

Court Act 1989 apply, with any necessary modifications, to appeals under this section as if—

- (a) a reference to the Magistrates' Court were a reference to the Children's Court; and
- (b) a reference to section 83 or 84 were a reference to this section; and
- (c) in section 85 for the words "and the appellant is not bound by the plea entered in the Magistrates' Court" there were substituted the words "and the appellant is not bound by the fact that he or she did not contest the application"; and
- (d) a reference to the sentencing order were a reference to the order or the dismissal of the application referred to in sub-section (1).

(7) Sections 20, 22, 23 and 87 apply, with any necessary modifications, to appeals under this section as if —

- (a) a reference to the Court or the Family Division were a reference to the County Court; and
- (b) a reference to a proceeding to which section 21 (1) applies were a reference to an appeal under this section; and
- (c) the reference in section 23 (3) to an order to which that sub-section applies were a reference to a final order made on the hearing of the appeal; and
- (d) a reference to the appropriate registrar were a reference to the registrar of the County Court.

Appeal to Supreme Court on a question of law

117. (1) A party to a proceeding before the Family Division or the Attorney-General, if he or she appeared or was represented in the proceeding under section 82 (2), may appeal to the Supreme Court, on a question of law, from a final order of the Court in that proceeding.

(2) If a protective intervener wishes to appeal under this section, the appeal must be brought by the Director-General on behalf of the protective intervener.

(3) An appeal under sub-section (1) —

- (a) must be instituted not later than 30 days after the day on which the order complained of was made; and
- (b) does not operate as a stay of any order made by the Court unless the Supreme Court so orders.

(4) Subject to sub-section (3), an appeal under sub-section (1) must be brought in accordance with the rules of the Supreme Court.

(5) An appeal instituted after the end of the period referred to in sub-section (3) (a) is deemed to be an application for leave to appeal under sub-section (1).

(6) The Supreme Court may grant leave under sub-section (5) and the appellant may proceed with the appeal if the Supreme Court—

- (a) is of the opinion that the failure to institute the appeal within the period referred to in sub-section (3) (a) was due to exceptional circumstances; and
- (b) is satisfied that the case of any other party to the appeal would not be materially prejudiced because of the delay.

(7) After hearing and determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court with or without any direction in law.

(8) An order made by the Supreme Court on an appeal under sub-section (1), other than an order remitting the case for re-hearing to the Court, may be enforced as an order of the Supreme Court.

(9) The Supreme Court may, as it thinks fit, provide for a stay of the order or may make any interim accommodation order pending the hearing of the appeal that the Children's Court has jurisdiction to make.

Appeals to be heard in open court

118. (1) Proceedings on an appeal under section 116 or 117 are, subject to sub-section (2), to be conducted in open court.

(2) The Supreme Court or County Court (as the case requires) may, on the application of a party or of any other person who has a direct interest in the proceeding or without any such application —

- (a) order that the whole or any part of a proceeding be heard in closed court; or
- (b) order that only persons or classes of persons specified by it may be present during the whole or any part of a proceeding.

(3) Any party to the proceeding and any other interested person has standing to support or oppose an application under sub-section (2).

(4) If an order has been made under this section, the Supreme Court or County Court (as the case requires) must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the Court is being held.

(5) An order posted under this section must not contain any particulars likely to lead to the identification of the child who is a party to the proceeding.

(6) A person must not contravene an order made and posted under this section.

Penalty applying to this sub-section:

- (a) In the case of a person of or above the age of 17 years, 25 penalty units or committal for a term of not more than six months to prison; or

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

Division 9—Powers and Responsibilities of Director-General

Principles of case planning

119. (1) Decisions made by the Director-General as part of the case planning process must, as far as possible, be made according to the following principles:

- (a) The welfare and interests of the child must be given paramount importance;
- (b) If the child is not living with his or her family, a primary goal is to reunite the child with his or her family if that is for the welfare and in the interests of the child;
- (c) When considering the welfare and interests of the child, due consideration must be given to immediate and long-term effects of decisions on the welfare and interests of the child and on the maintenance of the family relationships of the child;
- (d) Any decisions made to protect the safety and well-being of the child must not be more than sufficient to achieve this;
- (e) The child (except if his or her participation would be detrimental to his or her safety or well-being) and the family of the child (except where its participation would be detrimental to the safety or well-being of the child) must be encouraged and (through consultation and discussion) given adequate opportunity to participate fully in the case planning process and must be given a copy of any proposed case plan and sufficient notice of any meeting proposed to be held;
- (f) The child and the family of the child must be provided with the opportunity and assistance to involve other persons to assist them to participate fully in the case planning process in accordance with paragraph (e);
- (g) The case planning process must be conducted in such a way that the persons involved are able to understand it;
- (h) The case planning process must take into account the views of all persons who are directly involved;
- (i) Decisions are to be reached by collaboration and consensus;
- (j) Decisions are to be made with as much speed as a proper consideration of the case permits;

- (k) If a person attending meetings occurring as part of the case planning process has difficulty in communicating in the English language, an interpreter must be present;
 - (l) If meetings are held as part of the case planning process and the child comes from an ethnic background, a member of the appropriate ethnic community who is chosen or agreed to by the child or by his or her parent may attend;
 - (m) In the case of an Aboriginal child —
 - (i) decision-making should involve relevant members of the Aboriginal community to which the child belongs; and
 - (ii) in recognition of the principle of Aboriginal self-management and self-determination, arrangements concerning the child, and his or her care, supervision, custody or guardianship, or access to the child, must be made in accordance with the principles listed in sub-section (2).
- (2) For the purpose of sub-section (1) (m) (ii) the principles are:
- (a) Persons involved in the arrangements mentioned in sub-section (1) (m) (ii) must be, or at least one of them must be, a member of the Aboriginal community to which the child belongs; or
 - (b) If a person or persons of the class mentioned in paragraph (a) is or are not reasonably available for that purpose, the persons involved in those arrangements must be members of, or at least one of them must be a member of, an Aboriginal community; or
 - (c) If a person or persons of the classes mentioned in paragraphs (a) and (b) is or are not reasonably available for that purpose, the persons involved in those arrangements must be persons approved by the Director-General and by an Aboriginal agency as suitable persons for that purpose.

Preparation of case plan

- 120.** (1) The Director-General must ensure—
- (a) that a case plan is prepared in respect of a child within 6 weeks after the making by the Court of a supervision order, a supervised custody order, a custody to Director-General order or a guardianship to Director-General order; and
 - (b) that a copy of the case plan is given to the child and his or her parent within 14 days after its preparation; and
 - (c) that the case plan is reviewed from time to time by the Director-General as appears necessary.
- (2) A case plan must contain all decisions made by the Director-General concerning a child which—

- (a) the Director-General considers to be significant decisions; and
- (b) relate to the present and future care and well-being of the child, including the placement of, and access to, the child.

Internal review

121. (1) The Director-General must prepare and implement procedures for the review within the Department of decisions made as part of the case planning process following the making of a protection order or an interim protection order.

(2) The Director-General must ensure that a copy of the procedures prepared under sub-section (1) is given to the child and his or her parent together with the copy of the case plan required to be given under section 120 (1) (b).

(3) The Director-General, in consultation with the Chief Commissioner of Police, must prepare and implement procedures for the review by a panel that comprises—

- (a) a nominee of the Attorney-General (who shall be the chairperson); and
- (b) a nominee of the Director-General; and
- (c) a nominee of the Chief Commissioner of Police—

of decisions relating to the recording of information in the central register referred to in section 65 (1) (b).

(4) The Director-General must ensure that a copy of the procedures prepared under sub-section (3) is given to every person directly affected by a decision referred to in that sub-section.

Review by Administrative Appeals Tribunal

122. (1) Without limiting section 27 of the *Administrative Appeals Tribunal Act 1984*, a child or a child's parent may apply to the Administrative Appeals Tribunal for the review of—

- (a) a decision contained in a case plan prepared in respect of the child under section 120 or any other decision made by the Director-General concerning the child, including a decision not to make a decision; or
- (b) a decision relating to the recording of information in the central register referred to in section 65 (1) (b).

(2) The Administrative Appeals Tribunal must, for the purpose of the exercise of its powers to review a decision referred to in sub-section (1), include a member who in the opinion of the President of the Tribunal has knowledge of, or experience in, child welfare matters.

