply with the provisions of a notice under section 177 and with the requirements for attendance in paragraphs (a) and (b) of section 177(1);            | S. 172(1)(f) inserted by No. 69/1992 s. 21(1) (as amended by No. 19/1994 s. 40(1)(a)).    |
| (g) that the person attend at any alternative day and time fixed under section 177(5) or attend for such extension of the term of the order as is fixed under section 177(6); | S. 172(1)(g) inserted by No. 69/1992 s. 21(1) (as amended by No. 19/1994 s. 40(1)(a)).    |
| (h) that the person carry out the reasonable and lawful directions of the Secretary or any person acting under the authority of the Secretary under sections 182 and 183(1).  | S. 172(1)(h) inserted by No. 69/1992 s. 21(1) (as amended by No. 19/1994 s. 40(1)(a)(b)). |

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s. 174

s. 172(2)  
inserted by  
No. 93/1990  
s. 16(b),  
amended by  
No. 19/1994  
s. 27(5).

(2) Subject to sub-section (3), the Court may order the person to observe any special condition for the whole or any part of the period of the youth attendance order.

s. 172(3)  
inserted by  
No. 93/1990  
s. 16(b).

(3) Sub-sections (3) and (4) of section 159 apply to a special condition ordered under sub-section (2) of this section in the same manner as they apply to a special condition ordered under sub-section (2) of that section.

S. 173  
repealed by  
No. 19/1994  
s. 27(6).

\* \* \* \* \*

**174. Concurrent orders**

S. 174(1)  
amended by  
No. 19/1994  
s. 27(7)(a).

(1) If a person is convicted on the same day, or in the same proceeding, of more than one offence—

S. 174(1)(a)  
substituted by  
No. 19/1994  
s. 27(7)(b).

(a) the aggregate period of any youth attendance orders imposed in respect of the offences must not exceed 12 months or extend beyond the person's nineteenth birthday; and

S. 174(1)(b)  
repealed by  
No. 19/1994  
s. 27(7)(b).

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S. 174(1)(c)  
amended by  
No. 19/1994  
s. 27(7)(a).

(c) if the Court makes a youth attendance order in relation to an offence and directs that the person be detained in a youth training centre in respect of another offence, the aggregate term of attendance and detention in respect of all of the offences must not exceed 3 years.

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*Act No. 56/1989*

**s. 175**

- |   |  |
|---|--|
| <p>(2) Despite anything to the contrary in any Act, every youth attendance order imposed on a person by the Court shall, unless otherwise directed by the Court at the time of making the youth attendance order, be, as from the date of its commencement, served concurrently with any uncompleted youth attendance order or orders imposed on that person, whether previously to or at the time the relevant order was made.</p> | <p><b>S. 174(2)</b><br/>amended by<br/><b>No. 19/1994</b><br/>s. 27(8)(a)–(c).</p> |
| <p>(3) If the Court imposes a youth attendance order on a person who has not completed another youth attendance order, it may direct that the order being imposed be served in part concurrently with the other order or wholly cumulatively on it.</p>   | <p><b>S. 174(3)</b><br/>amended by<br/><b>No. 19/1994</b><br/>s. 27(9)(a)–(c).</p> |

**175. Copy of order to be given**

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|--|---|
| <p>(1) A youth attendance order must be in the prescribed form.</p>  |   |
| <p>(2) The Court, when it makes a youth attendance order, must cause a copy of the order to be given or sent by post to—</p> |   |
| <p style="padding-left: 40px;">(a) the person; and</p>   | <p><b>S. 175(2)(a)</b><br/>amended by<br/><b>No. 19/1994</b><br/>s. 27(10).</p> |
| <p style="padding-left: 40px;">(b) the Secretary.</p>  | <p><b>S. 175(2)(b)</b><br/>amended by<br/><b>No. 19/1994</b><br/>s. 27(11).</p> |

*      *      *      *      *	<p><b>S. 176</b> amended by <b>No. 19/1994</b> s. 27(10)–(12), repealed by <b>No. 69/1992</b> s. 21(2).</p>
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**177. Reporting**

*Children and Young Persons Act 1989*  
*Act No. 56/1989*

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S. 177(2)  
amended by  
No. 19/1994  
s. 27(11).

- (1) Subject to sub-sections (5) and (6), a person in respect of whom a youth attendance order is made must in every week during the term of the order—
  - (a) attend for a maximum of 3 attendances; and
  - (b) attend under paragraph (a) for a maximum of 10 hours of which no more than 4 hours may be spent in community service activities under section 183.
- (2) Subject to sub-section (1), the Secretary must from time to time specify in a notice in the prescribed form sent by registered post to, or served personally on, the person—
  - (a) the periods of time; and
  - (b) the starting and finishing times of each such period; and
  - (c) the number of times; and
  - (d) the total number of hours—in each week during which the person is required to attend the youth attendance project.

S. 177(3)  
amended by  
No. 19/1994  
s. 27(11).

- (3) Subject to sub-section (1), the Secretary may from time to time vary the details referred to in paragraph (a), (b), (c) or (d) of sub-section (2) by notice sent by registered post to, or served personally on, the person.

S. 177(4)  
amended by  
No. 19/1994  
s. 27(11).

- (4) In specifying the dates and times of attendance for a person in a notice under this section the Secretary must specify dates and times which, as far as practicable, avoid interference—



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*Act No. 56/1989*

<b>s. 178</b>
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- 
- (a) with the attendance of the person at his or her place of employment, education, training or religious observance; or
  - (b) with the person's religious beliefs.
- (5) The Secretary may excuse a person from reporting at a youth attendance project on any occasion—
- (a) on account of illness certified by a legally qualified medical practitioner; or
  - (b) on account of any other good cause—

S. 177(5)  
amended by  
No. 19/1994  
s. 27(11).

and if the Secretary so excuses a person, the Secretary may fix an alternative day and time and must specify the day and time in a notice sent by registered post to, or served personally on, the person.

- (6) If it is not reasonably practicable for a person to make up time for which the person has been excused under sub-section (5) during the term of the youth attendance order, the Secretary may extend the term of the youth attendance order so that the lost time can be made up and must inform the person of the extension by a notice sent by registered post to, or served personally on, the person.

S. 177(6)  
amended by  
No. 19/1994  
s. 27(11).

**178. *Suspension of youth attendance order***

- (1) If—

S. 178(1)  
amended by  
No. 19/1994  
s. 27(10)(11).

- (a) at the time the Court makes a youth attendance order, the person in respect of whom the order is made is in custody in a

S. 178(1)(a)  
amended by  
No. 19/1994  
s. 27(10).

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s. 179

S. 178(1)(b)  
amended by  
No. 19/1994  
s. 27(10)(13).

S. 178(2)  
amended by  
No. 19/1994  
s. 27(11)(14).

S. 178(3)  
amended by  
No. 19/1994  
s. 27(11)

S. 179(1)  
amended by  
No. 19/1994  
s. 27(11).

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remand centre, youth residential centre,  
youth training centre or prison; or

- (b) after the making of a youth attendance order,  
the person in respect of whom the order is  
made is taken into custody in a remand  
centre, youth residential centre, youth  
training centre or prison—

the Secretary may by a notice in writing in the  
prescribed form sent by registered post to, or  
served personally on, the person suspend the  
person's service of the youth attendance order.

- (2) The Secretary must, after consultation with the  
appropriate parole board, superintendent of a  
youth residential centre or youth training centre or  
the Office of Corrections, determine a time at and  
date on which a person shall commence or re-  
commence service of the youth attendance order  
and must by a notice in writing sent by registered  
post to, or served personally on, the person specify  
the time at and date on which the person is first  
required to report to the Secretary.
- (3) With the consent of the appropriate parole board,  
the Secretary may direct that the term of operation  
of a youth attendance order be served concurrently  
with a period of parole but the service of the youth  
attendance order must not be a condition of the  
parole.

**179. *Court may require manager or responsible officer to  
report***

- (1) If, at any time during a person's service of a youth  
attendance order, a Court—
- (a) finds the person guilty of an offence; and
- (b) is aware that a youth attendance order is in  
force in respect of the person—

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the Court may require the Secretary to provide the Court with a report on the extent to and the manner in which the person has complied with the youth attendance order.

- (2) In dealing with the offence referred to in paragraph (a) of sub-section (1), a Court—
- (a) may take into account the report referred to in that sub-section; and
  - (b) must not impose on the person a penalty greater than the penalty which the Court may impose for that offence.

**180. *Secretary may appoint youth attendance projects***

- (1) For the purposes of this Subdivision the Secretary by notice published in the Government Gazette may appoint any project as a youth attendance project and may by like notice at any time revoke the appointment.
- (2) A project appointed as a youth attendance project may be conducted—
- (a) by a youth supervision unit; or
  - (b) by any other person or body.

S. 180(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**181. *Objects of youth attendance project***

The objects of a youth attendance project are to provide a person in respect of whom a youth attendance order is in force with activities and requirements—

- (a) which take into account the gravity of the person's behaviour; and
- (b) which penalise the person by imposing restrictions on his or her liberty; and

S. 181  
amended by  
No. 19/1994  
s. 27(10).

S. 181(a)  
amended by  
No. 19/1994  
s. 27(13).

S. 181(b)  
amended by  
No. 19/1994  
s. 27(10).

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S. 181(c)  
amended by  
No. 19/1994  
s. 27(10).

S. 181(d)  
amended by  
No. 19/1994  
s. 27(10).

S. 182  
amended by  
No. 19/1994  
s. 27(11).

S. 183(1)  
amended by  
No. 19/1994  
s. 27(11).

S. 183(2)  
amended by  
No. 19/1994  
s. 27(11).

- (c) which require the person to make amends for the offence committed by him or her by performing community services; and
- (d) which provide the person with opportunities to receive such instruction, guidance, assistance and experiences as will assist the person in developing an ability to abide by the law and complete the requirements of the youth attendance order.

**182. *Person subject to control etc. of manager or responsible officer***

A person in respect of whom a youth attendance order is in force is subject to the reasonable control, direction and supervision of the Secretary or any person acting under the authority of the Secretary during—

- (a) each period of the person's attendance at a youth attendance project; and
- (b) the person's absence from a youth attendance project when the person is complying with a direction of that person; and
- (c) the person's time of travel between the youth attendance project and a place outside the youth attendance project at which the person is directed to be by that person.

**183. *Community service***

- (1) A person in respect of whom a youth attendance order is in force must engage in community service or other activities as directed by the Secretary.
- (2) A direction given by the Secretary—
  - (a) may require a person to engage in community service activities—

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- (i) at or in relation to a community service organisation; or
  - (ii) at the home of any old, infirm or disabled person; or
  - (iii) on any Crown land or land occupied by the Crown or owned, leased or occupied by any person or body under any Act for a public purpose; and
- (b) must not require a person to engage in any community service activities so as to take the place of some other person who would usually be engaged in those activities for hire or reward if that other person is absent from those activities because of an industrial dispute involving that other person's employer or is otherwise available and willing to perform the work required in those activities.
- (3) If a direction under sub-section (1) requires a person to engage in community service activities—
- (a) the person is, for the purposes of the **Accident Compensation Act 1985** or any other Act or law, to be taken to be a worker employed by the Crown; and
  - (b) for the purposes of the **Accident Compensation Act 1985** the weekly earnings of the person are to be taken to be an amount equivalent to the weekly earnings of the person in any full-time employment in which the person is engaged at that time or, if the person is not then engaged in full-time employment, an amount which the Minister administering the **Accident Compensation**

**Act 1985** considers reasonable in the circumstances of the case; and

- (c) the person is not entitled to receive any remuneration in respect of any work performed in those community service activities.

**184. Breach of youth attendance order**

- (1) A person subject to a youth attendance order who—
  - (a) commits an offence during the period that the youth attendance order is in force; or
  - (b) does not report to the Secretary as specified under section 172(c) or 178(2) (as the case requires); or
  - (c) fails to attend the youth attendance project as specified in a notice under section 177(2) or at an alternative time and on an alternative day fixed under section 177(5) without being excused from attending; or
  - (d) fails to comply with an extension of the term of the youth attendance order under section 177(6); or
  - (e) contravenes any provision of a regulation made for the purposes of this Subdivision; or
  - (f) contravenes any reasonable direction of the Secretary under section 182 or 183(1); or
  - (g) refuses to work as directed during an attendance at a youth attendance project; or
  - (h) is absent from or leaves—
    - (i) a youth attendance project; or

S. 184(1)(b)  
amended by  
No. 19/1994  
s. 27(11).

S. 184(1)(f)  
amended by  
No. 19/1994  
s. 27(11).

S. 184(1)(h)  
amended by  
No. 69/1992  
s. 21(3)(a).

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- (ii) any other place at which the child has been directed to be present under section 182(b)—
- without reasonable excuse at a day and time when the person is required to be present; or
- (i) fails to observe any other requirement or special condition imposed by the Court under section 172—
- must be taken to have breached the youth attendance order.
- (2) Subject to sub-section (3), on application to the Court by the Secretary the Court may, if it is satisfied that a person has breached a youth attendance order, make—
- (a) an order varying or revoking the youth attendance order; or
- (b) an order directing the person to comply with the youth attendance order; or
- (c) any order in respect of the person which the Court could originally have made if it had not made the youth attendance order but must not make an order for the person to be kept in custody for a period longer than the period of the breached youth attendance order.
- (3) If a breach of a youth attendance order is constituted by—
- (a) any act the subject of a charge before a court, any proceeding for the breach must be commenced not later than 3 months after a finding of guilt in respect of the charge; or
- (b) any other act, any proceeding for the breach must be commenced not later than 14 working days after the alleged breach and

S. 184(1)(i)  
 inserted by  
 No. 69/1992  
 s. 21(3)(a).

S. 184(2)  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

before the expiry of the youth attendance order.

- (4) If at any time during the period that a youth attendance order is in force it appears to the Secretary that the person subject to the order has breached it, the Secretary may cause the person to be served, by post or otherwise, with a notice to appear before the Court at a specified time.
- (5) In dealing with an application under sub-section (2), the Court must take into account—
- (a) a report on the person prepared by the Secretary; and
  - (b) the fact of the making of the youth attendance order; and
  - (c) the extent to and the manner in which the person has complied with the youth attendance order.

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- (7) If—
- (a) a notice is served on a person under sub-section (4) and he or she fails to appear before the Court at the time specified and the Court is satisfied that the notice has come to the attention of the person; or
  - (b) service of a notice under sub-section (4) cannot be effected—

the Court may direct that a warrant to arrest the person be issued.

S. 184(4) substituted by No. 69/1992 s. 21(3)(b).  
 S. 184(5)(a) amended by No. 19/1994 s. 27(11).  
 S. 184(6) repealed by No. 19/1994 s. 27(15).  
 S. 184(7) substituted by No. 69/1992 s. 21(4).  
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S. 184(8)–(10)  
repealed by  
No. 69/1992  
s. 21(4).

(11) A person in respect of whom an order is made by the Court under sub-section (2) may appeal from the order.

(12) If before or during the hearing of a proceeding under sub-section (2) it appears to the Court that the person appearing before the Court is of or above the age of 18 years, the Court must discontinue the proceeding and order that it be transferred to the Magistrates' Court and in the meantime it may—

S. 184(12)  
inserted by  
No. 93/1990  
s. 17.

- (a) permit the person to go at large; or
- (b) grant the person bail conditioned for the appearance of the person before the Magistrates' Court at the time and place at which the proceeding is to be heard; or
- (c) remand the person in prison or a police gaol or in accordance with section 49 of the **Magistrates' Court Act 1989** until the proceeding is heard by the Magistrates' Court—

as if the person were accused of an offence and were being held in custody in relation to that offence and, for this purpose, the **Bail Act 1977** (with any necessary modifications) applies.

(13) If a proceeding is transferred to the Magistrates' Court under sub-section (12), the Magistrates' Court may deal with the person as if the Court had just been satisfied of the person's guilt of the offence in respect of which the youth attendance order was made.

S. 184(13)  
inserted by  
No. 93/1990  
s. 17.

**185. Application for variation or revocation of order**

S. 185(1)  
amended by  
Nos 19/1994  
s. 27(10),  
46/1998  
s. 7(Sch. 1).

(1) Subject to sub-sections (2), (3) and (4), the Secretary or a person in respect of whom a youth attendance order is in force may apply to the Court for a variation or the revocation of the youth attendance order.

(2) An application under sub-section (1) may be made where—

(a) the circumstances of the person—

(i) have changed since the making of the youth attendance order; or

(ii) were not accurately presented to the Court or the Secretary before the making of the youth attendance order; or

(b) the person is in custody or is otherwise unable to comply with the youth attendance order; or

(c) the person is no longer willing to comply with the order.

S. 185(2)(a)  
amended by  
No. 19/1994  
s. 27(10).

S. 185(2)(a)(ii)  
amended by  
No. 19/1994  
s. 27(16).

S. 185(2)(b)  
amended by  
No. 19/1994  
s. 27(10).

S. 185(2)(c)  
amended by  
No. 19/1994  
s. 27(10).

S. 185(3)  
amended by  
Nos 19/1994  
s. 27(17),  
46/1998  
s. 7(Sch. 1).

(3) If the Secretary is the applicant under sub-section (1), the Secretary must, as soon as practicable after the making of the application, send by registered post to, or serve personally on, the person in respect of whom the order is in force a notice of the date set by the Court for the hearing of the application.

S. 185(4)  
amended by  
Nos 19/1994  
s. 27(17),  
46/1998  
s. 7(Sch. 1).

(4) If the person in respect of whom the order is in force is the applicant under sub-section (1), the principal registrar must, as soon as practicable after the making of the application, send by registered post to, or cause to be served personally

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on, the Secretary a notice of the date set by the Court for the hearing of the application.

(5) In dealing with an application under sub-section (1), the Court must take into account—

(a) a report on the person prepared by the Secretary; and

S. 185(5)(a)  
amended by  
No. 19/1994  
s. 27(10)(11).

(b) the fact of the making of the youth attendance order; and

(c) the extent to and the manner in which the person has complied with the youth attendance order—

S. 185(5)(c)  
amended by  
No. 19/1994  
s. 27(10).

and, subject to sub-section (6), may make—

(d) an order varying the youth attendance order, but not extending the period of the order, or revoking the youth attendance order; or

(e) an order directing that the youth attendance order continue in force; or

(f) any order in respect of the person which the Court could originally have made if it had not made the youth attendance order.

S. 185(5)(f)  
amended by  
No. 19/1994  
s. 27(10).

(6) If a person in respect of whom an application is made under sub-section (1) fails to appear before the Court at the time fixed for the hearing of the application, a warrant to arrest the child may be issued by the Court.

S. 185(6)  
amended by  
No. 19/1994  
s. 27(10).

(7) Division 3 of Part 4 of the **Magistrates' Court Act 1989** applies, with any necessary modifications, to warrants under sub-section (6), and in particular with the modification that a reference to the bringing of a person before the Magistrates' Court is to be construed as a

S. 185(7)  
amended by  
No. 19/1994  
s. 27(10).

reference to bringing the person as soon as practicable before the Children's Court.

- (8) If it is not possible for the Court to deal immediately with an application under sub-section (1) in respect of which the person has been arrested under sub-section (6), for the purposes of granting bail the provisions of this Act and the **Bail Act 1977** apply, with any necessary modifications, and in particular with the modification that a reference to a person accused of an offence or an accused person is to be construed as a reference to the person.
- (9) If a person is being held in custody pending the determination of an application under sub-section (1), the person must be detained in a youth training centre.
- (10) If a person changes his or her place of residence, the Secretary may, on receipt of an application in writing by the person, send by registered post to, or serve personally on, the person a written authority to attend at another youth attendance project specified in the authority at the time and place specified in the authority and the giving of the authority has effect as if it were a variation of a youth attendance order by the Court under sub-section (5)(d).

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***Subdivision 9—Youth Residential Centre Orders***

**186. Court may make youth residential centre order**

- (1) If—

S. 185(8)  
amended by  
No. 19/1994  
s. 27(10).

S. 185(9)  
amended by  
No. 19/1994  
s. 27(10).

S. 185(10)  
amended by  
Nos 19/1994  
s. 27(10),  
46/1998  
s. 7(Sch. 1).

S. 185(11)  
repealed by  
No. 19/1994  
s. 38(3).

S. 186(1)  
amended by  
No. 69/1992  
s. 22(1).

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- (a) the Court finds a child guilty of an offence, whether indictable or summary; and
- (b) on the day of sentencing, the child is aged 10 years or more but under 15 years; and
- (c) the Court is satisfied that the circumstances and nature of the offence are sufficiently serious to warrant the making of a youth residential centre order and that no other sentence is appropriate; and
- (d) the offence is one punishable by imprisonment (other than for default in payment of a fine); and
- (e) it has received and considered a pre-sentence report—

**S. 186(1)(c)**  
**amended by**  
**No. 93/1990**  
**s. 18(1).**

**S. 186(1)(e)**  
**inserted by**  
**No. 69/1992**  
**s. 22(1).**

the Court may convict the child and order that the child be detained in a youth residential centre.

- (2) If the Court makes an order under sub-section (1), it must—
  - (a) state in writing the reasons for the order; and
  - (b) cause the statement of reasons to be entered in the register; and
  - (c) unless the Court otherwise orders, cause a copy of the written statement of reasons to be given or sent by post within 21 days after the making of the order to the child, the child's parents and other parties to the proceeding.

**S. 186(2)**  
**substituted by**  
**No. 93/1990**  
**s. 18(2).**

- (2A) The failure of the Court to comply with sub-section (2) does not invalidate an order made by the Court under sub-section (1).
- (3) The Court must not make an order under sub-section (1) if the child is not present before the Court.

**S. 186(2A)**  
**inserted by**  
**No. 93/1990**  
**s. 18(2).**

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**187. Youth residential centre orders**

- (1) If a child is ordered to be detained in a youth residential centre under section 186, the period of detention in respect of an offence must not exceed the maximum term of imprisonment for the offence if committed by an adult and in any event must not exceed 1 year.
- (2) If a child is convicted on the same day, or in the same proceeding, of more than one offence—
  - (a) any period of detention in a youth residential centre shall be concurrent with any period of detention in respect of any other of the offences, unless the Court, at the time of sentencing, states that the sentences are cumulative and gives reasons for its decision; and
  - (b) the aggregate period of detention in a youth residential centre which may be required in respect of all of the offences must not exceed 2 years; and
  - (c) if the Court imposes a sentence of detention in a youth residential centre on a child who has not completed another sentence of detention in a youth residential centre, the Court may direct that the sentence being imposed be served in part concurrently with the other sentence or wholly cumulatively on it.
- (3) If—
  - (a) a sentence of detention in a youth residential centre is imposed on a child already under sentence of detention in a youth residential centre; and

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- (b) the subsequent sentence is cumulative on any uncompleted prior sentence; and
- (c) the aggregate of the periods of the unexpired portion of the prior sentence and the subsequent sentence exceeds 2 years—
- the subsequent sentence is to be taken to be a sentence that the child be further detained in a youth residential centre after the expiration of the period of the prior sentence for the period determined by deducting from 2 years the period of the unexpired portion of the prior sentence at the date of the passing of the subsequent sentence.
- (4) The Court may make recommendations in writing as to the management or treatment of, or any other matter concerning, a child sentenced to detention in a youth residential centre.
- (5) Subject to this section, the provisions of Subdivision (4) of Division 2 of Part 3 of the **Sentencing Act 1991** (except sections 32 and 33) apply to an order made by the Criminal Division detaining a child in a youth residential centre as if a reference to the Magistrates' Court were a reference to the Children's Court.

S. 187(5)  
 amended by  
 No. 49/1991  
 s. 119(7)(Sch.  
 4 item  
 2.1(a)(b)),  
 substituted by  
 No. 48/1997  
 s. 51(1).

***Subdivision 10—Youth Training Centre Orders***

**188. *Court may make youth training centre order***

- (1) If—
- (a) the Court finds a child guilty of an offence, whether indictable or summary; and
- (b) on the day of sentencing, the child is aged 15 years or more but under 18 years; and
- (c) the Court is satisfied that no other sentence is appropriate; and

S. 188(1)  
 amended by  
 No. 69/1992  
 s. 22(2).

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S. 188(1)(e)  
inserted by  
No. 69/1992  
s. 22(2).

