

Children and Young Persons Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 sets out the purposes of the Act.

Clause 2 provides for the Act to come into operation on a day or days to be proclaimed.

Clause 3 sets out the definitions under the Act.

Clause 4 provides a definition of “guardianship” consistent with other family law definitions.

Clause 5 provides a definition of “custody” consistent with other family law definitions.

Clause 6 provides for the declaration of “Aboriginal agency”.

Clause 7 provides for the delegation of powers and functions of the Director-General of Community Services under this Act or the Regulations.

PART 2—THE CHILDREN’S COURT OF VICTORIA

Division 1—Establishment

Clause 8 provides for the establishment of the Children’s Court, constitutes a Family Division and Criminal Division of the Children’s Court, and requires them to sit at different times and places.

Clause 9 provides for the places and times at which the Children’s Court is to be held.

Clause 10 enables the Chief Magistrate to make arrangements for a Magistrate to attend on the day, time and place on which the Court is to be held.

Clause 11 provides for the assignment of Magistrates to the Children’s Court by the Chief Magistrate.

Clause 12 requires the Magistrates to carry out duties assigned by the Chief Magistrate.

Clause 13 provides the same protection and immunity to a Magistrate in the performance of his or her duties as to a Judge.

Division 2—Jurisdiction

Clause 14 sets out those matters which the Family Division has jurisdiction to hear and determine.

Clause 15 sets out those matters which the Criminal Division has jurisdiction to hear and determine.

Clause 16 provides that the Children’s Court has exclusive jurisdiction in relation to any matter over which it has jurisdiction.

Division 3—Procedure

Clause 17 sets out procedural guidelines to be followed by the Children’s Court to ensure that the child, and the child’s family, can understand and participate in the proceedings.

Clause 18 provides for proceedings in the Children’s Court to be heard in open Court.

Clause 19 provides for the child, and where appropriate the child's parents to be legally represented in certain classes of matters. In the Family Division, with leave of the Court, a child may be represented by a person other than a legal practitioner or a parent of the child.

Clause 20 provides for the presence of an interpreter where the child or child's parents or any other party to the proceeding do not have a good understanding of the English language.

Clause 21 requires the Court to provide an explanation of and reasons for an order it has made, and sets out procedures for the provision of a written copy of the order and a written statement of the explanation and reasons.

Division 4—Powers

Clause 22 provides for the Children's Court to have the same powers as the Magistrate's Court and for the provisions of the *Magistrate's Court Act 1987* to apply to the Children's Court unless the provisions of the Magistrate's Court Act are contrary to this Act.

Clause 23 enables the Children's Court to adjourn the hearing of a proceeding.

Division 5—Restriction on Publication of Proceedings

Clause 24 prohibits publication of a proceeding in the Children's Court, or of a proceeding in any other Court arising out of a proceeding in the Children's Court, where that publication leads to the identification of a child or other party to the proceedings or a witness in the proceeding.

Division 6—Court Officers

Clause 25 establishes the offices of a Principal Registrar, Registrars and Deputy Registrars and provides for persons who hold the office of Principal Registrar, Registrar or Deputy Registrar of the Magistrate's Courts to be a Principal Registrar, Registrar or Deputy Registrar of the Children's Court.

Clause 26 requires the Principal Registrar to cause a register to be kept of the orders of the Court. Any person may, on payment of the prescribed fee, inspect the register. A party to a proceeding may inspect, without charge, that part of the register that related to that proceeding.

Clause 27 provides that a process may only be issued out of the Court by a Registrar. The Principal Registrar is required to keep the original of all process issued out of the Court.

Clause 28 provides a Registrar with powers to issue any proceedings out of the Court, administer an oath, and extend bail of the person in relation to a criminal proceeding. A Registrar will not be able to vary the amount or conditions of bail.

Clause 29 makes it an offence to engage in extortion and prohibits the impersonation of a court official.

Clause 30 provides the same protection and immunity to a Registrar as to a Magistrate.

Division 7—Court Services

Clause 31 provides for the appointment of stipendiary and honorary probation officers who are subject to the direction of the Court but otherwise are subject to the direction and control of the Director-General of Community Services. The Director-General of Community Services must co-ordinate the activities of probation officers.

Clause 32 sets out the duties of probation officers and other related requirements.

Clause 33 establishes the Children's Court liaison Office, sets out its functions, and provides for the appointment of court liaison officers.

Clause 34 establishes the Children's Court Clinic.

PART 3—PROTECTION OF CHILDREN

Division 1—Services for Children

Clause 35 provides for the establishment of community services and secure welfare services to meet the needs of children requiring protection, care or accommodation.

Clause 36 enables the Director-General to approve a person or an organisation to be a community service for children needing protection, care or accommodation and enables the Director-General to make a grant to an approved community service to assist the service in carrying out its functions.

