

“Tribunal” means the Community Welfare Appeals Tribunal established by section 103.

### **Constitution of Tribunal**

**103. (1)** There shall be a Community Welfare Appeals Tribunal.

**(2)** The Tribunal shall consist of persons, appointed by the Governor, from one or more of the following classes of persons:

- (a) persons who, in the opinion of the Minister, have knowledge of and experience in administration, education, psychology, social work or child care;
- (b) medical practitioners;
- (c) barristers;
- (d) solicitors;
- (e) other persons who, in the opinion of the Minister, have suitable qualifications or experience warranting their appointment as members of the Tribunal.

**(3)** Of the members—

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

**(4)** Schedule 3 applies to the constitution of the Tribunal.

**(5)** Schedule 4 applies to the procedure of the Tribunal.

### **Appeals**

**104. (1)** An appeal may be made to the Tribunal against any of the following decisions:

- (a) a decision of the Minister or the Director-General, as the case may be—
  - (i) to grant a licence or authority;
  - (ii) to grant a consent;
  - (iii) to impose a condition on a licence or authority;

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- (iv) to revoke or vary any condition of, or to impose a further condition on, a licence or authority;
  - (v) to grant an application to vary a fostering authority; or
  - (vi) to suspend or revoke a licence or authority,
- as referred to in Schedule 1;
- (b) a decision of the Minister to make an order under section 3 (4) or (7);
  - (c) a decision of the Minister to grant an exemption under section 48 (1) or 50, to limit the extent of any such exemption or to impose conditions on any such exemption;
  - (d) a decision of the Minister or the Director-General to give an approval referred to in section 42 (2) or 44 (2);
  - (e) a decision of the Minister to delegate any of the Minister's functions referred to in section 11 (1) (b) or to revoke a delegation of any such function;
  - (f) a decision of the Minister or the Director-General, as the case may be, to refuse to make a decision referred to in paragraph (a), (b), (c), (d) or (e) that the Minister or Director-General, as the case may be, is empowered and has been requested to make;
  - (g) a decision of the Minister to refuse to terminate the Minister's guardianship of a ward under section 90 (2);
  - (h) a decision of the Minister to terminate the custody of a ward or protected person under section 91 (1) (e);
  - (i) a decision of the Minister or the Director-General belonging to such class of decisions as may be prescribed by the regulations.

(2) If, under subsection (1), an appeal may be made against a decision to refuse to do any thing, an appeal may, in such circumstances as may be prescribed by the regulations, be made against the failure to make the decision by the person empowered to make it as if that person had refused to make the decision.

### **Parties to appeals**

**105. (1)** An appeal against a decision referred to in section 104 (1) may be made by any person who deems himself or herself to have a genuine concern in the subject-matter of the decision.

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(2) Without limiting the generality of subsection (1), an appeal against a decision concerning a child may be made by any person responsible for the child the subject of the decision.

(3) An appeal shall be made within a period of 28 days after the making of the decision appealed against or within such longer period as the Tribunal may (whether before or after the expiration of that period) determine.

(4) The parties to an appeal to the Tribunal with respect to a decision of the Minister or the Director-General are—

- (a) the Minister or the Director-General, as the case may require;
- (b) the person who appeals against the decision;
- (c) any person who was entitled to, but did not, appeal against the decision, but only if that person applies to the Tribunal to be made such a party and the application is approved by the Tribunal; and
- (d) any person who would, if the decision of the Minister or the Director-General were reversed or varied, be entitled to appeal against the decision as so reversed or varied, but only if that person applies to the Tribunal to be made such a party and the application is approved by the Tribunal.

(5) The Tribunal is not required to hear or determine an appeal made by a person referred to in subsection (1) unless it considers the person to have a genuine concern in the subject-matter of the decision to which the appeal relates.

**Lodging of material documents with the Tribunal**

**106. (1)** A person who has made a decision that is the subject of an appeal to the Tribunal shall, within a period of 28 days after receiving notice of the appeal, lodge with the Tribunal such number of copies as the Tribunal directs of every document or part of a document that is in that person's possession or under that person's control and is considered by that person to be relevant to the determination of the appeal.