S. 188(2)  
substituted by  
No. 69/1992  
s. 23.

S. 188(2A)  
inserted by  
No. 69/1992  
s. 23.

- (d) the offence is one punishable by imprisonment (other than for default in payment of a fine); and
- (e) it has received and considered a pre-sentence report—

the Court may convict the child and order that the child be detained in a youth training centre.

- (2) If the Court makes an order under sub-section (1), it must—
  - (a) state in writing the reasons for the order; and
  - (b) cause the statement of reasons to be entered in the register; and
  - (c) unless the Court otherwise orders, cause a copy of the written statement of reasons to be given or sent by post within 21 days after the making of the order to the child, the child's parents and other parties to the proceeding.
- (2A) The failure of the Court to comply with sub-section (2) does not invalidate an order made by the Court under sub-section (1).
- (3) The Court must not make an order under sub-section (1) if the child is not present before the Court.

**189. Youth training centre orders**



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- (1) Subject to this section, the provisions of Subdivision (4) of Division 2 of Part 3 of the **Sentencing Act 1991** (except sections 32 and 33) apply to an order made by the Criminal Division detaining a child in a youth training centre as if a reference to the Magistrates' Court were a reference to the Children's Court.
- (2) If a child is ordered to be detained in a youth training centre under section 188, the period of detention in respect of an offence must not exceed the maximum term of imprisonment for the offence if committed by an adult and in any event must not exceed 2 years.
- (3) If a child is convicted on the same day, or in the same proceeding, of more than one offence—
- (a) any period of detention in a youth training centre shall be concurrent with any period of detention in respect of any other of the offences, unless the Court, at the time of sentencing, states that the sentences are cumulative and gives reasons for its decision; and
  - (b) the aggregate term of detention at a youth training centre which may be required in respect of all of the offences must not exceed 3 years.
- (3A) Every term of detention in a youth training centre imposed on a child by a court must, unless otherwise directed by the court at the time of pronouncing the sentence, be, as from the date of its commencement, served concurrently with any uncompleted sentence or sentences of detention in a youth training centre imposed on that child, whether before or at the time the relevant sentence was imposed.

S. 189(1)  
amended by  
Nos 49/1991  
s. 119(7)(Sch.  
4 item 2.2),  
48/1997  
s. 51(2).

S. 189(3A)  
inserted by  
No. 48/1997  
s. 51(3).

- (4) The Court may make recommendations in writing as to the management or treatment of, or any other matter concerning, a child sentenced to detention in a youth training centre.

***Subdivision 11—Deferral of Sentencing***

**190. Deferral of sentencing**

- (1) If—
- (a) the Court is of the opinion that sentencing should, in the interests of the child, be deferred; and
  - (b) the child agrees to a deferral of sentencing—
- the Court may defer sentencing the child for a period not exceeding 4 months.
- (2) If the Court defers sentencing a child, it—
- (a) must adjourn the case to a fixed date for sentence and release the child unconditionally or adjourn the case to a fixed date for sentence and release the child on bail; and
  - (b) may order the preparation of a pre-sentence, or a further pre-sentence, report.
- (3) On the adjourned hearing date, the Court must, in determining the appropriate sentence for a child, have regard to—
- (a) the child's behaviour during the period of deferral; and

S. 190(2)  
amended by  
No. 69/1992  
s. 24(a)(i).

S. 190(2)(a)  
amended by  
No. 69/1992  
s. 24(a)(ii)  
(A)(B).

S. 190(2)(b)  
amended by  
No. 69/1992  
s. 24(a)(iii).

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- (b) any pre-sentence report ordered under sub-section (2)(b); and
- (c) any other relevant matter.
- (4) If a child is found guilty of an offence during a period of deferral under this section, the Court may—
  - (a) re-list the adjourned case at short notice; and
  - (b) on the adjourned hearing make any order which the Court could have made if it had not deferred sentence.
- (5) If a child does not appear before the Court on the date fixed for sentence, the Court may order that a warrant to arrest the child be issued.

S. 190(3)(b) amended by No. 69/1992 s. 24(b).

***Subdivision 12—Orders in Addition to Sentence***

Pt 4 Div. 7 Subdiv. 12 (Heading and ss 191, 192) substituted as Pt 4 Div. 7 Subdiv. 12 (Heading and s. 191) by No. 49/1991 s. 119(7)(Sch. 4 item 2.3).

**191. *Orders in addition to sentence***

S. 191 substituted by No. 49/1991 s. 119(7)(Sch. 4 item 2.3).

The provisions of Part 4 of the **Sentencing Act 1991** apply to a proceeding in the Criminal Division with any necessary modification and as if in section 86(2) for "may" there were submitted "must".

\* \* \* \* \*

S. 192 repealed by No. 49/1991 s. 119(7)(Sch. 4 item 2.3).

***Subdivision 13—General***

**193. Provisions applicable to warrants**

The provisions of sections 57 to 65 and 73 to 78 of the **Magistrates' Court Act 1989** apply, with any necessary modifications, to warrants issued in respect of sentencing orders alleged to have been breached as if a reference to bringing a person before the Magistrates' Court as soon as practicable were a reference to bringing a person before the Court as soon as practicable but not later than the next working day after the person is arrested and in the meantime placing the person as provided by this Act.

**194. Bail**

(1) If—

- (a) a child has been arrested in accordance with a warrant issued in respect of an alleged breach of a sentencing order and it is not possible for the Court to hear immediately an application for breach of the sentencing order; or
- (b) a child has appeared before the Court in answer to a notice to appear served in respect of an alleged breach of a sentencing order and the Court adjourns the hearing of the application—

the Court or a bail justice or a member of the police force may grant bail and, subject to section 129, the **Bail Act 1977** applies, with any necessary modifications, as if a reference to a person accused of an offence or an accused person were a reference to a child.

S. 193  
amended by  
No. 19/1994  
s. 28(1).

S. 194(1)  
amended by  
No. 69/1992  
s. 16(2)(a)(b).

S. 194(1)(a)  
substituted by  
No. 19/1994  
s. 29.

S. 194(1)(b)  
substituted by  
No. 19/1994  
s. 29.

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- (2) If a child is refused bail, the child must be remanded in custody for a period not exceeding 21 days.

**195. *Variation or revocation of order***

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|---|---|
| <p>(1) Subject to sub-sections (2), (3) and (4), the Secretary or a person in respect of whom a probation order or a youth supervision order is in force may apply to the Court for a variation or the revocation of the order.</p>   | <p>S. 195(1) amended by Nos 19/1994 s. 28(2), 46/1998 s. 7(Sch. 1).</p>   |
| <p>(2) An application under sub-section (1) may be made where—</p> <p style="margin-left: 20px;">(a) the circumstances of the person—</p> <p style="margin-left: 40px;">(i) have changed since the making of the order; or</p> <p style="margin-left: 40px;">(ii) were wrongly stated or were not accurately presented to the Court or the Secretary before sentence; or</p> <p style="margin-left: 20px;">(b) the person is in custody or is otherwise unable to comply with the order; or</p> <p style="margin-left: 20px;">(c) the person is no longer willing to comply with the order.</p> | <p>S. 195(2)(a) amended by No. 19/1994 s. 28(2).</p> <p>S. 195(2)(a)(ii) amended by No. 46/1998 s. 7(Sch. 1).</p> <p>S. 195(2)(b) amended by No. 19/1994 s. 28(2).</p> <p>S. 195(2)(c) amended by No. 19/1994 s. 28(2).</p> |
| <p>(3) If the Secretary is the applicant under sub-section (1), the Secretary must, as soon as practicable after the making of the application, send by registered post to, or serve personally on, the person in respect of whom the order is in force a notice of the date set by the Court for the hearing of the application.</p>   | <p>S. 195(3) amended by Nos 19/1994 s. 28(3), 46/1998 s. 7(Sch. 1).</p>   |

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S. 195(4)  
amended by  
Nos 19/1994  
s. 28(3),  
46/1998  
s. 7(Sch. 1).

(4) If the person in respect of whom the order is in force is the applicant under sub-section (1), the principal registrar must, as soon as practicable after the making of the application, send by registered post to, or cause to be served personally on, the Secretary a notice of the date set by the Court for the hearing of the application.

(5) In dealing with an application under sub-section (1), the Court must take into account—

(a) a report on the person prepared by the Secretary; and

(b) the fact of the making of the probation order or youth supervision order (as the case requires); and

(c) the extent to and the manner in which the person has complied with the order—

and, subject to sub-section (6), may make—

(d) an order varying the order, but not extending the period of the order, or revoking the order; or

(e) an order directing that the order continue in force; or

(f) any order in respect of the person which the Court could originally have made if it had not made the order.

(6) If a person in respect of whom an application is made under sub-section (1) fails to appear before the Court at the time fixed for the hearing of the application, a warrant to arrest the person may be issued by the Court.

S. 195(5)(a)  
amended by  
Nos 19/1994  
s. 28(2),  
46/1998  
s. 7(Sch. 1).

S. 195(5)(c)  
amended by  
No. 19/1994  
s. 28(2).

S. 195(5)(f)  
amended by  
No. 19/1994  
s. 28(2).

S. 195(6)  
amended by  
No. 19/1994  
s. 28(2).

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| <p>(7) Division 3 of Part 4 of the <b>Magistrates' Court Act 1989</b> applies, with any necessary modifications, to warrants under sub-section (6), and in particular with the modification that a reference to the bringing of a person before the Magistrates' Court is to be construed as a reference to bringing the person as soon as practicable before the Children's Court.</p>  | <p>S. 195(7)<br/>amended by<br/>No. 19/1994<br/>s. 28(2).</p>  |
| <p>(8) If it is not possible for the Court to deal immediately with an application under sub-section (1) in respect of which the person has been arrested under sub-section (6), for the purposes of granting bail the provisions of this Act and the <b>Bail Act 1977</b> apply, with any necessary modifications, and in particular with the modification that a reference to a person accused of an offence or an accused person is to be construed as a reference to the person.</p> | <p>S. 195(8)<br/>amended by<br/>No. 19/1994<br/>s. 28(2).</p>  |
| <p>*            *            *            *            *</p>   | <p>S. 196(9)<br/>repealed by<br/>No. 19/1994<br/>s. 38(4).</p> |

**196. Suspension of order**

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|---|---|
| <p>(1) If—</p>  | <p>S. 196(1)<br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p> |
| <p style="padding-left: 40px;">(a) a person in respect of whom a youth supervision order is in force is ill; or</p>   | <p>S. 196(1)(a)<br/>amended by<br/>No. 19/1994<br/>s. 28(4).</p>  |
| <p style="padding-left: 40px;">(b) there are other exceptional circumstances—<br/>the Secretary may suspend the operation of the order or any of the conditions of the order.</p> |   |

- (2) Any period of suspension under sub-section (1) is to be added to the period of the youth supervision order for the purpose of calculating the time of its expiry.

### **Division 8—Appeals to County Court and Supreme Court**

#### **197. Appeal to County Court or Supreme Court**

- (1) A person may appeal to the County Court or, if the Court was constituted by the President, to the Trial Division of the Supreme Court against any sentencing order made against that person by the Children's Court in a proceeding in the Criminal Division.
- (2) If a person appeals under this Act to the Supreme Court on a question of law, that person is deemed to have abandoned finally and conclusively any right under this or any other Act to appeal to the County Court or any right under this section to appeal to the Trial Division of the Supreme Court.
- (3) The Director of Public Prosecutions may appeal to the County Court or, if the Court was constituted by the President, to the Trial Division of the Supreme Court against any sentencing order made by the Children's Court in a proceeding in the Criminal Division if satisfied that an appeal should be brought in the public interest.
- (4) The Director of Public Prosecutions must not bring a further appeal against a sentencing order made by the County Court or the Supreme Court (as the case requires).

Victorian Legislation and Parliamentary Documents

Pt 4 Div. 9  
(Heading)  
re-numbered  
as Pt 4 Div. 8  
(Heading) by  
No. 69/1992  
s. 37(1)(a).

S. 197(1)  
amended by  
Nos 19/1994  
s. 30(1),  
36/2000  
s. 12(1).

S. 197(2)  
amended by  
Nos 19/1994  
s. 30(1),  
36/2000  
s. 12(2).

S. 197(3)  
amended by  
No. 36/2000  
s. 12(1).

S. 197(4)  
amended by  
No. 36/2000  
s. 12(3).



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(5) Subdivision 1 of Division 4 of Part 4 (except sections 83, 84, 89A and 90) of, and Schedule 6 (except clauses 1(4A) and (4B), 6(2A) to (2C) and 9(2)) to, the **Magistrates' Court Act 1989** apply, with any necessary modifications, to appeals to the County Court under this section as if—

S. 197(5)  
amended by  
Nos 10/1999  
s. 17(1)(a)(b),  
36/2000  
s. 12(4).

(a) a reference to the Magistrates' Court were a reference to the Children's Court; and

(b) a reference to section 83 or 84 were a reference to this section; and

(ba) section 86 had not been amended by section 9 of the **Magistrates' Court (Amendment) Act 1999**; and

S. 197(5)(ba)  
inserted by  
No. 10/1999  
s. 17(1)(c).

(c) a reference to a criminal proceeding were a reference to a proceeding in the Criminal Division; and

(d) a reference to imprisonment were a reference to detention in a youth residential centre or a youth training centre.

(5A) The provisions of the **Magistrates' Court Act 1989** that apply to appeals to the County Court under this section by virtue of sub-section (5) (as modified by that sub-section) apply, with any other necessary modifications, to appeals to the Trial Division of the Supreme Court under this section as if—

S. 197(5A)  
amended by  
No. 36/2000  
s. 12(5).

(a) a reference to the County Court were a reference to the Trial Division of the Supreme Court;

(b) in section 86(2) the reference to section 74 of the **County Court Act 1958** were a reference to section 17(2) of the **Supreme Court Act 1986**;

S. 197(6)  
amended by  
No. 36/2000  
s. 12(6).

S. 197(7)  
amended by  
Nos 19/1994  
s. 30(1),  
36/2000  
s. 12(6).

S. 197(7)(c)  
amended by  
No. 19/1994  
s. 30(1).

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- (c) in section 88AA(2) the reference to the **County Court Act 1958** were a reference to the **Supreme Court Act 1986**;
- (d) in clause 1(4) of Schedule 6 the reference to rules of the County Court were a reference to rules of the Supreme Court;
- (e) a reference to the registrar of the County Court were a reference to the prothonotary of the Supreme Court.
- (6) If an appellant appeals against an order made under section 140, 142 or 144, the County Court or the Supreme Court (as the case requires) may—
- (a) dismiss the charge against the appellant; or
  - (b) make an order in the same terms as the order of the Children's Court—
- but must not make any other sentencing order.
- (7) If an appeal is made from a sentencing order of the Court which orders a person to be detained in—
- (a) a youth residential centre; or
  - (b) a youth training centre—
- in respect of two or more offences for an aggregate period which is specified, the County Court or the Supreme Court (as the case requires) may, if it finds the person guilty of the offences or any two or more of them, order—
- (c) that the person be detained in a youth residential centre or a youth training centre (as the case may be) for a period not exceeding the aggregate period; or

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| <p>(d) that the person be detained in a youth residential centre or a youth training centre (as the case may be) for a separate period of detention in respect of each offence, but so that the separate periods do not in the aggregate exceed the aggregate period ordered to be served by the Court.</p>   | <p>S. 197(7)(d) amended by No. 19/1994 s. 30(1).</p>                                |
| <p>(8) Sections 20, 22, 23, 38 to 43, 52 to 56, 136, 139 and 175 apply, with any necessary modifications, to appeals under this section as if—</p>  | <p>S. 197(8) amended by No. 19/1994 s. 30(2).</p>                                   |
| <p style="padding-left: 2em;">(a) a reference to the Court or the Criminal Division were a reference to the County Court or the Supreme Court (as the case requires); and</p>   | <p>S. 197(8)(a) amended by No. 36/2000 s. 12(7)(a).</p>                             |
| <p style="padding-left: 2em;">(b) a reference to a proceeding to which section 21(2) applies were a reference to an appeal under this section; and</p>  |   |
| <p style="padding-left: 2em;">(c) the reference in section 23(3) to an order to which that sub-section applies were a reference to a final order made on the hearing of the appeal; and</p>   |   |
| <p style="padding-left: 2em;">(d) a reference to the appropriate registrar were a reference to the registrar of the County Court or the prothonotary of the Supreme Court (as the case requires).</p>   | <p>S. 197(8)(d) amended by No. 36/2000 s. 12(7)(b).</p>                             |
| <p>(9) On an appeal under this section, the County Court or the Supreme Court (as the case requires) may, despite anything to the contrary in this Act, make a probation order, youth supervision order or youth attendance order in respect of a person even though at the time of making that order the person is of or above the age of 18 years but under 19 years.</p> | <p>S. 197(9) inserted by No. 19/1994 s. 30(3), amended by No. 36/2000 s. 12(8).</p> |

S. 198  
amended by  
No. 36/2000  
s. 12(9)(a).

S. 198(b)  
amended by  
No. 36/2000  
s. 12(9)(b).

S. 198(c)  
inserted by  
No. 36/2000  
s. 12(9)(b).

S. 199(2)  
amended by  
Nos 19/1994  
s. 30(4),  
109/1994  
s. 34(6)(a).

S. 199(2)(a)  
amended by  
No. 36/2000  
s. 12(10).

**198. County Court or the Supreme Court may reserve question of law for Full Court**

Sections 446 to 450A of the **Crimes Act 1958** apply to an appeal to the County Court or the Supreme Court from the Children's Court as if—

- (a) a reference to the Magistrates' Court were a reference to the Children's Court; and
- (b) a reference to a criminal proceeding were a reference to a proceeding in the Criminal Division; and
- (c) the reference in section 446(1) (as modified by paragraphs (a) and (b) of this section) to the hearing of an appeal in a proceeding in the Criminal Division of the Children's Court to the County Court included a reference to the hearing of an appeal in a proceeding in the Criminal Division of the Children's Court to the Trial Division of the Supreme Court.

**199. Appeals to Full Court from County Court or Supreme Court**

- (1) In this section "**detention**" includes detention in a youth residential centre or youth training centre, but does not include detention in default of payment of a fine.

- (2) If—

- (a) on an appeal under section 197 the County Court or the Supreme Court (as the case requires) orders that the appellant be sentenced to a term of detention; and

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- (b) the Children's Court in the proceeding that is the subject of the appeal had not ordered that the appellant be detained—
- the person sentenced to be detained may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the sentence.
- (3) Part VI of the **Crimes Act 1958** with respect to admission to bail pending determination of an appeal applies to a person sentenced as described in sub-section (2) and who seeks leave to appeal under that sub-section as if the person were convicted on indictment. S. 199(3)  
amended by  
No. 19/1994  
s. 30(4).
- (4) If a person intends to apply under this section for leave to appeal to the Court of Appeal, the person must serve notice in writing of his or her intention to do so on— S. 199(4)  
amended by  
Nos 19/1994  
s. 30(4),  
109/1994  
s. 34(6)(b),  
36/2000  
s. 12(10).
- (a) the Registrar of Criminal Appeals; and
- (b) the informant; and
- (c) the Director of Public Prosecutions—
- within 30 days after the sentence is imposed by the County Court or the Supreme Court (as the case requires).
- (5) On an appeal under this section the Court of Appeal must— S. 199(5)  
amended by  
No. 109/1994  
s. 34(6)(c).
- (a) if it thinks that a different order should have been made— S. 199(5)(a)(i)  
amended by  
No. 36/2000  
s. 12(10).
- (i) set aside the order of the County Court or the Supreme Court (as the case requires); and
- (ii) make any other order (whether more or less severe) which it thinks ought to have been made; or
- (b) in any other case, dismiss the appeal.
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**200. Appeal to Supreme Court on a question of law**

- (1) A party to a proceeding (other than a committal proceeding) before the Criminal Division may appeal to the Supreme Court, on a question of law, from a final order of the Court in that proceeding.
- (2) If an informant who is a member of the police force wishes to appeal under sub-section (1), the appeal must be brought by the Director of Public Prosecutions on behalf of the informant.
- (3) An appeal under sub-section (1)—
  - (a) must be instituted not later than 30 days after the day on which the order complained of was made; and
  - (b) does not operate as a stay of any order made by the Court unless the Supreme Court so orders.
- (4) Subject to sub-section (3), an appeal under sub-section (1) must be brought in accordance with the rules of the Supreme Court.
- (5) An appeal instituted after the end of the period referred to in sub-section (3)(a) is deemed to be an application for leave to appeal under sub-section (1).
- (6) The Supreme Court may grant leave under sub-section (5) and the appellant may proceed with the appeal if the Supreme Court—
  - (a) is of the opinion that the failure to institute the appeal within the period referred to in sub-section (3)(a) was due to exceptional circumstances; and
  - (b) is satisfied that the case of any other party to the appeal would not be materially prejudiced because of the delay.

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- (7) After hearing and determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court with or without any direction in law.
  - (8) An order made by the Supreme Court on an appeal under sub-section (1), other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.
  - (9) The Supreme Court may provide for a stay of the order or for admitting any person to bail as it thinks fit.

S. 200(9)  
amended by  
No. 19/1994  
s. 30(5).

**201. *Appeal by child under 15 years***

If an appellant is a child under the age of 15 years the appeal may be made on the child's behalf and in the name of the child by—

- (a) the child's parent; or
- (b) in the absence of the parent, the Secretary.

S. 201(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**202. *Parent may enter into bail***

If the child is granted bail with or without a surety pending the appeal but it appears to the Court granting bail that the child does not have the capacity or understanding to enter into bail, the child's parent or any other person may enter into bail as principal in an amount determined by the Court, on condition that the person produce the child at the County Court or Supreme Court at a place and on a day to be fixed by the registrar of the County Court or as directed by the Supreme Court.

**203. Appeals to be heard in open court**

- (1) Proceedings on an appeal under section 197, 199 or 200 are, subject to sub-section (2), to be conducted in open court.
- (2) The Supreme Court or County Court (as the case requires) may, on the application of a party or of any other person who has a direct interest in the proceeding or without any such application—
  - (a) order that the whole or any part of a proceeding be heard in closed court; or
  - (b) order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.
- (3) Any party to the proceeding and any other interested person has standing to support or oppose an application under sub-section (2).
- (4) If an order has been made under this section, the Supreme Court or County Court (as the case requires) must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the Court is being held.
- (5) An order posted under this section must not contain any particulars likely to lead to the identification of the child who is a party to the proceeding.
- (6) A person must not contravene an order made and posted under this section.

Penalty applying to this sub-section:

- (a) In the case of a person of or above the age of 17 years, 25 penalty units or committal for a term of not more than six months to prison;  
or



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- (b) In the case of a child of or above the age of 15 years, 25 penalty units or detention for a period of not more than six months in a youth training centre; or
- (c) In the case of a child under the age of 15 years, 12 penalty units or detention for a period of not more than three months in a youth residential centre.

S. 203(6)(b)  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 18.6).

**Division 9—Parole**

Pt 4 Div. 10  
(Heading)  
re-numbered  
as Pt 4 Div. 9  
(Heading) by  
No. 69/1992  
s. 37(1)(b).

*Subdivision 1—Youth Residential Board*

**204. Establishment of Youth Residential Board**

- (1) There is established a Board called the Youth Residential Board.
- (2) The Board consists of—
  - (a) a judge of the County Court appointed by the Governor in Council on the nomination of the Attorney-General, who is to be the chairperson; and
  - (b) the Secretary or an officer appointed by the Governor in Council on the nomination of the Secretary; and
  - (c) two other persons appointed by the Governor in Council, both of whom must have experience in matters relating to child welfare and at least one of whom must be a woman.
- (3) A member of the Youth Parole Board may be appointed as a member of the Youth Residential Board.

S. 204(2)(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**205. Terms and conditions of office**

- (1) A member of the Youth Residential Board appointed by the Governor in Council holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment, and is eligible for re-appointment.
- (2) A member appointed by the Governor in Council may resign his or her office in writing delivered to the Governor in Council.
- (3) The Governor in Council may remove from office a member appointed by the Governor in Council.
- (4) A member is entitled to be paid—
  - (a) any remuneration that is fixed by the Governor in Council; and
  - (b) any travelling and other allowances that are fixed by the Governor in Council.
- (5) A member is appointed subject to any other terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act.
- (6) If a member who is a judge of the County Court ceases to be such a judge, he or she ceases to hold office as a member.
- (7) A member is not in respect of the office of member subject to the **Public Sector Management and Employment Act 1998**.
- (8) The appointment of a judge of the County Court as a member does not affect the tenure of office, rank, status, remuneration, rights or privileges of that person as a judge and, for all purposes, service as a member of the Youth Residential

S. 205(7)  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

Board by a judge is to be regarded as service as a judge.

