

### **Powers of registrar**

**30.** (1) A registrar has the following powers in addition to those conferred on him or her by this or any other Act:

- (a) Power to issue any process out of the Court;
- (b) Power to administer an oath;
- (c) With the consent of the parties to a proceeding in the Family Division, power to extend an interim accommodation order of a kind referred to in paragraph (a) or (b) of section 73 (3) made in respect of a child appearing on a return date in relation to the proceeding;
- (d) Power to extend the bail of a person appearing on a return date in relation to a criminal proceeding in respect of which the person has been granted bail;
- (e) Power to endorse a warrant to arrest in accordance with section 62 of the *Magistrates' Court Act 1989*.

(2) Sub-section (1) (c) does not empower a registrar to vary the amount or conditions of bail.

### **Fees**

**31.** A registrar must demand and receive the prescribed fees.

### **Extortion by and impersonation of court officials**

**32.** The following persons are guilty of an offence and liable to a fine of not more than 20 penalty units or to imprisonment for a term of not more than 2 years or to both:

- (a) A court official who extorts, demands, takes or accepts from any person any unauthorised fee or reward;
- (b) A court official who pretends to be the holder of an office or position in or in relation to the Court which he or she does not hold;
- (c) Any person who is not a court official and who pretends to be a court official.

### **Protection of registrars**

**33.** The principal registrar, a registrar and a deputy registrar have in the performance of their duties the same protection and immunity as a magistrate has in the performance of his or her duties.

## **Division 7—Court Services**

### **Probation officers**

**34.** (1) The Director-General—

- (a) has the duty of generally supervising all probation work under this Act; and
- (b) has the powers and duties prescribed by or under this Act.

(2) Subject to the *Public Service Act 1974*, there are to be appointed as many stipendiary probation officers for the Court as are necessary.

(3) A probation officer appointed under sub-section (2) has the powers and duties prescribed by or under this Act.

(4) The Director-General may, by instrument published in the *Government Gazette*, appoint as an honorary probation officer any fit and proper person who is willing to exercise and perform the powers and duties given to honorary probation officers by or under this Act.

(5) An honorary probation officer is not in respect of the office of honorary probation officer subject to the *Public Service Act 1974*.

(6) A probation officer is, in relation to a probation order, subject to the direction of the Court but otherwise he or she is subject to the direction and control of the Director-General.

(7) The Director-General must co-ordinate the activities of probation officers.

#### **Duties of probation officers**

**35. (1) It is the duty of a probation officer if required by the Criminal Division or the Director-General—**

- (a) to give the Court any assistance that it requires in relation to a child who has been found guilty of an offence, including preparing and furnishing it with a pre-sentence report prepared in accordance with section 53; or
- (b) to visit and supervise any child as directed by the Court and in consultation and co-operation with the child's parents; or
- (c) to perform such other duties as are prescribed by or under this or any other Act.

(2) All registrars of the Court and all members of the police force must, in the prescribed manner, supply the Director-General or a probation officer nominated by the Director-General with any information concerning charges before the Criminal Division that are necessary for the purposes of this Act.

(3) A probation officer must carry out any inquiries required under this section in such manner as to cause as little prejudice as possible to the reputations of the child concerned and of his or her parents.

(4) A written report prepared under this section must not be tendered to or received by the Court until the Court is satisfied that the child is guilty of the offence charged.

#### **Children's Court Liaison Office**

**36. (1) A Children's Court Liaison Office is established.**

(2) Subject to the *Public Service Act 1974*, there are to be appointed to the Children's Court Liaison Office as many court liaison officers

and other persons as are necessary for the proper functioning of the Office.

- (3) The Children's Court Liaison Office has the following functions:
- (a) To provide information and advice about the Court to children, families and the community;
  - (b) To co-ordinate the provision to the Court of any reports that are required;
  - (c) To collect and keep general information and statistics on the operation of the Court;
  - (d) To provide general advice and assistance to the Court;
  - (e) To undertake any research that is required to enable it to carry out its functions.

#### **Children's Court Clinic**

37. (1) The Chief General Manager of the Department of Health may establish and maintain a Children's Court Clinic.

- (2) The Children's Court Clinic has the following functions:
- (a) To make clinical assessments of children;
  - (b) To submit reports to courts and other bodies;
  - (c) To provide clinical services to children and their families.

(3) In addition to the functions mentioned in sub-section (2) the Children's Court Clinic has any other functions that are prescribed.

### **Division 8—Reports to the Court**

#### **Subdivision 1—General**

#### **Reports to which Division applies**

38. This Division applies to the following types of reports:
- (a) Protection reports;
  - (b) Disposition reports;
  - (c) Additional reports;
  - (d) Pre-sentence reports.

