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Enforcement of undertakings

79. (1) If proceedings on a care application with respect to a child are adjourned and—

- (a) the child, having been required by the Children's Court to attend at the time and place to which the proceedings are adjourned, does not so attend; or
- (b) an undertaking referred to in section 77 (1) given by or with respect to the child is not complied with during the period of adjournment,

the Children's Court may require the attendance of the child at a time and place determined by it.

(2) If a child is brought before the Children's Court and it is proved that an undertaking referred to in section 77 (1) given by or with respect to the child has not been complied with, the Children's Court may, under section 77 (1) (a), make any one of the orders referred to in that paragraph in respect of the child.

Adjournments by authorised justices prior to hearings

80. (1) If—

- (a) a care application has been made with respect to a child; and
- (b) the hearing of the application has not commenced,

an authorised justice may, on application made by the Director-General or by a person responsible for the child, exercise the powers of the Children's Court to adjourn the proceedings on the application.

(2) Not more than 2 adjournments may be granted under subsection (1) in respect of any one care application.

(3) An adjournment under subsection (1) shall not be granted—

- (a) in the case of the first such adjournment—for more than 3 days; or
- (b) in the case of the second such adjournment—for more than 2 days,

if, on the adjournment, the authorised justice makes an order under section 77 (1) whereby the child is placed or continued in the care of the Director-General.

(4) Proceedings adjourned by an authorised justice on a second occasion shall be adjourned to the Children's Court sitting at the place at which it appears to the justice the Children's Court will be sitting when the adjournment expires.

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(5) The authorised justice by whom a second adjournment is granted shall, forthwith after the adjournment, transmit to an officer of the Children's Court employed at the place to which the application is adjourned all documents and depositions that are in the possession of the justice and that relate to the application.

(6) Sections 77–79 apply to an adjournment granted by an authorised justice in the same way as those sections apply to an adjournment granted by the Children's Court.

DIVISION 6—*Appeals***Appeals**

81. (1) Any person who is dissatisfied with a decision of the Children's Court under this Part may, in accordance with the rules of the District Court, appeal to the District Court against the decision.

(2) An appeal may not be taken by the Director-General except on a question of law.

(3) An appeal shall be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision was made, may be given on the appeal.

(4) In addition to any functions and discretions that the District Court has apart from this section, the District Court shall, for the purposes of hearing and disposing of an appeal, have all the functions and discretions that the Children's Court has under this Part.

(5) The decision of the District Court in respect of an appeal shall be deemed to be the decision of the Children's Court and shall be given effect to accordingly.

(6) Subject to any interlocutory order made by the District Court, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

(7) The provisions of Division 3 apply to and in respect of the hearing of an appeal under this section in the same way as they apply to and in respect of the hearing of a care application under that Division

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DIVISION 7—*Effect of orders under sec. 72*

Supervision, etc., of children subject to orders under sec. 72

82. (1) While a child is subject to an order in force under section 72 (1) (c) (i)—

- (a) the child and the premises in which the child resides shall be subject to inspection by an authorised officer; and
- (b) the child shall—
 - (i) accept the supervision of an authorised officer; and
 - (ii) obey all reasonable directions of the officer.

(2) While a child is subject to an order in force under section 72 (1) (c) (ii), the child and the premises in which the child resides shall be subject to inspection by an authorised officer.

Entry without warrant into certain premises

83. (1) For the purpose of inspecting any premises subject to inspection under section 82, an authorised officer may at any time, without any authority other than that conferred by this subsection, enter the premises and inspect them and observe and converse with any person apparently residing there.

(2) In exercising the powers conferred by subsection (1), an authorised officer may be accompanied—

- (a) by a medical practitioner; or
- (b) by a member of the police force,

or both, and any such medical practitioner may inspect the premises and observe, examine and converse with any person apparently residing there.

(3) Nothing in subsection (2) authorises—

- (a) the examination of a child in contravention of section 20 or 21; or
- (b) the examination of any other person against that person's will.