(2) If it appears to the Tribunal that a party to an appeal would or might suffer hardship if the period prescribed by subsection (1) for lodging with it the copies of the documents referred to in that subsection is not shortened, the Tribunal may, upon request being made by that party, make an order directing that those copies be lodged with the Tribunal within such period (being a period of less than 28 days) after the person who made the decision receives or received notice of the appeal as is specified in the order.

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(3) If the Tribunal is of the opinion that particular other documents or that other documents included in a particular class of documents may be relevant to the determination of the appeal, it may cause to be served on the person who made the decision a notice in writing—

- (a) stating that the Tribunal is of that opinion; and
- (b) requiring the person to lodge with the Tribunal, within a time specified in the notice, such number of copies as it may specify of each of those other documents that is in that person's possession or under that person's control,

and a person on whom such a notice is served shall comply with the notice.

**Operation and implementation of a decision pending appeal**

107. (1) Subject to this section, an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision.

(2) The Tribunal or the President may, on request being made by a party to an appeal and if the Tribunal or President is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the determination of the appeal, make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the appeal relates, or a part of that decision, as the Tribunal or President considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

(3) While an order is in force under subsection (2) (including an order that has previously been varied on one or more occasions under this subsection), the Tribunal or President may, on request being made by a party to the appeal, make an order varying or revoking the firstmentioned order.

(4) Subject to subsection (5), neither the Tribunal nor the President shall—

- (a) make an order under subsection (2) unless the person who made the decision to which the appeal relates has been given a reasonable opportunity to make submissions to the Tribunal or the President, as the case may be, in relation to the matter; or
- (b) make an order varying or revoking an order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3)) unless—
  - (i) the person who made the decision to which the appeal relates;

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- (ii) the person who requested the making of the order under subsection (2); and
- (iii) if the order under subsection (2) has previously been varied by an order or orders under subsection (3)—the person or persons who requested the making of the lastmentioned order or orders, have been given a reasonable opportunity to make submissions to the Tribunal or President, as the case may be, in relation to the matter.

(5) Subsection (4) does not prohibit the Tribunal or the President from making an order without giving to any person referred to in that subsection a reasonable opportunity to make submissions to the Tribunal or President in relation to a matter if the Tribunal or President is satisfied that, because of the urgency of the case or otherwise, it is not practicable to give that person such an opportunity but, where an order is so made without giving such an opportunity to the person who made the decision to which the appeal relates, the order does not come into operation until a notice setting out the terms of the order is served on the lastmentioned person.

(6) An order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3))—

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect—
  - (i) if a period for the operation of the order is specified in the order—until the expiration of that period or, if the appeal is decided by the Tribunal before the expiration of that period, until the decision of the Tribunal on the appeal comes into operation; or
  - (ii) if no period is so specified—until the decision of the Tribunal on the appeal comes into operation.

**Powers of the Tribunal in respect of appeals**

**108. (1)** The Tribunal, in determining an appeal, shall have and may exercise the functions of the Minister or the Director-General, as the case may be, with respect to the matter the subject of the appeal.

(2) In addition to its functions under subsection (1), the Tribunal, in relation to an appeal made by or on behalf of any person, may, having regard to—

- (a) the frequency of appeals made by or on behalf of that person; or

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(b) any other matter that the Tribunal considers relevant, determine that no further right of appeal may be exercised by or on behalf of that person in respect of the matter the subject of the appeal until the expiration of such period as it may specify in its determination.

### **Effect of decisions of the Tribunal**

**109.** Subject to section 110, a decision of the Tribunal with respect to proceedings before it shall be final and shall be given effect to as if it were the decision of the person in respect of whose decision the proceedings were brought.

### **Appeals to Supreme Court from decisions of the Tribunal**

**110. (1)** A party to a proceeding before the Tribunal may appeal to the Supreme Court, on a question of law, from any decision of the Tribunal in that proceeding.

(2) If a person has appealed to the Tribunal against a decision, or has applied to be made a party to a proceeding before the Tribunal, and the Tribunal decides that the person was not entitled so to appeal or has not approved that person's application, the person may appeal to the Supreme Court from the decision of the Tribunal.