#### **Notification of requirement to submit report**

39. If the Court orders the Director-General or the Chief General Manager of the Department of Health or any other person to submit a report to which this Division applies, the registrar at the venue of the Court at which the order is made must, within 1 working day after the making of the order—

- (a) orally notify him or her of the making of the order; and
- (b) forward a copy of the order to him or her.

**Warning to be given to persons being interviewed**

40. The author of a report to which this Division applies must at the beginning of any interview being conducted by him or her in the course of preparing the report inform the person being interviewed that any information that he or she gives may be included in the report.

**Attendance at Court of author of report**

41. (1) The author of a report to which this Division applies may be required to attend to give evidence at the hearing of the proceeding to which the report is relevant by a notice given in accordance with sub-section (2) by—

- (a) the child in respect of whom the report has been prepared; or
- (b) a parent of that child if the proceeding is in the Family Division; or
- (c) the Court.

(2) A notice under sub-section (1) must be—

- (a) in writing; and
- (b) filed with the appropriate registrar or a court liaison officer at the proper venue of the Court as soon as possible and, if practicable, not later than 2 working days before the hearing.

(3) On the filing of a notice under sub-section (1), the registrar or court liaison officer must immediately notify the author of the report that his or her attendance is required on the return date.

(4) A person is guilty of contempt of court if, being the author of a report who has been required to attend the Court under sub-section (1), he or she fails, without sufficient excuse, to attend as required.

(5) The author of a report who has been required under sub-section (1) by the child or a parent of the child to attend at the hearing of a proceeding must, if required by the child or parent (as the case requires), be called as a witness and may be cross-examined on the contents of the report.

**Disputed report**

42. (1) If any matter in a report to which this Division applies is disputed by the child who is the subject of the report or, if the proceeding is in the Family Division, by a parent of the child, the Court must not take the disputed matter into consideration when determining the proceeding unless satisfied that the matter is true—

- (a) in the case of a proceeding in the Family Division, on the balance of probabilities; or
- (b) in the case of a proceeding in the Criminal Division, beyond reasonable doubt.

(2) If—

- (a) a report to which this Division applies, or any part of it, is disputed by the child who is the subject of the report or, if the proceeding is in the Family Division, by a parent of the child; and
- (b) the author of the report does not attend the hearing of the proceeding despite having been required to attend under section 41 (1)—

the Court must not take the report or the part in dispute into consideration when determining the proceeding unless the child or parent (as the case requires) consents to the report or the part in dispute being admitted into evidence.

### **Confidentiality of reports**

43. (1) A person who prepares or receives or otherwise is given or has access to a report to which this Division applies, or any part of such a report, must not, without the consent of the child who is the subject of the report or that child's parent, disclose any information contained in that report or part report (as the case requires) to any person who is not entitled to receive or have access to that report or that part (as the case requires).

Penalty: 10 penalty units.

(2) Sub-section (1) is subject to any contrary direction by the Court.

(3) A reference in sub-section (1) to a report includes a reference to a copy of a report.

### **Subdivision 2—Protection Reports**

#### **Protection reports**

44. If the Family Division requires further information to enable it to determine a protection application, it may order the Director-General to submit to the Court a protection report concerning the child who is the subject of the application.

#### **Director-General to forward report to Court**

45. If the Court orders the Director-General to submit a protection report to the Court, he or she must do so within 21 days and not less than 3 working days before the hearing.

#### **Content of protection report**

46. A protection report must only deal with matters that are relevant to the question of whether the child is in need of protection.

#### **Access to protection report**

47. (1) The Court must, subject to sub-section (2), cause a copy of a protection report to be given within 7 days of its receipt by the Court and before the hearing of the proceeding to each of the following:

- (a) The child who is the subject of the report;
- (b) That child's parent;
- (c) The legal practitioners representing that child;
- (d) The legal practitioners representing that child's parent;
- (e) The protective intervener who made the protection application;
- (f) Any other person specified by the Court.

(2) The Court may by order restrict access to the whole of a protection report, or a part of the report specified in the order, by a person mentioned in sub-section (1) (a), (b) or (f) and specified in the order, if the Court is satisfied that information in the report, or the part of the report, may be prejudicial to the physical or mental health of the child or a parent of the child.

(3) An application for an order under sub-section (2) may be made by—

- (a) the Director-General; or
- (b) a party to the proceeding; or
- (c) a person mentioned in sub-section (1); or
- (d) with the leave of the Court, any other person—

and must be made not less than 2 working days before the hearing of the proceeding.

(4) If the Court makes an order under sub-section (2), it must cause a copy of the order to be served on the persons mentioned in sub-section (1).