- (9) If a person was immediately before becoming a member of the Youth Residential Board an officer within the meaning of the **State Superannuation Act 1988**, the member continues, subject to that Act, to be an officer within the meaning of that Act.

**206. *Alternate members***

- (1) The Governor in Council may appoint—
- (a) a judge of the County Court nominated by the Attorney-General as an alternate member for the chairperson of the Youth Residential Board and the person so appointed is required to act as chairperson if the chairperson is absent from duty or the office of chairperson is vacant; and
  - (b) an officer nominated by the Secretary as an alternate member for the member holding office under section 204(2)(b) and the person so appointed is required to act for that member if he or she is absent from duty.
- (2) The Governor in Council may appoint an alternate member for each member holding office under section 204(2)(c) and at least one of those alternate members must be a woman.
- (3) In the absence from duty of a member holding office under section 204(2)(c) the alternate member for that member is entitled to attend a meeting of the Board.
- (4) A person appointed under sub-section (1) or (2), while acting for a member—
- (a) has all the powers and may perform all the functions of the member; and

S. 206(1)(b)  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

- (b) is entitled to be paid—
- (i) any remuneration that is fixed by the Governor in Council; and
  - (ii) any travelling and other allowances that are fixed by the Governor in Council.

**207. *Meetings of the Youth Residential Board***

- (1) The Youth Residential Board must meet at the times and places that are fixed by the regulations or, if no times or places are so fixed, at the times and places that are determined by the chairperson.
- (2) The chairperson or, in the chairperson's absence, the acting chairperson, must preside at every meeting of the Youth Residential Board.
- (3) Subject to sub-sections (4) and (5), a quorum of the Youth Residential Board consists of the chairperson and one other member.
- (4) A female member of the Youth Residential Board must be present at any meeting of the Board at which consideration is being given to the release on parole of a female person.
- (5) A quorum at any meeting of the Youth Residential Board at which consideration is being given to the transfer to a youth training centre of a person detained in a youth residential centre consists of the chairperson and two other persons.
- (6) The following questions which may arise at a meeting of the Youth Residential Board are to be determined by the person presiding at the meeting alone—
  - (a) whether a question is a question of law;

- (b) any question determined to be a question of law.
- (7) A question (other than a question referred to in sub-section (6)) arising at a meeting of the Youth Residential Board must be determined by a majority of votes and, if the votes are equal, the person presiding has a casting vote.
- (8) Subject to this Act and the regulations, the Board may regulate its own procedure.

**208. *Validity of acts or decisions of the Youth Residential Board***

An act or decision of the Youth Residential Board is not invalid only because—

- (a) of a vacancy in the office of a member; or
- (b) of a defect or irregularity in or in connection with the appointment of a member; or
- (c) in the case of an alternate member, the occasion for that person acting for a member had not arisen or had ceased.

**209. *Secretary or member may act on behalf of Youth Residential Board***

- (1) If the Youth Residential Board has heard and determined a matter, the secretary or acting secretary or a member of the Board may, on behalf of the Board, sign and issue all necessary orders and documents relating to that matter.
- (2) An order or document signed under sub-section (1) has effect as if signed by all the members of the Youth Residential Board.

**210. *Evidentiary provisions***

- (1) All courts must take judicial notice of the signature on an order or document of the secretary or acting secretary or a member of the Youth

Residential Board and, until the contrary is proved, must presume that the document was properly signed.

- (2) A certificate purporting to be signed by the secretary or acting secretary of the Youth Residential Board and purporting to record any determination or decision of the Board on a matter is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the making of that determination or decision by the Board.

**211. Powers etc. of Youth Residential Board**

- (1) The Youth Residential Board has the powers, duties and functions conferred or imposed on it by or under this or any other Act.
- (2) In exercising its functions, the Youth Residential Board is not bound by the rules of natural justice.

**212. Powers to take evidence etc.**

The Youth Residential Board has and may exercise the powers conferred by sections 17, 18, 19, 20, 20A, 21 and 21A of the **Evidence Act 1958** as if the Board were a body of persons to whom the Governor in Council has issued a commission and the person presiding at meetings of the Board were the president or chairman of the commission.

**213. Saving of members of Youth Residential Board from liability**

The members or secretary of the Youth Residential Board are not liable to any action or suit in respect of any act or thing done or omitted to be done in the exercise or purported exercise of any power or duty conferred or imposed on the Board or on any members or on the secretary of the Board by or under this or any other Act.

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**214. Reports by Youth Residential Board**

- (1) The Youth Residential Board must once in every year within the prescribed period give to the Minister a report on—
  - (a) the number of persons released on parole by the Board during the period to which the report relates and the number returned during that period to youth residential centres on cancellation of parole; and
  - (b) the operation and activities of the Board and of youth parole officers generally during that period.
- (2) The Youth Residential Board must, if required to do so by the Minister in writing, give to the Minister a report on a matter stated in the requirement and relating to the exercise by the Board of any power or function.
- (3) The Minister must cause each report received by him or her under sub-section (1) to be laid before the Legislative Council and the Legislative Assembly before the end of the fourteenth sitting day of the Council or the Assembly after the receipt of the report by the Minister.
- (4) At the request of the Attorney-General for the Commonwealth, the Minister may authorise the Youth Residential Board or an officer—
  - (a) to make reports and recommendations to the Attorney-General for the Commonwealth, at the intervals or times requested by that Attorney-General, with respect to a person who is detained in a youth residential centre

in Victoria under any law of the  
Commonwealth; and

- (b) to exercise any power or perform any function in relation to a person who is or has been detained in a youth residential centre in Victoria under any law of the Commonwealth, being a power or function that the Attorney-General for the Commonwealth might exercise or perform or cause to be exercised or performed in relation to that person.

***Subdivision 2—Youth Parole Board***

**215. *Establishment of Youth Parole Board***

- (1) There is established a board called the Youth Parole Board.
- (2) The Board consists of—
  - (a) a judge of the County Court appointed by the Governor in Council on the nomination of the Attorney-General, who is to be the chairperson; and
  - (b) the Secretary or an officer appointed by the Governor in Council on the nomination of the Secretary; and
  - (c) two other persons appointed by the Governor in Council, both of whom must have experience in matters relating to child welfare and at least one of whom must be a woman.
- (3) A member of the Youth Residential Board may be appointed as a member of the Youth Parole Board.

**216. *Terms and conditions of office***



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- (1) A member of the Youth Parole Board appointed by the Governor in Council holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment, and is eligible for re-appointment.
- (2) A member appointed by the Governor in Council may resign his or her office in writing delivered to the Governor in Council.
- (3) The Governor in Council may remove from office a member appointed by the Governor in Council.
- (4) A member is entitled to be paid—
  - (a) any remuneration that is fixed by the Governor in Council; and
  - (b) any travelling and other allowances that are fixed by the Governor in Council.
- (5) A member is appointed subject to any other terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act.
- (6) If a member who is a judge of the County Court ceases to be such a judge, he or she ceases to hold office as a member.
- (7) A member is not in respect of the office of member subject to the **Public Sector Management and Employment Act 1998**.
- (8) The appointment of a judge of the County Court as a member does not affect the tenure of office, rank, status, remuneration, rights or privileges of that person as a judge and, for all purposes, service as a member of the Youth Parole Board by a judge is to be regarded as service as a judge.
- (9) If a person was immediately before becoming a member of the Youth Parole Board an officer within the meaning of the **State Superannuation**

S. 216(7)  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

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**Act 1988**, the member continues, subject to that Act, to be an officer within the meaning of that Act.

**217. *Alternate members***

- (1) The Governor in Council may appoint—
  - (a) a judge of the County Court nominated by the Attorney-General as an alternate member for the chairperson of the Youth Parole Board and the person so appointed is required to act as chairperson if the chairperson is absent from duty or the office of chairperson is vacant; and
  - (b) an officer nominated by the Secretary as an alternate member for the member holding office under section 215(2)(b) and the person so appointed is required to act for that member if he or she is absent from duty.
- (2) The Governor in Council may appoint an alternate member for each member holding office under section 215(2)(c) and at least one of those alternate members must be a woman.
- (3) In the absence from duty of a member holding office under section 215(2)(c) the alternate member for that member is entitled to attend a meeting of the Board.
- (4) A person appointed under sub-section (1) or (2), while acting for a member—
  - (a) has all the powers and may perform all the functions of the member; and
  - (b) is entitled to be paid—
    - (i) any remuneration that is fixed by the Governor in Council; and

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- (ii) any travelling and other allowances that are fixed by the Governor in Council.

**218. Meetings of the Youth Parole Board**

- (1) The Youth Parole Board must meet at the times and places that are fixed by the regulations or, if no times or places are so fixed, at the times and places that are determined by the chairperson.
- (2) The chairperson or, in the chairperson's absence, the acting chairperson, must preside at every meeting of the Youth Parole Board.
- (3) Subject to sub-sections (4) and (5), a quorum of the Youth Parole Board consists of the chairperson and one other member.
- (4) A female member of the Youth Parole Board must be present at any meeting of the Board at which consideration is being given to the release on parole of a female person.
- (5) A quorum at any meeting of the Youth Parole Board at which consideration is being given to the transfer to a prison of a person detained in a youth training centre consists of the chairperson and two other persons.
- (6) The following questions which may arise at a meeting of the Youth Parole Board are to be determined by the person presiding at the meeting alone—
  - (a) whether a question is a question of law;
  - (b) any question determined to be a question of law.
- (7) A question (other than a question referred to in sub-section (6)) arising at a meeting of the Youth

Parole Board must be determined by a majority of votes and, if the votes are equal, the person presiding has a casting vote.

- (8) Subject to this Act and the regulations, the Board may regulate its own procedure.

**219. *Validity of acts or decisions of the Youth Parole Board***

An act or decision of the Youth Parole Board is not invalid only because—

- (a) of a vacancy in the office of a member; or
- (b) of a defect or irregularity in or in connection with the appointment of a member; or
- (c) in the case of an alternate member, the occasion for that person acting for a member had not arisen or had ceased.

**220. *Secretary or member may act on behalf of Youth Parole Board***

- (1) If the Youth Parole Board has heard and determined a matter, the secretary or acting secretary or a member of the Board may, on behalf of the Board, sign and issue all necessary orders and documents relating to that matter.
- (2) An order or document signed under sub-section (1) has effect as if signed by all the members of the Youth Parole Board.

**221. *Evidentiary provisions***

- (1) All courts must take judicial notice of the signature on an order or document of the secretary or acting secretary or a member of the Youth Parole Board and, until the contrary is proved, must presume that the document was properly signed.

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- (2) A certificate purporting to be signed by the secretary or acting secretary of the Youth Parole Board and purporting to record any determination or decision of the Board on a matter is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the making of that determination or decision by the Board.

**222. *Powers etc. of Youth Parole Board***

- (1) The Youth Parole Board has the powers, duties and functions conferred or imposed on it by or under this or any other Act.
- (2) In exercising its functions, the Youth Parole Board is not bound by the rules of natural justice.

**223. *Powers to take evidence etc.***

The Youth Parole Board has and may exercise the powers conferred by sections 17, 18, 19, 20, 20A, 21 and 21A of the **Evidence Act 1958** as if the Board were a body of persons to whom the Governor in Council has issued a commission and the person presiding at meetings of the Board were the president or chairman of the commission.

**224. *Saving of members of Youth Parole Board from liability***

The members or secretary of the Youth Parole Board are not liable to any action or suit in respect of any act or thing done or omitted to be done in the exercise or purported exercise of any power or duty conferred or imposed on the Board or on any members or on the secretary of the Board by or under this or any other Act.

**225. *Reports by Youth Parole Board***

- (1) The Youth Parole Board must once in every year within the prescribed period give to the Minister a report on—

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- (a) the number of persons released on parole by the Board during the period to which the report relates and the number returned during that period to youth training centres on cancellation of parole; and
  - (b) the operation and activities of the Board and of youth parole officers generally during that period.
- (2) The Youth Parole Board must, if required to do so by the Minister in writing, give to the Minister a report on a matter stated in the requirement and relating to the exercise by the Board of any power or function.
- (3) The Minister must cause each report received by him or her under sub-section (1) to be laid before the Legislative Council and the Legislative Assembly before the end of the fourteenth sitting day of the Council or the Assembly after the receipt of the report by the Minister.
- (4) At the request of the Attorney-General for the Commonwealth, the Minister may authorise the Youth Parole Board or an officer—
  - (a) to make reports and recommendations to the Attorney-General for the Commonwealth, at the intervals or times requested by that Attorney-General, with respect to a person who is detained in a youth training centre under any law of the Commonwealth; and
  - (b) to exercise any power or perform any function in relation to a person who is or has been detained in a youth training centre in Victoria under any law of the Commonwealth, being a power or function that the Attorney-General for the Commonwealth might exercise or perform or

cause to be exercised or performed in relation to that person.

***Subdivision 3—Youth Parole Officers***

**226. Youth parole officers**

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| <p>(1) There are to be employed under Part 3 of the <b>Public Sector Management and Employment Act 1998</b> as many stipendiary youth parole officers as are necessary for the purposes of this Act.</p>   | <p>S. 226(1) substituted by No. 46/1998 s. 7(Sch. 1).</p> |
| <p>(2) The Secretary may by instrument published in the Government Gazette appoint as an honorary youth parole officer any fit and proper person who is willing to exercise and perform the powers and duties given to honorary youth parole officers by or under this Act.</p>  | <p>S. 226(2) amended by No. 46/1998 s. 7(Sch. 1).</p>     |
| <p>(3) An honorary youth parole officer is not in respect of the office of honorary youth parole officer subject to the <b>Public Sector Management and Employment Act 1998</b>.</p>   | <p>S. 226(3) amended by No. 46/1998 s. 7(Sch. 1).</p>     |
| <p>(4) A youth parole officer is, in relation to a parole order made by the Youth Residential Board, subject to the direction of the Youth Residential Board and, in the case of a parole order made by the Youth Parole Board, the Youth Parole Board but otherwise he or she is subject to the direction and control of the Secretary.</p> | <p>S. 226(4) amended by No. 46/1998 s. 7(Sch. 1).</p>     |
| <p>(5) A parole officer has the powers and duties prescribed by or under this Act.</p>   |   |

***Subdivision 4—Release on Parole from Youth Residential Centre***

**227. Release on parole from youth residential centre**

- (1) The Youth Residential Board may by order in writing direct that a person detained in a youth residential centre or otherwise subject to the jurisdiction of the Youth Residential Board be released on or granted parole at the time specified in the order and, unless the Youth Residential Board revokes the order under sub-section (2), the person must be released on or granted parole accordingly.
- (2) Before a person is released under a parole order the Youth Residential Board may revoke the parole order.
- (3) If, before a person is released on parole, the Youth Residential Board determines that the person is to be released at a time other than that specified in the parole order, the person must be released at that other time.
- (4) Subject to any determination of the Youth Residential Board, a parole order is subject to the prescribed terms and conditions.
- (5) The Youth Residential Board may amend or vary the terms and conditions to which a parole order is subject.
- (6) If the terms and conditions of a parole order require a person to be under the supervision of a youth parole officer, the Secretary must assign a youth parole officer to supervise the person and may from time to time assign another youth parole officer in place of the youth parole officer previously assigned.
- (7) A person released on or granted parole must during the parole period comply with the terms and conditions of the parole order.

**228. Person still under sentence until end of parole period**



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- (1) A person is to be regarded as having served his or her period of detention if—
- (a) at the end of the parole period the Youth Residential Board has not made an order cancelling the person's parole under section 229(1); or
  - (b) during the parole period the person has not committed, whether in Victoria or elsewhere, an offence for which he or she could be sentenced to a term of imprisonment or period of detention in a youth residential centre or youth training centre for more than 3 months.
- (2) Until the parole period ends or until the person is otherwise discharged from the sentence of detention, a person released on parole is to be regarded as being still under sentence and as not having served his or her period of detention.

**229. Cancellation of parole**

- (1) If a person is released on or granted parole under section 227, the Youth Residential Board may at any time before the end of the parole period by order cancel the parole.
  - (2) If the Youth Residential Board cancels a person's parole under sub-section (1) the Youth Residential Board may at any time by further order revoke the cancellation and, on that revocation, the parole order revives.
  - (3) The Youth Residential Board must not make a revocation order under sub-section (2) in any case where a warrant has been issued under sub-section (5)(a) unless the Youth Residential Board is satisfied that the warrant will not be executed.
  - (4) If the person is sentenced to a term of imprisonment or to a period of detention in a
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*Children and Young Persons Act 1989*  
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youth training centre for more than 3 months or to a further period of detention in a youth residential centre for more than 3 months in respect of an offence committed during the parole period, whether in Victoria or elsewhere, the Youth Residential Board may cancel that person's parole, whether or not the parole period may already have ended.

- (5) If a person's parole is cancelled, the Youth Residential Board or any member of the Board may—
- (a) authorise any member of the police force or other officer by warrant signed by the secretary or a member of the Board to apprehend the person and return the person to a youth residential centre to serve the unexpired portion of the person's sentence of detention; or
  - (b) whether or not a warrant has been issued under paragraph (a), apply to a magistrate for a warrant authorising any member of the police force or other officer to apprehend the person and return the person to a youth residential centre to serve the unexpired portion of the person's sentence of detention.
- (6) A warrant issued under sub-section (5)(a) is sufficient authority for the person's apprehension and return to a youth residential centre to serve the unexpired portion of the person's sentence of detention or for the person to be otherwise dealt with by the Youth Residential Board.
- (7) If a person's parole is cancelled the original warrant or other authority for the person's detention revives and unless the Youth Residential Board otherwise orders, having regard to the extent to and the manner in which the person
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complied with the parole order, no part of the time between the person's release on parole and his or her recommencing to serve the unexpired portion of the period of detention is to be regarded as time served in respect of the period of detention.

- (8) If section 237 applies, the warrant or other authority must in all respects be regarded as and taken to be a warrant to detain the person in a youth training centre.
- (9) The Youth Residential Board may revoke any order for cancellation of parole at any time before the warrant to arrest is executed and, on revoking the order, must cause the warrant to be withdrawn.

**230. *Youth Residential Board may release on parole more than once***

The Youth Residential Board may again release a person on parole whether or not the person's parole has been cancelled on any prior occasion or occasions in respect of the same period of detention.

***Subdivision 5—Release on Parole from Youth Training Centre***

**231. *Release on parole from youth training centre***

- (1) The Youth Parole Board may by order in writing direct that a person detained in a youth training centre or otherwise subject to the jurisdiction of the Youth Parole Board be released on or granted parole at the time specified in the order and, unless the Youth Parole Board revokes the order under sub-section (2), the person must be released on or granted parole accordingly.
- (2) Before a person is released under a parole order the Youth Parole Board may revoke the parole order.

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- (3) If, before a person is released on parole, the Youth Parole Board determines that the person is to be released at a time other than that specified in the parole order, the person must be released at that other time.
- (4) Subject to any determination of the Youth Parole Board, a parole order is subject to the prescribed terms and conditions.
- (5) The Youth Parole Board may amend or vary the terms and conditions to which a parole order is subject.
- (6) If the terms and conditions of a parole order require a person to be under the supervision of a youth parole officer, the Secretary must assign a youth parole officer to supervise the person and may from time to time assign another youth parole officer in place of the youth parole officer previously assigned.
- (7) A person released on or granted parole must during the parole period comply with the terms and conditions of the parole order.

**232. *Person still under sentence until end of parole period***

- (1) A person is to be regarded as having served his or her period of detention if—
  - (a) at the end of the parole period the Youth Parole Board has not made an order cancelling the person's parole under section 233(1); or
  - (b) during the parole period the person has not committed, whether in Victoria or elsewhere, an offence for which he or she could be sentenced to a term of imprisonment or period of detention in a youth training centre or youth residential centre for more than 3 months.

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- (2) Until the parole period ends or until the person is otherwise discharged from the sentence of detention, a person released on parole is to be regarded as being still under sentence and as not having served his or her period of detention.

**233. Cancellation of parole**

- (1) If a person is released on or granted parole under section 231, the Youth Parole Board may at any time before the end of the parole period by order cancel the parole.
- (2) If the Youth Parole Board cancels a person's parole under sub-section (1) the Youth Parole Board may at any time by further order revoke the cancellation and, on that revocation, the parole order revives.
- (3) The Youth Parole Board must not make a revocation order under sub-section (2) in any case where a warrant has been issued under sub-section (5)(a) unless the Youth Parole Board is satisfied that the warrant will not be executed.
- (4) If the person is sentenced to a term of imprisonment or to a period of detention in a youth residential centre for more than 3 months or to a further period of detention in a youth training centre for more than 3 months in respect of an offence committed during the parole period, whether in Victoria or elsewhere, the Youth Parole Board may cancel that person's parole, whether or not the parole period may already have ended.
- (5) If a person's parole is cancelled, the Youth Parole Board or any member of the Board may—
- (a) authorise any member of the police force or other officer by warrant signed by the secretary or a member of the Board to

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- apprehend the person and return the person to a youth training centre to serve the unexpired portion of the person's sentence of detention; or
- (b) whether or not a warrant has been issued under paragraph (a), apply to a magistrate for a warrant authorising any member of the police force or other officer to apprehend the person and return the person to a youth training centre to serve the unexpired portion of the person's sentence of detention.
- (6) A warrant issued under sub-section (5)(a) is sufficient authority for the person's apprehension and return to a youth training centre to serve the unexpired portion of the person's sentence of detention or for the person to be otherwise dealt with by the Youth Parole Board.
- (7) If a person's parole is cancelled the original warrant or other authority for the person's detention revives and unless the Youth Parole Board otherwise orders, having regard to the extent to and the manner in which the person complied with the parole order, no part of the time between the person's release on parole and his or her recommencing to serve the unexpired portion of the period of detention is to be regarded as time served in respect of the period of detention.
- (8) If section 240 applies, the warrant or other authority must in all respects be regarded as and taken to be a warrant to imprison the person in a youth training centre.
- (9) The Youth Parole Board may revoke any order for cancellation of parole at any time before the warrant to arrest is executed and, on revoking the order, must cause the warrant to be withdrawn.
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**234. *Youth Parole Board may release on parole more than once***

The Youth Parole Board may again release a person on parole whether or not the person's parole has been cancelled on any prior occasion or occasions in respect of the same period of detention.

**Division 10—Transfers etc.**

Pt 4 Div. 11  
 (Heading)  
 re-numbered  
 as Pt 4 Div. 10  
 (Heading) by  
 No. 69/1992  
 s. 37(1)(c).

***Subdivision 1—Jurisdiction over Detainees***

**235. *Persons detained in youth residential centre subject to Youth Residential Board***

Every child ordered by a court to be detained in a youth residential centre is subject to the jurisdiction of the Youth Residential Board.

**236. *Persons detained in youth training centre subject to Youth Parole Board***

Every person ordered by a court to be detained in a youth training centre is subject to the jurisdiction of the Youth Parole Board.

***Subdivision 2—Transfer from Youth Residential Centre to Youth Training Centre***

**237. *Power of Youth Residential Board to transfer person to a youth training centre*<sup>15</sup>**

On the application of the Secretary the Youth Residential Board may, subject to section 238, direct that a person sentenced to be detained in a youth residential centre by a court or a person transferred to a youth residential centre under this

S. 237  
 amended by  
 Nos 44/1996  
 s. 5(a)–(c),  
 46/1998  
 s. 7(Sch. 1).

Division be transferred to a youth training centre to serve the unexpired portion of the period of his or her sentence as detention in a youth training centre if the Board considers the direction appropriate, having regard to the antecedents and behaviour of the person or the age and maturity of the person.

**238. *Restriction on transfer of under 14 year olds***

The Youth Residential Board may only direct that a child under the age of 14 years be transferred to a youth training centre if, in the opinion of the Board, exceptional circumstances justify the making of that direction.

**239. *Transfer to youth training centre***

- (1) The Secretary must cause the physical removal of a person from a youth residential centre to a youth training centre on the direction of the Youth Residential Board under section 237.
- (2) A person directed to be transferred under section 237, while being removed from a youth residential centre to a youth training centre, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Youth Residential Board and that officer must deliver that person into the custody of the officer in charge of the youth training centre.
- (3) A member of the police force may, if requested to do so by the Secretary, assist the officer referred to in sub-section (2) in the discharge of his or her duties under that sub-section and, in that case, the person being transferred is deemed to be in the legal custody of the member of the police force.
- (4) A person transferred to a youth training centre under section 237 becomes, on transfer, subject to the jurisdiction of the Youth Parole Board.

