

**Youth Advocate may direct release of the child**

75. (1) Upon a notification being made as provided by section 73 or 74, the Youth Advocate may direct that the child be released immediately and, if the Youth Advocate does not so direct, the Youth Advocate shall forthwith notify a magistrate of the name and age of the child, of the shelter, approved home or hospital in which the child is and of any other relevant circumstances.

(2) If, at the expiration of 48 hours after the child was taken into custody under sub-section 73 (1) or a direction was given under sub-section 74 (1), action under this section has not been taken by a magistrate, the child shall forthwith be released.

(3) A magistrate may by order authorise the detention of the child in the shelter, approved home or hospital for such period, not exceeding 72 hours reckoned from the time when the magistrate gives the authority, as the magistrate specifies or may direct that the child be released.

(4) Subject to sub-section (5), a magistrate may act under sub-section (3) without any formal hearing and upon the information given to him or her by the Youth Advocate and the magistrate is not required, before so acting, to hear any person on behalf of the child or his or her parents.

(5) Where the child, a parent of the child or another person having custody of the child applies to a magistrate to be heard, the magistrate shall not act under sub-section (3) without hearing the child, parent or person, whether by way of a formal hearing or otherwise.

(6) If—

(a) a magistrate or the Youth Advocate directs that the child be released; or

(b) the period of 72 hours referred to in sub-section (3) expires,

the child shall, subject to section 80, be released, as soon as is reasonably practicable, and reasonable steps taken to return the child to his or her usual place of living.

**Application to Court for detention order**

76. (1) If a magistrate authorises the detention of the child, the Youth Advocate shall forthwith make appropriate enquiries as to the welfare of the child and may make an application to the Court for an order under sub-section (3).

(2) Where the Youth Advocate makes an application under sub-section (1), the child shall, unless the Court otherwise orders, continue to be detained in a shelter, approved home or hospital.

(3) The Court may make an order—

(a) that the child be no longer detained;

- (b) authorising the continued detention of the child in the shelter, approved home or hospital or his or her detention in some other shelter, approved home or hospital; or
- (c) placing the child in the custody of a suitable person.

(4) An order under paragraph (3) (b) or (c) remains in force for such period, not exceeding 7 days, as the Court specifies in the order.

(5) The Court may, upon application by the Youth Advocate, make one further order extending the period specified in the previous order by not more than 7 days.

#### **Procedure on application**

77. (1) Notification of an application under section 76 shall, if practicable, be given to the person having the custody of the child and to at least one of the child's parents, whether the person or parent is resident in the Territory or elsewhere.

(2) The child and each person notified under sub-section (1) shall be the respondents to the application.

#### **Application for declaration that a child is in need of care**

78. (1) The Youth Advocate may make an application to the Court for a declaration that a child, being a child who is in the Territory or ordinarily resides in the Territory, is in need of care.

(2) Before making such an application, the Youth Advocate shall consult the Standing Committee.

#### **Application to be served on parents**

79. (1) A copy of an application under section 78 shall, if reasonably practicable, be served on—

- (a) at least one of the child's parents, whether the parent is resident in the Territory or elsewhere;
- (b) if the child has, or appears to have, attained the age of 8 years—on the child; and
- (c) on any other person that the Court directs.

(2) The child, whether served with a copy of the application or not, and a parent or the parents on whom a copy of the application has been served shall be the respondents to the application.

#### **Hearing and determination of application**

80. (1) The Court hearing an application under section 78 with respect to a child—

- (a) subject to sub-section (2), may make a declaration that the child is in need of care; and
- (b) where the Court makes that declaration, shall make one or more of the orders specified in section 83 with respect to the child,

or may dismiss the application.

(2) The Court shall not make a declaration that the child is in need of care unless the Court is satisfied that the child is unlikely to receive suitable care unless the Court makes an order of the kind referred to in sub-section 83 (1).

(3) The question whether a child is in need of care or is unlikely to receive suitable care shall be decided on the balance of probabilities.