Enforcement of undertakings

84. (1) If—

- (a) an undertaking referred to in section 72 (1) given by or with respect to a child is not complied with;

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- (b) a child placed in the custody of a person under section 72 (1) (c) (ii) ceases, without lawful authority, to be in that person's care; or
- (c) a direction referred to in section 82 (1) (b) (ii) given to a child is not obeyed,

the Children's Court may require the attendance of the child at a time and place determined by it.

(2) If a child is brought before the Children's Court and it is proved that—

- (a) an undertaking referred to in section 72 (1) given by or with respect to the child has not been complied with; or
- (b) a direction referred to in section 82 (1) (b) (ii) given to the child has not been obeyed,

then—

- (c) the Children's Court may vary or rescind any order under section 72 (1) (b) or (c); and
- (d) if the Children's Court rescinds such an order—it may, in accordance with Division 4, 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.

DIVISION 8—*General*

Application of Justices Act 1902 to secure attendance of witnesses, etc.

85. The provisions of the Justices Act 1902 relating to warrants and summonses for the attendance of witnesses in proceedings before justices for offences punishable on summary conviction apply to—

- (a) the attendance of witnesses in proceedings under this Part; and
- (b) the attendance of any person required under section 64, 79 or 84 to attend at a place at which proceedings under this Part are being or are to be conducted.

in the same way as those provisions apply to the attendance of witnesses in proceedings for such offences.

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Care of children arrested under sec. 85

86. (1) If an officer or member of the police force arrests a child under a warrant referred to in section 85, the officer or member of the police force shall forthwith place the child in the care of the Director-General to be kept at a place approved by the Minister for the purposes of this section.

(2) If a child has been placed in the care of the Director-General in accordance with subsection (1), the Director-General shall, subject to any action taken by a justice under any of the provisions of the Justices Act 1902 referred to in section 85, cause the child to be brought before the Children's Court as soon as practicable.

Care of Aboriginal children

87. An Aboriginal child shall not be placed in the custody or care of another person under this Part unless—

- (a) the child is placed in the care of a member of the child's extended family, as recognised by the Aboriginal community to which the child belongs;
- (b) if it is not practicable for the child to be placed in accordance with paragraph (a) or it would be detrimental to the welfare of the child to be so placed—the child is placed in the care of a member of the Aboriginal community to which the child belongs;
- (c) if it is not practicable for the child to be placed in accordance with paragraph (a) or (b) or it would be detrimental to the welfare of the child to be so placed—the child is placed in the care of a member of some other Aboriginal family residing in the vicinity of the child's usual place of residence; or
- (d) if it is not practicable for the child to be placed in accordance with paragraph (a), (b) or (c) or it would be detrimental to the welfare of the child to be so placed—the child is placed in the care of a suitable person approved by the Director-General after consultation with—
 - (i) members of the child's extended family, as recognised by the Aboriginal community to which the child belongs; and
 - (ii) such Aboriginal welfare organisations as are appropriate in relation to the child.

Power of Supreme Court

88. (1) The Supreme Court may, at any time, make an order discharging a child who is in the care of the Director-General under this Part from the Director-General's care, whether or not on the giving of undertakings of the kind referred to in section 77 (1).

(2) If the Supreme Court makes an order discharging a child from the Director-General's care subject to the giving of undertakings, the undertakings shall, for the purposes of section 79, be deemed to be undertakings referred to in section 77 (1).

(3) There is no limit to the number of applications that may be made for the purposes of subsection (1) for the discharge of a child from the care of the Director-General.

(4) Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the custody and guardianship of children.

PART 6**WARDS AND PROTECTED PERSONS****Administration**

89. (1) In the administration of this Part, the welfare and interests of wards and protected persons shall be given paramount consideration.

(2) In determining any matter relevant to the welfare or interests of a ward or protected person, regard shall be had to the wishes of the ward or protected person.