S. 239(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 239(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).



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(5) Despite section 231, the Youth Parole Board must not release a person who<sup>16</sup>—

S. 239(5)  
inserted by  
No. 44/1996  
s. 6.

(a) has been sentenced to a period of imprisonment; and

(b) has been transferred from prison and is currently detained in a youth training centre—

on parole before the expiry of any non-parole period fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(6) Despite section 231, the Youth Parole Board must not release a person on parole if<sup>17</sup>—

S. 239(6)  
inserted by  
No. 44/1996  
s. 6.

(a) the person has been sentenced to a period of imprisonment of 12 months or more; and

(b) a non-parole period has not been fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

(7) In determining whether to release a person on parole, the Youth Parole Board may take into account the periods which that person has spent in prison and in a youth residential centre<sup>18</sup>.

S. 239(7)  
inserted by  
No. 44/1996  
s. 6.

***Subdivision 3—Transfer from Youth Training Centre to Prison***

**240. *Power of Youth Parole Board to transfer person to prison***

(1) The Youth Parole Board may, on the application of the Secretary, direct a person aged 16 years or more sentenced as a child by the Children's Court or any other court to be detained in a youth training centre be transferred to a prison to serve the unexpired portion of the period of his or her detention as imprisonment.

S. 240(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 240(2)(b)  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

S. 240(3)  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

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- (2) The Youth Parole Board may only make a direction under sub-section (1) in respect of a person if—
- (a) it has had regard to the antecedents and behaviour of the person; and
  - (b) it has taken into account a report from the Secretary; and
  - (c) it is satisfied that the person—
    - (i) has engaged in conduct that threatens the good order and safe operation of the youth training centre; and
    - (ii) cannot be properly controlled in a youth training centre.
- (3) A report from the Secretary under sub-section (2)(b) must set out the steps that have been taken to avoid the need to transfer the person concerned to prison.
- (4) The Youth Parole Board may direct that a person aged 17 years or more sentenced by a Court other than the Children's Court to be detained in a youth training centre be transferred to a prison to serve the unexpired portion of the period of his or her detention as imprisonment if the Board considers the direction appropriate, having regard to the antecedents and behaviour of the person.

**241. *Detainee may request transfer to prison***

- (1) A person aged 16 years or more who is sentenced to be detained in a youth training centre may apply to the Youth Parole Board for a direction that he or she be transferred to a prison to serve the unexpired portion of the period of his or her detention as imprisonment.

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- (2) A person who applies to the Youth Parole Board under sub-section (1) must appear before the Board to support the application.
- (3) The Youth Parole Board may make a direction under sub-section (1) if the Board considers the direction appropriate, having taken into account a report from the Secretary and having regard to the antecedents and behaviour of the person.

S. 241(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**242. *Transfer to prison***

- (1) The Secretary must cause the physical removal of a person from a youth training centre to a prison on the direction of the Youth Parole Board under section 240 or 241.
- (2) A person directed to be transferred under section 240 or 241, while being removed from a youth training centre to a prison, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Youth Parole Board and that officer must deliver that person into the custody of the officer in charge of the prison.
- (3) A member of the police force may, if requested to do so by the Secretary, assist the officer referred to in sub-section (2) in the discharge of his or her duties under that sub-section and, in that case, the person being transferred is deemed to be in the legal custody of the member of the police force.
- (4) A person transferred to a prison under section 240 or 241 becomes, on transfer, subject to the jurisdiction of the Adult Parole Board as if the period of detention served by that person prior to the transfer had been a non-parole period.

S. 242(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 242(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 242(4)  
amended by  
No. 49/1991  
s. 119(7)(Sch.  
4 item 2.4).

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- (5) If—
- (a) a person is transferred to a prison under section 240 or 241; and
  - (b) a warrant for the detention of the person in a youth training centre in default of payment of a fine or sum of money is executed—
- the Youth Parole Board may further direct that the person be imprisoned in default of payment of the fine or sum of money.

***Subdivision 4—Transfer from Youth Training Centre to Youth Residential Centre***

***243. Persons in youth training centre may be transferred to youth residential centre***

- (1) If the Youth Parole Board, having regard to the antecedents and behaviour of the child, considers it appropriate in the interests of a child under the age of 17 years detained in a youth training centre to transfer that child to a youth residential centre, the Youth Parole Board may direct that that person be transferred to a youth residential centre.
- (2) The Secretary must cause the physical removal of a person from a youth training centre to a youth residential centre on the direction of the Youth Parole Board under sub-section (1).
- (3) A person directed to be transferred under sub-section (1), while being removed from a youth training centre to a youth residential centre, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Youth Parole Board and that officer must deliver that person into the custody of the officer in charge of the youth residential centre.

S. 243(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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- (4) A member of the police force may, if requested to do so by the Secretary, assist the officer referred to in sub-section (3) in the discharge of his or her duties under that sub-section and, in that case, the person being transferred is deemed to be in the legal custody of the member of the police force.
- (5) A person transferred from a youth training centre to a youth residential centre under sub-section (1) becomes, on transfer, subject to the jurisdiction of the Youth Residential Board for the unexpired portion of the term of his or her sentence and that sentence is to be treated for all purposes as a sentence of detention in a youth residential centre.
- (6) Despite section 227, the Youth Residential Board must not release a person who<sup>19</sup>—
- (a) has been sentenced to a term of imprisonment; and
  - (b) has been transferred from prison and is currently detained in a youth residential centre—
- on parole before the expiry of any non-parole period fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.
- (7) Despite section 227, the Youth Residential Board must not release a person on parole if<sup>20</sup>—
- (a) the person has been sentenced to a term of imprisonment of 12 months or more; and
  - (b) a non-parole period has not been fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.
- (8) In determining whether to release a person on parole, the Youth Residential Board may take into account the periods which that person has spent in prison and in a youth training centre<sup>21</sup>.

S. 243(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 243(6)  
substituted by  
No. 44/1996  
s. 7.

S. 243(7)  
inserted by  
No. 44/1996  
s. 7.

S. 243(8)  
inserted by  
No. 44/1996  
s. 7.

***Subdivision 5—Transfers to and from Prison***<sup>22</sup>

Pt 4 Div. 10  
Subdiv. 5  
(Heading)  
substituted by  
No. 44/1996  
s. 8.

**244. *Persons in prison may be transferred to youth training centre***

S. 244(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (1) If the Adult Parole Board considers it appropriate in the interests of a person under the age of 21 years imprisoned in a prison to transfer that person to a youth training centre, the Adult Parole Board may if satisfied, after considering a report from the Secretary, that—
- (a) that person is suitable for detention in a youth training centre; and
  - (b) a place is available in a youth training centre—

direct that that person be transferred to a youth training centre.

S. 244(2)  
amended by  
No. 45/1996  
s. 18(Sch. 2  
item 2.1).

- (2) The Secretary to the Department of Justice must cause the physical removal of a person from a prison to a youth training centre on the direction of the Adult Parole Board under sub-section (1).
- (3) A person directed to be transferred under sub-section (1), while being removed from a prison to a youth training centre, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Adult Parole Board and that officer must deliver that person into the custody of the officer in charge of the youth training centre.

S. 244(4)  
amended by  
No. 45/1996  
s. 18(Sch. 2  
item 2.2).

- (4) A member of the police force may, if requested to do so by the Secretary to the Department of Justice, assist the officer referred to in sub-section (3) in the discharge of his or her duties under that

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sub-section and, in that case, the person being transferred is deemed to be in the legal custody of the member of the police force.

- (5) A person transferred from a prison to a youth training centre under sub-section (1) becomes, on transfer, subject to the jurisdiction of the Youth Parole Board for the unexpired portion of the term of his or her sentence and that sentence is to be treated for all purposes as a sentence of detention in a youth training centre.
- (6) Despite section 231, the Youth Parole Board must not release a person who<sup>23</sup>—
- (a) has been sentenced to a term of imprisonment; and
  - (b) has been transferred from prison and is currently detained in a youth training centre—

S. 244(6)  
substituted by  
No. 44/1996  
s. 9.

on parole before the expiry of any non-parole period fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.

- (7) Despite section 231, the Youth Parole Board must not release a person on parole if<sup>24</sup>—
- (a) the person has been sentenced to a term of imprisonment of 12 months or more; and
  - (b) a non-parole period has not been fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.
- (8) In determining whether to release a person on parole, the Youth Parole Board may take into account the periods which that person has spent in prison<sup>25</sup>.

S. 244(7)  
amended by  
No. 49/1991  
s. 119(7)(Sch.  
4 item 2.5),  
substituted by  
No. 44/1996  
s. 9.

S. 244(8)  
inserted by  
No. 44/1996  
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S. 244A  
inserted by  
No. 44/1996  
s. 10.

**244A. *Person in prison may be transferred to youth residential centre***<sup>26</sup>

- (1) If the Adult Parole Board considers it appropriate in the interests of a child under the age of 17 years imprisoned in a prison to transfer the child to a youth residential centre, the Adult Parole Board may direct that the child be transferred to a youth residential centre.
- (2) The Adult Parole Board may only make a direction under sub-section (1) if, after considering a report from the Secretary, the Board is satisfied that—
  - (a) the child is suitable for detention in a youth residential centre; and
  - (b) a place is available in a youth residential centre.
- (3) The Secretary to the Department of Justice must cause the physical removal of a child from a prison to a youth residential centre on the direction of the Adult Parole Board under sub-section (1).
- (4) A child directed to be transferred under sub-section (1), while being removed from a prison to a youth residential centre, is deemed to be in the legal custody of the officer having the custody of the child and acting under the direction of the Adult Parole Board and that officer must deliver the child into the custody of the officer in charge of the youth residential centre.
- (5) A member of the police force may, if requested to do so by the Secretary to the Department of Justice, assist the officer referred to in sub-section (4) in the discharge of his or her duties under that sub-section and, in that case, the child being

S. 244A(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 244A(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 244A(5)  
amended by  
No. 46/1998  
s. 7(Sch. 1).



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transferred is deemed to be in the legal custody of the member of the police force.

- (6) A child transferred from a prison to a youth residential centre under sub-section (1) becomes, on transfer, subject to the jurisdiction of the Youth Residential Board for the unexpired portion of the term of his or her sentence and that sentence is to be treated for all purposes as a sentence of detention in a youth residential centre.
- (7) Despite section 227, the Youth Residential Board must not release a person who—
- (a) has been sentenced to a term of imprisonment; and
  - (b) has been transferred from prison and is currently detained in a youth residential centre—
- on parole before the expiry of any non-parole period fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.
- (8) Despite section 227, the Youth Residential Board must not release a person on parole if—
- (a) the person has been sentenced to a term of imprisonment of 12 months or more; and
  - (b) a non-parole period has not been fixed in accordance with Subdivision (1) of Division 2 of Part 3 of the **Sentencing Act 1991**.
- (9) In determining whether to release a person on parole, the Youth Residential Board may take into account the periods which that person has spent in prison.

**244B.** *Person transferred from prison to YTC or YRC may be transferred back to prison*<sup>27</sup>

S. 244B  
 inserted by  
 No. 44/1996  
 s. 10.

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- (1) The Youth Parole Board may direct that a person aged 16 years or more who has been transferred to—
- (a) a youth training centre under section 244(1); or
  - (b) a youth residential centre under section 244A(1)—
- and is currently detained in a youth training centre, be transferred to a prison to serve the unexpired portion of the period of his or her sentence.
- (2) The Youth Parole Board may only make a direction under sub-section (1) in respect of a person if the Board considers the direction appropriate, having regard to—
- (a) the antecedents and behaviour of the person; and
  - (b) the length of the unexpired portion of the person's sentence; and
  - (c) the age and maturity of the person; and
  - (d) a report from the Secretary.
- (3) The Secretary must cause the physical removal of a person from a youth training centre to a prison on the direction of the Youth Parole Board under this section.
- (4) A person directed to be transferred under this section, while being removed from a youth training centre to a prison, is deemed to be in the legal custody of the officer having the custody of that person and acting under the direction of the Youth Parole Board and that officer must deliver

S. 244B(2)(d)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 244B(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

that person into the custody of the officer in charge of the prison.

- (5) A member of the police force may, if requested to do so by the Secretary, assist the officer referred to in sub-section (4) in the discharge of his or her duties under that sub-section and, in that case, the person being transferred is deemed to be in the legal custody of the member of the police force.
- (6) A person transferred to a prison under this section becomes, on transfer, subject to the jurisdiction of the Adult Parole Board for the unexpired portion of the term of his or her sentence and that sentence is to be treated for all purposes as a sentence of imprisonment.
- (7) In determining whether to release a person on parole, the Adult Parole Board may take into account the periods which the person has spent in a youth training centre and a youth residential centre.

S. 244B(5)  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

***Subdivision 6—General***

**245. *Person in youth residential centre sentenced to detention in youth training centre or imprisonment***

- (1) If a person—
  - (a) has been sentenced to detention in a youth residential centre; and
  - (b) before the end of that sentence is sentenced to a period of detention in a youth training centre or to a term of imprisonment in respect of any offence—

the Youth Residential Board may direct that the person must serve the unexpired portion of the period of detention in a youth residential centre as detention in a youth training centre or as

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imprisonment (as the case requires) and thereafter the person is subject to the jurisdiction of the Youth Parole Board or the Adult Parole Board (as the case requires).

- (2) If a person—
- (a) has been sentenced to detention in a youth residential centre; and
  - (b) before the end of that sentence is sentenced to a period of detention in a youth training centre or to a term of imprisonment to be served cumulatively on the sentence of detention in a youth residential centre—
- service of the sentence of detention in a youth residential centre must be suspended until that person has served the sentence of detention in a youth training centre or the sentence of imprisonment (as the case requires).
- (3) If a person undergoing a sentence of detention in a youth residential centre is brought before a court under section 258 or under any warrant or order of the Magistrates' Court, that person is, subject to sub-section (2), deemed to be continuing to serve the sentence of detention which that person is then undergoing even if he or she is held in custody in a prison, police gaol, youth training centre or other place that is not a youth residential centre.
- (4) If a person who is sentenced to detention in a youth residential centre is at that time being held in custody in a prison, police gaol, youth training centre or other place that is not a youth residential centre, that person is, subject to sub-section (2), deemed to be serving that sentence of detention even if he or she is being held in custody otherwise than in a youth residential centre.
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**246. *Person in youth training centre sentenced to imprisonment***

(1) If a person—

- (a) has been sentenced to detention in a youth training centre; and
- (b) before the end of that sentence is sentenced to a term of imprisonment in respect of any offence—

the Youth Parole Board may direct that the person must serve the unexpired portion of the period of detention as imprisonment in a prison and thereafter the person is subject to the jurisdiction of the Adult Parole Board as if the period of detention served by him or her before that sentence of imprisonment or his or her release on parole by the Youth Parole Board had been a non-parole period.

(2) If a person—

- (a) has been sentenced to detention in a youth training centre; and
- (b) before the end of that sentence is sentenced by a court to a term of imprisonment to be served cumulatively on the sentence of detention—

service of the sentence of detention must be suspended until that person has served the sentence of imprisonment.

(3) Despite anything to the contrary in any Act, every sentence of imprisonment imposed on a person by a court must, unless otherwise directed by the court at the time of pronouncing the sentence, be, as from the date of its commencement, served concurrently with any uncompleted sentence or

S. 246(1)  
 amended by  
 No. 49/1991  
 s. 119(7)(Sch.  
 4 item 2.6).

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sentences of detention in a youth training centre imposed on that person, whether before or at the time the relevant sentence was imposed.

- (4) If a person undergoing a sentence of detention in a youth training centre is brought before a court under section 258 or under any warrant or order of the Magistrates' Court, that person is, subject to sub-section (2), deemed to be continuing to serve the sentence of detention which that person is then undergoing even if he or she is held in custody in a prison, police gaol or other place that is not a youth training centre.
- (5) If a person who is sentenced to detention in a youth training centre is at that time being held in custody in a prison, police gaol or other place that is not a youth training centre, that person is, subject to sub-section (2), deemed to be serving that sentence of detention even if he or she is being held in custody otherwise than in a youth training centre.
- (6) If—
  - (a) a person is in a prison under sub-section (1) serving the unexpired portion of a sentence of detention as imprisonment; and
  - (b) a warrant for the detention of the person in a youth training centre in default of payment of a fine or sum of money is executed—

the Youth Parole Board may further direct that the person be imprisoned in default of payment of the fine or sum of money.

**247. *Person in youth training centre sentenced to detention in youth residential centre***

- (1) If—

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- (a) a person is serving a sentence of detention in a youth training centre; and
- (b) before the end of that sentence of detention he or she is sentenced to a period of detention in a youth residential centre to be served cumulatively on the sentence of detention in a youth training centre—
- service of the period of detention in a youth residential centre is suspended until that person has served the sentence of detention in a youth training centre.
- (2) The Youth Residential Board may before the person is released from a youth training centre, whether under a parole order made by the Youth Parole Board in respect of the sentence of detention in a youth training centre or otherwise, direct that at the end of the sentence of detention in a youth training centre, the person must serve the whole of the period of detention in a youth residential centre (if it was to be served cumulatively on the sentence of detention in a youth training centre) or the unexpired portion (if any) of it (if it was to be served concurrently with the sentence of detention in a youth training centre) as detention in a youth training centre.
- (3) If under sub-section (2) the period of detention in a youth residential centre is to be served as detention in a youth training centre, the person is, in respect of that detention in a youth training centre, subject to the jurisdiction of the Youth Parole Board and the Youth Parole Board may at any time release the person on parole.
- (4) This section does not apply to or in relation to a person who is sentenced to a period of detention in a youth residential centre while that person is released from a youth training centre on parole.
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**248. *Person in prison sentenced to detention in youth training centre***

(1) If—

- (a) a person is serving a sentence of imprisonment in a prison; and
- (b) before the end of that sentence of imprisonment he or she is sentenced to a period of detention in a youth training centre to be served cumulatively on the sentence of imprisonment—

service of the period of detention is suspended until that person has served the sentence of imprisonment.

- (2) Despite anything to the contrary in any Act, every sentence of detention in a youth training centre imposed on a person by a court must, unless otherwise directed by the court at the time of pronouncing the sentence, be, as from the date of its commencement, served concurrently with any uncompleted sentence or sentences of imprisonment imposed on that person, whether before or at the time the relevant sentence was imposed.
- (3) The Youth Parole Board may, before a person is released from prison, whether under a parole order made by the Adult Parole Board in respect of the sentence of imprisonment or otherwise, direct that at the end of the sentence of imprisonment, the person must serve the whole of the period of detention (if it was to be served cumulatively on the sentence of imprisonment) or the unexpired portion (if any) of it (if it was to be served concurrently with the sentence of imprisonment) as imprisonment in a prison.

S. 248(2)  
 amended by  
 No. 19/1994  
 s. 38(5).



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- (4) If under sub-section (3) the period of detention is to be served as imprisonment in a prison, the person is, in respect of that imprisonment, subject to the jurisdiction of the Adult Parole Board and, whether or not a non-parole period has been set in respect of that imprisonment, the Adult Parole Board may at any time release the person on parole.
- (5) If—
- (a) under sub-section (3) a person is serving a period of detention as imprisonment in a prison; and
  - (b) a warrant for the detention of the person in a youth training centre in default of payment of a fine or sum of money is executed—
- the Youth Parole Board may direct that the person be imprisoned in default of payment of the fine or sum of money.
- (6) This section does not apply to or in relation to a person who is sentenced to a period of detention in a youth training centre while that person is released from prison on parole.

S. 248(4)  
amended by  
No. 49/1991  
s. 119(7)(Sch.  
4 item 2.7).

**Division 11—Establishment of Corrective Services for  
Children**

Pt 4 Div. 12  
(Heading)  
re-numbered  
as Pt 4 Div. 11  
(Heading) by  
No. 69/1992  
s. 37(1)(d).

**249. Governor in Council may establish corrective services**

For the purposes of this Act the Governor in Council may, by notice published in the Government Gazette, establish or abolish—

S. 249(b)  
amended by  
No. 48/1997  
s. 51(4).

S. 249(c)  
amended by  
No. 49/1991  
s. 119(7)(Sch.  
4 item 2.8).

S. 250(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (a) remand centres for the detention of children awaiting trial or sentence or in transit to or from a youth residential centre or youth training centre; or
- (b) youth residential centres for the care and welfare of children ordered under this Act or the **Sentencing Act 1991** to be placed in a youth residential centre and which provide special direction, support, educational opportunities and supervision; or
- (c) youth training centres for the care and welfare of persons ordered to be detained in youth training centres under this Act or the **Sentencing Act 1991**; or
- (d) youth supervision units for persons—
  - (i) referred to them as a condition of a probation order, youth supervision order, youth attendance order or other order made by the Court; or
  - (ii) referred to them as a requirement of a parole order.

**250. Approval of service as youth supervision unit**

- (1) The Secretary may approve a service operated by any person or body of persons (other than the Department) as a youth supervision unit.
- (2) An approval under sub-section (1)—
  - (a) may be of general or limited application; and
  - (b) is given by sending by post to the person or body of persons concerned a notice of approval; and

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| <p>(c) may, if at any time the Secretary is satisfied that the unit is unable to provide services of an adequate standard, be withdrawn by sending by post to the person or body of persons concerned a notice of withdrawal of approval.</p> | <p><b>S. 250(2)(c)</b><br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p>   |
| <p>(3) The Secretary may out of money available for the purpose make a grant to an approved youth supervision unit to assist the unit in carrying out its functions.</p>  | <p><b>S. 250(3)</b><br/>amended by<br/>Nos 31/1994<br/>s. 3(Sch. 1<br/>item 8.2),<br/>46/1998<br/>s. 7(Sch. 1).</p> |
| <p>(4) A grant under sub-section (3) may be made on any terms and conditions that are determined by the Secretary.</p>  | <p><b>S. 250(4)</b><br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p>  |

**251. *Standard of services***

The Minister may issue directions relating to the standards of services established under section 249 or approved under section 250 and may establish procedures that are appropriate to ensure that those directions are given effect.

**252. *Form of care, custody or treatment***

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|---|--|
| <p>(1) The Secretary must—</p> <p>(a) determine the form of care, custody or treatment which he or she considers to be in the best interests of each person detained in a remand centre, youth residential centre or youth training centre; and</p> <p>(b) not detain in a community service or secure welfare service a person who is on remand or is serving a period of detention and is not released on parole; and</p> | <p><b>S. 252</b><br/>amended by<br/>No. 69/1992<br/>s. 26(1)(a)(b).</p>  |
| <p>(1) The Secretary must—</p> <p>(a) determine the form of care, custody or treatment which he or she considers to be in the best interests of each person detained in a remand centre, youth residential centre or youth training centre; and</p> <p>(b) not detain in a community service or secure welfare service a person who is on remand or is serving a period of detention and is not released on parole; and</p> | <p><b>S. 252(1)</b><br/>amended by<br/>No. 46/1998<br/>s. 7(Sch. 1).</p> |

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S. 252(2)  
inserted by  
No. 69/1992  
s. 26(1)(b).

- (c) separate persons who are on remand from those who are serving a period of detention by accommodating them separately in some part set aside for the purpose unless exceptional circumstances exist; and
  - (d) separate persons held on remand who are under the age of 15 years from those held on remand who are of or above the age of 15 years unless exceptional circumstances exist.
- (2) Persons detained in remand centres, youth residential centres or youth training centres—
- (a) are entitled to have their developmental needs catered for;
  - (b) subject to section 270, are entitled to receive visits from parents, relatives, legal practitioners, persons acting on behalf of legal practitioners and other persons;
  - (c) are entitled to have reasonable efforts made to meet their medical, religious and cultural needs including, in the case of Aboriginal children, their needs as members of the Aboriginal community;
  - (d) are entitled to receive information on the rules of the centre in which they are detained that affect them and on their rights and responsibilities and those of the officer in charge of the centre and the other staff;
  - (e) are entitled to complain to the Secretary or the Ombudsman about the standard of care, accommodation or treatment which they are receiving in the centre;
  - (f) are entitled to be advised of their entitlements under this sub-section.
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- (3) It is the responsibility of the Secretary to make sure that sub-section (2) is complied with and he or she must, at least once each year, report to the Minister on the extent of compliance with sub-section (2).