(3) Before a person is entitled to apply to the Administrative Appeals Tribunal for the review of a decision referred to in sub-section (1), the person must have exhausted all available avenues for the review of the decision under section 121.

Powers of Director-General as guardian or custodian

123. (1) The Director-General, in relation to a child who is under his or her guardianship —

- (a) is the guardian of the person and estate of the child to the exclusion of all other persons; and
- (b) has the same rights, powers, duties, obligations and liabilities as a natural parent of the child would have.

(2) The Director-General, in relation to a child who is in the custody or under the guardianship of the Director-General —

- (a) has the sole right to the custody of the child; and
- (b) may demand, sue for and recover any money due to the child; and
- (c) in the name and on behalf of the child may commence and prosecute any proceeding relating to any property or rights of the child.

(3) The Director-General may detain without warrant any child who is in the custody or under the guardianship of the Director-General.

(4) This section applies except as otherwise expressly provided by this Part or by any order made under this Part.

Placement of children

124. (1) The Director-General may deal with a child who is in the custody or under the guardianship of the Director-General under this Act or of whom the Director-General is the guardian under the *Adoption Act 1984* in any of the following ways:

- (a) Place him or her in a community service;
- (b) Place him or her in a secure welfare service if the Director-General is satisfied that there is a substantial and immediate risk of harm to the child;
- (c) Place him or her for adoption under the *Adoption Act 1984* if he or she is under the guardianship of the Director-General and available for adoption;
- (d) Place him or her in any other suitable situation as circumstances require.

(2) In dealing with a child under sub-section (1), the Director-General—

- (a) must have regard to the welfare of the child as the first and paramount consideration; and
- (b) must make provision for the physical, intellectual, emotional and spiritual development of the child in the same way as a good parent would; and
- (c) must have regard to the fact that the child's lack of adequate accommodation is not by itself a sufficient reason for placing the child in a secure welfare service.

State Guardianship Fund

125. (1) All money received by the Director-General as guardian of the estate of a child must be paid to the credit of an account established and kept in a bank by the Director-General under the name of the "State Guardianship Fund".

(2) The Director-General must keep an account showing the current amount at credit in the Fund on account of each child.

(3) Money standing to the credit of a child in the Fund which is not immediately required for use by the child may be invested in any manner in which trust money may be invested by a trustee under the *Trustee Act* 1958 and interest earned must be credited to the account of the child at least once a year.

(4) Money standing to the credit of a child in the Fund may only be used for the benefit of the child and with the approval of the Director-General.

(5) On the child ceasing to be under the guardianship of the Director-General all money standing to the credit of the child in the Fund—

(a) if the child is over 18 years of age, must be paid to the child; and

(b) in any other case, may be paid to the child or may, if the Director-General considers it to be in the interests of the child to do so, be retained (wholly or in part) in the Fund until the child is 18 years of age.

(6) The Director-General must, on a child ceasing to be under the guardianship of the Director-General, notify the child of the amount standing to his or her credit in the Fund.

Interstate movement of children

126. (1) In this section "State" means a State or Territory of the Commonwealth.

(2) The Director-General may, on request by or on behalf of the Minister or other person in another State exercising guardianship in that State over a child under an enactment corresponding to this Part, declare the child to be under the guardianship of the Director-General if the child has entered or is about to enter Victoria.

(3) A declaration under sub-section (2) is for all purposes to be deemed to be a guardianship to Director-General order of 12 months duration commencing from—

(a) the date when the Minister or other person in the other State was last granted guardianship of the child or the period of that guardianship was last extended; or

(b) if the date referred to in paragraph (a) occurred more than 12 months before the date of the declaration under sub-section (2), the latter date.

(4) A deemed guardianship to Director-General order referred to in sub-section (3) may be extended or revoked in accordance with the provisions of Subdivision 7 of Division 6.

(5) Subject to sub-sections (3) and (4), a deemed guardianship to Director-General order referred to in sub-section (3) remains in force—

(a) until the child leaves Victoria; or

(b) until the child would have ceased to be under the guardianship of the Minister or other person in the other State if the child had remained in the other State.