(3) An appeal by a person under subsection (1) or (2) shall be instituted—

- (a) within the period of 28 days after the day on which a document setting out the terms of the decision of the Tribunal is furnished to the person; or
- (b) within such further time as the Supreme Court (whether before or after the expiration of that period) allows.

(4) The Supreme Court shall hear and determine the appeal and may make such order as it thinks appropriate in the light of its decision.

(5) Without affecting the generality of subsection (4), the orders that may be made by the Supreme Court on an appeal include—

- (a) an order affirming or setting aside the decision of the Tribunal; and
- (b) an order remitting the case to be heard and decided again by the Tribunal, either with or without the hearing of further evidence, in accordance with the directions of the Supreme Court.

**Power of entry**

**111.** Section 83 applies to a member of the Tribunal in the same way as it applies to an authorised officer, but as if the powers conferred by that section were conferred on the member for the purpose of the member's functions as such a member instead of for the purposes specified in that section.

**Reports**

**112. (1)** The President shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Tribunal.

**(2)** A report shall deal with such matters as the Minister directs and with such other matters as the President considers appropriate to include in the report.

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**PART 9****MISCELLANEOUS****Service of notices, etc.**

**113. (1)** Any notice or other instrument required or authorised by this Act to be served on a person is sufficiently served if the notice or other instrument is—

- (a) delivered personally to the person;
- (b) left with a person who is apparently of or above the age of 16 years at, or sent by prepaid post to, the address last known to the Director-General of the person on whom the notice or other instrument is to be served; or
- (c) where no address of the person is known to the Director-General, published or otherwise dealt with as may be prescribed by the regulations.

**(2)** If such a notice or instrument is—

- (a) sent by post as referred to in subsection (1) (b), it shall be deemed to have been served at the time it would be delivered in the ordinary course of post; or

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(b) published or otherwise dealt with as referred to in subsection (1) (c), it shall be deemed to have been served at such time as may be prescribed by the regulations.

(3) Subsection (1) does not affect any other provision of this Act relating to the service of notices or other instruments.

**Notices, etc., to be written in other languages**

**114. (1)** If—

- (a) the Director-General is required, by or under this Act, to cause a notice or other instrument to be served on any person; and
- (b) it appears to the Director-General that the person is not literate in the English language but is literate in another language,

the Director-General shall, in so far as it is reasonably practicable, cause the notice or other instrument to be written in that other language.

(2) Failure to comply with subsection (1) does not vitiate any thing done under any other provision of this Act.

**Disclosure of information**

**115.** A person who discloses any information obtained in connection with the administration or execution of this Act is guilty of an offence unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act;
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

**Search warrants**

**116. (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 a provision of this Act or the regulations has been or is being contravened at any premises.



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(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 the premises; and
- (b) to inspect the premises for evidence of a contravention of this Act or the regulations.

(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 Act or the regulations.

**Obstruction of officers**

117. A person who wilfully hinders, obstructs, delays, assaults or threatens with violence any person in the exercise of that person's functions under this Act is guilty of an offence.

**Person falsely representing as an officer**

118. A person, not being an officer, who—

- (a) assumes or uses the designation of officer or falsely represents himself or herself to be officially associated in any capacity with the Department; or
- (b) uses, for any fraudulent purpose, any designation which that person previously held in the Department,

is guilty of an offence.

**False or misleading statements**

119. A person shall not, in any application under this Act or in connection with an inquiry made by an officer in relation to any such application—

- (a) make a statement; or
- (b) furnish information,

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that the person knows to be false or misleading in a material particular.

Penalty: \$500.

**Penalties**

**120.** A person who is guilty of an offence under this Act is, for every such offence, liable to a penalty not exceeding the penalty expressly imposed or, if no penalty is expressly imposed, to a penalty not exceeding \$1,000 or imprisonment for a period not exceeding 12 months, or both.

**Proceedings for offences**

**121.** Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Evidence of young children**

**122. (1)** If an authorised justice is satisfied by the evidence of a medical practitioner that the attendance before a court of a child to whom an offence against this Act or the regulations relates would be injurious or dangerous to the child's health, the justice may take in writing the statement of the child in pursuance of section 406 of the Crimes Act 1900 as if the child were dangerously ill, whereby the child's evidence would probably be lost if not forthwith taken.