S. 252(3) inserted by No. 69/1992 s. 26(1)(b).

**Division 12—Persons in Detention**

Pt 4 Div. 13 (Heading) re-numbered as Pt 4 Div. 12 (Heading) by No. 69/1992 s. 37(1)(e).

**253. Legal custody and fingerprinting**

- (1) A person who is detained in a remand centre, youth residential centre or youth training centre is deemed to be in the legal custody of the Secretary while so detained.
- (2) As soon as possible after a person is received into a youth residential centre or youth training centre to serve the whole or a part of a sentence of detention, the officer in charge of the centre must take the person's fingerprints or cause them to be taken, if not already taken by a member of the police force in respect of the conviction for which the sentence of detention was imposed.
- (3) The officer in charge of a youth residential centre or youth training centre must provide as soon as practicable to the Chief Commissioner of Police a copy of fingerprints taken under sub-section (2).

S. 253(1) amended by No. 46/1998 s. 7(Sch. 1).

S. 253(2) amended by No. 93/1990 s. 19.

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S. 254 amended by No. 49/1991 s. 119(7) (Sch. 4 item 2.9(a)(b)), repealed by No. 48/1997 s. 51(5).

**255. Removal of person from remand centre etc.**

- (1) The Secretary may by warrant under his or her hand cause the removal of a person—
  - (a) from any remand centre to any other remand centre or to a youth residential centre or youth training centre; or
  - (b) from a youth residential centre to any other youth residential centre or to a remand centre; or
  - (c) from a youth training centre to any other youth training centre or to a remand centre.
- (2) On being removed under sub-section (1) a person must be kept at the remand centre, youth residential centre or youth training centre for the residue of the period of his or her detention in custody or until removed by legal authority.
- (3) A person while being removed from or to a remand centre, youth residential centre or youth training centre is deemed to be in the legal custody of the officer having the custody of the person and acting under the warrant.
- (4) The officer acting under the warrant must in due course deliver or return the person into the custody of the officer in charge of the remand centre, youth residential centre or youth training centre in accordance with the terms of the warrant.
- (5) A member of the police force may, if requested to do so by the Secretary, assist the officer referred to in sub-sections (3) and (4) in the discharge of his or her duties under those sub-sections and, in that case, the person being removed is deemed to be in the legal custody of the member of the police force.

S. 255(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 255(5)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**256. Temporary leave from legal custody**

- (1) In relation to a person who is detained in a remand centre, youth residential centre or youth training centre, the Secretary or the officer in charge of the centre with the authority in writing of the Secretary given either generally or in any particular case, may by writing under his or her hand permit a person in the centre to take temporary leave of absence, with or without escort or supervision, from the place where that person is detained for any purpose stated in the permit which may include, but is not limited to, any of the following purposes—
- (a) to engage in employment, whether with or without remuneration;
  - (b) to attend an educational or training institution;
  - (c) to visit his or her family, relatives or friends;
  - (d) to participate in sport, recreation or entertainment in the community;
  - (e) to attend a hospital or a medical, dental or psychiatric clinic or like place for receiving treatment or for examination;
  - (f) to attend a funeral;
  - (g) to accompany members of the police force for a specified purpose or for assisting in the administration of justice;
  - (h) to seek employment;
  - (i) to live in any other accommodation specified in the permit for any purpose specified in the permit.

S. 256(1)  
amended by  
Nos 69/1992  
s. 27, 46/1998  
s. 7(Sch. 1).

S. 256(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (2) A permit under this section may be subject to any conditions, limitations and restrictions that the Secretary thinks fit to impose and may be issued to or in respect of an individual person or any group of persons engaged in common employment, education, instruction or activity.
- (3) A person permitted temporary leave in accordance with this section is during the temporary leave deemed to continue to be in legal custody.
- (4) The person issuing a permit under this section to an individual person must give that person a copy of the permit or cause that person to be given a copy.
- (5) A person to whom a copy of a permit is given in accordance with sub-section (4) must carry that copy at all times during the temporary leave.
- (6) The Secretary may at any time before the end of a period of temporary leave cancel a permit issued under this section.
- (7) The cancellation of a permit takes effect at the end of the day on which the person permitted temporary leave is informed of the cancellation of the permit.
- (8) A person who fails, before the end of a period of temporary leave, either to return to the place of custody from which he or she was released on leave or to report at some other place of custody specified in the permit is deemed to have escaped from the place of custody within the meaning of section 267.
- (9) It is a defence to any proceedings brought under section 267 by virtue of the provisions of sub-section (8) for the person charged to prove that the failure to return or report to any place was not attributable to any failure on his or her part but

S. 256(6)  
amended by  
No. 46/1998  
s. 7(Sch. 1).



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was due to circumstances beyond his or her control.

- (10) A person must not contravene a condition, limitation or restriction to which a permit under this section is subject, not being a condition, limitation or restriction with respect to returning to or reporting to a place of custody as described in sub-section (8).

S. 256(10)  
amended by  
No. 19/1999  
s. 17(1).

Penalty applying to this sub-section:

- (a) In the case of a child, detention in a youth residential centre for 2 months or in a youth training centre for 3 months;
- (b) In any other case, imprisonment or detention in a youth training centre for 3 months.

**256A. Search**

- (1) In this section "**formal search**", in relation to a person, means a search to detect the presence of drugs, weapons or metal articles carried out by an electronic or mechanical device.
- (2) The officer in charge of a remand centre, youth residential centre or youth training centre may—
  - (a) cause a person detained in the centre to be formally searched—
    - (i) as soon as possible after the person is received into the centre or returns after temporary leave of absence;
    - (ii) at any time when he or she believes on reasonable grounds that the person may have in his or her possession—
      - (A) any firearm, offensive weapon or other article which is capable of being used as a weapon;

S. 256A  
inserted by  
No. 69/1992  
s. 30(1).

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- (B) any form of drug or alcoholic liquor or beverage;
  - (C) any other article or thing not allowed by the regulations made for the purposes of section 270(1)(b);
- (b) if in his or her opinion it is necessary to do so in the interests of the security or good order of the centre, cause a person detained in the centre to submit to search and examination of the person and of any article or thing (including a letter) in the person's possession or under the person's control if there is reasonable cause to believe that the article or thing—
- (i) is of a kind referred to in paragraph (a)(ii); or
  - (ii) jeopardises or is likely to jeopardise the security or good order of the centre or the safety of persons in it;
- (ba) if in his or her opinion it is necessary to do so in the interests of the safety and security of the person or any person in the centre or with whom the person may come into contact on leaving the centre, cause a person detained in the centre to submit to search and examination of the person and of any article or thing (including a letter) in the person's possession or under the person's control if there is reasonable cause to believe that the article or thing—
- (i) is of a kind referred to in paragraph (a)(ii); or

S. 256A(2)(ba)  
 inserted by  
 No. 26/1997  
 s. 49(1).

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- (ii) jeopardises or is likely to jeopardise the security or safety of the person or any person in the centre or with whom the person may come into contact on leaving the centre;
- (c) cause any part of the centre to be searched and any article or thing (including a letter) found in it to be examined if there is reasonable cause to believe that the article or thing—
- (i) is of a kind referred to in paragraph (a)(ii); or
- (ii) jeopardises or is likely to jeopardise the security or good order of the centre or the safety of persons in it.
- (3) The person carrying out a search under sub-section (2) may seize any article or thing (including a letter) found in the centre, whether in a person's possession or not, that he or she believes on reasonable grounds is of a kind referred to in sub-section (2)(a)(ii) or is likely to jeopardise the security or good order of the centre or the safety of persons in it or, in the case of a search under sub-section (2)(ba) is likely to jeopardise the safety and security of the person subjected to the search or any person with whom that person may come into contact.
- (4) Any article or thing seized under sub-section (3) must be dealt with in accordance with the regulations.
- (5) If necessary, reasonable force may be used to carry out a search under sub-section (2).

**S. 256A(3)**  
**amended by**  
**No. 26/1997**  
**s. 49(2).**

**s. 256B**  
inserted by  
No. 69/1992  
s. 30(1).

**256B. *Prohibited actions***

The following actions are prohibited in relation to a person detained in a remand centre, youth residential centre or youth training centre or a child detained in a police gaol—

- (a) the use of isolation (within the meaning of section 256C) as a punishment;
- (b) the use of physical force unless it is reasonable and—
  - (i) is necessary to prevent the person or child from harming himself or herself or anyone else or from damaging property; or
  - (ii) is necessary for the security of the centre or police gaol; or
  - (iii) is otherwise authorised by or under this or any other Act or at common law;
- (c) the administering of corporal punishment, that is, any action which inflicts, or is intended to inflict, physical pain or discomfort on the person or child as a punishment;
- (d) the use of any form of psychological pressure intended to intimidate or humiliate the person or child;
- (e) the use of any form of physical or emotional abuse;
- (f) the adoption of any kind of discriminatory treatment.

**256C. Isolation**

**S. 256C**  
**inserted by**  
**No. 69/1992**  
**s. 30(1).**

- (1) The officer in charge of a remand centre, youth residential centre or youth training centre may authorise the isolation of a person detained in the centre, that is, the placing of the person in a locked room separate from others and from the normal routine of the centre.
- (2) Isolation may only be authorised under sub-section (1) if—
  - (a) all other reasonable steps have been taken to prevent the person from harming himself or herself or any other person or from damaging property; and
  - (b) the person's behaviour presents an immediate threat to his or her safety or the safety of any other person or to property.
- (3) The period of isolation must be approved by the Secretary.
- (4) If necessary, reasonable force may be used to place a person in isolation under this section.
- (5) A person placed in isolation must be closely supervised and observed at intervals of not longer than 15 minutes.
- (6) The officer in charge of a remand centre, youth residential centre or youth training centre must make sure that the prescribed particulars of every use of isolation under sub-section (1) are recorded in a register established for the purpose.
- (7) In addition to his or her powers under this section, the officer in charge of a remand centre, youth residential centre or youth training centre may cause a person detained in the centre to be isolated in the interests of the security of the centre.

- (8) This section (except sub-section (4)) does not apply to the use of isolation under sub-section (7).

**257. Detention in default of payment of a fine**

If a person is undergoing, or has been sentenced to, detention in a youth residential centre or youth training centre and there is delivered to the Secretary a warrant to detain the person in a youth residential centre or youth training centre or to imprison the person in default of payment of a fine or sum of money, the Secretary may direct that the period of the default be served in the youth residential centre or youth training centre (as the case requires) instead of in the manner specified in the warrant.

**258. Bringing of person before court or inquest**

- (1) If a court or proper officer of a court, or a coroner holding an inquest under the **Coroners Act 1985** or the coroner's clerk requires by an order in the prescribed form that a person in a remand centre, youth residential centre or youth training centre be brought before the court or inquest—
- (a) the person may be brought before, or be brought to another place specified in the order where facilities exist to enable the person (by audio or audio visual link within the meaning of Part IIA of the **Evidence Act 1958**) to appear before, the court or inquest as often as is necessary for the person to be dealt with according to law or to give evidence, without a writ of habeas corpus or other writ or an order for that purpose<sup>28</sup>; and
  - (b) the person must then be returned to the custody from which the person was brought.

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- (2) A person being removed from a remand centre, youth residential centre or youth training centre under this section is, during the time of removal, deemed to be in the legal custody of the member of the police force, protective services officer or other officer having the custody of that person.
  - (3) No proceeding, either criminal or civil, may be maintained by a person against any member of the police force or against any other person on account of the removal.

**259. Power of police to arrest person in youth training centre**

- (1) Without limiting the generality of Subdivision (30) of Division 1 of Part III of the **Crimes Act 1958**, a member of the police force may at any time, on the request of the officer in charge of a youth training centre, without warrant apprehend and take before a bail justice or the Magistrates' Court to be dealt with according to law, a person of or above the age of 17 years who—
  - (a) is serving a period of detention in the youth training centre; and
  - (b) is being charged with an offence alleged to have been committed within the youth training centre while serving the period of detention.
- (2) Section 49 of the **Magistrates' Court Act 1989** does not apply to a defendant in a criminal proceeding who has been apprehended under subsection (1) of this section if the Magistrates' Court is satisfied that the defendant—
  - (a) has engaged in conduct that threatens the good order and safe operation of the youth training centre; and

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(b) is unable to be properly controlled in the youth training centre.

**260. *Interstate transfer of young offenders***

Schedule 1 sets out provisions relating to the interstate transfer of young offenders.

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**PART 5—MISCELLANEOUS**

**Division 1—Offences Relating to the Protection of Children**

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

- (1) A person who has a duty of care in respect of a child—
- (a) who intentionally takes action that has resulted, or appears likely to result, in—
    - (i) the child suffering significant harm as a result of—
      - (A) physical injury; or
      - (B) sexual abuse; or
    - (ii) the child suffering emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged; or
    - (iii) the child's physical development or health being significantly harmed; or
  - (b) who intentionally fails to take action that has resulted, or appears likely to result, in the child's physical development or health being significantly harmed—

is guilty of an offence and liable to a penalty of not more than 50 penalty units or to imprisonment for a term of not more than 12 months.

- (2) Proceedings for an offence under sub-section (1) may only be brought by a person after consultation with the Secretary.

**S. 261(2)**  
**amended by**  
**No. 46/1998**  
**s. 7(Sch. 1).**

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- (3) A person may be guilty of an offence under sub-section (1) even though the child was protected by the action of another person from harm of the type referred to in that sub-section.

**262. *Offence to leave child unattended***

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

Penalty: 15 penalty units or imprisonment for 3 months.

- (2) Proceedings for an offence under sub-section (1)—
- (a) must not be brought against a person who is under 16 years of age and is not the parent of the child; and
- (b) may only be brought by a person after consultation with the Secretary.

S. 262(2)(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 263  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**263. *Offence to harbour or conceal child***

A person must not in the knowledge that a child is absent without lawful authority or excuse from the place in which the child had been placed under an interim accommodation order, a custody to third party order or a supervised custody order or by the Secretary under section 124 or from the lawful custody of a member of the police force or other person—

- (a) harbour or conceal or assist in harbouring or concealing the child; or

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- (b) prevent or assist in preventing the child from returning to that place or custody.

Penalty: 15 penalty units or imprisonment for 3 months.

**264. *Offence to counsel or induce child to be absent without lawful authority etc.***

A person must not directly or indirectly—

- (a) without lawful authority or excuse, withdraw a child from the place in which the child had been placed under an interim accommodation order, a custody to third party order or a supervised custody order or by the Secretary under section 124; or
- (b) counsel, induce or assist a child placed as described in paragraph (a) to absent himself or herself from any such place; or
- (c) without lawful authority or excuse, withdraw a child from the lawful custody of a member of the police force or other person; or
- (d) counsel or induce a child to absent himself or herself from the lawful custody of a member of the police force or other person.

S. 264(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

Penalty: 15 penalty units or imprisonment for 3 months.

**265. *Circumstances in which child may be taken into safe custody***

- (1) If a magistrate is satisfied by evidence on oath or by affidavit by the Secretary or by a member of the police force that—
- (aa) an undertaking entered into under section 25(1A) has not been complied with; or

S. 265(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 265(1)(aa)  
inserted by  
No. 19/1994  
s. 31(1),  
amended by  
No. 44/1996  
s. 21(2).

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S. 265(1)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(a) a child is absent without lawful authority or excuse from the place in which the child had been placed under an interim accommodation order, a custody to third party order or a supervised custody order or by the Secretary under section 124 or from the lawful custody of a member of the police force or other person; or

S. 265(1)(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(b) a child or a child's parent or the person who has the care of a child is refusing to comply with a lawful direction of the Secretary under section 124 as to the placement of the child—

the magistrate may issue a search warrant for the purpose of having the child taken into safe custody.

S. 265(1A)  
inserted by  
No. 19/1994  
s. 31(2).

(1A) A child taken into safe custody under a warrant issued under sub-section (1)(aa) 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.

S. 265(2)  
amended by  
Nos 19/1994  
s. 31(3),  
46/1998  
s. 7(Sch. 1).

(2) Despite anything to the contrary in this Act but subject to sub-section (1A), a child taken into safe custody under this section must be taken by the member of the police force who executed the warrant to the place specified in the warrant or, if no place is so specified, to a place determined by the Secretary or, in the absence of any such determination, to any place referred to in section 124.

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**266. Offences in relation to community service etc.**

A person must not without lawful authority or excuse—

- (a) enter any place in which a child has been placed under an interim accommodation order, a custody to third party order or a supervised custody order or by the Secretary under section 124; or
- (b) at any time or in any manner contrary to the regulations, convey to or cause to be conveyed to a child placed as described in paragraph (a) any article or thing; or
- (c) contrary to the instructions of the Secretary, attempt to have access to a child placed as described in paragraph (a); or
- (d) lurk or loiter about any place described in paragraph (a) for any of the purposes mentioned in this section.

S. 266(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 266(c)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

Penalty: 15 penalty units or imprisonment for 3 months.

**Division 2—Offences Relating to Detained Persons**

Pt 5 Div. 2  
(Heading)  
amended by  
No. 69/1992  
s. 28.

**267. Offence to escape or attempt to escape etc.**

- (1) A person who is lawfully detained in a remand centre, youth residential centre or youth training centre must not escape, attempt to escape or be absent without lawful authority from the remand centre, youth residential centre or youth training centre or from the custody of the Chief Commissioner of Police or of any member of the

S. 267(1)  
amended by  
No. 26/1997  
s. 50.

police force or other officer in whose custody the person may be.

Penalty:

- (a) In the case of a child who is under the age of 15 years, detention in a youth residential centre for 3 months;
  - (b) In the case of a child who is of or above the age of 15 years, detention in a youth training centre for 6 months;
  - (ba) In the case of a child who is lawfully detained in a youth residential centre or a youth training centre on weekend detention, detention in the centre for 48 hours or 1 penalty unit;
  - (c) In any other case, imprisonment or detention in a youth training centre for 6 months.
- (2) Without limiting section 458 of the **Crimes Act 1958**, a person who is escaping or attempting to escape or who is unlawfully absent as described in sub-section (1) may be apprehended without warrant by any member of the police force.
- (3) If it appears to a magistrate by evidence on oath or by affidavit that there is reasonable cause to suspect that a person so escaping or unlawfully absent is in any place, the magistrate may issue a search warrant.
- (4) A child apprehended under this section may—
- (a) be placed in a remand centre, youth residential centre or youth training centre; or
  - (b) be placed in prison or a police gaol if it is not possible to place the child in a remand centre, youth residential centre or youth training centre.

**268. *Offence to harbour or conceal person***

A person must not, in the knowledge that a person—

- (a) has escaped or is absent without lawful authority from a remand centre, youth residential centre or youth training centre in which the person is lawfully detained; or
- (b) has escaped from the custody of a member of the police force or other officer in whose legal custody the person is or is deemed to be under section 239(2), 242(2), 243(3) or 244(3)—

harbour or conceal or assist in harbouring or concealing the person or prevent or assist in preventing the person from returning to that centre or custody.

Penalty: 15 penalty units or imprisonment for 3 months.

**269. *Offence to counsel or induce person to escape***

A person must not directly or indirectly withdraw a person without legal authority from, or counsel or induce or assist a person to escape from, a remand centre, youth residential centre or youth training centre in which the person is lawfully detained.

Penalty: 15 penalty units or imprisonment for 3 months.

**270. *Offences in relation to persons held in centres***

(1) A person must not without lawful authority or excuse—

- (a) communicate or attempt to communicate with a person held in a remand centre, youth residential centre, youth training centre or

S. 270(1)(a)  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

youth supervision unit in contravention of a clear instruction from the Secretary not to do so; or

- (b) deliver, or in any manner attempt to deliver, to any such person or introduce or attempt to introduce or cause to be introduced into a remand centre, youth residential centre, youth training centre or youth supervision unit—

- (i) any firearm, offensive weapon or other article which is capable of being used as a weapon; or

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- (iii) any form of drug without the consent of the Secretary; or

- (iv) any form of alcoholic liquor or beverage; or

- (v) any other article or thing not allowed by the regulations; or

- (c) in any manner take or receive from any such person for the purpose of conveying out of or taking away from a remand centre, youth residential centre, youth training centre or youth supervision unit any article or thing without the consent of the Secretary; or

S. 270(1)(b) amended by No. 69/1992 s. 30(3).

S. 270(1)(b)(i) inserted by No. 69/1992 s. 30(3).

S. 270(1)(b)(ii) inserted by No. 69/1992 s. 30(3), repealed by No. 19/1994 s. 32(a).

S. 270(1)(b)(iii) inserted by No. 69/1992 s. 30(3), amended by No. 19/1994 s. 32(b).

S. 270(1)(b)(iv) inserted by No. 69/1992 s. 30(3).

S. 270(1)(b)(v) inserted by No. 69/1992 s. 30(3).

S. 270(1)(c) amended by No. 46/1998 s. 7(Sch. 1).



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- (d) deliver or cause to be delivered to any other person any article or thing for the purpose of being introduced as mentioned in paragraph (b) or secrete or leave about or in any place where any such person is usually employed or detained any article or thing for the purpose of being found or received by any such person; or
  - (e) at any time or in any manner contrary to the regulations convey to or cause to be conveyed to any person any article or thing; or
  - (f) lurk or loiter about a remand centre, youth residential centre, youth training centre or youth supervision unit for any of the purposes mentioned in this sub-section.

Penalty: 15 penalty units or imprisonment for 3 months.

- (2) A person who has without lawful authority or excuse entered a remand centre, youth residential centre, youth training centre or youth supervision unit or any building, yard or ground belonging to that centre or unit must not refuse or fail to leave when required to do so by any person for the time being in charge of that centre or unit.

Penalty: 15 penalty units or imprisonment for 3 months.

- (3) A person guilty of an offence under this section may be apprehended by a member of the police force without warrant.

**Division 3—Director-General: Miscellaneous**

**271. Powers of Secretary in relation to medical services and operations**

S. 271(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(1) The Secretary may at any time order that a person—

S. 271(1)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(a) in the care or custody of the Secretary as the result of—

(i) an interim accommodation order; or

(ii) a custody to Secretary order; or

S. 271(1)(a)(ii)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(iii) a guardianship to Secretary order; or

S. 271(1)(a)(iii)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 271(1)(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(b) in the legal custody of the Secretary as provided by section 253; or

S. 271(1)(ba)  
inserted by  
No. 69/1992  
s. 13(7)(a).

(ba) placed with a suitable person or suitable persons or in a community service approved under section 58(1) as a result of an interim accommodation order; or

S. 271(1)(c)  
amended by  
No. 19/1994  
s. 33(1)(a)-(c).

(c) in safe custody under section 69, 79(5), 80(3) and (4), 80A(5) and (6), 95(3), 95(4) (including sections 95(3) and 95(4) as applied to a supervised custody order by section 98(3)), 110(2A), 111(3) or 111(4)—

be examined to determine his or her medical, physical, intellectual or mental condition.

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- (2) The Minister and the Minister administering Division 1 of Part II of the **Health Act 1958** may make arrangements for the provision of any necessary medical, dental, psychiatric, psychological or pharmaceutical services to persons referred to in sub-section (1) or to any class or classes of those persons or to any other persons placed in a community service.
- (3) On the advice of a legally qualified medical practitioner that medical treatment or a surgical or other operation or admission to hospital is necessary in the case of a child referred to in sub-section (1)(a)(ii) or (iii) or (b), the Minister, the Secretary or any person (other than an officer or employee) authorised by the Secretary in that behalf may consent to the medical treatment or the surgical or other operation or the admission to hospital even if the child's parent objects.
- (4) The Minister, the Secretary or any person (other than an employee) authorised by the Secretary in that behalf may consent to medical treatment or a surgical or other operation or admission to hospital in the case of a child who is not referred to in sub-section (1)(a)(ii) or (iii) or (b) if—
- (a) the child is placed in a community service or with a suitable person or suitable persons as the result of—
- (i) having been taken into safe custody under section 69, 79(5), 80(3) and (4), 80A(5) and (6), 95(3), 95(4) (including sections 95(3) and 95(4) as applied to a supervised custody order by section 98(3)), 110(2A), 111(3) or 111(4); or
- (ii) an interim accommodation order; and

S. 271(3)  
amended by  
Nos 19/1994  
s. 34(a),  
46/1998  
s. 7(Sch. 1).

S. 271(4)  
amended by  
Nos 19/1994  
s. 34(b),  
46/1998  
s. 7(Sch. 1).

S. 271(4)(a)  
amended by  
No. 69/1992  
s. 13(7)(b).

S. 271(4)(a)(i)  
amended by  
No. 19/1994  
s. 33(2)(a)–(c).

S. 271(4)(c)(f)  
amended by  
No. 93/1990  
s. 24(f).

S. 271(5)  
inserted by  
No. 19/1994  
s. 34(c).

S. 271(6)  
inserted by  
No. 19/1994  
s. 34(c),  
substituted by  
No. 46/1998  
s. 7(Sch. 1).

S. 272  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(b) a legally qualified medical practitioner has advised that the medical treatment or operation or admission to hospital is necessary to avoid a serious threat to the health of the child; and

(c) the child's parent—

(i) refuses to give his or her consent; or

(ii) cannot be found within a time which is reasonable in the circumstances.