Clause 37 enables the Minister for Community Services to issue directions relating to the standard of services provided by community services and to take appropriate measures to ensure maintenance of these standards.

Clause 38 enables the Minister for Community Services to determine rates for payment for children who are placed in approved community services in the custody or under the guardianship of the Director-General and for children in who's favor a permanent care order is made (whether the order for guardianship and custody is made by the Children's Court or the Family Court).

Clause 39 enables the Director-General of Community Services to examine and inspect any community service in regard to the state and management of the service and the condition and treatment of children in that service and to inspect personal records kept in that community service of any child of whom the Director-General has custody or guardianship.

Clause 40 prohibits persons from providing long-term care for children under 15 years of age for any fee or reward unless exempted under this provision.

Division 2—Children in Need of Protection

Clause 41 sets out the revised grounds under which a protection application can be made in respect of a child who is in need of protection.

Clause 42 provides for any person who believes on reasonable grounds that a child is in need of a protection to notify a protective intervener. It also provides indemnity to the person giving the notification and sets out requirements and restrictions in respect of the disclosure of the contents of a notification.

Clause 43 provides that all members of the Police Force and the Director-General are to be protective interveners. It also enables the Minister for Community Services, after consultation with the Minister for Police, to provide directions for protective interveners as to the conduct of investigations and exercise of their functions and the Minister is required to publish these in the *Government Gazette*.

Clause 44 provides that a protective intervener must, as soon as practicable after receiving a notification that a child is in need of protection, investigate the matter. It also provides that the Director-General must furnish a protection report upon the request of a member of the Police Force investigating a notification. It also requires the protective intervener to record in writing, details and results of the investigation. The disclosure of any record of investigation where no further action is taken is prohibited, other than to the Director-General or Chief Commissioner of Police or other authorised people.

Clause 45 provides indemnity to the person giving information to a protective intervener during the course of the investigation. It also prohibits a protective intervener from disclosing to any person, other than another protective intervener, the name of the person who gave information or any information that is likely to lead to the identification of the person who gave information, unless that person has given written consent.

Clause 46 enables a protective intervener to take the child into safe custody with or without a warrant pending the hearing of a protection application providing the protective intervener is satisfied, on reasonable grounds, that the child is in need of protection. A protection application must be lodged in these circumstances. Alternatively, the protective intervener may serve a notice directing the child to appear before the Court for the hearing of a protection application.

Clause 47 enables a protective intervener to apply for a search warrant to take the child into safe custody. A search warrant may only be executed by a member of the Police Force of or above the rank of Sergeant. Where a child is taken into safe custody, the protective intervener must give the child's parent written information relating to the taking of a child into safe custody. It also provides for the child to be brought before the Court or Bail Justice as soon as practicable and within one working day after the child has been taken into safe custody for the making of an interim accommodation order. Until the child is brought before the Court or a Bail Justice for the making of an interim accommodation order, the child may be placed in a community service or in a secure welfare service or in any other accommodation approved by the Director-General.

Clause 48 enables a protective intervener to make a protection application, without taking the child into safe custody, by serving a notice on the child and the child's parents. If the child does not appear before the Court, the Court may issue a search warrant.

Division 3—Irreconcilable Differences

Clause 49 enables a child or a person who has custody of a child and who believes that there are substantial and presently irreconcilable differences between them to such an extent that the care and control of the child are likely to be seriously disrupted, to apply for conciliation counselling.

Clause 50 provides that before an irreconcilable difference application can be filed, an application for conciliation counselling must be lodged with the Director-General and the applicant must produce to the Court the certificate of conciliation counselling issued by the Director-General. Where an application for conciliation counselling is lodged, the Director-General must ensure that conciliation counselling is provided to the parties within 21 days. It further sets out the purpose and other requirements of conciliation counselling.

Division 4—Interim Accommodation Orders

Clause 51 specifies the circumstances in which the Court or Bail Justice may make an interim accommodation order in respect of a child; who can make an application for an interim accommodation order; and the types of interim accommodation orders which may be made. Conditions may be included in an interim accommodation order, including access by a parent to the child.

Clause 52 specifies the duration of interim accommodation orders.

Clause 53 places a limitation on the placement of a child in a secure welfare service under an interim accommodation order.

Clause 54 provides that where an interim accommodation order is made in respect of a child providing for the placement of the child in a secure welfare service, the Court or Bail Justice must arrange for the child's parent to be given a written statement containing information about the order. In certain circumstances when making an interim

accommodation order, the Court of a Bail Justice may direct that the details of the child's whereabouts be withheld from a parent of the child.

Clause 55 provides that where a child is placed in a community service or secure welfare service on an interim accommodation order, the Director-General may transfer the child from one community service or secure welfare service to another and must notify the child's parents of that change.

Clause 56 specifies the circumstances in which an application may be made to the Court for the variation of an interim accommodation order.