Guardianship of wards

90. (1) The Minister is the guardian of a ward, and, subject to this Act, has the custody of a ward to the exclusion of any other person, until—

- (a) the ward attains the age of 18 years;
- (b) the guardianship of the Minister—
 - (i) is terminated by the Minister under subsection (2); or
 - (ii) is terminated by the Supreme Court in the exercise of its jurisdiction with respect to the custody and guardianship of children; or

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- (c) the ward ceases to be a ward by virtue of any other provision of this Act,

whichever first occurs.

(2) The Minister may terminate the Minister's guardianship of a ward.

(3) Where the Minister terminates the Minister's guardianship of a child who is a ward, the child ceases to be a ward.

(4) The guardianship of a child who has ceased to be a ward shall be determined as if the child had never been a ward.

Functions of the Minister in relation to wards and protected persons

91. (1) The Minister—

- (a) shall provide for the accommodation, care and maintenance of wards and protected persons;
- (b) may make payments, at such rates as may be prescribed by the regulations, to persons having the care of wards or protected persons;
- (c) may direct the removal of any ward or protected person from one place to another;
- (d) may, subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Minister may determine, place any ward or protected person—
 - (i) in the custody of a person in charge of a non-Government organisation; or
 - (ii) for the purpose of the ward or protected person being fostered, in the custody of any person approved by the Minister,

being a person who is willing to undertake the custody of the ward or protected person;

- (e) may terminate the custody of a ward or protected person who has been placed in the custody of a person referred to in paragraph (d) (i) or (ii); and
- (f) may direct that a ward be restored to the custody of a parent of the ward or be placed in the custody of any other person.

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(2) Payment to a person in respect of a ward or protected person shall not continue after the ward or protected person has attained the age of 15 years unless—

- (a) the payment is made for the purpose of securing education or vocational training on a full-time basis for the ward or protected person;
- (b) the ward or protected person is an invalid or is otherwise incapacitated; or
- (c) the case possesses unusual features which, in the opinion of the Minister, call for special consideration,

and the Minister authorises the making of the payment.

(3) This section is subject, in relation to a ward or protected person, to the requirements imposed by the provisions of this or any other Act or of any declaration, order or other thing under which the person became a ward or protected person.

Functions of the Minister in relation to former wards and protected persons

92. (1) The Minister may give to, or provide for, any person who has ceased to be a ward or protected person—

- (a) such assistance as the Minister was empowered to give to, or provide for, the person while the person was a ward or protected person; and
- (b) such other assistance (whether financial or other),

as, in the Minister's opinion, is reasonable having regard to the circumstances of the case.

(2) For the purpose of securing education or vocational training on a full-time basis for any person who has ceased to be a ward or protected person, the Minister may, subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Minister may determine, from time to time and for periods not exceeding 6 months at any one time, authorise the making of payments for that purpose as if the person were a ward or protected person.

(3) Any payment continued under the provisions of subsection (2) may, at the discretion of the Minister, be discontinued or varied at any time.

*Children (Care and Protection) 1987***Wards or protected persons leaving custody, etc.**

93. If a ward or protected person has, without lawful excuse, left, or been removed from, proper custody and the Minister is of the opinion that the ward or protected person should be returned to that custody, or be placed in the custody of some other person, the Minister may, by order in writing, direct that the ward or protected person be returned to proper custody, or be placed in the custody of that other person, as the Minister may specify in the order.

Search warrants

94. (1) An officer may apply to an authorised justice for a search warrant if the officer has reasonable grounds for believing that a ward or protected person the subject of an order in force under section 93 may be found in any premises.

(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 officers named in the warrant—

- (a) to enter any premises specified in the warrant;
- (b) to search the premises for the presence of the ward or protected person;
- (c) to remove the ward or protected person from the premises; and
- (d) to return the ward or protected person to, or to place the ward or protected person in, the custody of the person specified in the order in force under section 93 in respect of the ward or protected person.