(5) An authorisation under sub-section (3) or (4)—

(a) must be made by instrument; and

(b) may be made to the holder of an office or position or to any person for the time being acting in or performing the duties of an office or position.

(6) An employee may, in accordance with section 7, have delegated to him or her any function or power of the Secretary under this section, except (unless he or she is an executive within the meaning of the **Public Sector Management and Employment Act 1998**) the power to make authorisations under sub-section (3) or (4).

**272. Offence to obstruct Secretary or officer**

A person must not obstruct or hinder the Secretary or any officer in the execution of his or her duties under this Act.

Penalty: 15 penalty units or imprisonment for 3 months.

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**Division 4—Court: Miscellaneous**

**273. *Witness who has previously appeared in Children's Court***

- (1) If a person is called as a witness in any legal proceeding within the meaning of section 3 of the **Evidence Act 1958** (other than a proceeding in the Children's Court) and the person—
- (a) has appeared before the Court charged with an offence; or
  - (b) has been the subject of an application to the Family Division for a protection order—  
no question regarding—
  - (c) that charge or any order made in respect of that charge; or
  - (d) that application or any appearance of the person before the Court in respect of, or consequent on, that application—

is to be asked of the person after the end of 3 years from the date of the charge, application or appearance (whichever last happens).

- (2) Sub-section (1) does not apply if—
- (a) the question is relevant to the facts in issue in the proceeding or to matters necessary to be known in order to determine whether or not those facts existed; or
  - (b) the Court considers that the interests of justice require that the question be asked.
- (3) A person referred to in sub-section (1) must not be asked any question about any application made to the Family Division other than an application for a protection order.

**274. Defendant or other person who has previously appeared in Children's Court**

- (1) If—
- (a) a person has appeared before the Court charged with an offence; or
  - (b) an application has been made to the Family Division for a protection order in respect of the person—

the fact of the charge or of any order made in respect of the charge or of the application or of any appearance of the person before the Court in respect of, or consequent on, the application must not be given in evidence against the person in any legal proceeding within the meaning of section 3 of the **Evidence Act 1958** (other than a proceeding in the Children's Court) after the end of 3 years from the date of the charge, application or appearance (whichever last happens).

- (2) Sub-section (1) does not apply if that fact is relevant—
- (a) to the facts in issue in the proceeding; or
  - (b) to matters necessary to be known in order to determine whether or not those facts existed.
- (3) Despite sub-section (1), if a person is found guilty by a court of an offence, evidence may be given to the court of an order of the Criminal Division in relation to an offence committed by the person, if the order was made not more than 10 years before the hearing at which it is sought to be proved.

**275. Transfer of proceedings from Magistrates' Court to Children's Court**

- (1) If before or during the hearing of a charge for an offence it appears to the Magistrates' Court that

the defendant is a child, the Magistrates' Court must discontinue the proceeding and order that it be transferred to the Children's Court and in the meantime it may—

- (a) permit the defendant to go at large; or
  - (b) grant the defendant bail conditioned for the appearance of the defendant before the Children's Court at the time and place at which the proceeding is to be heard; or
  - (c) remand the defendant in a remand centre until the proceeding is heard by the Children's Court.
- (2) In exercising a power conferred by sub-section (1)(b) or (c) the Magistrates' Court must exercise the power in accordance with this Act as if it were the Children's Court.

**276. *Supreme Court or County Court may exercise sentencing powers of Children's Court***

The powers that the Supreme Court or the County Court may exercise in sentencing a child for an indictable offence include the power to make any sentencing order which the Children's Court may make under this Act but an order that the child be detained in a youth residential centre or youth training centre must be made in accordance with Subdivision (4) of Division 2 of Part 3 of the **Sentencing Act 1991**.

S. 276  
 amended by  
 No. 48/1997  
 s. 52.

**277. *Service of documents***

- (1) If by or under this Act a person is required to serve a document and no provision is made, other than in this section, as to how the document is to be served, the document must be served on the person to be served—

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- (a) by delivering a true copy of the document to that person personally; or
  - (b) by sending by registered post a true copy of the document addressed to that person at that person's last known place of residence or business; or
  - (c) by leaving a true copy of the document for that person at that person's last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.
- (2) If it appears to the Court, by evidence on oath or by affidavit, that service cannot be promptly effected, the Court may make an order for substituted service.
- (3) If the person to be served is a company or a recognized company or a recognized foreign company within the meaning of the **Companies (Victoria) Code**, the document may be served on that person in accordance with section 528, 529 or 530 of that Code.

**278. Proof of service**

- (1) Service of a document may be proved by—
- (a) evidence on oath; or
  - (b) affidavit; or
  - (c) declaration.
- (2) Evidence of service must identify the document served and state the time and manner in which service was effected.



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- (3) A document purporting to be an affidavit or declaration under sub-section (1)(b) or (1)(c) is admissible in evidence and, in the absence of evidence to the contrary, is proof of the statements in it.

**279. Notice required to be filed if child is taken into safe custody or apprehended without warrant**

If under the provisions of this Act (other than section 123(3)) a child is taken into safe custody or apprehended without a warrant and that child is required to be brought before the Court, the person who took the child into safe custody or apprehended the child must file with the appropriate registrar as soon as possible after doing so and before the child is brought before the Court a notice setting out the grounds for taking the child into safe custody or apprehending the child.

**279A. Supreme Court—limitation of jurisdiction**

- (1) It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of a matter over which the Court, by virtue of this Act as amended by the **Children and Young Persons (Miscellaneous Amendments) Act 1994**, has exclusive jurisdiction.
- (2) It is the intention of section 14, as amended by section 16 of the **Children and Young Persons (Miscellaneous Amendments) Act 1996**, to alter or vary section 85 of the **Constitution Act 1975**.
- (3) It is the intention of section 13B to alter or vary section 85 of the **Constitution Act 1975**.

S. 279A inserted by No. 19/1994 s. 35, amended by No. 44/1996 s. 17(1).

S. 279A(2) inserted by No. 44/1996 s. 17(2).

S. 279A(3) inserted by No. 36/2000 s. 13.

S. 279A(4)  
inserted by  
No. 36/2000  
s. 13.

- (4) It is the intention of sections 116, 197 and 198, as amended by the **Children and Young Persons (Appointment of President) Act 2000**, to alter or vary section 85 of the **Constitution Act 1975**.

#### **Division 5—Regulations**

#### **280. Regulations**

- (1) The Governor in Council may make regulations for or with respect to—
- (a) reports for the purposes of this Act; and
  - (b) the earnings of a person detained in a youth residential centre or youth training centre; and
  - (c) the remission of sentences of detention in a youth residential centre or youth training centre; and
  - (d) the appointment, powers, duties and functions of persons responsible for youth supervision programs; and
  - (e) the appointment, powers, duties and functions of probation officers; and
  - (f) the appointment, powers, duties and functions of youth parole officers; and
  - (g) prescribing the terms and conditions to be included in parole orders; and
  - (h) prescribing standards to be observed—
    - (i) for the protection, care or accommodation of persons placed in the care or custody or under the guardianship, control or supervision of the Secretary; and

S. 280(1)(h)(i)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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- (ii) in performing any function, supplying any service or otherwise carrying out the objects of this Act; and
- (i) the approval of community services and prescribing standards to be observed for the protection, care or accommodation of persons placed in community services and in the conduct, management and control of community services; and
- (j) the care, control and management of persons placed in community services or in the custody or under the guardianship of the Secretary; and
- (k) the conduct, management and supervision of community services, youth residential centres, youth training centres, remand centres, youth supervision units and any other institutions or places established under this Act or under the control of the Secretary; and
- (l) the care, control and management of persons in youth residential centres, youth training centres, remand centres and youth supervision units or otherwise in the legal custody of the Secretary; and
- (la) the entitlements of persons detained in remand centres, youth residential centres or youth training centres or of children detained in police gaols or other places prescribed for the purposes of section 130 and the responsibility of the Secretary, the Chief Commissioner of Police or any other person with respect to those entitlements; and
- S. 280(1)(j) amended by No. 46/1998 s. 7(Sch. 1).
- S. 280(1)(k) amended by No. 46/1998 s. 7(Sch. 1).
- S. 280(1)(l) amended by No. 46/1998 s. 7(Sch. 1).
- S. 280(1)(la) inserted by No. 69/1992 s. 26(3)(a), amended by No. 74/2000 s. 3(Sch. 1 item 18.7).

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S. 280(1)(lb)  
inserted by  
No. 69/1992  
s. 26(3)(a),  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 18.7).

(lb) the management, good order and security of remand centres, youth residential centres or youth training centres in which persons are detained or of police gaols or other places prescribed for the purposes of section 130 in which children are detained; and

S. 280(1)(lc)  
inserted by  
No. 69/1992  
s. 30(4),  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 18.7).

(lc) searches under section 256A and manner of dealing with articles or things seized, including the forfeiture of articles or things to the Crown; and

S. 280(1)(ld)  
inserted by  
No. 69/1992  
s. 30(4),  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 18.7).

(ld) the particulars of the use of isolation to be recorded under section 256C(6); and

S. 280(1)(m)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(m) providing for the admission of ministers of religion to community services, youth residential centres, youth training centres, remand centres, youth supervision units and any other institutions or places established under this Act or under the control of the Secretary for the purpose of the spiritual welfare and pastoral care of persons accommodated or detained in those places; and

(n) prescribing regions of the State for the purpose of Division 2 of Part 4 and Subdivision 7 of Division 7 of Part 4; and

(o) all matters necessary for the good order, discipline, safe custody and health of children in respect of whom a youth attendance order is in force; and

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- (p) the participation of persons in youth attendance projects; and
- (q) the maximum number of persons who may attend any youth attendance project; and
- \* \* \* \* \*
- (r) S. 280(1)(r) repealed by No. 19/1994 s. 36(a).
- (s) the variation by the Secretary under sections 179 and 180 of details relating to the dates and times of attendance at a youth attendance project; and
- (t) the conduct, management and supervision of youth attendance projects and youth supervision programs; and
- (u) prescribing the nature of reasonable directions which may be given by the Secretary in relation to youth attendance projects; and
- (v) the establishment and maintenance of the central register referred to in section 65(1)(b); and
- (w) prescribing institutions or places in which children remanded in custody by a court or a bail justice may be placed; and
- (wa) Subdivision 5 of Division 7 of Part 4 generally including—
- (i) the matters to be specified in applications or orders made or notices given under that Subdivision; and
- (ii) the manner of making applications under section 154; and
- (v) S. 280(1)(s) amended by No. 19/1994 s. 36(b).
- (u) S. 280(1)(u) amended by No. 19/1994 s. 36(c).
- (wa) S. 280(1)(wa) inserted by No. 69/1992 s. 20(10).

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- (iii) the procedure of the Court and of the appropriate registrar under that Subdivision; and
  - (iv) securing the attendance of a child before the Court and the production of documents by a child to the Court under that Subdivision; and
  - (v) the functions of the appropriate registrar under that Subdivision; and
  - (x) prescribing forms; and
  - (y) prescribing fees for the purposes of section 28(3); and
  - (z) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations made under this Act may be made—
- (a) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
    - (i) wholly or partially or as amended by the regulations; or
    - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; and
  - (b) so as to apply—
    - (i) at all times or at a specified time; or
    - (ii) throughout the whole of the State or in a specified part of the State; or

(iii) as specified in both sub-paragraphs (i) and (ii); and

(c) so as to impose a penalty not exceeding 10 penalty units for a contravention of the regulations.

\* \* \* \* \*

S. 280(3)(4) repealed by No. 10/1999 s. 31(3).

**Division 5A—Rules**

Pt 5 Div. 5A (Heading and s. 280A) inserted by No. 44/1996 s. 18.

**280A. Rules**

S. 280A inserted by No. 44/1996 s. 18.

- (1) The President together with 2 or more magistrates for the Court may jointly make Rules for or with respect to the prescription of forms for the purposes of the Family Division of the Court.
- (2) A rule under sub-section (1) must not be inconsistent with a provision made by or under this or any other Act, whether the provision was made before or after the making of the rule.

S. 280A(1) amended by No. 36/2000 s. 14.

**280B. Rules of court<sup>29</sup>**

The President together with 2 or more magistrates for the Court may jointly make rules of court for or with respect to—

S. 280B inserted by No. 4/1997 s. 9, amended by No. 36/2000 s. 14.

- (a) requirements for the purposes of Part IIA of the **Evidence Act 1958** for or with respect to—
  - (i) the form of audio visual or audio link;

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- (ii) the equipment, or class of equipment, used to establish the link;
- (iii) the layout of cameras;
- (iv) the standard, or speed, of transmission;
- (v) the quality of communication;
- (vi) any other matter relating to the link;
- (b) applications to the Court under Division 2 or 3 of Part IIA of the **Evidence Act 1958**;
- (c) any matter relating to the practice and procedure of the Court under Part IIA of the **Evidence Act 1958**.

s. 280C  
inserted by  
No. 4/1997  
s. 9,  
amended by  
No. 36/2000  
s. 14.

**280C. Disallowance<sup>30</sup>**

The power of the President together with 2 or more magistrates for the Court to jointly make rules of court, whether that power is conferred by this or any other Act, is subject to the rules being disallowed by a House of the Parliament in accordance with section 23 of the **Subordinate Legislation Act 1994**.

s. 280D  
inserted by  
No. 36/2000  
s. 15.

**280D. Practice notes**

- (1) The President may from time to time issue practice directions, statements or notes for the Court in relation to proceedings in the Family Division or the Criminal Division or any class of proceeding in the Family Division or the Criminal Division.
- (2) Practice directions, statements or notes issued under sub-section (1) must not be inconsistent with any provision made by or under this or any other Act.



**PART 6—REPEALS, AMENDMENTS, SAVINGS AND TRANSITIONALS**

*	*	*	*	*	Ss 281–283 repealed by No. 74/2000 s. 3(Sch. 1 item 18.8).
*	*	*	*	*	S. 284 amended by Nos 93/1990 ss 20(a)–(d), 24(g), 69/1992 s. 33(1), repealed by No. 74/2000 s. 3(Sch. 1 item 18.8).
*	*	*	*	*	S. 285 repealed by No. 74/2000 s. 3(Sch. 1 item 18.8).

**286. Consequential amendments**

On the coming into operation of an item in Schedule 2 the Act referred to in that item is amended as set out in that item.

**287. Savings and transitionals**

- (1) Schedule 3 contains saving and transitional provisions.
- (2) The provisions of Schedule 3 are in addition to and not in derogation from the provisions of the **Interpretation of Legislation Act 1984.**

*	*	*	*	*	S. 288 inserted by No. 93/1990 s. 21, repealed by No. 74/2000 s. 3(Sch. 1 item 18.8).
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## SCHEDULES

### SCHEDULE 1

S. 260

#### INTERSTATE TRANSFER OF YOUNG OFFENDERS

##### 1. *Definitions*

In this Schedule—

**"agreement"** means an agreement between the Minister and a Minister of another State under clause 2;

**"arrangement"** means an arrangement made under clause 3 for the transfer of a young offender from Victoria to another State, or to Victoria from another State;

**"Minister"**, in relation to a State other than Victoria, means—

- (a) except where the other State is the Australian Capital Territory or the Northern Territory of Australia—a Minister of the Crown of that State; and
- (b) where the other State is the Australian Capital Territory—a Minister of the Crown of the Commonwealth; and
- (c) where the other State is the Northern Territory of Australia—a person holding Ministerial office, as defined in section 4(1) of the Northern Territory (Self-Government) Act 1978 of the Commonwealth;

**"sending State"** means the State from which a young offender is transferred;

**"State"** means any State or Territory of the Commonwealth;

**"receiving State"** means the State to which a young offender is transferred;

**"young offender"** means a person—

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- (a) in another State who—
    - (i) is under the age of 18 years; or
    - (ii) is of or above the age of 18 years but under the age of 21 years and who has committed or is alleged to have committed an offence when the person was under the age of 18 years—

and who has been dealt with under a law which applies in that State and which relates to the welfare or punishment of such a person; or
  - (b) in Victoria who—
    - (i) is subject to an order made under paragraph (f), (g), (h), (i) or (j) of section 137(1), whether the order was made by the Children's Court or by some other court; or
    - (ii) is under the age of 21 years and is serving a sentence of detention in a youth training centre; or
    - (iii) is under the age of 21 years and has been released on parole under this Act; or
  - (c) who is in Victoria and is subject to an arrangement for the transfer of the person to Victoria or is being transferred through Victoria from one State to another under an agreement.

**2. Minister may enter into general agreement**

The Minister may enter into a general agreement with a Minister of another State for the transfer of young offenders—

- (a) into or out of Victoria; and
- (b) through Victoria from one State to another.

**3. Secretary may make arrangements**

If the Minister enters into an agreement with a Minister of another State, the Secretary may make an arrangement with the Minister of the other State, or with a person authorised by that Minister as provided in the agreement, for the transfer of a particular young offender—

- (a) to that State from Victoria; or

**Sch. 1 cl. 3  
amended by  
No. 46/1998  
s. 7(Sch. 1).**

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(b) to Victoria from that State.

**4. Arrangement for transfer out of Victoria**

- (1) The Secretary must not make an arrangement for the transfer of a young offender from Victoria to another State unless—
- (a) the young offender or a parent of the young offender applies for the transfer to be made; and
  - (b) the Secretary is of the opinion that the transfer is appropriate in all the circumstances including—
    - (i) the place or intended place of residence of the parents; and
    - (ii) the education, further education, training or employment; and
    - (iii) the medical or other needs—
 of the young offender; and
  - (c) the young offender has been given independent legal advice as to the effect of the arrangement and consents to it; and
  - (d) the Secretary is satisfied that there is no appeal pending against an order of a court to which the young offender is subject.
- (2) For the purposes of deciding whether or not to arrange for the transfer of a young offender from Victoria to another State, the Secretary may ask—
- (a) the young offender; or
  - (b) the parents of the young offender—
- for any necessary information, and the young offender or parents must supply the information within the time specified by the Secretary.

**5. Arrangement for transfer to Victoria**

The Secretary must not make an arrangement for the transfer of a young offender from another State to Victoria unless the Secretary is satisfied that there are adequate facilities in Victoria for the young offender to be accepted and dealt with as provided in the arrangement.

Sch. 1 cl. 4(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

Sch. 1  
cl. 4(1)(b)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

Sch. 1  
cl. 4(1)(d)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

Sch. 1 cl. 4(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

Sch. 1 cl. 5  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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**6. Provisions to be made in each arrangement**

- (1) An arrangement for the transfer of a young offender to or from Victoria must—
  - (a) provide for the acceptance and means of dealing with the young offender in the receiving State; and
  - (b) specify each order of a court of the sending State to which the young offender is subject (including an order deemed by a previous arrangement with Victoria or with another State to have been made by a court of the sending State); and
  - (c) for each order specified under paragraph (b)—
    - (i) specify the way in which it is to operate in the receiving State, which must be as similar as possible to the way in which it would operate in the sending State if the arrangement were not made; and
    - (ii) specify the maximum time for which it is to operate, which must not be longer than the maximum time for which it would operate in the sending State if the arrangement were not made.
- (2) An arrangement made by the Secretary for the transfer of a young offender from Victoria to another State must provide for the escort under clause 7(1)(b) to be authorised in that State to hold, take and keep custody of the young offender for the purpose of transferring the young offender to the place and the custody specified in the arrangement.
- (3) A reference in sub-clause (1) to an order of a court of a sending State is a reference to any sentence, period of detention, probation, parole or other order which could be made or imposed by that court.

**Sch. 1 cl. 6(2)**  
**amended by**  
**No. 46/1998**  
**s. 7(Sch. 1).**

**7. Transfer order made under an arrangement**

- (1) If the Secretary makes an arrangement under this Schedule for the transfer of a person to another State, he or she must make a transfer order which—
  - (a) directs the person who has the custody of the young offender to deliver the young offender to the custody of the escort; and

**Sch. 1 cl. 7(1)**  
**amended by**  
**No. 46/1998**  
**s. 7(Sch. 1).**

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- (b) authorises the escort to take and keep custody of the young offender for the purpose of transferring the young offender to the place in the receiving State and to the custody specified in the arrangement.
- (2) A reference in sub-clause (1) to a person having the custody of a young offender is a reference to—
- (a) a person in charge of a remand centre, youth residential centre, youth training centre or youth supervision unit; or
- (b) a person in charge of any other establishment conducted and managed by the Department; or
- (c) any other person who has custody of the young offender.
- (3) A reference in sub-clause (1) to an escort is a reference to a youth officer, a member of the police force or a person appointed by the Secretary by an instrument in writing to be an escort for the purposes of this Schedule, or any two or more of them.

**8. *Transfer to Victoria in custody of escort***

If under an arrangement for the transfer of a young offender to Victoria an escort authorised under the arrangement brings the young offender to Victoria, the escort, while in Victoria, is authorised to hold, take and keep custody of the young offender for the purpose of transferring the young offender to the place in Victoria and to the custody specified in the arrangement.

**9. *Reports***

- (1) For the purpose of forming an opinion or exercising a discretion under this Schedule, the Secretary may be informed as he or she thinks fit and, in particular, may have regard to reports from any person who has or has had the custody or supervision of a young offender in Victoria or in another State.
- (2) Reports of any person who has or has had the custody or supervision of a young offender may be sent to a Minister of another State who has entered into an agreement or to a person authorised under an agreement to make arrangements with the Secretary.

**10. *Transfer of sentence or order with transferee***

Sch. 1 cl. 7(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

Sch. 1 cl. 9(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

Sch. 1 cl. 9(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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If under an arrangement a young offender is transferred from Victoria to another State, then from the time the young offender arrives in that State any sentence imposed on, or order made in relation to, the young offender in Victoria before that time ceases to have effect in Victoria except—

- (a) in relation to any period of detention served by the young offender before that time; or
- (b) in relation to any part of the order carried out in respect of the young offender before that time; or
- (c) in relation to the remittance of money to the Minister which is paid in discharge or partial discharge of a sentence of default detention or default imprisonment originally imposed on the young offender by a court in Victoria.

**11. *Sentence etc. deemed to have been imposed in this State***

If under an arrangement a young offender is transferred to Victoria from another State, then from the time the young offender arrives in Victoria—

- (a) any sentence imposed on, or order made in relation to, the young offender by a court of the sending State and specified in the arrangement is deemed to have been imposed or made; and
- (b) any sentence or order deemed by a previous arrangement with Victoria or with another State to have been imposed or made by a court of the sending State and specified in the arrangement under which the young offender is transferred to Victoria is deemed to have been imposed or made; and
- (c) any direction or order given or made by a court of the sending State concerning the time when anything to be done under an order made by a court of that State commences is, so far as practicable, deemed to have been given or made—

by the court in Victoria specified in the arrangement and, except as otherwise provided in this Schedule, has effect in Victoria as specified in the arrangement in accordance with clause 6, and the laws of Victoria apply, as if that court had had power to impose the sentence and give or make the directions or orders, and did in fact impose the sentence and give or make the directions or orders.

**12. *Lawful custody for transit through Victoria***

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Sch. 1 cl. 12(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (1) The Secretary may authorise the person in charge of a remand centre, youth residential centre, youth training centre or youth supervision unit or any other person to receive young offenders being transferred through Victoria from one State to another.
- (2) If under an agreement for the transfer of young offenders through Victoria from one State to another, a young offender is brought into Victoria by an escort authorised as provided in the agreement—
  - (a) while in Victoria, the escort is authorised to take, hold and keep custody of the young offender for the purposes of the transfer; and
  - (b) a person authorised under sub-clause (1) may at the request of the escort and on receiving from the escort written authority for the transfer as provided in the agreement—
    - (i) receive and detain the young offender in the custody and for the time the escort requests, if it is reasonably necessary for the purposes of the transfer; and
    - (ii) at the end of that time deliver the young offender into the custody of the escort.