Clause 57 specifies persons who may appeal to the Supreme Court against an interim accommodation order in respect of a child and specifies what action the Supreme Court must take in relation to the appeal.

Clause 58 provides for procedures in respect of breach of an interim accommodation order.

Division 5—Procedures in Family Division

Clause 59 provides for the manner in which the Family Division of the Children's Court must conduct proceedings and provides that the Attorney-General may intervene in proceedings before the Family Division.

Clause 60 requires the Family Division of the Children's Court to take certain matters into account in determining whether or not to make an order in a proceeding in the Family Division.

Clause 61 enables the Family Division of the Children's Court to make an order without requiring the parties to attend (to be referred to as a consent order) where the parties to the proceeding have agreed on the terms of the order.

Clause 62 provides that if the Family Division requires additional information to enable it to determine a protection application, the Court may order the Director-General to submit a protection report.

Clause 63 specifies the circumstances in which the Director-General must prepare and submit a disposition report to the Family Division of the Children's Court.

Clause 64 enables the Family Division of the Children's Court to order the preparation of an additional report.

Division 6—Protection Orders

Sub-Division 1—General

Clause 65 specifies when the Court may make a protection order in respect of a child.

Clause 66 provides that the Court must not make a protection order unless it has received and considered a disposition report and sets out the factors which the Court must take into account before it can make a protection order removing the child from his or her parent.

Clause 67 enables the Court to make an interim protection order when hearing and determining a protection application or an irreconcilable difference application. It also specifies what the interim protection order can do, its duration and the conditions which can be included. When the interim protection order expires, the Court must make a final determination regarding the protection application or irreconcilable difference application.

Clause 68 sets out the procedures in respect of a breach of an interim protection order.

Clause 69 specifies the types of protection order that the Family Division may make and procedures for the variation or revocation of a protection order.

Sub-Division 2—Undertaking

Clause 70 enables the Court to require the child or the child's parent or the person who has custody of the child or with whom the child is living to enter into an undertaking in writing for a specified period not exceeding six months. If the Court is satisfied that there are special circumstances the order may be made for a period exceeding six months but not exceeding twelve months.

Sub-Division 3—Supervision Order

Clause 71 specifies that a supervision order remains in force for a period not exceeding twelve months or, if the Court is satisfied that there are special circumstances, for a period not exceeding two years. Where the Court specifies a period exceeding twelve months the Director-General must review the case plan before the end of the twelve months period and notify the Court, the child, child's parent and other persons as specified by the Court if the order is to continue for the full duration of the period specified in the order. If the Director-General does not notify the Court, the supervision order ceases to be in force at the end of twelve months.

Clause 72 provides that the supervision order may include conditions to be observed by the child, the parent of the child or the person who has custody of the child or with whom the child is living but it must not include any condition as to where the child lives.

Clause 73 requires the parent or person with whom the child is living to allow the Director-General to visit the child under supervision and give directions to the parent or person caring for the child.

Clause 74 sets out provisions relating to applications to vary or revoke a supervision order and the powers of the Court in respect of the application.

Clause 75 sets out procedures in respect of breaches of supervision orders.

Sub-Division 4—Custody to Third Party Order

Clause 76 enables the Court to make an order granting custody of the child to a person or persons other than the Director-General, a person in charge of a community service or a parent for a period not exceeding one year. This order does not effect the guardianship of the child. The goal of a third party custody order is to re-unite the child with his or her family. It also enables the Court to place conditions, including conditions as to access. It also provides that where joint custodians can not agree on matters affecting the child, one of them may apply to the Court to determine the matter.

Clause 77 specifies persons who may apply for variation or revocation of custody to third party order and specifies the powers of Court in relation to that application.

Sub-Division 5—Supervised Custody Order

Clause 78 empowers the Court to make an order granting custody to third party which will be supervised by the Director-General. The provisions of Clauses 73 and 75 relating to supervision orders apply to supervised custody orders where appropriate. The goal of the order is to re-unite the child with his or her family.

Sub-Division 6—Custody to Director-General Order

Clause 79 enables the court to make an order granting sole custody of the child to the Director-General for a specified period not exceeding one year. This order does not affect the guardianship of the child. this section also enables the Court to place conditions on the

order including access by the parent or guardian or other person. The Court may only make a custody to Director-General order with the consent of the Director-General.

Clause 80 provides for an application to be made by the Director-General to the Children's Court for an extension of the order for a period not exceeding twelve months.

Clause 81 enables an application to be made to the Children's Court for an extension of the order beyond two years. When such an application is made by the Director-General, the Court must give due consideration to the possibility of re-unification of the child with the parent; the appropriateness of a permanent care order, and the benefits of retaining the custody of the Director-General, in that order.

The Court must take certain other matters into account and can not make an order unless it has received and considered a disposition report.