(4) If an order is not made under this section within 6 months after the making of the application, the application lapses and the child, if he or she is detained under this Part, shall forthwith be released.

### **Adjournment of hearing**

**81. (1)** The Court may adjourn a hearing under section 80 from time to time but so that a period of adjournment does not, unless the Court considers it necessary, exceed 21 days.

(2) The Court may, by order, direct that, during the period of an adjournment, the child—

- (a) live, or continue to live, at home;
- (b) be placed, or remain, in the care of a specified suitable person;
- (c) live, or continue to live, if the person in charge of the home consents, in an approved home;
- (d) live, or continue to live, in a shelter; or
- (e) be detained, if the person in charge of the hospital consents, in a specified hospital.

### **Child care conference**

**82. (1)** Where the Court adjourns an application under section 78, the Court may direct that the Youth Advocate convene a conference to consider the welfare of the child, to be attended by one or more of the following persons:

- (a) if the Court so orders, the child;
- (b) a parent of the child;
- (c) a person who is or may be concerned with the welfare of the child;
- (d) with the leave of the Court, a barrister and solicitor acting for a person referred to in paragraph (a), (b) or (c).

(2) The Youth Advocate shall attend and preside at the conference and shall report the result of the conference to the Court.

(3) The Youth Advocate shall keep a record in writing of the proceedings at the conference.

(4) Evidence of anything said, or of any admission made, at a conference is not admissible in proceedings before a court except with—

- (a) the consent of all the persons who attended the conference; or
- (b) the leave of the court.

(5) A person who attends a conference under this section shall not, otherwise than provided by this section, disclose any information furnished to the conference or anything said at the conference.

(6) A person who contravenes sub-section (5) is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000, or imprisonment for a period not exceeding 12 months, or both.

### **Care orders**

**83. (1)** For the purposes of section 80, the following orders are specified:

- (a) a supervision order;
- (b) a residential order;
- (c) an order committing a child to a State institution in a specified State or Territory for such period as the Court determines;
- (d) an order committing a child to an institution for such period as the Court determines;
- (e) an order that a child become a ward of the Director.

(2) An order of the kind specified in sub-section (1) shall specify a period during which the order is to have effect.

(3) An order of the kind specified in paragraph (1) (c), (d) or (e) shall not be made unless the Court is satisfied that no other order specified in sub-section (1) would be in the interests of the welfare of the child.

(4) A supervision order may contain one or more of the following provisions:

- (a) a provision requiring the child, a parent of the child or both a child and a parent of the child to take part in discussions with the supervisor with respect to the welfare of the child, in particular whether the child should receive some form of educational, vocational or recreational activity or other activity, having as its object the welfare of the child; and
- (b) such other provisions as the Court considers to be in the interests of the welfare of the child.

(5) A supervision order may be expressed to have effect when a residential order or an order of the kind specified in paragraph (1) (c) or (d) ceases to have effect.

(6) The Court may include in a supervision order provisions to be complied with by a parent of the child, being a parent on whom a copy of the application under section 78 was served, whether or not the parent resides in the Territory.

(7) An order that the child become a ward of the Director may provide that the Director or another person who has the care of the child shall not, if it is practicable to consult a parent of the child, exercise a power in respect of the ward except after consulting a parent of the child.

**Access**

**84. (1)** Where the Court makes an order of the kind specified in paragraph 83 (1) (b), (c), (d) or (e) in respect of a child, the Court may, at the time of making the order or at any time while the order is in force, on application made to it, by order grant to the applicant access to the child.

**(2)** Before making an order under sub-section (1), the Court shall have regard to such matters as it thinks appropriate and, in particular, shall have regard to the wishes of the child if the child is capable of expressing them and to the conduct and wishes of the parent or of any other person concerned.

**Residential orders and supervision orders—entry and inspection by Director, &c.**

**85. (1)** Where a child who is the subject of a residential order or a supervision order resides with a person who has the care, custody and control of the child—

- (a) in the case of a child the subject of a residential order—the Director or an officer; and
- (b) in the case of a child the subject of a supervision order—the supervisor of the child,

may, on reasonable grounds and at a reasonable time—

- (c) enter the premises where the child resides; and
- (d) inspect the premises and the child.