**13. *Escape from custody of person being transferred***

- (1) A young offender being transferred through Victoria from one State to another in the custody of an escort and who escapes from that custody may be apprehended without warrant by the escort, any member of the police force or any other person.
- (2) If a young offender being transferred through Victoria from one State to another in the custody of an escort—
  - (a) has escaped and been apprehended; or
  - (b) has attempted to escape—

the young offender may be taken before a magistrate who may by warrant under his or her hand order the young offender to be detained in custody at a remand centre, youth residential centre or youth training centre.
- (3) A warrant issued under sub-clause (2) may be executed according to its tenor.



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- (4) A young offender who is the subject of a warrant under sub-clause (2) must as soon as possible be brought before the Magistrates' Court or the Children's Court (as the case requires) which may order—
- (a) that the young offender be delivered to the custody of an escort; or
  - (b) that the young offender be detained for no longer than 7 days until an escort is available from the sending State to carry out the arrangement or any orders made by a court of that State.
- (5) If a young offender who is the subject of an order under sub-clause (4)(b) is not, in accordance with the order, delivered into the custody of an escort within a period of 7 days from the making of the order, the order has no further effect.
- (6) A reference in this clause to an escort in relation to a young offender being transferred through Victoria from one State to another under an agreement is a reference to—
- (a) the escort authorised in the manner provided for in the agreement; or
  - (b) if the young offender has escaped or attempted to escape—
    - (i) that escort; or
    - (ii) a member of the police force of the sending State; or
    - (iii) a person appointed by the Minister of the sending State by instrument in writing to be an escort for the purposes of carrying out any orders of a court of the sending State—
- or any two or more of them.

**14. *Escape from custody—penalty***

- (1) A young offender—
- (a) who is in custody under an arrangement made for his or her transfer from Victoria to another State; and
  - (b) who was subject before the arrangement to detention in Victoria; and

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- (c) who escapes or attempts to escape from that custody while he or she is not within Victoria or the receiving State—

is guilty of an offence and is liable to imprisonment for a term not exceeding six months or to detention in a youth residential centre or youth training centre for a term not exceeding six months, to be served after the end of any term of detention to which he or she was subject at the time of the escape or attempt to escape.

- (2) Without limiting the generality of section 253, that section applies to a person—

- (a) who is in custody under an arrangement for the transfer of the person from Victoria to another State; and  
(b) who escapes from that custody while he or she is not within Victoria or the receiving State—

in the same way as it applies to a person who escapes, attempts to escape or is absent without lawful authority from a remand centre, youth residential centre or youth training centre in which he or she is lawfully detained or from the custody of any person in whose custody the person may be.

**15. *Revocation of order of transfer on escape from custody***

The Magistrates' Court or Children's Court may revoke an order made under an arrangement for the transfer of a young offender from Victoria to another State on application made to it under this clause by the Secretary that the young offender has, while being transferred, committed—

- (a) the offence of escaping or attempting to escape; or  
(b) any other offence—

whether—

- (c) the offence was an offence against the law of Victoria or of the receiving State or of a State through which the young offender was being transferred; or  
(d) a charge has been filed or a conviction secured in respect of the offence or not.

**16. *Revocation of order of transfer by consent***

Sch. 1 cl. 15  
amended by  
No. 46/1998  
s. 7(Sch. 1).

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| <p>(1) The Secretary may revoke an order for the transfer of a young offender from Victoria to another State—</p> <p style="margin-left: 40px;">(a) at any time before the young offender is delivered in the receiving State into the custody specified in the arrangement; and</p> <p style="margin-left: 40px;">(b) only with the consent of the young offender and of the Minister or other person in the receiving State with whom the Secretary made the arrangement.</p> | <p><b>Sch. 1 cl. 16(1)</b><br/> <b>amended by</b><br/> <b>No. 46/1998</b><br/> <b>s. 7(Sch. 1).</b></p>  |
| <p>(2) If the Secretary revokes an order under sub-clause (1), the Secretary may make a further arrangement with the receiving State for the return of the young offender to Victoria.</p>  | <p><b>Sch. 1</b><br/> <b>cl. 16(1)(b)</b><br/> <b>amended by</b><br/> <b>No. 46/1998</b><br/> <b>s. 7(Sch. 1).</b></p> <p><b>Sch. 1 cl. 16(2)</b><br/> <b>amended by</b><br/> <b>No. 46/1998</b><br/> <b>s. 7(Sch. 1).</b></p> |
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SCHEDULE 2

S. 286

CONSEQUENTIAL AMENDMENTS

1. *Adoption Act 1984*

Sch. 2 item  
1.1 repealed  
by No.  
32/2000 s. 19.

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1.2 In section 46(3)(b)—

Sch. 2  
item 1.2(a)  
amended by  
No. 93/1990  
s. 24(h)(i).

(a) for "a ward of the Department of Community Services within the meaning of the **Community Services Act 1970**" substitute "the subject of a guardianship to Director-General order within the meaning of the **Children and Young Persons Act 1989**";

Sch. 2  
item 1.2(b)  
amended by  
No. 93/1990  
s. 24(h)(ii).

(b) for "**Community Services Act 1970**" substitute "**Children and Young Persons Act 1989**".

2. *Bail Act 1977*

2.1 In section 3 (definition of "Prison") for "**Community Welfare Services Act 1970**" substitute "**Children and Young Persons Act 1989**".

Sch. 2 items  
2.2, 2.3  
repealed by  
No. 69/1992  
s. 37(2).

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3. *Commonwealth Powers (Family Law—Children) Act 1986*

3. In the Schedule for "**Children's Court Act 1973**" substitute "**Children and Young Persons Act 1989**".

4. *Community Services Act 1970*

Sch. 2 item 4  
amended by  
No. 93/1990  
s. 24(h)(iii).

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4. In section 3 the definition of "Ward of the Department of Community Welfare Services" and "ward of the Department" is **repealed**.

**5. Community Welfare Services (Amendment) Act 1983**

5. The whole Act is **repealed**.

**6. Corrections Act 1986**

6. In section 75 for "**Community Services Act 1970**" substitute "**Children and Young Persons Act 1989**".

Sch. 2 item 6  
amended by  
No. 93/1990  
s. 24(h)(iv).

**7. Crimes Act 1958**

- 7.1 Section 335 is **repealed**.
- 7.2 In section 395(4)(a) for "children's court" (where twice occurring) substitute "the Children's Court".
- 7.3 In section 464(2) (definition of "Held in a prison, police gaol or youth training centre") in paragraph (c) for "**Community Welfare Services Act 1970**" substitute "**Children and Young Persons Act 1989**".
- 7.4 In section 464(2) (definition of "Prison") for "section 92 of the **Community Welfare Services Act 1970**" substitute "section 249 of the **Children and Young Persons Act 1989**".
- 7.5 In section 464B(1) for "a children's court" substitute "the Children's Court".
- 7.6 In section 464B(3) for "children's court" substitute "Children's Court".
- 7.7 In section 464B(5) and (8) for "children's court" substitute "the Children's Court".
- 7.8 In section 464N(3), (4) and (5) for "A children's court" substitute "The Children's Court".
- 7.9 In section 464N(7) for "a children's court" substitute "the Children's Court".
- 7.10 In section 464N(8)(b) after "centre" insert "or is detained in a youth residential centre in the custody of the Director-General within the meaning of the **Children and Young Persons Act 1989**".
- 7.11 In section 464O(5) for "a court" substitute "the court".
- 7.12 In section 464O(6) and (10)(b) for "a children's court" substitute "the Children's Court".

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Sch. 2  
item 11.1  
amended by  
No. 93/1990  
s. 24(h)(v).

Sch. 2  
item 12.3  
amended by  
No. 93/1990  
s. 24(h)(vi).

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- 7.13 In section 464O(10)(b) after "centre" **insert** "or is detained in a youth residential centre in the custody of the Director-General within the meaning of the **Children and Young Persons Act 1989**".
- 7.14 In section 464Q(4) and (5) for "a children's court" **substitute** "the Children's Court".
- 7.15 In section 464R(3) for "a children's court" **substitute** "the Children's Court".
- 7.16 In section 506 (definition of "Child") for "**Children's Court Act 1973**" **substitute** "**Children and Young Persons Act 1989**".
- 8. Crimes (Family Violence) Act 1987**
8. In section 25 for "**Children's Court Act 1973**" **substitute** "**Children and Young Persons Act 1989**".
- 9. Drugs, Poisons and Controlled Substances Act 1981**
9. In section 71(2) for "**Children's Court Act 1973**" **substitute** "**Children and Young Persons Act 1989**".
- 10. Interpretation of Legislation Act 1984**
10. In section 38, after the definition of "Act" **insert**—  
' "**Children's Court**" means The Children's Court of Victoria.'
- 11. Magistrates' Court Act 1989**
- 11.1 In section 3(1) (definition of "Youth training centre") for "section 92 of the **Community Services Act 1970**" **substitute** "section 249 of the **Children and Young Persons Act 1989**".
- 11.2 In section 120(1) after "**Bail Act 1977**" **insert** "and the **Children and Young Persons Act 1989**".
- 12. Penalties and Sentences Act 1985**
- 12.1 In section 28(14) for "**Children's Court Act 1973**" **substitute** "**Children and Young Persons Act 1989**".
- 12.2 Part 6 is **repealed**.
- 12.3 In section 82(1)(b) for "**Community Services Act 1970**" **substitute** "**Children and Young Persons Act 1989**".
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12.4 In section 83(5) after "imprisonment" **insert** "or detention in a youth training centre".

12.5 In section 89 for "children's courts" **substitute** "the Children's Court".

**13. *Penalties and Sentences (Youth Attendance Projects) Act 1984***

13. The whole Act is **repealed**.

**14. *Public Service Act 1974***

14. In section 68 for "clerk of the children's court" (where twice occurring) **substitute** "registrar of the Children's Court".

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Sch. 2 item 15  
repealed by  
No. 69/1992  
s. 37(2).

**16. *Young Offenders (Interstate Transfer) Act 1986***

16. Sections 4 and 5 are **repealed**.

**SCHEDULE 3**

S. 287

**SAVINGS AND TRANSITIONALS**

1. (1) The Children's Court shall be deemed to be the same Court as the several children's courts existing immediately before the commencement of section 8 and no action, matter or thing shall be abated or affected by the change in the establishment or name of the Court.
- (2) Unless the context otherwise requires, any reference in any Act or in any subordinate instrument or in any document or writing of any kind whatsoever to a children's court or to children's courts is to be taken to refer to the Children's Court.
- (3) Unless the context otherwise requires, any reference in any Act or in any subordinate instrument or in any document or writing of any kind whatsoever to a children's court held at a particular place is to be taken to refer to the Children's Court sitting at that place or, if the Children's Court does not sit at that place, to the Court sitting at the place that is nearest to that place.
2. (1) Each person who holds office as a magistrate for a children's court or children's courts immediately before the commencement of section 8 holds office as a magistrate under and subject to this Act on and from that commencement without any further appointment.
- (2) Unless the context otherwise requires, any reference in any Act or in any subordinate instrument or in any document or writing of any kind whatsoever to a children's court magistrate, a stipendiary children's court magistrate, a magistrate for a children's court or a magistrate for children's courts is to be taken to refer to a magistrate.
3. (1) Each person who holds office as a stipendiary probation officer under Part II of the **Children's Court Act 1973** immediately before the commencement of section 34 of this Act holds office as a stipendiary probation officer under and subject to this Act and the **Public Service Act 1974** on and from that commencement without any further appointment.
- (2) Each person who holds office as an honorary probation officer under Part II of the **Children's Court Act 1973** immediately before the commencement of section 34 of this Act holds office

Sch. 3 cl. 1(1)  
amended by  
No. 93/1990  
s. 22(a).

S. 3 cl. 2(1)  
amended by  
No. 93/1990  
s. 22(b).



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as an honorary probation officer under and subject to this Act on and from that commencement without any further appointment.

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| <p>4. (1) The Youth Parole Board established by section 215(1) is deemed to be the same Board as the Youth Parole Board established by section 156 of the <b>Community Services Act 1970</b>.</p> <p>(2) Unless the context otherwise requires, any reference in any Act or in any subordinate instrument or in any document or writing of any kind whatsoever to the Youth Parole Board is to be taken to refer to the Youth Parole Board established by section 215(1).</p> <p>(3) All proceedings pending before the Youth Parole Board established by section 156 of the <b>Community Services Act 1970</b> immediately before the commencement of section 215(1) may be continued and completed by the Board established by that section as if those proceedings had been commenced under this Act.</p> <p>(4) The person who holds office immediately before the commencement of section 215(1) as the secretary of the Youth Parole Board established by section 156 of the <b>Community Services Act 1970</b> holds office under and subject to this Act as the secretary of the Youth Parole Board established by section 215(1) of this Act on and from that commencement without any further appointment.</p> | <p><b>Sch. 3 cl. 4(1)</b><br/>amended by<br/><b>No. 93/1990</b><br/>s. 24(i)(i).</p> <p><b>Sch. 3 cl. 4(3)</b><br/>amended by<br/><b>No. 93/1990</b><br/>s. 24(i)(ii).</p> <p><b>Sch. 3 cl. 4(4)</b><br/>amended by<br/><b>No. 93/1990</b><br/>s. 24(i)(iii).</p>   |
| <p>5. (1) This Act applies to—</p> <p style="padding-left: 20px;">(a) every proceeding commenced in the Court on or after the commencement of section 8; and</p> <p style="padding-left: 20px;">(b) every proceeding commenced in another court before the commencement of section 8 and transferred to the Court on or after that commencement.</p> <p>(2) This Act applies, with any necessary modifications, to any action or matter pending in a children's court immediately before the commencement of section 8 and anything required or permitted to be done under this Act with respect to a proceeding commenced in the Court on or after the commencement of section 8 must or may be done with respect to any such action or matter.</p>   | <p><b>Sch. 3</b><br/>cl. 5(1)(a)<br/>amended by<br/><b>No. 93/1990</b><br/>s. 22(c).</p> <p><b>Sch. 3</b><br/>cl. 5(1)(b)<br/>amended by<br/><b>No. 93/1990</b><br/>s. 22(c).</p> <p><b>Sch. 3 cl. 5(2)</b><br/>amended by<br/><b>No. 93/1990</b><br/>s. 22(c).</p> |

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Sch. 3 cl. 5(3)  
amended by  
No. 93/1990  
s. 22(c)(d).

Sch. 3 cl. 5(4)  
amended by  
No. 93/1990  
s. 22(e).

Sch. 3  
cl. 5(4A)  
inserted by  
No. 19/1994  
s. 37(1).

Sch. 3 cl. 5(5)  
inserted by  
No. 93/1990  
s. 22(f).

Sch. 3 cl. 6  
amended by  
No. 93/1990  
ss 22(g),  
24(i)(iv).

Sch. 3 cl. 7(1)  
amended by  
No. 93/1990  
s. 22(h).

Sch. 3 cl. 7(2)  
amended by  
No. 93/1990  
s. 22(h).

- (3) The repeal of a provision of the **Children's Court Act 1973** does not affect anything done or omitted to be done in an action or matter referred to in sub-clause (2) before the commencement of section 8 and anything so done or omitted to be done is to be taken to have been done or omitted under this Act.
  - (4) Any provision of the **Children's Court Act 1973** repealed by this Act continues, despite its repeal and despite any rule of law to the contrary, to apply to—
    - (a) any re-hearing or review of, or appeal from, any action or matter in a children's court to which this Act does not apply; and
    - (b) subject to this Schedule, the enforcement of any order made in any action or matter referred to in paragraph (a).
  - (4A) Clause 8 applies to an order admitting a child to the care of the Department made on any re-hearing or review of, or appeal from, any action or matter referred to in sub-clause (4)(a) as if a reference to the commencement of section 85 were a reference to the commencement of section 37(1) of the **Children and Young Persons (Miscellaneous Amendments) Act 1994**.
  - (5) This clause applies except as otherwise expressly provided by this Act or the **Children's Court Act 1973**.
6. If before the commencement of section 64(1) a person has made a notification under section 31(3) of the **Community Services Act 1970** that a child or young person is in need of care and protection, that notification has effect from that commencement as a notification under section 64(1) of this Act that the child is in need of protection.
  7.
    - (1) If before the commencement of section 84 a children's court has adjudged a child to be a child or young person in need of care and protection, that adjudgment has effect from that commencement as a finding that the child is in need of protection.
    - (2) If before the commencement of section 84 a person has made an application to a children's court that a child or young person should be adjudged to be a child or young person in need of care and protection and at that commencement the application had not been determined, the application has effect from that commencement as a protection application within the meaning of this Act.

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| <p>8. (1) If at the commencement of section 85 there is in force an order made by a children's court or the County Court admitting a child to the care of the Department or a deemed order to that effect, that order or deemed order has effect from that commencement as a guardianship to Secretary order<sup>31</sup>.</p>   | <p>Sch. 3 cl. 8(1) amended by Nos 93/1990 s. 22(i), 19/1994 s. 37(2), 46/1998 s. 7(Sch. 1).</p>  |
| <p>(2) The following periods are, subject to sub-clause (3), to be taken to have been specified in a guardianship to Secretary order to which sub-clause (1) applies:</p> <p>(a) 12 months beginning when the child was admitted to the care of the Department if at the commencement of section 85 the child has been in the care of the Department for less than 12 months;</p> <p>(b) 2 years beginning when the child was admitted to the care of the Department if at the commencement of section 85 the child has been in the care of the Department for 12 months or more but less than 2 years;</p> <p>(c) 12 months beginning when the child's placement in the care of the Department was last reviewed and extended before the commencement of section 85 if at that commencement the child has been in the care of the Department for 2 years or more.</p> | <p>Sch. 3 cl. 8(2) amended by No. 46/1998 s. 7(Sch. 1).</p> <p>Sch. 3 cl. 8(2)(a) amended by No. 93/1990 s. 22(j).</p> <p>Sch. 3 cl. 8(2)(b) amended by No. 93/1990 s. 22(j).</p> <p>Sch. 3 cl. 8(2)(c) amended by Nos 93/1990 s. 22(j), 69/1992 s. 37(3).</p> |
| <p>(3) In the case of an order admitting a child to the care of the Department that was deemed to arise under section 35 of the <b>Community Services Act 1970</b> as amended by the <b>Community Welfare Services Act 1978</b>, the period for which the guardianship to Secretary order referred to in sub-clause (1) is to be taken to remain in force is the period for which that deemed order continues in force under section 35 of the <b>Community Services Act 1970</b> and for this purpose—</p> <p>(a) section 35 of that Act (except sub-section (3)) continues to apply, despite its repeal; and</p> <p>(b) the guardianship to Secretary order may not be extended or revoked under Subdivision 7 of Division 6 of Part 3 of this Act.</p>  | <p>Sch. 3 cl. 8(3) amended by Nos 93/1990 s. 24(i)(v), 46/1998 s. 7(Sch. 1).</p> <p>Sch. 3 cl. 8(3)(b) amended by No. 46/1998 s. 7(Sch. 1).</p>  |

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Sch. 3 cl. 9(1)  
amended by  
Nos 93/1990  
s. 22(k),  
19/1994  
s. 37(3).

Sch. 3 cl. 9(2)  
amended by  
No. 93/1990  
ss 22(k),  
24(i)(vi).

Sch. 3 cl. 10(1)  
amended by  
Nos 93/1990  
s. 22(l),  
19/1994  
s. 37(4).

Sch. 3 cl. 10(2)  
amended by  
No. 93/1990  
s. 22(l).

Sch. 3 cl. 11  
amended by  
Nos 93/1990  
s. 22(l),  
19/1994  
s. 37(5)(a)(b).

9. (1) If before the commencement of section 84 a children's court or the County Court has adjudged a child to be a child or young person whose care and custody are likely to be seriously disrupted, that adjudgment has effect from that commencement as a finding that there is a substantial and presently irreconcilable difference between the person who has custody of the child and the child to such an extent that the care and control of the child are likely to be seriously disrupted.
- (2) If before the commencement of section 84 a person has made an irreconcilable difference application to a children's court under section 34 or 104 of the **Community Services Act 1970** and at that commencement the application had not been determined, the application has effect from that commencement as an irreconcilable difference application within the meaning of this Act.
10. (1) If at the commencement of section 85 there is in force a supervision order made by a children's court or the County Court under section 26(1)(g) or 27(c) of the **Children's Court Act 1973**, that order has effect from that commencement as a supervision order made under this Act<sup>32</sup>.
- (2) The period for which a supervision order to which sub-clause (1) applies remains in force from the commencement of section 85 is the period after that commencement for which the supervision order would have remained in force if this Act had not been passed, even though that period may exceed 2 years.
11. If before the commencement of section 85 a children's court or the County Court has adjourned a proceeding under section 27(d) of the **Children's Court Act 1973** and at that commencement the period of adjournment has not expired, the provisions of the **Children's Court Act 1973** continue, despite their repeal, to apply to that adjournment but if the child appears before the Court or the County Court for the further hearing of the proceeding and the Court or the County Court is satisfied that the child has failed to be of good behaviour or has not complied with any other condition imposed by the court, it may make a protection order in respect of the child<sup>33</sup>.
12. The repeal of section 335 of the **Crimes Act 1958** and the enactment of section 127 of this Act does not affect the hearing and determination of a charge for an offence against a child who was under the age of 10 years but of or above the age of 8 years at the time of the alleged offence if the offence is alleged to have been committed before the commencement of section 127.

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| <p>13. If before the commencement of section 137 a children's court or the County Court has adjourned a proceeding under section 26(1)(b) of the <b>Children's Court Act 1973</b> and at that commencement the period of adjournment has not expired, the provisions of the <b>Children's Court Act 1973</b> continue, despite their repeal, to apply to that adjournment but if the child appears before the Court or the County Court for the further hearing of the proceeding and the Court or the County Court is satisfied that the child has failed to be of good behaviour or has not complied with any other condition imposed by the court, it may deal with the child as if the Court or the County Court had just been satisfied of the child's guilt of the offence with which the child was charged<sup>34</sup>.</p>  | <p>Sch. 3 cl. 13<br/>amended by<br/>Nos 93/1990<br/>s. 22(m),<br/>19/1994<br/>s. 37(6)(a)(b).</p>   |
| <p>14. (1) If at the commencement of section 137 there is in force a probation order made by a children's court or the County Court or the Supreme Court under section 26(1)(c) of the <b>Children's Court Act 1973</b>, that order has effect from that commencement as a probation order made under this Act<sup>35</sup>.</p> <p>(2) The period for which a probation order to which sub-clause (1) applies remains in force from the commencement of section 137 is the period after that commencement for which the probation order would have remained in force if this Act had not been passed, even though that period may exceed the period for which such an order could be made under this Act.</p>   | <p>Sch. 3 cl. 14(1)<br/>amended by<br/>Nos 93/1990<br/>s. 22(m),<br/>19/1994<br/>s. 37(7).</p> <p>Sch. 3 cl. 14(2)<br/>amended by<br/>No. 93/1990<br/>s. 22(m).</p> |
| <p>15. The provisions of this Act relating to a default in the payment of a monetary penalty apply to a default in the payment of a penalty imposed on a child by a children's court or the County Court or the Supreme Court under section 26(1)(d) of the <b>Children's Court Act 1973</b> before the commencement of section 137<sup>36</sup>.</p>  | <p>Sch. 3 cl. 15<br/>amended by<br/>Nos 93/1990<br/>s. 22(m),<br/>19/1994<br/>s. 37(8).</p>   |
| <p>16. If before the commencement of section 137 a children's court or the County Court or the Supreme Court has under section 26(1)(e) of the <b>Children's Court Act 1973</b> discharged a child conditionally on the child entering into a recognizance to be of good behaviour and to observe any other condition imposed by the Court or the County Court or the Supreme Court and at that commencement the period limited by the recognizance has not expired, the provisions of the <b>Children's Court Act 1973</b> continue, despite their repeal, to apply to that recognizance but if the child appears before the Court or the County Court or the Supreme Court for punishment under that recognizance and the Court or the County Court or the Supreme Court is satisfied that the child has failed to be of good behaviour or to observe any other condition imposed by the court, it may deal with the child as if the Court or the County Court or the Supreme Court had just been satisfied of the child's guilt of the offence in respect of which the child was discharged on entering into the recognizance<sup>37</sup>.</p> | <p>Sch. 3 cl. 16<br/>amended by<br/>Nos 93/1990<br/>s. 22(m),<br/>19/1994<br/>s. 37(9)(a)(b).</p>   |

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Sch. 3 cl. 17(1)  
amended by  
No. 93/1990  
s. 24(i)(vii).

