

Service of care applications

58. (1) A person who makes a care application shall, as soon as practicable after the application is made, cause a copy of the application (on which is endorsed a notice specifying the time, date and place set down for the hearing of the application) to be served on—

- (a) in the case of a child who is of or above the age of 10 years—the child;
- (b) each person responsible for the child who can reasonably be located;
- (c) in the case of a child who is residing in a non-Government children's home—the person in charge of the home; and
- (d) if the application is made by a parent of the child—the Director-General.

(2) Failure to serve a copy of a care application in accordance with subsection (1) does not vitiate the decision of the Children's Court on the application.

Removal of children pursuant to order of the Children's Court

59. (1) If a care application has been made with respect to a child—

- (a) the Children's Court may make an order for the removal of the child from any premises; and
- (b) an authorised officer, or a member of the police force, may, pursuant to the order, enter the premises, search the premises for the presence of the child and remove the child from the premises.

(2) An authorised officer, or a member of the police force, may, for the purposes of entering and searching premises and removing a child pursuant to an order in force under subsection (1), use all reasonable force.

Removal of children without warrant

60. (1) An authorised officer, or a member of the police force, may, without any authority other than that conferred by this subsection—

- (a) enter any premises in which the officer or member of the police force suspects on reasonable grounds that there is a child in need of care by virtue of the child's being in immediate danger of abuse;
- (b) search the premises for the presence of any such child; and
- (c) remove any such child from the premises.

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(2) An authorised officer, or a member of the police force, may, for the purposes of entering and searching premises and removing a child pursuant to subsection (1), use all reasonable force.

Power of search and removal of children in need of care

61. (1) An officer or member of the police force may apply to an authorised justice for a search warrant if the officer or member of the police force has reasonable grounds for believing that there is in any premises a child in need of care.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the warrant—

- (a) to enter any premises specified in the warrant;
- (b) to search the premises for the presence of the child; and
- (c) to remove the child from the premises.

(3) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force or a medical practitioner, or both—

- (a) may accompany an officer executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

(5) It shall not be necessary in any search warrant issued under this section to name any particular child.

(6) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a child pursuant to the warrant, use all reasonable force.

Care of children pending care proceedings

62. (1) If an officer or member of the police force removes a child from any premises under section 59, 60 or 61, the officer or member of the police force shall forthwith place the child in the care of the Director-General to be kept by the Director-General at a place approved by the Minister for the purposes of this section.

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(2) If a child has been removed from any premises under section 60 or 61 and placed in the care of the Director-General, the Director-General shall not keep the child in the Director-General's care for more than 3 days unless the Director-General has, before the expiration of that period, made a care application in respect of the child.

(3) If a child has been removed from any premises under section 59, 60 or 61 and placed in the care of the Director-General, the Director-General may, subject to any order of the Children's Court—

(a) discharge the child from the Director-General's care—

- (i) without any undertakings being given;
- (ii) upon the giving by a person responsible for the child of undertakings acceptable to the Director-General with respect to the care of the child;
- (iii) upon the giving by the child of undertakings acceptable to the Director-General with respect to the conduct of the child; or
- (iv) upon the giving of undertakings referred to in both subparagraph (ii) and subparagraph (iii); or

(b) keep the child in the Director-General's care or, where a person approved by the Director-General is willing to have the care of the child, place the child in the care of that person,

pending the hearing of the care application made or to be made in respect of the child.

(4) While a child is in the care of the Director-General, the Director-General may, at any time before the hearing of the care application commences, exercise any of the functions conferred on the Director-General by subsection (3) (a).

(5) In determining whether or not to exercise any function under subsection (3) or (4), the Director-General shall have regard only to the following matters:

- (a) any views expressed by the child as to whether the child wishes that function to be exercised;
- (b) any views expressed by the child as to whether the child intends to return to the care of the person responsible for the child;
- (c) whether the exercise by the Director-General of that function is likely to protect the welfare of the child;

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(d) whether the failure by the Director-General to exercise that function is likely to endanger the welfare of any other person.

(6) An undertaking referred to in subsection (3) shall be in writing signed by the person giving it and shall remain in force until the commencement of the hearing of the care application made or to be made in respect of the child to whom it relates.