The section further provides that where the Court is satisfied that it would not be in the interest of the child to be returned to the custody of the parent but that a permanent care order would be more appropriate it may make an order extending the custody to Director-General order for a period not exceeding twelve months on the condition that, at the end of that period, the Director-General makes an application to a Court for a permanent care order.

Where the Court is satisfied that an extension of custody to the Director-General is in the best interests of the child, it may make an order extending the custody for a further period not exceeding two years.

Clause 82 enables the Director-General to make a further application to the Court at the end of the 2 year order to extend the period of custody. The provisions of *Clause 81* apply to such an application.

Clause 83 provides that the custody order to the Director-General is suspended upon the filing, with the prior consent of the Director-General, of an application for guardianship and custody under the *Family Law Act 1975* with the consent of the parties; and it ceases to be in force where an order is made. If an order is not made, or the application is withdrawn, the custody order to the Director-General by the Children's Court revives.

Clause 84 specifies persons who may make an application for a variation or revocation of a custody to Director-General order and specifies the powers of the Court in respect of that application.

Sub-Division 7—Guardianship to Director-General Order

Clause 85 empowers the Court to make an order granting guardianship of a child to the Director-General for a specified period not exceeding two years. The order grants both guardianship and custody to the Director-General.

The guardianship to the Director-General order ceases to be in force when a child attains the age of 18 years, or marries.

A guardianship to Director-General order may be made for a period not exceeding 2 years. Where an order is made for a period of exceeding 12 months, the Director-General must review the case plan before the end of the twelve months period and notify the Court, the child, the child's parent and other persons as the Court directs if the Director-General considers the order should continue for the duration of the period specified in the order. If the Director-General does not make a notification, guardianship to Director-General order ceases to be in force at the end of twelve months.

Clause 86 provides that where an order was initially made for 12 months, the Director-General may apply to extend the order for a further twelve months. The Court must extend the order if it is satisfied that the Director-General, the child and the parent or guardian have agreed to extend the order and it is in the best interest of the child.

Clause 87 provides that where applications are made for additional extensions beyond 2 years to the guardianship to the Director-General order, the provisions relating to extension of custody to the Director-General orders in sections 81 and 82 apply. As well the provisions which apply to the lapsing of a custody to Director-General order apply to the lapsing of a guardianship to the Director-General order.

Clause 88 specifies that the Director-General, the child or a parent of the child may apply for the revocation of a guardianship to Director-General order. An application by the child or the parent of the child may only be made if there are changed circumstances and the person has asked the Director-General to review the case plan and the Director-General has either refused, or has reviewed it in a way which the person finds unsatisfactory. It further specifies the powers of the Court in respect of that application.

Division 7—Permanent Care Orders

Clause 89 empowers the Court to make an order granting guardianship and custody of a child to a person or persons other than the Director-General, to be known as a permanent care order, and specifies persons who are eligible to apply for a permanent care order. The Court cannot make a permanent care order unless it is satisfied that the child has not been in the care of the parent for a period of at least two years, or a total of two out of the last three years, and that the applicant is a suitable person to have guardianship and custody having regard to other specified matters, including the welfare and interests of the child.

The Court is also empowered to make a permanent care order vesting joint guardianship in the applicants and the parent if it is satisfied that the Director-General, the child and the persons to be named in the order as custodians and guardians agree on the terms of the order, and special circumstances exist.

In making a permanent care order, the Court must include conditions concerning parental access if it is considered in the interests of the child. Any protection order relating to the child then ceases to be in force. The order may continue to be in force after the child attains the age of 17 years but ceases to be in force when a child attains the age of 18 years or when the child marries.

It further provides that where people who are joint guardians or joint custodians can not agree on the exercise of rights or duties, one of them may apply to the Court for a ruling on the exercise of those powers and duties.

Clause 90 sets out restrictions on the making of a permanent care order.

Clause 91 specifies when a permanent care order ceases to be in force or is suspended.

Clause 92 specifies persons who are eligible to apply for variation and revocation of permanent care orders and specifies the powers of the Court in respect of such applications.

Division 8—Appeals

Clause 93 sets out provisions relating to appeals to the County Court and specifies the provisions in the *Magistrate's Court Act 1987* which shall apply in relation to appeal procedures.

Clause 94 provides for proceedings in the County Court on appeal to be conducted in open Court and sets out the powers of the County Court in relation to an appeal under this Division.

Clause 95 allows a party to a proceeding before the Family Division, or the Attorney-General, to appeal to the Supreme Court on a question of law. The Clause sets out the procedure which is to be complied with and specifies the powers of the Supreme Court in respect of that appeal.

Division 9—Powers and Responsibilities of the Director-General

Clause 96 sets out principles which must guide the case planning process.

Clause 97 provides that the Director-General must ensure that a case plan is prepared within six weeks of the making of an order by the Children’s Court placing the child in the custody or under the guardianship or supervision of the Director-General. The Director-General must ensure that a case plan is recorded in writing; that copies are given to the child and the parent within 14 days; and that the case plan is reviewed from time to time.