**(2)** If, in any proceedings for an offence against this Act or the regulations relating to a child, a court is satisfied by the evidence of a medical practitioner that the attendance before the court of the child would be injurious or dangerous to the child's health, any deposition taken under section 406 of the Crimes Act 1900, or any statement of the child taken under subsection (1), may be read in evidence, and shall have effect in the same manner as if it were proved that the child were so ill as not to be able to travel or (in the case of any such statement) that there was no reasonable probability that the child would ever be able to travel or give evidence.

**(3)** If, in any proceedings for an offence against this Act or the regulations relating to a child, a court is satisfied by the evidence of a medical practitioner that the attendance of the child for the purpose of giving evidence before the court would be injurious or dangerous to the child's health, and it is further satisfied that the evidence of the child is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

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**123. (1)** In the absence of proof to the contrary, the authority of the Minister, the Director-General or any officer to exercise any function conferred or imposed on the Minister, the Director-General or any such officer by or under this Act, or to take any proceedings for the purposes of this Act, shall be presumed.

**(2)** In any proceedings under this Act with respect to a child, the Minister, the Director-General or any authorised officer shall be entitled to appear and to be heard.

**(3)** An averment in any complaint or information made or laid under this Act—

- (a) that any instrument, purporting to have been made under this Act and specified in the averment, was or was not, at a time or during a period so specified, in force under this Act and was or was not made, granted or issued subject to conditions so specified;
  - (b) that any officer has been appointed, authorised or directed, for the purposes of this Act or the regulations, by the Minister as stated in the averment;
  - (c) that any person was, on a date specified in the averment, a ward or protected person; or
  - (d) that any person was, on a date specified in the averment, an officer,
- shall be prima facie evidence of the facts averred.

**Regulations**

**124. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the control and regulation of child care services and authorised supervisors of licensed child care services;
- (b) the control and regulation of residential child care centres and licensed managers of licensed residential child care centres;
- (c) the control and regulation of private fostering agencies and principal officers of authorised private fostering agencies;
- (d) the control and regulation of holders of fostering authorities;

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- (e) the control and regulation of the employment of children;
- (f) the making of care applications under Part 5;
- (g) the undertakings that may be given by or with respect to a child for the purposes of Part 5;
- (h) the control and regulation of wards and protected persons; and
- (i) registers for the purposes of this Act.

**(2)** A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

**(3)** A regulation may create an offence punishable by a penalty not exceeding \$500.

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SCHEDULE 1

(Secs. 32,36,41,43)

PROVISIONS RELATING TO CERTAIN LICENCES AND AUTHORITIES

**Interpretation**

1. In this Schedule—

“approved person” means—

- (a) in relation to a licence for a child care service—the authorised supervisor under the licence;
- (b) in relation to a licence for a residential child care centre—the licensed manager under the licence; or
- (c) in relation to a private fostering agency authority—the principal officer under the authority;

“authority” means a private fostering agency authority or a fostering authority;

“licence” means a licence for a child care service or a residential child care centre.

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*continued***Eligible applicants**

2. A person is not eligible to make an application for a licence for a residential child care centre unless the person is the proprietor of the premises for which the licence is applied for.

**Grant of licences or authorities**

3. (1) When a person makes an application to the Minister for a licence or authority, the Minister shall cause an inquiry to be made with respect to the application by officers and a report on the application to be made and furnished to the Minister by an officer.

(2) Upon receipt of the report, the Minister shall—

(a) grant the licence or authority to the applicant; or

(b) cause to be served on the applicant a notice stating that, when 28 days have expired after service of the notice, the Minister intends to refuse the licence or authority on the grounds specified in the notice unless it has been established to the Minister's satisfaction that the licence or authority should not be refused.

(3) When 28 days have expired after a notice has been served under subclause (2) (b), the Minister shall, after considering any submissions made during that period by the applicant—

(a) grant the licence or authority to the applicant; or

(b) refuse the licence or authority and cause to be served on the applicant a notice stating the grounds on which the licence or authority has been refused.