**(2)** Where a child who is the subject of a residential order or a supervision order resides with a person other than a person who has the care, custody and control of the child—

- (a) in the case of a child the subject of a residential order—the Director or an officer; and
- (b) in the case of a child the subject of a supervision order—the supervisor of the child,

may enter the premises where the child resides if, and only if, the entry and inspection is made—

- (c) with the consent of the occupier of the premises; or
- (d) in pursuance of a warrant issued under this section.

**(3)** Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that—

- (a) a child the subject of a residential order or a supervision order is residing on premises otherwise than with a person who has the care, custody and control of the child; and

(b) it is necessary in the interests of the child for the premises and the child to be inspected,  
and the information sets out those grounds, the magistrate may issue a search warrant authorising—

(c) in the case of a child the subject of a residential order—the Director or an officer; and

(d) in the case of a child the subject of a supervision order—the supervisor of the child,

with such assistance as he or she thinks necessary and if necessary by such force as is reasonable—

(e) to enter upon or into the premises; and

(f) to inspect the premises and the child.

(4) A magistrate shall not issue a warrant under this section unless—

(a) the informant or some other person has given to the magistrate either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and

(b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

#### **Placing in shelter, &c.**

**86. (1)** Subject to sub-section (2), a child who has been committed to a State institution by an order under paragraph 80 (1) (b) may be placed in an approved home or shelter until he or she is removed to the institution.

(2) The child shall not be kept in the approved home or shelter for more than 14 days unless the Court so orders or the Director approves in writing.

(3) An order committing a child to a State institution is sufficient authority for an officer to do one or more of the following:

(a) subject to any contrary provision in the order—

(i) take the child to an approved home or a shelter;

(ii) take the child from one approved home or shelter to another;

(b) take the child to the State institution;

(c) take the child to the State or Territory specified in the order for the purposes of detention in the institution.

#### **Applications by other persons**

**87. (1)** If the Youth Advocate has not made an application under section 78 with respect to a child, a person may, after consultation with the Youth Advocate, seek the leave of the Court to make such an application.

(2) The Court shall hear the person and the Youth Advocate and may make an order granting leave to the person to make the application.

(3) Where a person makes an application under section 78 in pursuance of leave granted under this section—

- (a) a copy of the application shall be served on the Youth Advocate and the Youth Advocate may appear and be heard in the proceedings; and
- (b) sections 79, 80, 81 and 82 apply to and in relation to an application made in pursuance of this section in like manner as they apply to an application made by the Youth Advocate.

#### **Review of orders on application**

88. (1) Where the Court has made an order under section 80 with respect to a child (in this section referred to as the "previous order"), the Court may, on an application by the Youth Advocate or any other person, by order revoke or vary the previous order or make another order in substitution for the previous order.

(2) Before making an application under this section the Youth Advocate may consult the Standing Committee.

(3) The previous order as varied or the order made in substitution for the previous order shall be an order that the Court is empowered to make under section 80 but the Court shall have regard to the circumstances at the time of the hearing.

(4) Subject to sub-sections (3) and (5), the Court may make any order that appears to the Court to be appropriate.

(5) If the Court considers that the child is no longer in need of care, the Court shall revoke the order.

(6) This section has effect notwithstanding that the child is, whether under an order of a court or otherwise, for the time being living outside the Territory.

(7) This section applies to and in relation to an order made on appeal from an order under section 80.

#### **Periodical review of orders**

89. (1) Where the Court—

- (a) makes an order under section 80; or
  - (b) makes an order in substitution for such an order,
- and that order is still in force, the Youth Advocate shall, within 2 months before the expiration of each period of 12 months after the making of that order, apply to the Court for a review of the order.

(2) The Youth Advocate shall serve with each copy of the application a statement as to any matter that the Youth Advocate considers to be relevant concerning the child.

(3) If the Court considers that the child is no longer in need of care, the Court shall revoke the order.