(7) A child does not cease to be in the care of the Director-General merely because the child has been placed in the care of some other person under subsection (3) (b).

Duties of Director-General to give information to certain persons

63. (1) If the Director-General does not discharge a child from the Director-General's care, as referred to in section 62 (3) (a), the Director-General shall record the Director-General's reasons for not doing so and cause a copy of that record to be served on—

(a) in the case of a child who is of or above the age of 10 years—the child; and

(b) each person responsible for the child who can reasonably be located.

(2) If a child—

(a) is the subject of a care application; and

(b) is in the care of the Director-General under this Division,

the Director-General shall cause a document containing brief particulars of the laws under which an application may be made for the discharge of the child from the care of the Director-General to be served on—

(c) in the case of a child who is of or above the age of 10 years—the child; and

(d) each person responsible for the child who can reasonably be located.

(3) The Director-General shall cause a copy of any undertaking referred to in section 62 (3) to be served on the person giving it.

(4) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.

DIVISION 3—*Hearings***Attendance of witnesses, etc.**

64. In any proceedings under this Part with respect to a child, the Children's Court may require the attendance, at the place where the proceedings are being or are to be conducted, of the child and of any person responsible for the child.

Right of appearance

65. (1) In any proceedings under this Part with respect to a child—

- (a) the child and each person responsible for the child; and
- (b) the Director-General,

may appear in person in the proceedings, or be represented by a barrister or solicitor or, by leave of the Children's Court, by an agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

(2) In any proceedings under this Part with respect to a child, any other person who, in the opinion of the Children's Court, has a genuine concern for the welfare of the child to whom the proceedings relate may, by leave of the Children's Court, appear in person in the proceedings, or be represented by a barrister, solicitor or agent, and may examine and cross-examine witnesses on matters relevant to the proceedings.

Children's Court's powers with respect to representation for children

66. (1) In any proceedings under this Part with respect to a child, the Children's Court may appoint a person to act as guardian ad litem for the child.

(2) In any proceedings under this Part with respect to a child, the Children's Court may, if it appears to it that the child ought to be separately represented—

- (a) order that the child be separately represented; and
- (b) make such other orders as it thinks necessary for the purpose of securing separate representation for the child.

(3) A person is not entitled to legal aid under the Legal Aid Commission Act 1979 merely because the Children's Court has made an order under subsection (2) (b).

*Children (Care and Protection) 1987***Exclusion of general public from proceedings**

67. (1) While the Children's Court is hearing proceedings under this Part with respect to a child—

- (a) any person (other than a person referred to in paragraph (b)) who is not directly interested in the proceedings shall, unless the Children's Court otherwise directs, be excluded from the place where the proceedings are being heard; and
- (b) any person who is engaged in preparing a report on the proceedings for dissemination through a public news medium shall, unless the Children's Court otherwise directs, be entitled to enter and remain in the place where the proceedings are being heard.

(2) While the Children's Court is hearing proceedings under this Part with respect to a child—

- (a) the Children's Court may direct the child to leave the place where the proceedings are being heard at any time during the proceedings if it is of the opinion that the prejudicial effect of excluding the child is outweighed by the psychological harm that is likely to be occasioned to the child if the child is allowed to remain there; and
- (b) the Children's Court may direct any person (other than the child) to leave the place where the proceedings are being heard at any time during the examination of any witness if it is of the opinion that it is in the interests of the child that such a direction should be given.

(3) The powers exercisable by the Children's Court under subsection (2) (b) may be exercised even if the person to whom a direction under that paragraph is given is directly interested in the proceedings.

(4) If the Children's Court gives a direction under subsection (2) (a) with respect to a child, it shall also give a direction under subsection (2) (b) with respect to all persons who are engaged in preparing reports of the proceedings for dissemination through a public news medium.

Publication of names, etc.

68. (1) The name of any child—

- (a) who appears as a witness before the Children's Court in any proceedings under this Part;
- (b) to whom any proceedings under this Part relate; or
- (c) who is mentioned or otherwise involved in any proceedings under this Part,

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shall not be published or broadcast, whether before or after the proceedings are disposed of.

(2) Any person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence.