Clause 98 provides that the Director-General must prepare and implement procedures for review by the Director-General of decisions made as part of the case plan.

Clause 99 enables a child or the parent or guardian to apply to the Administrative Appeals Tribunal for the review of a decision contained in the case plan. In reviewing such a matter, the Administrative Appeals Tribunal must include a person with experience in child welfare matters.

Clause 100 specifies the powers and responsibilities of the Director-General in relation to a child who is under his or her guardianship or custody.

Clause 101 empowers the Director-General to place a child who is in custody or guardianship the Director-General in specified ways and requires the Director-General to have regard to the welfare of the child as the first and paramount consideration and to make provision for the physical, intellectual, emotional and spiritual development of the child in the same way as a good parent would.

Clause 102 establishes the “State Guardianship Fund”. All moneys paid to the Director-General as guardian of the estate of the child must be paid into the State Guardianship Fund.

Clause 103 makes provision for the interstate transfer of children under State guardianship and under the custody or supervision of the Director-General.

PART 4—CHILDREN AND THE CRIMINAL LAW

Division 1—Criminal Responsibility of the Children

Clauses 104 and 105 specify the age criteria for criminal responsibility of children.

Clause 106 provides procedures in bringing a child before a Court or Bail Justice when the child has been taken into custody for an offence.

Clause 107 provides that where the child does not have the capacity or understanding to enter into an undertaking, the child may be released on bail if the child’s parent or some other person enters into an undertaking to produce the child at Court.

Clause 108 provides for a child who is remanded in custody by the Court or Bail Justice to be placed in a remand centre.

Clause 109 provides that where a child has breached bail and is brought before the Court, the Court must not remand the child in custody for longer than 21 days.

Division 3—Referral for Investigation

Clause 110 provides that where a child appears before the Criminal Division on charges and the Court considers that there is prima facie evidence the grounds exist for the making of a protection application in respect of the child, the Court may refer the matter to the Director-General for investigation. Upon referral, the court may defer sentencing the child until the Director-General provides a report indicating either that no protection application is needed or until a report has been received from the Family Division stating that a

protection application has been dismissed or stating that a protection order has been made. The Court may then order a pre-sentence report in respect of the child.

Clause 111 requires the Director-General to provide the report referred to above within 21 days of the referral from the Criminal Division.

Division 4—Procedure for Indictable Offences Triable Summarily

Clause 112 sets out the procedure to apply where an indictable offence is triable summarily. It also provides that where the Court finds that the child is not guilty of an offence the Court may nevertheless find the child guilty of attempting to commit the offence.

Division 5—Standard of Proof

Clause 113 provides that the Court must be satisfied of a child's guilt on the basis of proof beyond reasonable doubt by relevant and admissible evidence.

Division 6—Pre-sentence Reports

Clause 114 provides that, where the child has been found guilty of an offence and before passing sentence, the Court may order a pre-sentence report in respect to the child and adjourn the proceedings to enable the pre-sentence report to be prepared.

Clause 115 provides for certain procedures to be used in accordance with Schedule 3 where a pre-sentence report has been ordered.

Clause 116 specifies those reports which the Court may take into account when considering imposition of a sentence.

Clause 117 enables a child in respect of whom a pre-sentence report has been prepared, or a parent of the child to require the author of that report to attend Court and to give evidence at Court.

Clause 118 provides that, where any matter in a pre-sentence report is disputed by a child, the Court must not take the disputed matter into consideration when determining sentence unless it is satisfied beyond reasonable doubt that the matter is true. If a matter is disputed by the child and the author of the report does not attend the hearing of the proceeding, the Court must not take the disputed matter into consideration when determining sentence unless the child consents to that matter being admitted into evidence.

Division 7—Sentencing Orders

Clause 119 provides for and sets out the range of sentencing orders which the Court may make in respect of a child found guilty of an offence.

Clause 120 requires the Court, in determining which sentence to impose on a child, to consider the sentences in the order of the hierarchy set out in section 119.

Clause 121 enables the Court to defer sentencing the child for a period not exceeding four months. Upon deferral, the Court must adjourn the case to a fixed date when a pre-sentence report must be prepared for the Court. On the adjourned hearing date the Court must, in determining an appropriate sentence, have regard to certain matters.

Clause 122 requires the Court to take certain matters into account in determining which sentences to impose on a child.

Clause 123 specifies that the child is entitled to be heard before sentence is imposed.

Clause 124 specifies that certain provisions of the *Penalties and Sentences Act 1985* apply to bonds given by the Criminal Division of the Children's Court.

Clause 125 specifies that certain provisions of the *Penalties and Sentences Act 1985* apply to a monetary penalty imposed on a child by the Criminal Division.