Sch. 3 cl. 17(2)  
amended by  
No. 93/1990  
s. 24(i)(viii).

Sch. 3 cl. 18  
amended by  
No. 93/1990  
s. 24(i)(ix).

Sch. 3 cl. 19(1)  
amended by  
No. 93/1990  
s. 24(i)(x).

Sch. 3 cl. 19(2)  
amended by  
No. 93/1990  
s. 24(i)(xi).

Sch. 3 cl. 19(3)  
amended by  
No. 93/1990  
s. 24(i)(xii).

Sch. 3 cl. 19(4)  
amended by  
No. 93/1990  
s. 24(i)(xiii).

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17. (1) A permit issued under section 200 of the **Community Services Act 1970** and in force immediately before the commencement of section 256 of this Act has effect as if it were a permit issued under section 256 of this Act.
- (2) An order made by the Youth Parole Board under Division 3 of Part VIII of the **Community Services Act 1970** and in force immediately before the commencement of section 215(1) of this Act has effect as if it were an order made under this Act by the Youth Parole Board established by section 215(1) of this Act.
- (3) A permit or order which under this clause has effect as if it were issued or made under this Act may be enforced, varied, amended, cancelled or revoked under the provisions of this Act which relate to permits or orders of that kind.
18. The State Guardianship Fund established under section 125 is the same fund as the State Wards Fund established under section 38 of the **Community Services Act 1970**.
19. (1) A children's reception centre or children's home established under section 27 of the **Community Services Act 1970** as in force immediately before the commencement of section 57 of this Act is deemed to be a community service established under section 57 of this Act.
- (2) A place, establishment or institution appointed under section 92 of the **Community Services Act 1970** as in force immediately before the commencement of section 249 of this Act as a youth hostel is deemed to be a community service established under section 57 of this Act, if operated by the Department, or a community service approved under section 58(1) of this Act, if not operated by the Department.
- (3) A children's reception centre, children's home or foster care agency approved under section 29 of the **Community Services Act 1970** as in force immediately before the commencement of section 58(1) of this Act is deemed to be a community service approved under section 58(1) of this Act.
- (4) A place, establishment or institution appointed under section 92 of the **Community Services Act 1970** as in force immediately before the commencement of section 249 of this Act as a service specified in column 1 of the Table is deemed to be established
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under section 249 of this Act as the service specified opposite it in column 2 of the Table.

**TABLE**

<i>Column 1</i>	<i>Column 2</i>
Remand centre	Remand centre
Youth training centre	Youth training centre

- (5) A place, establishment or institution appointed under section 92 of the **Community Services Act 1970** as in force immediately before the commencement of section 249 of this Act as a youth welfare service is deemed to be a youth supervision unit established under section 249 of this Act, if operated by the Department, or a youth supervision unit approved under section 250(1) of this Act, if not operated by the Department.
20. Unless the context otherwise requires, any reference in any Act (other than this Act) or in any subordinate instrument or in any document or writing of any kind whatsoever to a youth training centre is to be taken to include a reference to a youth residential centre.
21. Until the commencement of section 142 of the **Health Services Act 1988**, sections 64(3)(d) and 67(1)(c) have effect as if for the words "section 141 of the **Health Services Act 1988**" there were substituted the words "section 92A of the **Hospitals and Charities Act 1958**".
22. The amendments of this Act made by section 50 of the **Sentencing and Other Acts (Amendment) Act 1997** apply to a proceeding for an offence that is commenced after the commencement of that section, irrespective of when the offence to which the proceeding relates is alleged to have been committed.
23. The amendments of this Act made by section 51 or 52 of the **Sentencing and Other Acts (Amendment) Act 1997** apply to a sentence imposed after the commencement of that section, irrespective of when the offence was committed.
24. Section 88AA of the **Magistrates' Court Act 1989**, as applying to an appeal under section 197 of this Act by force of Part 3 of the **Magistrates' Court (Amendment) Act 1999**, applies only with respect to appeals where the notice of appeal is given on or after 1 July 1999.

Sch. 3 cl. 19(5)  
amended by  
No. 93/1990  
s. 24(i)(xiv).

Sch. 3 cl. 22  
inserted by  
No. 48/1997  
s. 53.

Sch. 3 cl. 23  
inserted by  
No. 48/1997  
s. 53.

Sch. 3 cl. 24  
inserted by  
No. 10/1999  
s. 17(2).

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Sch. 3 cl. 24  
inserted by  
No. 19/1999  
s. 17(2),  
renumbered  
as Sch. 3  
cl. 24A by  
No. 74/2000  
s. 3(Sch. 1  
item 18.9).

Sch. 3 cl. 25  
inserted by  
No. 36/2000  
s. 16.

- 24A. The amendment of the penalty set out at the foot of section 256(10) made by section 17 of the Sentencing (Amendment) Act 1999 applies only to offences committed after the commencement of that section of that Act.
25. (1) The office of Children's Court Senior Magistrate is abolished and the person holding that office immediately before the commencement of section 5 of the **Children and Young Persons (Appointment of President) Act 2000** goes out of office.
- (2) Any reference to the Children's Court Senior Magistrate in any Act or in any subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** must, so far as it relates to any period after the commencement of section 5 of the **Children and Young Persons (Appointment of President) Act 2000** and if not inconsistent with the context or subject-matter, be construed as a reference to the President.
- (3) The amendments of sections 9 and 11 of this Act made by section 4 of the **Children and Young Persons (Appointment of President) Act 2000** do not affect the operation of any notice published under section 9 or assignment made under section 11 before the commencement of section 4 of that Act and any such notice or assignment has effect on and after that commencement as if it had been published or made by the President after consulting the Chief Magistrate.
- (4) The amendments of this Act made by section 14 of the **Children and Young Persons (Appointment of President) Act 2000** do not affect the operation of any rules of court made before the commencement of that section under a provision amended by that section.



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Sch. 4  
inserted by  
No. 93/1990  
s. 23,  
amended by  
Nos 69/1992  
s. 37(4),  
19/1994  
s. 38(6),  
repealed by  
No. 74/2000  
s. 3(Sch. 1  
item 18.10).

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**NOTES**

**1. General Information**

*Minister's second reading speech—*

*Legislative Assembly: 8 December 1988*

*Legislative Council: 26 May 1989*

The long title for the Bill for this Act was "a Bill to establish the Children's Court of Victoria, to provide for the constitution, jurisdiction and proceedings of that Court, to make fresh provision in relation to the protection of children and in relation to children who have been charged with, or who have been found guilty of, offences, to repeal the **Children's Court Act 1973**, to amend the **Community Welfare Services Act 1970** and various other Acts and for other purposes."

The **Children and Young Persons Act 1989** was assented to on 14 June 1989 and came into operation as follows:

Part 1, Division 1 of Part 2, section 18, Division 5 of Part 2, Division 6 of Part 2 (*except* section 28), section 36, Division 1 of Part 4, Subdivisions 2, 3, 5 of Division 10 of Part 4, Division 11 of Part 4 (*except* sections 235, 237–239, 243, 245, 247 and 248(2)), section 249 (*except* paragraphs (b), (c) and (d)), Division 13 of Part 4 (*except* sections 255, 257, 258 and 260), section 268 (*except* paragraph (a)), Division 5 of Part 5, Part 6 (*except* sections 281, 284(da), (db), (dc), (dd), (de), (df), (dg), (e), (ea), (eb), (ed), (ee), (f), (g), (i), (j), (k), (l), (m), 285(b)–(e)), items 6, 7.1, 7.2, 7.5–7.9, 7.11, 7.12, 7.14, 7.15, 10, 12.3–12.5, 14 of Schedule 2, all items in Part 1 of Schedule 4 (*except* items 13, 15, 16, 89 and 92), and item 139 in Part 3 of Schedule 4 on 31 January 1991: Special Gazette (No. 9) 31 January 1991 page 2.

Division 2 of Part 2, sections 19, 20 (*except* sub-sections (2)(3)(10)), 22, 23, Division 4 of Part 2, sections 28, 34, 35, 37, Division 8 of Part 2 (*except* Subdivisions 2, 3), Division 1 of Part 3, Division 2 of Part 3 (*except* sections 64(3)(c), 66(5)–(7), 67(2)), Division 3 of Part 3, Division 4 of Part 3 (*except* sections 73(3)(e), 75), Division 5 of Part 3 (*except* section 83), sections 84, 86(2)(3), 87, 93, Division 8 of Part 3 (*except* section 116(1)–(4)), sections 119–122, Divisions 2–9 of Part 4, sections 204–214, 227–230, 235, 237–239, 243, 245, 247, 248(2), 249(b)–(d), 250, 251, 252(a), 255, 257, 258, Division 1 of Part 5 (*except* sections 261, 262), sections 267, 268(a), 269, 270, Divisions 3, 4 of Part 5, sections 284(da)–(dd)(df)(ea)(eb)(ed)(ee) (i)–(m), 285(b)–(e), Schedule 2 items 2.1, 5, 7.3, 7.4, 7.10, 7.13, 7.16, 9, 11.1, 11.2, 12.1, 12.2, 13, 16, Schedule 4 Part 1 item 92, Schedule 4 Part 2 all items (*except* item 100) on 23 September 1991: Government Gazette 28 August 1991 page 2368.

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Sections 73(3)(e), 75 on 18 March 1992: Special Gazette (No. 4) 18 March 1992 page 1.

Sections 48(1)(b)(i), 49–51, 112–115 on 16 April 1992: Government Gazette 15 April 1992 page 898.

Sections 20(2)(3)(10), 21(2), 44–47, 48(1)(a)(b)(ii)–(iv)(c)(2), 66(5)–(7), 83, 85, 86(1), 88–92, 94–111, 116(1)–(4), 123–126, 252(b)–(d), 260–262, 281, 284(de)(dg)(e)(f)(g), Schedule 1, Schedule 2 items 1.2, 3, 4, 8, Schedule 3 on 30 September 1992: Government Gazette 26 August 1992 page 2470.

S. 67(2) on 22 February 1993: Government Gazette 28 January 1993 page 175.

Section 21(1) not yet proclaimed.

Schedule 2 items 2.2, 2.3, 15 never proclaimed, repealed by No. 69/1992 section 37(2); Schedule 4 items 13, 15, 16, 89 never proclaimed, repealed by No. 69/1992 section 37(4); section 64(3)(c) never proclaimed, repealed by No. 19/1994 section 11(4); Schedule 4 items 100, 137, 138 never proclaimed, repealed by No. 19/1994 section 38(6); Schedule 2 item 1.1 never proclaimed, repealed by No. 32/2000 section 19.

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## 2. Table of Amendments

This Version incorporates amendments made to the **Children and Young Persons Act 1989** by Acts and subordinate instruments.

### **Crimes (Family Violence) (Amendment) Act 1990, No. 17/1990**

*Assent Date:* 29.5.90  
*Commencement Date:* 29.5.90  
*Current State:* All of Act in operation

### **Children and Young Persons (Amendment) Act 1990, No. 93/1990**

*Assent Date:* 18.12.90  
*Commencement Date:* All of Act (*except* s. 8(2)) on 31.1.91: Special Gazette (No. 9) 31.1.91 p. 2; s. 8(2) on 30.9.92: Government Gazette 26.8.92 p. 2470  
*Current State:* All of Act in operation

### **Sentencing Act 1991, No. 49/1991**

*Assent Date:* 25.6.91  
*Commencement Date:* 22.4.92: Government Gazette 15.4.92 p. 898  
*Current State:* All of Act in operation

### **Children and Young Persons (Amendment) Act 1992, No. 69/1992** (as amended by Nos 19/1994, 40/1995)

*Assent Date:* 24.11.92  
*Commencement Date:* S. 33(1) on 14.6.89: s. 2(2); ss 3, 20(10), 26(3), 28, 30(3)(4), 31(1) (*except* (1)(b)), 37, 38 on 29.1.93; ss 4–6, 8–12, 13 (*except* (2)), 14–19, 20(2)(4)(5), 22–24, 26(1)(2), 27, 29, 30(1)(2) on 22.2.93: Government Gazette 28.1.93 p. 174; s. 7 on 14.6.93: Government Gazette 10.6.93 p. 1478; ss 20(7)(8), 21 on 2.4.95: Government Gazette 30.3.95 p. 695; s. 31(1)(b) never proclaimed, repealed by No. 19/1994  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

### **Children and Young Persons (Further Amendment) Act 1993, No. 10/1993** (as amended by No. 19/1994)

*Assent Date:* 11.5.93  
*Commencement Date:* 11.5.93  
*Current State:* All of Act in operation

### **Nurses Act 1993, No. 111/1993**

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*Assent Date:* 7.12.93  
*Commencement Date:* S. 102 on 1.7.94: Government Gazette 16.6.94 p. 1576  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Health and Community Services (Further Amendment) Act 1993, No. 124/1993**

*Assent Date:* 7.12.93  
*Commencement Date:* S. 3 on 7.12.93: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Children and Young Persons (Miscellaneous Amendments) Act 1994, No. 19/1994**

*Assent Date:* 10.5.94  
*Commencement Date:* Ss 1–3, 6, 8, 11(1)–(3), 23, 24 (*except* (b)), 26(1) (*except* (b)), 32, 35, 37(1)(10)(11), 38 (*except* (8)), 39, 40 (*except* (3)) on 10.5.94: s. 2(1); s. 5 on 14.6.89: s. 2(2); s. 37(3)(6)–(9) on 23.9.91: s. 2(3) (where secondly occurring); s. 37(2)(4)(5) on 30.9.92: s. 2(4); s. 38(8) on 11.5.93: s. 2(5); s. 40(3) on 13.6.94: s. 2(6); ss 7, 9, 14, 15, 17, 18, 21, 29, 31 on 11.7.94: s. 2(3); rest of Act on 1.3.95: s. 2(8)  
*Current State:* All of Act in operation

**Medical Practice Act 1994, No. 23/1994**

*Assent Date:* 7.5.94  
*Commencement Date:* Ss 116, 118(Sch. 1 item 8) on 1.7.94: Government Gazette 23.6.94 p. 1672  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Sentencing (Victim Impact Statement) Act 1994, No. 24/1994**

*Assent Date:* 17.5.94  
*Commencement Date:* Ss 8, 9 on 31.5.94: Government Gazette 26.5.94 p. 1265  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Financial Management (Consequential Amendments) Act 1994, No. 31/1994**

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*Assent Date:* 31.9.94  
*Commencement Date:* S. 3(Sch. 1 item 8) on 7.7.94: Government Gazette 7.7.94 p. 1878—see **Interpretation of Legislation Act 1984**  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Constitution (Court of Appeal) Act 1994, No. 109/1994**

*Assent Date:* 20.12.94  
*Commencement Date:* S. 34(6) on 7.6.95: Special Gazette (No. 41) 23.5.95 p. 1  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Legal Practice Act 1996, No. 35/1996**

*Assent Date:* 6.11.96  
*Commencement Date:* S. 453(Sch. 1 item 9) on 1.1.97: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Births, Deaths and Marriages Registration Act 1996, No. 43/1996**

*Assent Date:* 26.11.96  
*Commencement Date:* S. 65(Sch. item 3) on 2.10.97: Government Gazette 2.10.97 p. 2731  
*Current State:* This information relates only to the provision/s amending the **Births, Deaths and Marriages Registration Act 1996**

**Children and Young Persons (Miscellaneous Amendments) Act 1996, No. 44/1996**

*Assent Date:* 26.11.96  
*Commencement Date:* 26.11.96: s. 2  
*Current State:* All of Act in operation

**Corrections (Amendment) Act 1996, No. 45/1996**

*Assent Date:* 26.11.96  
*Commencement Date:* S. 18(Sch. 2 item 2) on 6.2.97: Government Gazette 6.2.97 p. 257  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Children's Services Act 1996, No. 53/1996 (as amended by No. 74/2000)**

*Assent Date:* 3.12.96  
*Commencement Date:* S. 58 on 1.6.98: Government Gazette 28.5.98 p. 1189  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Evidence (Audio Visual and Audio Linking) Act 1997, No. 4/1997**

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*Assent Date:* 22.4.97  
*Commencement Date:* Ss 9, 10 on 22.12.97: Government Gazette 18.12.97 p. 3612  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Police and Corrections (Amendment) Act 1997, No. 26/1997**

*Assent Date:* 20.5.97  
*Commencement Date:* Ss 49, 50 on 22.5.97: Government Gazette 22.5.97 p. 1131  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Sentencing and Other Acts (Amendment) Act 1997, No 48/1997**

*Assent Date:* 11.6.97  
*Commencement Date:* Ss 50–53 on 1.9.97: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Miscellaneous Acts (Omnibus No. 1) Act 1998, No. 43/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* Ss 4, 5 on 26.5.98: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 7(Sch. 1) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998**

*Assent Date:* 2.6.98  
*Commencement Date:* S. 311(Sch. 1 item 13) on 1.7.98: Government Gazette 18.6.98 p. 1512  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Magistrates' Court (Amendment) Act 1999, No. 10/1999**

*Assent Date:* 11.5.99  
*Commencement Date:* S. 31(3) on 11.5.99: s. 2(1); s. 17 on 1.7.99: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Public Sector Reform (Further Amendments) Act 1999, No. 12/1999**

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*Assent Date:* 11.5.99  
*Commencement Date:* S. 4(Sch. 2 item 3) on 11.5.99: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Sentencing (Amendment) Act 1999, No. 19/1999**

*Assent Date:* 18.5.99  
*Commencement Date:* S. 17 on 18.5.99: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Adoption (Amendment) Act 2000, No. 32/2000**

*Assent Date:* 6.6.00  
*Commencement Date:* S. 19 on 15.12.00: Government Gazette 14.12.00 p. 2915  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Children and Young Persons (Appointment of President) Act 2000, No. 36/2000**

*Assent Date:* 6.6.00  
*Commencement Date:* Ss 4–16 on 26.6.00: Special Gazette (No. 87) 22.6.00 p. 1  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

**Statute Law Revision Act 2000, No. 74/2000**

*Assent Date:* 21.11.00  
*Commencement Date:* S. 3(Sch. 1 item 18) on 22.11.00: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Children and Young Persons Act 1989**

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### 3. Explanatory Details

<sup>1</sup> S. 25: Section 12 of the **Evidence (Audio Visual and Audio Linking) Act 1997**, No. 4/1997 reads as follows:

#### **12. Transitional provisions**

- (1) An amendment made by a provision of this Act to the **Evidence Act 1958**, the **Supreme Court Act 1986**, the **County Court Act 1958**, the **Magistrates' Court Act 1989** or the **Children and Young Persons Act 1989** applies to a proceeding that is commenced to be heard on or after the twenty-first day after the commencement of that amendment, irrespective of when the proceeding was commenced or when any offence to which the proceeding relates is alleged to have been committed.
- (2) For the purposes of sub-section (1) in its application to criminal proceedings—
  - (a) a trial is commenced to be heard on arraignment of the accused person; and
  - (b) a hearing of a charge for an offence is commenced to be heard on the taking of a formal plea from the accused person.

<sup>2</sup> S. 25(5A): Section 23 of the **Children and Young Persons (Miscellaneous Amendments) Act 1996**, No. 44/1996 reads as follows:

#### **23. Transitional**

- (1) The Principal Act as amended by Part 2 of this Act applies to a person, whether the person—
  - (a) was sentenced to a period of imprisonment;  
or
  - (b) was transferred under Division 10 of Part 4 of the Principal Act—  
before or after the commencement of this Act.

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- (2) The amendments to the Principal Act made by Part 2 of this Act do not affect the release of a person on parole under Division 10 of Part 4 of the Principal Act before the commencement of this Act.

<sup>3</sup> S. 37A: Section 38 of the **Children and Young Persons (Amendment) Act 1992**, No. 69/1992 (as amended by No. 19/1994 s. 40(3)) reads as follows:

**38. Sunset provision**

The amendments made to the Principal Act by section 7 continue in force only until 30 June 1995 and, thereafter, the Principal Act has effect as if it had not been amended by that section.

Section 38 of the **Children and Young Persons (Amendment) Act 1992** was repealed by section 3 of Act No. 40/1995 on 14 June 1995.

<sup>4</sup> S. 64(1C)(a): Government Gazette dated 28 October 1993, page 2932 reads as follows:

The Governor in Council, under section 64(1D) of the **Children and Young Persons Act 1989** ("the Act") orders that 4 November 1993 be the date fixed for the purposes of paragraphs (a), (c) and (i) of section 64(1C) of the Act.

<sup>5</sup> S. 64(1C)(c): See note 4.

<sup>6</sup> S. 64(1C)(d): Government Gazette dated 14 July 1994, page 1977 reads as follows:

The Governor in Council, under section 64(1D) of the **Children and Young Persons Act 1989** ("the Act") orders that 18 July 1994 be the date fixed for the purposes of paragraphs (d)(da)(db) and (e) of section 64(1C) of the Act.

<sup>7</sup> S. 64(1C)(da): See note 6.

<sup>8</sup> S. 64(1C)(db): See note 6.

<sup>9</sup> S. 64(1C)(e): See note 6.

<sup>10</sup> S. 64(1C)(i): See note 4.

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- <sup>11</sup> S. 82A: See note 3.
- <sup>12</sup> S. 82B: See note 3.
- <sup>13</sup> S. 87(1): See note 3.
- <sup>14</sup> S. 87(2): See note 3.
- <sup>15</sup> S. 237: See note 2.
- <sup>16</sup> S. 239(5): See note 2.
- <sup>17</sup> S. 239(6): See note 2.
- <sup>18</sup> S. 239(7): See note 2.
- <sup>19</sup> S. 243(6): See note 2.
- <sup>20</sup> S. 243(7): See note 2.
- <sup>21</sup> S. 243(8): See note 2.
- <sup>22</sup> Pt 4 Div. 10 Subdiv. 5 (Heading): See note 2.
- <sup>23</sup> S. 244(6): See note 2.
- <sup>24</sup> S. 244(7): See note 2.
- <sup>25</sup> S. 244(8): See note 2.
- <sup>26</sup> S. 244A: See note 2.
- <sup>27</sup> S. 244B: See note 2.
- <sup>28</sup> S. 258(1)(a): See note 1.
- <sup>29</sup> S. 280B: See note 1.
- <sup>30</sup> S. 280C: See note 1.
- <sup>31</sup> Sch. 3 cl. 8: Section 37(10) of the **Children and Young Persons (Miscellaneous Amendments) Act 1994**, No. 19/1994 reads as follows:

***37. Amendments to transitional provisions***

- (10) The amendments of the Principal Act made by sub-sections (2), (4) and (5) do not have the effect of invalidating anything done in relation to an order of the County Court between the commencement of section 85 of the Principal Act and the date on which this Act receives the Royal Assent which would have been validly done had this Act not been passed but, from the date on which this Act receives the Royal Assent, clauses

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8, 10 and 11 of Schedule 3 to the Principal Act have effect in relation to such an order that is then in force as if any reference in those clauses to the commencement of section 85 were a reference to that date.

<sup>32</sup> Sch. 3 cl. 10: See note 31.

<sup>33</sup> Sch. 3 cl. 11: See note 31.

<sup>34</sup> Sch. 3 cl. 13: Section 37(11) of the **Children and Young Persons (Miscellaneous Amendments) Act 1994**, No. 19/1994 reads as follows:

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(11) The amendments of the Principal Act made by sub-sections (6), (7), (8) and (9) do not have the effect of invalidating anything done in relation to an order of the County Court between the commencement of sections 84 and 137 of the Principal Act and the date on which this Act receives the Royal Assent which would have been validly done had this Act not been passed but, from the date on which this Act receives the Royal Assent, clauses 13, 14, 15 and 16 of Schedule 3 to the Principal Act have effect in relation to such an order that is then in force as if any reference in those clauses to the commencement of section 84 or 137 (as the case requires) were a reference to that date.

<sup>35</sup> Sch. 3 cl. 14: See note 34.

<sup>36</sup> Sch. 3 cl. 15: See note 34.

<sup>37</sup> Sch. 3 cl. 16: See note 34.