(3) Subsection (1) does not prohibit—

(a) the publication or broadcasting of an official report of the proceedings of the Children's Court that includes the name of any child the publication or broadcasting of which would otherwise be prohibited by subsection (1); or

(b) the publication or broadcasting of the name of a child—

(i) in the case of a child who is under the age of 14 years at the time of publication or broadcasting—with the consent of the Minister; or

(ii) in the case of a child who is of or above the age of 14 years at the time of publication or broadcasting—with the consent of the child.

(4) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material that identifies the child or is likely to lead to the identification of the child.

Children's Court to explain proceedings to children

69. (1) In any proceedings under this Part with respect to a child, the Children's Court shall take such measures as are reasonably practicable to ensure that the child understands the proceedings and, in particular, that the child understands—

(a) the nature of any assertions made in the proceedings; and

(b) the legal implications of any such assertion.

(2) Without limiting the generality of subsection (1), the Children's Court shall, if requested by the child or by some other person on behalf of the child, explain to the child—

(a) any aspect of the Children's Court's procedure; and

(b) any decision or ruling made by the Children's Court,

in or in relation to the proceedings.

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(3) Without limiting the generality of subsection (1), the Children's Court shall ensure that the child has the fullest opportunity practicable to be heard, and to participate, in the proceedings.

Procedure generally

70. (1) Proceedings under this Part shall be conducted with as little formality and legal technicality and form as the circumstances of the case permit.

(2) Proceedings under this Part are not criminal proceedings, but an order shall not be made under section 72 (1) (b) or (c) in respect of a child unless the Children's Court is satisfied that it is very highly probable that the child is in need of care.

(3) In any proceedings under this Part, the Children's Court is not bound by the rules of evidence but may, subject to section 71, consider any statement, document, information or matter that may, in its opinion, assist it in relation to the proceedings, whether or not the statement, document, information or matter would be admissible in accordance with those rules.

(4) In any proceedings under this Part, a member of the Children's Court may examine and cross-examine any witness to such extent as the member thinks proper for the purpose of eliciting information relevant to the exercise of the Children's Court's powers under this Part.

(5) In subsection (4), a reference to a member of the Children's Court includes a reference to an authorised Magistrate within the meaning of the Children's Court Act 1987.

Admissibility of certain statements

71. (1) Any statement or information made or given to a member of the police force by a child to whom any proceedings under this Part relate shall not be admitted in evidence in the proceedings unless—

(a) there was present at the place where, and throughout the period of time during which, it was made or given an adult (other than a member of the police force)—

(i) nominated by the child; or

(ii) belonging to a class of persons selected by the child,

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and the child was given (before the statement or information was made or given) an opportunity to consult with the adult in private;
or

(b) the Children's Court—

(i) is satisfied that there was proper and sufficient reason for no such adult to have been present at the place where, or throughout the period of time during which, the statement or information was made or given; and

(ii) considers that, in the particular circumstances of the case, the statement or information should be admitted in evidence in those proceedings.

(2) Subsection (1) does not apply in any proceedings on a care application that alleges that a child is in need of care—

(a) because adequate provision is not being made, or is likely not to be made, for the child's care; or

(b) because the child is being, or is likely to be, abused.

DIVISION 4—*Children's Court orders*

Children's Court's powers with respect to children in need of care

72. (1) If a care application is made with respect to a child, the Children's Court shall inquire into the matter and—

(a) if it is not satisfied that the child is in need of care, it shall make an order dismissing the application;

(b) if it is satisfied that the child is in need of care—

(i) it may make an order accepting such undertakings (given by a person responsible for the child) as it thinks fit with respect to the care of the child;

(ii) it may make an order accepting such undertakings (given by the child) as it thinks fit with respect to the child's conduct; or

(iii) it may make an order accepting undertakings referred to in both subparagraph (i) and subparagraph (ii); or

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(c) if it is satisfied that the child is in need of care and that the making of an order under this paragraph is likely to result in a significant improvement in the standard of care being given to the child—

- (i) it may make an order placing the child under the supervision of an officer (whether or not on the giving of undertakings referred to in paragraph (b) (i) or (ii) or both);
- (ii) where a suitable person is willing to have the custody of the child—it may make an order placing the child in the custody of that person (whether or not on the giving of undertakings referred to in paragraph (b) (i) or (ii) or both); or
- (iii) it may make an order declaring the child to be a ward under this Act,

for such period expiring on or before the day on which the child attains the age of 18 years as it thinks fit.