(6) The Director-General may make financial or other arrangements with the Minister or other person in another State exercising guardianship in that State over a child under an enactment corresponding to this Part—

(a) for the care of that child in Victoria and may, subject to those arrangements, cause the child while he or she is under the guardianship of the Director-General to be removed from Victoria and returned to that other State; and

(b) for the care in that other State of a child who is under the guardianship of the Director-General under this Act or of whom the Director-General is the guardian under the *Adoption Act 1984*.

(7) The Minister may enter into a general agreement with a Minister in another State for the transfer of children in the custody or under the supervision of the Director-General—

(a) into or out of Victoria; or

(b) through Victoria from one State to another.

(8) If the Minister enters into an agreement with a Minister in another State under sub-section (7), the Director-General—

(a) may make an arrangement with that Minister, or with a person authorised by that Minister for the purpose in the agreement, for the transfer of a particular child—

(i) to that State from Victoria; or

(ii) to Victoria from that State; and

(b) in relation to any particular child who is in the custody of the Director-General, may make financial arrangements with that Minister, or with a person authorised by that Minister for the purpose in the agreement, for the care of the child in that other State.

PART 4—CHILDREN AND THE CRIMINAL LAW

Division 1—Criminal Responsibility of Children

Children under 10 years of age

127. It is conclusively presumed that a child under the age of 10 years cannot commit an offence.

Division 2—Custody and Bail**Children to be proceeded against by summons except in exceptional circumstances**

128. (1) On the filing of a charge against a child a registrar must not issue in the first instance a warrant to arrest unless satisfied by evidence on oath or by affidavit that the circumstances are exceptional.

(2) This section has effect despite anything to the contrary in section 28 of the *Magistrates' Court Act 1989*.

Child in custody to be brought before Court or bail justice

129. (1) Subject to this section, the provisions of Subdivision (30A) of Division 1 of Part III of the *Crimes Act 1958* apply to the custody and investigation of a child.

(2) A child taken into custody under this Part must be—

- (a) released unconditionally; or
- (b) brought before the Court; or
- (c) if the Court is not sitting at any convenient venue, brought before a bail justice—

within a reasonable time of being taken into custody but not later than 24 hours after being taken into custody.

(3) If a child is brought before the Court under sub-section (2) (b), the Court may—

- (a) grant bail; or
- (b) refuse bail and remand the child in custody for a period not exceeding 21 days.

(4) If a child is brought before a bail justice under sub-section (2) (c), the bail justice may only—

- (a) grant bail; or
- (b) refuse bail and remand the child in custody to appear before the Court on the next working day or, if the proper venue is in a prescribed region of the State, within 2 working days.

(5) The *Bail Act 1977* applies to an application for bail by a child.

(6) If a member of the police force inquires into a case under section 10 of the *Bail Act 1977*, a parent or guardian of the child in custody or an independent person must be present.

(7) Bail must not be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation.

(8) If, in the opinion of the Court or bail justice, the child does not have the capacity or understanding to enter into an undertaking within the meaning of the *Bail Act 1977*, the child may be released on bail if the child's parent or some other person enters into an undertaking, in any amount which the Court or bail justice thinks fit, to produce the

child at the venue of the Court to which the charge is adjourned or the court to which the child is committed for trial.

Child in custody to be placed in remand centre

130. If a child is remanded in custody by a court or a bail justice, the child must be placed in a remand centre except as otherwise provided by the regulations with respect to prescribed regions of the State.

Breach of bail

131. Despite section 24 (3) of the *Bail Act 1977*, if a child is arrested under section 24 (1) of that Act and is brought before the Court, the Court must not remand the child in custody for a period longer than 21 days.

Division 3—Referral for Investigation

Referral to Director-General

132. (1) If—

- (a) a child appears as a defendant in a criminal proceeding in the Court; and
- (b) the Court considers that there is *prima facie* evidence that grounds exist for the making of a protection application in respect of the child—

the Court may refer the protective matter to the Director-General for investigation.

(2) If a matter is referred to the Director-General under this section, the Director-General must enquire into the matter and provide, within 21 days of the referral, a report on the matter to the Court.