(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—

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

Reciprocity between States and Territories

95. (1) In this section—

“appropriate authority” means a person who, under—

- (a) the law of a State of the Commonwealth other than New South Wales; or
- (b) the law of a Territory,

corresponding to this Act, is competent to take action equivalent to the undertaking of guardianship of wards under this Act;

“interstate ward” means a child who is in New South Wales and who, immediately before entering New South Wales, was under the guardianship of an appropriate authority;

“Territory” means Territory of the Commonwealth, including a Territory under the trusteeship of the Commonwealth.

(2) The Minister—

- (a) may make financial and other arrangements with an appropriate authority for the care of an interstate ward or a ward under this Act;
- (b) may, at the Minister’s discretion, or in accordance with any such arrangements, return an interstate ward to the care of the appropriate authority for the interstate ward; and
- (c) shall, where the appropriate authority for an interstate ward requests the Minister to do so, return the interstate ward to the care of that appropriate authority.

(3) The Minister shall provide for the accommodation, care and maintenance of an interstate ward to whom an arrangement referred to in subsection (2) applies as if the interstate ward were a ward under this Act.

(4) The Minister may, at the request of an appropriate authority, declare an interstate ward to be a ward under this Act.

(5) If an interstate ward who was made a ward for a specified period is declared to be a ward under this Act pursuant to subsection (4), then, notwithstanding any other provision of this Part, that person shall, if, upon the expiration of that period, that person is a ward under this Act, cease to be a ward under this Act by virtue of that declaration.

(6) If, in the opinion of the Minister—

- (a) the law of a State of the Commonwealth other than New South Wales; or

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(b) the law of a Territory,

contains a provision corresponding to subsection (4) and, upon the request of the Minister, a ward under this Act is declared, under that provision, to be a ward for the purposes of the law of that other State or that Territory, the functions conferred or imposed by or under this Act upon the Minister and any other person shall be deemed to have been suspended in relation to that ward while the ward remains under guardianship by virtue of the declaration under that provision, except in so far as those functions may be exercised in accordance with arrangements made under subsection (2) (a).

Jurisdiction of Supreme Court not affected

96. Nothing in this Part limits the jurisdiction of the Supreme Court with respect to the custody and guardianship of children.

PART 7

CHILDREN'S BOARDS OF REVIEW

Interpretation

97. In this Part—

“Board of Review” means a Board of Review established under section 99;

“child in care” means—

- (a) a child who is in the custody of the Director-General pursuant to a temporary care arrangement or a temporary custody order;
- (b) a child who is residing in a residential child care centre, otherwise than as a member of the household of any other person who resides there;
- (c) a child who is being fostered by a person into whose care the child has been placed—
 - (i) by an authorised private fostering agency; or
 - (ii) by or with the written approval of the Minister or the Director-General;
- (d) a child who is in the custody of a person pursuant to an order in force under section 72 (1) (c) (ii); or

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(e) a child who is a ward or protected person;

“Deputy President” means the Deputy President of the Boards of Review;

“full-time President” means a person who is required, by an instrument referred to in section 98 (4), to devote the whole of his or her time to the duties of his or her office as President;

“member” means a member of the Panel;

“Panel” means the Children’s Review Panel established by section 98;

“President” means the President of the Boards of Review.

Children’s Review Panel

98. (1) There shall be a Children’s Review Panel.

(2) The Panel shall consist of persons, appointed by the Governor—

(a) at least one of whom is an officer who, in the opinion of the Minister, has knowledge of or experience in administration, education, psychology or social work;

(b) at least one of whom is an Aboriginal who, in the opinion of the Minister, has knowledge of or experience in matters relating to the welfare of Aboriginal children; and

(c) the remainder of whom are persons who, in the opinion of the Minister, have suitable qualifications or experience warranting their appointment as members of the Panel.

(3) Of the members of the Panel—

(a) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as the President of the Boards of Review; and

(b) one shall, in the member’s instrument of appointment or in a subsequent instrument executed by the Governor, be appointed as the Deputy President of the Boards of Review.

(4) The President shall, if required to do so by his or her instrument of appointment as President or by a subsequent instrument executed by the Governor, devote the whole of his or her time to the duties of his or her office as President.

(5) Schedule 2 applies to the Panel.