(4) The Court may, in determining an application under sub-section (1)—

(a) by order—

- (i) direct that the order continue in force for such period as the Court specifies;
- (ii) vary the order; or
- (iii) revoke the order; or

(b) make an order of the kind specified in section 83 in substitution for the order.

(5) The Court shall not give a direction or vary or make an order under sub-section (4) unless it is satisfied that the child is unlikely to receive suitable care unless the Court so acts.

(6) This section has effect notwithstanding that the child is, whether under an order of a court or otherwise, for the time being living outside the Territory.

(7) This section applies to and in relation to an order made on appeal from an order under section 80.

(8) If the Youth Advocate does not make an application under sub-section (1) in respect of an order, the order ceases to have effect at the expiration of the period of 12 months after the making of that order.

### **Service of applications for review**

90. A copy of an application under section 88 or 89 shall be served—

- (a) on the Youth Advocate;
- (b) if practicable, on at least one of the parents of the child concerned, whether the parent is resident in the Territory or not;
- (c) if the child has attained the age of 8 years, on the child concerned; and
- (d) on any other person that the Court directs.

### **Application of Part**

91. The provisions of this Part relating to applications under section 78 apply, so far as applicable, to and in relation to the hearing of an application under section 88 or 89.

### **Order to resolve disagreements**

92. (1) Where a disagreement arises between a parent of a child and a person having, under this Ordinance, the care of the child, an application may be made to the Court for an order resolving the disagreement.

(2) The application may be made by the child, by the parent or by the person having the care of the child.

(3) Where an order of the kind specified in paragraph 83 (1) (e) has been made with respect to the child, the application may be made by the Director.

(4) Each other person by whom the application might have been made shall be the respondents to the application and each of them shall be served with a copy of the application.

(5) On the hearing of the application, the provisions of this Part relating to applications under section 78 apply, so far as applicable and subject to any directions of the Court, to and in relation to the hearing.

### **Procedure at hearing**

93. (1) The following provisions of this section have effect with respect to the hearing and determination of an application or other proceeding under this Part.

(2) Subject to this Ordinance, the procedure to be followed in proceedings shall be as directed by the Court.

(3) The Court is not bound by the rules of evidence and may inform itself in any manner it thinks fit.

(4) It is not competent for a child or a parent of a child to admit that the child is in need of care.

(5) The Court may hear submissions that any of the following persons wishes to make:

- (a) the Youth Advocate or other applicant;
- (b) a parent or other relative of the child concerned;
- (c) the barrister and solicitor representing the child;
- (d) a person appointed under section 166 to be the next friend of the child;
- (e) any person whom the Court considers is able to inform it on any matter relevant to determining the application or proceeding.

(6) Submissions on behalf of the Youth Advocate or a person referred to in paragraph (a), (b), (d) or (e) may be made by a barrister and solicitor representing the Youth Advocate or other person.

(7) A child the subject of proceedings may make representations in person to the Court, whether or not the child is legally represented, and the Court shall receive and consider the representations.

(8) The Court may, for good cause, order that a person (including the child concerned or a parent of the child concerned) shall not be present in the room where the Court is sitting during the whole or such part of the hearing as the Court determines.

(9) The validity of an order under this Part is not affected by reason of any failure to comply with any of the preceding provisions of this section.

**Division 3—Child Care Agreements**

**Child care agreements**

**94. (1)** The Director may, at the request of a parent of a child, approve the parent's placing the child under the care and in the custody of a suitable person, whether in the Territory or elsewhere.

**(2)** In considering whether to give his or her approval, the Director shall:

- (a) consider what assistance to the child is possible while the child is in the care of his or her parent; and
- (b) where the child is capable of understanding the proposed arrangement—
  - (i) endeavour to ensure that the child does so understand; and
  - (ii) receive and consider such representations as the child wishes to make to the Director.

**(3)** Where the suitable person agrees to receive a child under sub-section (1), a parent of the child and the Director shall enter into an agreement in writing with respect to the care and custody of the child.