(2) In considering a care application in respect of a child, the Children's Court shall have regard to—

- (a) the need to protect the welfare of the child;
- (b) the views of the child;
- (c) the importance of encouraging continuing contact between the child and the persons responsible for the child;
- (d) the importance of preserving the particular cultural environment of the child;
- (e) the practicability of services and facilities being provided to the child without the need for the making of an order under subsection (1) (b) or (c); and
- (f) the objects of this Part.

(3) The Children's Court may make an order under subsection (1) (b) or (c) in respect of a child even though the child is not then in need of care if the Children's Court is satisfied that—

- (a) the child was in need of care when the circumstances that gave rise to the relevant care application occurred or existed; and
- (b) the child would be in need of care but for the existence of arrangements for the care of the child made under section 62 or 77.

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(4) An undertaking referred to in subsection (1) shall be in writing signed by the person giving it and shall remain in force for such period (expiring on or before the day on which the child attains the age of 18 years) as may be specified in the undertaking.

(5) The Children's Court shall cause a copy of any undertaking referred to in subsection (1) to be served on the person giving it.

(6) If the Children's Court makes an order under subsection (1) (c), it shall cause a copy of the order to be forwarded to the Director-General.

(7) If—

- (a) an order is made with respect to a child under subsection (1) (c) (ii);
- (b) the person in whose custody the child is placed by the order is the principal officer of a private fostering agency; and
- (c) no undertakings of the kind referred to in subsection (1) (b) (i) were given by the principal officer on the making of the order,

the principal officer may place the child in the care of another person.

Restrictions on making orders under sec. 72

73. (1) An order shall not be made under section 72 (1) (c) in respect of a child unless—

- (a) the child is under the age of 16 years; and
- (b) the Children's Court is satisfied that the exercise of its power under section 72 (1) (b) would be wholly insufficient to meet the child's need for care.

(2) An order shall not be made under section 72 (1) (c) (iii) in respect of a child unless the Children's Court is satisfied that the exercise of its power under a preceding subparagraph of that paragraph would be wholly insufficient to meet the child's need for care.

(3) If the Children's Court is of the opinion that a child the subject of a care application has been brought up substantially in accordance with a particular culture or is regarded as belonging to a particular cultural group, the Children's Court shall not, unless the child has expressed a wish to the contrary, make an order under section 72 (1) (c) (i) or (iii) unless it has taken into account the practicability of making an order under section 72 (1) (c) (ii) placing the child in the custody of a person belonging to that cultural group.

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(4) The Children's Court shall not make an order under section 72 (1) (c) in respect of a child if the order would be inconsistent with any order in relation to the child made by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children.

Assessment reports

74. (1) The Children's Court shall not make an order under section 72 (1) (c) (ii) or (iii) unless—

- (a) the Director-General has tendered to the Children's Court an assessment report, prepared in accordance with the regulations, with respect to the child;
- (b) the Director-General has caused copies of the report to be given to the child and to any other person appearing in the proceedings; and
- (c) the Children's Court has taken into account the matters contained in the report and any submissions made in relation to those matters by the persons referred to in paragraph (b).

(2) Such a report shall include, in relation to any case in respect of which the Children's Court has determined that a conflict of cultural factors exists, such advice as is appropriate to enable the Children's Court to make an appropriate order in relation to the child.

Variation of orders under sec. 72

75. (1) An application for the rescission or variation of an order under section 72 (1) (b) or (c) may be made—

- (a) by the Director-General;
- (b) by the child the subject of the order;
- (c) by a person responsible for the child; or
- (d) by any person who deems himself or herself to have a sufficient interest in the welfare of the child.

(2) The Children's Court is not required to hear or determine an application made to it with respect to a child by a person referred to in subsection (1) (d) unless it considers the person to have a sufficient interest in the welfare of the child.

(3) If the Children's Court is satisfied, on an application made to it with respect to a child, that it is appropriate to do so—

- (a) it may, by order, vary or rescind any order under section 72 (1) (b) or (c); and
- (b) if it rescinds such an order—it may, in accordance with this Division, make any one of the orders that it could have made in relation to the child had a care application been made to it with respect to the child.