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Boards of Review

99. (1) The President may establish Boards of Review.

(2) Each Board of Review shall consist of 2 members of the Panel of whom not more than one is an officer.

(3) The President may establish Boards of Review generally for the purpose of carrying out reviews of children under this Part or may establish a Board of Review for the purpose of carrying out a particular review under this Part.

(4) In respect of any review concerning an Aboriginal child, a Board of Review shall include at least one member of the Panel who is an Aboriginal.

(5) The procedure of a Board of Review shall, subject to the regulations, be as directed by the President.

Functions of a Board of Review

100. (1) An application may be made to the President for the review of a child who has been a child in care for a period of 3 months or more.

(2) The Director-General shall ensure that such an application is made—

(a) in relation to—

(i) any child who is in the custody of the Director-General pursuant to a temporary care arrangement or temporary custody order;

(ii) any child who is being fostered by a person into whose care the child has been placed by or with the written approval of the Minister or the Director-General; and

(iii) any child who is a ward or protected person,

within 28 days after the expiration of 6 months from when the child became a child in care; and

(b) in relation to any child in care whose need for care is, in the opinion of the Director-General, not being met by the person in whose care or custody the child is placed.

(3) Without limiting the generality of subsection (2), such an application may be made—

(a) in any case—

(i) by the child;

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- (ii) by a person responsible for the child;
 - (iii) by a foster parent of the child;
 - (iv) by any person who deems himself or herself to have a sufficient interest in the welfare of the child; or
 - (v) by the Minister or the Director-General;
- (b) in the case of a child who is residing in a licensed residential child care centre—by the licensed manager of the centre;
- (c) in the case of a child who is being fostered by a person into whose care the child has been placed—
- (i) by an authorised private fostering agency—by the principal officer of the agency; or
 - (ii) by or with the written approval of the Minister or the Director-General—by the Minister or the Director-General;
- (d) in the case of a child who is in the custody of a person pursuant to an order in force under section 72 (1) (c) (ii)—by a person responsible for the child; or
- (e) in the case of a child who is residing in a facility—by a Visitor for the facility.
- (4) The President—**
- (a) shall, upon receipt of an application under this section in respect of a child who has been a child in care for a period of 3 months or more, request a Board of Review to carry out a review of the child; and
 - (b) may, at any time and for any reason, request a Board of Review to carry out a review of any child in care.
- (5) The President is not required to make a request with respect to a child in respect of whom an application has been made by a person referred to in subsection (3) (a) (iv) unless the President considers the person to have a sufficient interest in the welfare of the child.**
- (6) A Board of Review, when requested by the President to carry out a review of a child in care, shall—**
- (a) review such aspects of the welfare, status, progress and circumstances of the child as are referred to in the request, having particular regard to any arrangements that exist to encourage continuing contact between the child and the child's parents; and

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(b) make a written report that—

- (i) informs the Minister as to the results of the review; and
- (ii) advises the Minister as to whether any change (and if so, what change) in the circumstances or status of the child would, in its opinion, promote the welfare and interests of the child.

(7) In the exercise of its functions under subsection (6) in relation to a review of a child in care, a Board of Review may—

- (a) inspect files, records or papers in respect of the child that are kept in the offices of the Department, any residential child care centre or any authorised private fostering agency; and
- (b) hear or receive submissions from any person, including the child.

Copies of report

101. When a Board of Review has made a report to the Minister in relation to a child in care, the Board—

- (a) shall give a copy of the report—
 - (i) to the person, if any, who applied for the review of the child; and
 - (ii) if the child is of or above the age of 10 years and if the Board considers it in the best interests of the child to do so—to the child; and
- (b) may give a copy of the report to any other person who it considers has a sufficient interest in the welfare of the child.

PART 8

COMMUNITY WELFARE APPEALS TRIBUNAL

Interpretation

102. In this Part—

- “Deputy President” means the Deputy President of the Tribunal;
- “member” means a member of the Tribunal;
- “President” means the President of the Tribunal;