**(4)** An agreement under sub-section (3) shall be expressed to be in force for a period, not exceeding 3 months, specified in the agreement.

**(5)** The parties to an agreement under sub-section (3) may agree to extend the period specified in the agreement for one or 2 further periods, neither of which shall exceed 6 months.

**(6) Where—**

- (a) a child is placed under the care of a person in pursuance of this section; or
- (b) a child is placed in the care of a person or organization, or committed to an institution, in pursuance of an order under section 80,

the Director may enter into an agreement with the person or organization, or the person in charge of the institution, with respect to the care and custody of the child.

**(7) Where the Director—**

- (a) refuses to give his or her approval under sub-section (1); or
  - (b) refuses to agree to extend an agreement under sub-section (5),
- the parent of the child may appeal to the Court.

**(8)** On the hearing of an appeal under this section, the Court may by order confirm, vary or set aside the decision of the Director and may make such other order as the Court considers necessary.

**Agreements not void**

**95.** An agreement under section 94 is not void or voidable because a parent who is a party to it has not attained the age of 18 years.

**Consent of child over the school-leaving age**

96. An agreement under section 94 with respect to a child who has attained the school-leaving age shall not be made without the consent of the child, unless the child is incapable of giving consent.

**Determination and expiration of agreements**

97. (1) A party to an agreement under section 94 may determine the agreement by giving to the other party not less than 21 days' notice in writing.

(2) Where an agreement under section 94 expires or is determined, the person having the custody of the child shall, as soon as practicable and in any case within 21 days after the expiration or determination of the agreement, cause the child to be returned—

- (a) to the parent or other person in whose custody the child was before the agreement was entered into; or
- (b) if there is an order in force placing the child in the custody of some other person—to that other person.

**Payment of expenses**

98. The Director may pay to a person who is caring for a child in pursuance of an agreement under section 94 such amount as the Director determines in respect of the expenses of the person in caring for the child.

**Contributions by parents**

99. (1) Where the Court makes an order of the kind specified in paragraph 83 (1) (b), (c), (d) or (e) in respect of a child, the Court may also order that the parents of the child pay such amount by way of contribution to the cost of the care of the child as the Court, having regard to the financial circumstances of the parents, determines.

(2) An agreement under sub-section 94 (3) may require the parent of the child to pay such amount by way of contribution to the cost of the care of the child as the Director, having regard to the financial circumstances of the parent, determines.

- (3) An amount payable by virtue of this section—
  - (a) shall not exceed the amount paid under section 98 in respect of the child; and
  - (b) is a debt due to the Commonwealth.

***Division 4—Miscellaneous*****Orders to be furnished to Director**

100. The Court shall cause a copy of an order under this Part to be furnished to the Director and to the Youth Advocate.

**Dispensing with service**

**101.** The Court may, by order, dispense with service of a notice, order or other instrument under this Part upon a particular person or may make an order for substituted service of such a notice, order or instrument.

**Procedure where child voluntarily enters a place of safety**

**102. (1)** Where a child voluntarily enters a place of safety (not being a police station) otherwise than with the consent of a parent of the child, the occupier or person in charge of the place shall, as soon as practicable but in any case within 12 hours—

- (a) where the child has, or appears to the occupier or person in charge to have, attained the age of 8 years—seek the permission of the child to notify a parent of the child that the child is in the place of safety and, where the child grants permission, notify the parent accordingly; and
- (b) where the child has not, or does not appear to the occupier or person in charge to have, attained that age—notify a parent of the child that the child is in the place of safety.

Penalty: \$500.

**(2)** Where a child who voluntarily enters a place of safety referred to in sub-section (1)—

- (a) has, or appears to the occupier or person in charge to have, attained the age of 8 years;
- (b) does not grant permission under paragraph (1) (a); and
- (c) remains in the place of safety for more than 12 hours,

the occupier or person in charge shall notify a police officer or the Youth Advocate that the child is in the place of safety and of any relevant circumstances.

Penalty: \$500.