Clause 126 specifies the core conditions which a child must comply with when placed on probation. The Court may order the child to observe any special conditions and types of special conditions are specified. It also enables the Court, on application by the child or the Director-General, to vary the probation order at any time during the period of the order.

Clause 127 relates to youth supervision orders and specifies the core conditions which a child must comply with when placed on such an order. The Court may also order the child to observe special conditions. Types of special conditions are specified in the provision.

Clause 128 provides that the provisions of Part 6 of the *Penalties and Sentences Act 1985* shall apply to youth attendance orders made by the Criminal Division.

Clause 129 provides for detention of a child in a youth residential centre for a period not exceeding one year for one offence. When the child is convicted of more than one offence, the period of detention in the youth residential centre is to be concurrent with any other sentence, unless the Court states that the sentences are to be cumulative and gives reasons for its decision. The aggregate period of detention in youth residential centre must not exceed two years. The Court may also direct that a youth residential centre order be served in part concurrently with any other uncompleted youth residential centre order or be served wholly cumulatively with any other uncompleted youth residential centre orders.

Clause 130 provides that where a child is ordered to be detained in a youth training centre, the order must not exceed two years. If a child is convicted of more than one offence, the Court may order that the period of detention be concurrent with any other period of detention in respect of other offences, unless the Court states that the sentences are cumulative and gives reasons for its decision. The aggregate term of detention in a youth training centre must not exceed three years.

Clause 131 specifies that certain provisions of the *Penalties and Sentences Act 1985* relating to restitution and compensation apply to a proceeding in the Criminal Division of the Children's Court.

Division 8—Breach of Sentencing Orders

Sub-Division 1—General

Clause 132 specifies certain provisions of the *Magistrate's Court Act 1987* which shall apply with any necessary modifications in respect of warrants issued for the purposes of bringing a child before the Court.

Clause 133 provides that, where a child has been arrested in accordance with a warrant issued under this Division for breach of a sentencing order, and it is not possible for the Court to hear an application immediately, the Court may grant bail and certain provisions of the *Bail Act 1977* shall apply with any necessary modifications.

Clause 134 provides that where an undertaking order has been breached the Court is not to take any action.

Clause 135 provides that where it appears to the Court that the child has failed to comply with an accountable 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.

Clause 136 specifies the powers of the Court in respect of breach of an accountable undertaking.

Sub-Division 3—Breach of Bond

Clause 137 provides that where it appears to the Court that a child has failed to be of a 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 parents be served with a notice to appear before the Court at a specified time.

Clause 138 provides that where a child has been served with a notice for a breach of bond and the child fails to appear before the Court at the time specified the Court may issue a warrant to arrest the child.

Clause 139 specifies the powers of the Court in respect of breach of bond.

Clause 140 provides for the adjournment of a breach of proceeding to the original Sentencing Court.

Clause 141 provides that where a bond is breached by a child committing a further offence, proceeding for the breach must be commenced no later than three months after a finding of guilt in respect of that offence.

Sub-Division 4—Default in Payment of Monetary Penalty

Clause 142 specifies the powers of the Court in respect of failure to pay a fine or an installment.

Clause 143 provides that where a child does not attend before the Court after service of notice in respect of the default in payment, the Court may adjourn the proceeding and issue a warrant to arrest the child.

Clause 114 defines “weekend detention” in respect of default of payment of a monetary penalty or instalment order and specifies periods of weekend detention, which may be imposed corresponding to unpaid monetary penalties.

Sub-Division 5—Breach of Probation

Clause 145 provides that where a child has been placed on probation and it appears that the child has failed to observe any condition of the probation order, the Supervising Court or the Director-General 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 Supervising Court at a specified time.

Clause 146 provides that where a notice is served on a child for failing to comply with conditions of a probation order, and the child fails to appear before the Court, the Supervising Court may issue a warrant to arrest the child.

Clause 147 provides that, where a child has failed to observe any conditions of the probation order, the Director-General or the assigned probation officer with the written consent of the Director-General may apply to the Court to issue a warrant to arrest the child.

Clause 148 provides that the Director-General or the probation officer with a written consent of the Director-General may apply for a search warrant to enter and search any place and arrest the child and bring the child before the Court.

Clause 149 specifies the powers of the Court in respect of breach of probation.

Clause 150 provides that where a child has committed an offence whilst on probation, the breach proceedings must be commenced no later than three months after a finding of guilt in respect of the offence.

Sub-Division 6—Breach of Youth Supervision Order

Clause 151 provides that where it appears to the Court that the child has failed to observe any condition of a youth supervision order the Court or the Director-General 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.

Clause 152 requires a supervisor provide to the Director-General with a certificate of attendance in respect of the child placed on the youth supervision order and a report as to whether the child has complied with the youth supervision order.