(4) Without limiting the Minister's power to refuse a licence, the Minister may refuse a licence on the ground that, in the locality in which it is proposed—

(a) to provide the child care service; or

(b) to conduct the residential child care centre,

there are already available adequate child care services or residential child care centres, as the case may be, of a similar kind to that in relation to which the licence is applied for.

**Change of approved persons under licences or private fostering agency authorities**

4. (1) A licensee or holder of a private fostering agency authority may apply for the Minister's consent to the replacement of the approved person under the licence or authority by another person.

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*continued*

(2) When the Minister receives an application under subclause (1), the Minister shall, by notice served on the applicant, the approved person and the other person specified in the application—

- (a) if the Minister considers the other person suitable to act as the approved person under the licence or authority—consent to the other person's becoming the approved person under the licence or authority; or
- (b) refuse the application.

(3) When the Minister has consented to another person's becoming the approved person under a licence or authority—

- (a) any person who was the approved person under the licence or authority immediately before the consent was given ceases to be the approved person under the licence or authority; and
- (b) the other person shall be deemed to be the person specified under section 32 (1) (c), 36 (1) (c) or 41 (1) (b), as the case may be, in the licence or authority.

(4) A notice served for the purpose of giving a consent under subclause (2) shall specify any conditions, other than such conditions as may be prescribed by the regulations, which are in force when the notice is served and to which the licence or authority to which it relates is subject.

**Duration of licences and authorities**

5. (1) Unless sooner revoked, a licence or private fostering agency authority shall remain in force for such period, not exceeding 3 years, as is specified in the licence or authority, commencing on the date on which it is granted, or such later date as is specified in the licence or authority, as the case may be.

(2) If an application for a further licence or private fostering agency authority in relation to the same child care service, residential child care centre or private fostering agency, as the case may be, as that to which the licence or authority relates is made by the licensee under the licence or the holder of the authority while the licence or authority is in force, the licence or authority shall remain in force until the application is finally dealt with.

(3) Subject to any condition specified in the authority under section 43 (1) (e), a fostering authority shall remain in force until it is revoked.

**Conditions of licence or authority**

6. A licence or authority is subject to—

- (a) any condition prescribed by the regulations for licences or authorities or for a class of licences or authorities to which the licence or authority belongs; and

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*continued*

(b) any other condition in force in relation to the licence or authority, being a condition that the Minister thought fit to impose on the licence or authority and that was—

- (i) specified in the licence or authority when it was granted; or
- (ii) subsequently imposed on the licence or authority under clause 7.

**Revocation, variation or addition of conditions on licences and authorities**

7. (1) If the Minister intends to revoke or vary any condition of a licence or authority or to impose a further condition on a licence or authority, the Minister shall cause to be served on—

- (a) the licensee under the licence or the holder of the authority; and
- (b) the approved person, if any, under the licence or authority,

a notice stating that, when 28 days have expired after service of the notice, the Minister intends to revoke or vary a condition of the licence or authority specified in the notice or to impose on the licence or authority a further condition specified in the notice, as the case may be, unless it has been established to the Minister's satisfaction that the Minister should not do so.

(2) When 28 days have expired after notices have been served under subclause (1), the Minister may, after considering any submissions made during that period by the person or persons on whom the notices were served—

- (a) revoke or vary the condition specified in the notices; or
- (b) impose the further condition, as specified in the notices, on the licence or authority to which the notices relate,

by a further notice served on that person or those persons.

(3) Notwithstanding subclauses (1) and (2), if the licensee under a licence or the holder of an authority has requested that a condition of the licence or authority be revoked or varied or that a further condition be imposed on the licence or authority, the Minister may, by notice served on the licensee or holder of the authority and the approved person, if any, under the licence or authority—

- (a) revoke or vary the condition; or
- (b) impose the further condition,

as the case may require.

**Application for variation of matters specified in a fostering authority**

8. Any matter specified in a fostering authority pursuant to section 43 (1) (b)–(e) shall, for the purposes of clauses 5 and 7, be deemed to be a condition of the fostering authority.