**(3)** Where the place of safety referred to in sub-section (1) is a place the occupier of which regularly receives and cares for children temporarily, the occupier shall, as soon as practicable, but in any case within 12 hours, after the child enters the place, notify the Youth Advocate that the child is in the place of safety and of any relevant circumstances.

Penalty: \$1,000.

**(4)** The Youth Advocate shall make enquiries as to the welfare of the child and shall consider whether he or she should make an application to the Court under Division 2.

**(5)** The Youth Advocate shall, as soon as practicable after being notified under sub-section (2) or (3), notify a parent of the child that the child is in a place of safety.

**Notification of children in need of care and of child abuse**

**103. (1)** Where a person, on reasonable grounds, suspects that there exist, have existed or may come into existence with respect to a child such circumstances as may make it appropriate that proceedings should be taken with respect to the child under this Part, the person may notify the Youth Advocate of those circumstances or may cause the Youth Advocate to be so notified.

**(2) Where—**

- (a) a medical practitioner, dentist, nurse, police officer, teacher or person employed to counsel children in a school, in the course of practising his or her profession or carrying on his or her calling in the Territory;
- (b) a person employed in the Department or by the Health Authority whose duties include matters relating to children's welfare, in the course of performing those duties; or
- (c) a person providing child care at premises in respect of which a licence under Part VII is in force, in the course of providing that care,

on reasonable grounds, suspects that a child has suffered physical injury (otherwise than by accident) or has been sexually abused, the person shall notify the Youth Advocate accordingly or cause the Youth Advocate to be so notified.

Penalty: \$1,000 or imprisonment for 6 months, or both.

**Record of notifications**

**104.** The Youth Advocate shall keep a record of each notification made to him or her under section 103 and shall include in the record particulars of any action that he or she takes in consequence of the notification.

**Protection of persons making notifications**

**105. (1)** Where a person in good faith notifies the Youth Advocate as provided by section 103—

- (a) the notification shall, for all purposes, be taken not to be a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct;
- (b) no civil or criminal liability is incurred by reason only of the making of the notification;
- (c) subject to sub-sections (2) and (3), the notification is not admissible in evidence in any proceedings in a court and evidence of its contents is not so admissible; and
- (d) subject to sub-section (2), a person shall not be compelled in any proceedings to produce the notification or a copy of, or extract from, the notification or to disclose, or give any evidence of, any of the contents of the notification.

- (2) Paragraph (1) (c) or (d) does not apply—
- (a) in proceedings before the Court under this Part in relation to the child concerned or before a court hearing an appeal from a decision of the Court in any such proceedings; or
  - (b) with respect to a charge or allegation made in proceedings against a person in relation to the person's exercising any of his or her powers, or performing any of his or her duties or functions, under this Ordinance.

(3) Paragraph (1) (c) does not apply where a notification is tendered in evidence, or evidence in respect of a notification is given, by the person by whom the notification was, or was caused to be, given.

### **Cessation of Part**

**106. (1)** This Part and any order or agreement under this Part cease to have effect with respect to a child upon the child attaining the age of 18 years and, if the child is being detained under this Part, the child shall forthwith be released.

- (2) Sub-section (1) does not require the release of a person who—
- (a) has been convicted of an offence and, in relation to the conviction, is detained under an order, determination, direction, declaration or decision of a court, including a court of a State or of another Territory; or
  - (b) has been charged with an offence and is so detained in relation to the charge.

## **PART VI—WARDS**

### **Marriage of wards**

**107. If a person who is a ward marries before attaining the age of 18 years, the person ceases to be a ward.**

### **Director to be guardian of wards**

**108. (1)** Notwithstanding any other law in force in the Territory relating to the guardianship of children, the Director is the guardian of a child who is a ward to the exclusion of the parent or person who would otherwise be the guardian of the child.

(2) Sub-section (1) has effect both within and beyond the Territory.

### **Incidents of wardship**

**109. (1)** While a child is a ward of the Director, the Director has, subject to this Ordinance, the care of the child to the exclusion of the parents or other guardian of the child and has the same rights, powers, duties, obligations and liabilities as a natural parent of the child would otherwise have.