Clause 153 provides that where a notice has been served on the child for failing to comply with conditions of a youth supervision order, and the child fails to appear before the Court at the specified time, the Court may issue a warrant to arrest the child.

Clause 154 specifies the powers of the Court in respect of a breach of the youth supervision order.

Clause 155 requires the Court to take certain matters into account when considering an order in respect of a breach of a youth supervision order.

Clause 156 provides that where a child has committed an offence whilst placed on a youth supervision order, breach proceedings must be commenced no later than three months after a finding of guilt in respect of the offence.

Sub-Division 6—Breach of Youth Attendance Order

Clause 157 specifies a maximum penalty for breach of a youth attendance order.

Division 9—Appeals

Clause 158 provides that a child may appeal against any sentencing order of the Criminal Division and specifies certain provisions in the *Magistrates' Court Act 1987* which shall apply to procedures in respect of appeals.

Clause 159 specifies the provisions of the *Crimes Act 1958* which shall apply in respect of an appeal to the County Court from the Children's Court in respect of which the County Court may reserve a question of law for the full Court.

Clause 160 specifies persons who may appeal on behalf of a child who is under the age of 15 years.

Clause 161 provides that where a child is granted bail pending an appeal but it appears to the Court that the child does not have the capacity or understanding to enter into bail, a parent or any other person may enter into bail as principal on the condition that the person produce the child at the County Court at a place or a day to be fixed by the Registrar of the County Court.

Clause 162 specifies the powers of the Court in respect of an appeal against aggregate period of detention in a youth residential centre or in a youth training centre.

Division 10—Parole

Clause 163 establishes the Youth Parole Board and specifies the membership of the Board and the manner in which members are appointed. Other provisions in relation to the Youth Parole Board are contained in Part 1 of Schedule 4.

Clause 164 establishes the Youth Residential Board and specifies membership of the Board and the manner in which members are appointed. Other provisions in relation to the Youth Residential Board are contained in Part 2 of Schedule 4.

Clause 165 provides for the appointment of stipendiary and honorary parole officers.

Clause 166 specifies that provisions relating to release on parole from a youth training centre and a youth residential centre are contained in Schedule 5.

Division 11—Transfers

Clause 167 provides that every person ordered by the Court to be detained in a youth training centre is subject to the jurisdiction of the Youth Parole Board.

Clause 168 provides that every person ordered by a Court to be placed in a youth residential centre is subject to the jurisdiction of the Youth Residential Board.

Clause 169 specifies that provisions relating to the transfer of a person from a prison to a youth training centre are set out in Schedule 6.

Clause 170 specifies that provisions relating to the transfer of a child from a youth training centre to a youth residential centre are set out in Schedule 7.

Clause 171 specifies that provisions relating to the transfer of a person sentenced to detention in a youth training centre to a prison as set out in Part 1 of Schedule 8 and specifies that provisions relating to the transfer of a child placed in a youth residential centre to a youth training centre, are set out in Part 2 of Schedule 8.

Division 12—Establishment of Services

Clause 172 provides for the establishment of remand centres, youth residential centres, youth training centres, and youth supervision units.

Clause 173 provides that the Minister may issue directions in relation to the standards of those services established.

Clause 174 enables the Director-General to determine the form of care, custody or treatment of persons detained in such established services.

Division 13—Miscellaneous

Clause 175 provides that 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 Director-General.

Clause 176 enables the Director-General to remove a person while by way of a warrant from any remand centre to any other remand centre or to a youth training centre; or from a youth training centre to any other youth training centre or to a remand centre; or from a youth residential centre to any other youth residential centre. It also provides that a person is deemed to be in a legal custody of any member of the Police Force or other officer having the custody of a person whilst being removed under the warrant.

Clause 177 allows a person to be granted temporary leave from legal custody for purposes specified in the provision. A temporary leave permit is subject to any conditions, limitations and restrictions that the Director-General thinks fit. A person permitted

temporary leave is, during the temporary leave, deemed to continue to be in legal custody. A person who fails before the end of the period of temporary leave to return to the place of custody or fails to comply with the conditions of the temporary leave is deemed to have escaped from the place of custody.

Clause 178 provides that where a warrant to imprison a person or warrant for the detention of a person in a youth training centre or youth residential centre in default of payment of a fine or sum of money is delivered to the Director-General, the person shall serve the term of imprisonment or detention specified in the warrant concurrently with any term of detention that person is serving.

Clause 179 provides that where a person is required to be brought before the Court or Inquest the person may be removed from a remand centre, youth residential centre or youth training centre by way of an order to be brought to the Court or Inquest and must be returned to the custody from which the person was brought. On being removed a person is deemed to be in the legal custody of a member of the Police Force or other officer having custody of that person.

Clause 180 specifies that provisions relating to the interstate transfer of young offenders are set out in Schedule 9.