(4) Upon the making of an order under subsection (3) (a) or (b), the Children's Court shall cause notice of the order to be served on the Director-General.

(5) There is no limit to the number of applications that may be made under subsection (1) for the variation or rescission of an order under section 72.

DIVISION 5—*Adjournments*

Adjournments by the Children's Court

76. (1) The Children's Court shall not adjourn proceedings on a care application for a period exceeding 8 days on any one occasion if, on the adjournment, it makes an order under section 77 (1) with respect to the child to whom the application relates whereby the child is placed or continued in the care of the Director-General.

(2) Without limiting the generality of subsection (1), the Children's Court—

- (a) shall not adjourn proceedings on a care application for a period, or for periods in the aggregate, exceeding 8 days except with the consent of—
 - (i) in the case of a child who is of or above the age of 10 years—the child; and
 - (ii) each person responsible for the child, being a person who is appearing in, or is represented at, the proceedings,

given after they have received advice from a barrister or solicitor instructed to advise them on the question of the adjournment; and

- (b) shall not adjourn any such proceedings for a period, or for periods in the aggregate, exceeding 42 days.

*Children (Care and Protection) 1987***Care of children during adjournments**

77. (1) On the adjournment of proceedings on a care application with respect to a child, the Children's Court shall do one of the following things:

- (a) if the child is not in the care of the Director-General—
 - (i) it may refuse to make an order under subparagraph (ii), (iii), (iv) or (v);
 - (ii) it may make an order accepting such undertakings (given by a person responsible for the child) as it thinks fit with respect to the care of the child;
 - (iii) it may make an order accepting such undertakings (given by the child) as it thinks fit with respect to the conduct of the child;
 - (iv) it may make an order accepting undertakings referred to in both subparagraph (ii) and subparagraph (iii);
 - (v) it may make an order placing the child in the care of the Director-General;
- (b) if the child is in the care of the Director-General—
 - (i) it may make an order discharging the child from the care of the Director-General unconditionally;
 - (ii) it may make an order discharging the child from the care of the Director-General on the giving of undertakings referred to in paragraph (a) (ii) or (iii) or both;
 - (iii) it may make an order that the child continue in the care of the Director-General.

(2) In determining which order to make under subsection (1), the Children's Court shall have regard only to the following matters:

- (a) any views expressed by the child as to whether the child wishes the order to be made;
- (b) any views expressed by the child as to whether the child intends to return to the care of the person responsible for the child;
- (c) whether the making of the order is likely to protect the welfare of the child;
- (d) whether the failure by the Children's Court to make the order is likely to endanger the welfare of any other person.

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(3) An undertaking referred to in subsection (1) shall be in writing signed by the person giving it and shall remain in force for the period of the adjournment.

(4) An order shall not be made under a subparagraph of subsection (1) (a) or (b) unless the Children's Court is satisfied that the exercise of its power under a preceding subparagraph of that paragraph would be wholly insufficient to meet the child's need for care.

(5) If a child is placed or continued in the care of the Director-General and an application for the child to be discharged from the Director-General's care is made to the Director-General by the child or by a person responsible for the child, the Director-General shall, as soon as is reasonably practicable, refer the application to the Children's Court.

(6) Upon the making of any such application, the Children's Court may, under subsection (1) (b), make any one of the orders referred to in that paragraph in respect of the child.

(7) There is no limit to the number of applications that may be made under subsection (5) for the discharge of a child from the care of the Director-General.

Duties of the Children's Court to give information to certain persons

78. (1) If the Children's Court makes an order under section 77 (1) (a) (v) or (b) (iii), it shall record its reasons for doing so and cause a copy of the record to be served on—

(a) in the case of a child who is of or above the age of 10 years—the child; and

(b) each person responsible for the child who can reasonably be located.

(2) The Children's Court shall cause a copy of any undertakings referred to in section 77 (1) to be served on—

(a) in the case of a child who is of or above the age of 10 years—the child; and

(b) each person responsible for the child who can reasonably be located.

(3) Failure to comply with any provision of this section does not vitiate any thing done under any other provision of this Act.