(3) A report provided under sub-section (2) must—

- (a) confirm that the Director-General has enquired into the matter referred; and
- (b) advise that—
 - (i) a protection application has been made by the Director-General; or
 - (ii) the Director-General is satisfied that no protection application is required.

Report to Court

133. (1) If a matter is referred to the Director-General under section 132, the Court may, subject to section 18 (2), defer sentencing the child until the Director-General provides a report under section 132 (3) (b) (ii) or sub-section (2) (a) of this section.

(2) If a protection application is made by the Director-General, the Director-General, as soon as possible after the determination of the application, must—

- (a) report to the Criminal Division—
 - (i) that the protection application was dismissed; or
 - (ii) that a protection order was made and state the terms of the order; and
- (b) at the same time, forward a pre-sentence report on the child to the Criminal Division.

Division 4—Procedure for Indictable Offences Triable Summarily

Procedure for indictable offences triable summarily

134. (1) If a child is charged before the Court with an indictable offence, other than homicide, the Court must, before the hearing of any evidence, inform the child and his or her parent, if present, that the child may object to the charge being heard and determined summarily.

(2) If the parent of a child who—

- (a) is charged before the Court with an indictable offence, other than homicide; and
- (b) is under the age of 15 years—

is not present before the Court, the Court may adjourn the hearing of the proceeding for the purpose of securing the parent's attendance or may proceed to hear and determine the proceeding in the parent's absence.

(3) If a child is charged before the Court with an indictable offence, other than homicide, the Court must hear and determine the charge summarily unless—

- (a) before the hearing of any evidence the child objects; or
- (b) at any stage the Court considers that the charge is unsuitable by reason of exceptional circumstances to be determined summarily—

and the Court must conduct a committal proceeding into the charge and, in the circumstances mentioned in paragraph (b), must give reasons for declining to determine the charge summarily.

(4) If a child charged before the Court with an indictable offence, other than homicide, is—

- (a) under the age of 15 years; and
- (b) not legally represented—

the child's parent may, for the purposes of sub-section (3) (a), object on the child's behalf.

(5) If the Court hears and determines summarily a charge against a child for an indictable offence, the Court may find the child not guilty of the offence charged but guilty of having attempted to commit the offence charged.

Division 5—Standard of Proof

Proof beyond reasonable doubt

135. (1) On the summary hearing of a charge, whether indictable or summary, the Court must be satisfied of a child's guilt on proof beyond reasonable doubt by relevant and admissible evidence.

(2) If the Court is not satisfied in accordance with sub-section (1), it must dismiss the charge.

Division 6—Reports and other Matters to be Taken into Account in Considering Sentence

Court may only consider certain reports and other matters

136. If the Court finds a child guilty of an offence, the Court may, in considering sentence, take into account only the following:

- (a) A pre-sentence report prepared by the Director-General or the Chief General Manager of the Department of Health and the evidence, if any, of its author;
- (b) Any report, submission or evidence given, made or tendered by or on behalf of the child who is to be sentenced;
- (c) Any offences of which the child has been convicted or found guilty before the commission of the offence under consideration;
- (d) Any submission on sentencing made by the informant or prosecutor or any person appearing on behalf of the Crown.

Division 7—Sentencing Orders

Subdivision 1—General

Sentencing orders

137. (1) If the Court finds a child guilty of an offence, whether indictable or summary, the Court may —

- (a) without conviction, dismiss the charge; or
- (b) without conviction, dismiss the charge and order the giving of an undertaking under section 140; or
- (c) without conviction, dismiss the charge and order the giving of an accountable undertaking under section 142; or
- (d) without conviction, place the child on a good behaviour bond under section 144; or
- (e) with or without conviction, impose a fine under section 150; or
- (f) with or without conviction, place the child on probation under section 158; or
- (g) with or without conviction, release the child on a youth supervision order under section 163; or

- (h) convict the child and make a youth attendance order under section 170; or
 - (i) convict the child and order that the child be detained in a youth residential centre under section 186; or
 - (j) convict the child and order that the child be detained in a youth training centre under section 188.
- (2) If the Court is of the opinion that sentencing should be deferred, the Court may defer sentencing the child in accordance with section 190.
- (3) In addition to any other sentencing order, the Court may order the child —
- (a) to make restitution or pay compensation in accordance with section 191; or
 - (b) to pay costs.
- (4) If under any Act other than this Act a court is authorised on a conviction for an offence—
- (a) to make an order with respect to any property or thing the subject of or in any way connected with the offence; or
 - (b) to impose any disqualification or like disability on the person convicted—

then the Court may, if it finds a child guilty of that offence, make any such order or impose any such disqualification or disability despite the child not being convicted of the offence.