PART 6—MISCELLANEOUS

Division 1—Offences Relating to the Protection of Children

Clause 181 creates an offence and a penalty for a person whose action or failure to take action has resulted in certain harm which are specified in the provision.

Clause 182 creates an offence and a penalty for a person who leaves a child unattended.

Clause 183 creates an offence and penalty for a person who harbors or conceals a child knowing that the child has been placed under an interim accommodation order, a custody to third party order or supervised custody order, a placement under Clause 101, or other lawful custody.

Clause 184 creates an offence and penalty for a person who counsels or induces a child to be absent without lawful authority.

Clause 185 provides that where a child is absent without lawful authority, the Magistrate may issue a search warrant for the purpose of having the child taken into safe custody.

Clause 186 provides that it is an offence for a person without lawful authority to 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 any placement in a community service; or contrary to the regulations or contrary to the instructions of the Director-General, attempts to have access to a child or loiters about any of those places.

Clause 187 provides that it is an offence for a person who is lawfully detained in a remand centre, youth residential centre or youth training centre and to escape, attempt to escape or be without lawful authority absent from those centres or from the custody of the Police or other officer in whose custody the person may be. The escapee may be apprehended without warrant by any member of the Police Force and, where required, an application can be made to the Magistrate for the issue of a search warrant.

Clause 188 provides that it is an offence for a person who knowingly harbors or conceals an escapee.

Clause 189 creates an offence and penalty for a person who counsels or induces a person to escape from a remand centre, or youth residential centre or youth training centre.

Clause 190 creates offences and a penalty for a person who without lawful authority holds or attempts to hold any communication with a person held in a remand centre, youth

residential centre, youth training centre or youth supervision unit in contravention of instructions from the Director-General, and other like offences including conveying of an article in and out of those centres or units.

Division 3—Director-General: Miscellaneous

Clause 191 enables the Director-General to order a person in his or her custody to be medically examined; enables the Minister to make arrangements with the Minister for Health of the provision for any medical, dental, psychiatric, psychological or pharmaceutical services to those persons or to other children placed in a community service. It also enables the Minister, the Director-General or any person authorised by the Director-General to consent to a surgical or other operation on a person specified in this provision.

Clause 192 provides that it is an offence for a person who obstructs or hinders the Director-General or any officer in the execution of his or her duties under this Act.

Division 4—Court: Miscellaneous

Clause 193 restricts questions that can be put to a person who has previously appeared in the Children's Court and is called as a witness in any legal proceedings.

Clause 194 restricts evidence that can be used against a person who has previously appeared in the Children's Court and who is defendant in any legal proceedings.

Clause 195 enables the Magistrates Court to transfer proceedings to a Children's Court where it is found that the defendant is a child.

Clause 196 enables the Supreme Court or the County Court to exercise the same sentencing powers as the Children's Court.

Clause 197 sets out procedures for the service of documents where none is prescribed.

Clause 198 provides for regulation making powers.

PART 7—REPEALS, AMENDMENTS SAVINGS AND TRANSITIONALS

Clause 199 repeals the *Children's Court Act 1973*.

Clause 200 makes consequential amendments to section 12 of the *Children (Guardianship and Custody) Act 1984*.

Clause 201 repeals parts of the *Community Welfare Services Act 1970*.

Clause 202 makes consequential amendments to the *Penalties and Sentences Act 1985*.

Clause 203 makes consequential amendments to Acts referred to and as set out in Schedule 10.

Clause 204 concerns saving and transitional provisions as contained in Schedule 11.

Schedule 1 specifies proceedings in which a child is required to be legally represented in the Family Division and the Criminal Division.

Schedule 2 contains provisions in relation to Protection Reports and Disposition Reports including content and access to reports.

Schedule 3 contains provisions in relation to pre-sentence reports including procedures, contents and persons entitled to receive a copy of pre-sentence reports.

Schedule 4 contains provisions relating to the Youth Parole Board and Youth Residential Board, which include terms and conditions of office, appointment of deputy members and acting members, meetings of the Boards, the validity of acts or decisions of the Boards,

evidentiary provisions, powers and functions of the Boards and savings of members of the Boards from liability.

Schedule 5 contains provisions in relation to the Parole Boards' powers to release persons on parole from youth training centres or youth residential centres and to cancel parole.

Schedule 6 contains provisions in relation to the Adult Parole Boards' power to transfer a person from prison to youth training centre.

Schedule 7 contains provisions relating to the powers of the Youth Parole Board to transfer a person from youth training centre to a youth residential centre.

Schedule 8 contains provisions relating to the Youth Parole Board's power to transfer a person from a youth training centre to prison; and powers of the Youth Residential Board to transfer a person from a youth residential centre to a youth training centre.

Schedule 9 contains provisions in relation to the interstate transfer of young offenders.

Schedule 10 contains provisions relating to consequential amendments to other Acts.

Schedule 11 relates to savings and transitional provisions.