(5) The Court must not pass a sentence that imposes any condition or requirement on a person or body that is not a party to the proceeding unless the Court is satisfied that the person or body consents to that condition or requirement.

Sentencing hierarchy

138. The Court must not impose a sentence referred to in any of the paragraphs of section 137 (1) unless it is satisfied that it is not appropriate to impose a sentence referred to in any preceding paragraph of that section.

Matters to be taken into account

139. (1) In determining which sentence to impose on a child, the Court must, as far as practicable, have regard to —

- (a) the need to strengthen and preserve the relationship between the child and the child's family; and
- (b) the desirability of allowing the child to live at home; and
- (c) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and

- (d) the need to minimise the stigma to the child resulting from a court determination; and
- (e) the suitability of the sentence to the child; and
- (f) if appropriate, the need to ensure that the child is aware that he or she must bear a responsibility for any action by him or her against the law; and
- (g) if appropriate, the need to protect the community, or any person, from the violent or other wrongful acts of the child.

(2) In passing sentence on a child who has appeared before the Family Division or who is or has been the subject of an order of the Family Division, the Court must not impose a sentence more severe than it would have imposed had the child not so appeared or been the subject of such an order.

Subdivision 2—Undertaking

Non-accountable undertaking

140. If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, without conviction, dismiss the charge and order that —

- (a) the child; and
- (b) if required, the child's parent —

give an undertaking, with or without conditions, to do or refrain from doing the act or acts specified in the undertaking for a period not exceeding 6 months or, in exceptional circumstances, 12 months.

Breach of undertaking

141. If an undertaking under section 140 is breached, the Court must not take any action.

Subdivision 3—Accountable Undertaking

Accountable undertaking

142. If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, without conviction, dismiss the charge in accordance with section 140, and order that on breach of the undertaking by the child, the child be made accountable and dealt with for the breach under section 143.

Breach of undertaking

143. (1) If —

- (a) a child has given an undertaking to the Court under section 142; and

- (b) it appears to the Court that the child has failed to comply with the undertaking —

the Court may direct that the child and, if the child is under the age of 15 years, his or her parent be served with a notice to appear before the Court at a specified time.

(2) If a notice is served under sub-section (1) and the child fails to appear before the Court at the time specified, the Court may direct that a warrant to arrest the child be issued.

(3) If the Court is satisfied that the child has failed to comply with an undertaking given under section 142, the Court may —

- (a) cancel the undertaking; or
- (b) continue or vary the undertaking but must not extend the period of the undertaking; or
- (c) revoke the order dismissing the charge and impose a fine not exceeding 1 penalty unit.

Subdivision 4—Good Behaviour Bond

Good behaviour bond

144. (1) If the Court finds a child guilty of an offence, whether indictable or summary, the Court may, without conviction, adjourn the proceeding if it appears expedient to do so, having regard to all the circumstances of the matter including —

- (a) the nature of the offence; and
- (b) the character and antecedents of the child; and
- (c) whether or not the child pleaded guilty.

(2) The period of an adjournment under this section must be specified by the Court and must not exceed 1 year.

(3) An adjournment under this section must not be granted unless the child enters into a bond for a nominal amount on the following conditions:

- (a) That the child appears, if so required by the Court, at the time to which the further hearing is adjourned;
- (b) That the child appears before the Court, if required to do so, during the period of the adjournment;
- (c) That the child is of good behaviour during the period of the adjournment;
- (d) That the child observes any special conditions imposed by the Court.

(4) Subject to this section, the Court may grant an adjournment under this section to a child who is serving or is about to serve a term of detention in respect of another offence and in such a case the period of the adjournment shall commence on the discharge of the child from detention by due course of law.