(5) A person who receives a copy of a protection report or of part of a protection report under this section (part or all of which was not given to the child who is the subject of the report or to that child's parent on account of an order made under sub-section (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report or the part of it (as the case requires) that was not given to that child or parent.

Penalty applying to this sub-section: 10 penalty units.

### **Subdivision 3—Disposition Reports and Additional Reports**

#### **Disposition reports**

**48. (1) The Director-General must prepare and submit to the Family Division a disposition report if—**

- (a) the Court becomes satisfied that—
  - (i) a child is in need of protection; or
  - (ii) there is a substantial and presently irreconcilable difference between the person who has custody of a child and the child to such an extent that the care and

control of the child are likely to be seriously disrupted;  
or

- (iii) there has been a failure to comply with a supervision order, a supervised custody order or an interim protection order; or
- (b) he or she applies, or is notified that a person has applied—
  - (i) for a permanent care order; or
  - (ii) for the variation or revocation of a supervision order, a custody to third party order, a supervised custody order, a custody to Director-General order or a permanent care order; or
  - (iii) for the extension of a custody to Director-General order or a guardianship to Director-General order; or
  - (iv) for the revocation of a guardianship to Director-General order; or
- (c) the Court orders him or her to do so.

(2) Unless the Court otherwise orders, the Director-General is not required under sub-paragraph (i) or (ii) of paragraph (a) of sub-section (1) to prepare and submit to the Court a disposition report if the Court states that it does not propose to make a protection order or an interim protection order or that it only proposes to make an order requiring a person to give an undertaking.

#### **Content of disposition report**

**49.** A disposition report must include—

- (a) the draft case plan, if any, prepared for the child; and
- (b) recommendations, where appropriate, concerning the order which the Director-General believes the Court ought to make and concerning the provision of services to the child and the child's family; and
- (c) if the report recommends that the child be removed from the custody or guardianship of his or her parent, a statement setting out the steps taken by the Director-General to provide the services necessary to enable the child to remain in the custody or under the guardianship of the parent; and
- (d) any other information—
  - (i) that the Court directs to be included; or
  - (ii) that the regulations require to be included.

#### **Additional report**

**50.** If in any proceeding in which a disposition report is required under section 48 (1) the Family Division is of the opinion that an additional report is necessary to enable it to determine the proceeding, it may order the preparation and submission to the Court of an additional report by—

- (a) the Director-General; or
- (b) the Chief General Manager of the Department of Health; or
- (c) another person specified by the Court.

**Access to disposition and additional reports**

**51.** (1) If a disposition report is required under section 48 (1) or the Court orders a disposition report or an additional report, the author of the report must, subject to sub-section (2), within 21 days and not less than 3 working days before the hearing forward the report to the proper venue of the Court and a copy—

- (a) to the child who is the subject of the report; and
- (b) to that child's parent; and
- (c) to the legal practitioners representing that child; and
- (d) to the legal practitioners representing that child's parent; and
- (e) to any other person specified by the Court.

(2) The author of a report is not under sub-section (1) required to forward copies of the report in accordance with paragraph (a), (b) or (e) of that sub-section if—

- (a) he or she is of the opinion that information contained in the report may be prejudicial to the physical or mental health of the child or a parent of the child; or
- (b) the child or a parent of the child or another party to the proceeding notifies him or her of his or her objection to the forwarding of copies of the report.

(3) If because of sub-section (2) the author of a report is not required to forward a copy of the report to a person in accordance with sub-section (1), he or she may forward to that person a copy of part of the report.

(4) If because of sub-section (2) the author of a report does not forward copies of the report in accordance with sub-section (1) (a), (b) or (e)—

- (a) he or she must inform the appropriate registrar or the other persons referred to in that sub-section of that fact; and
- (b) the Court may by order direct the appropriate registrar to forward a copy of the report or of a specified part of the report, together with a copy of the order, to a person named or described in the order as soon as possible and before the hearing.

(5) A person who receives a copy of a report or of part of a report under this section (part or all of which was not forwarded to the child who is the subject of the report or to that child's parent because of sub-section (2)) must not, unless otherwise directed by the Court, disclose to that child or parent any information contained in the report



or the part of it (as the case requires) that was not forwarded to that child or parent.

Penalty applying to this sub-section: 10 penalty units.

(6) The Court may dispense with compliance with the time requirements of sub-section (1) in a case where a disposition report is required under section 48 (1).

#### **Subdivision 4—Pre-Sentence Reports**

##### **Court may order pre-sentence report**

52. If the Criminal Division finds a child guilty of an offence it may, before passing sentence, order a pre-sentence report in respect of the child and adjourn the proceeding to enable the report to be prepared.

##### **Who prepares pre-sentence reports?**

53. A pre-sentence report must be prepared by—

- (a) the Director-General; or
- (b) the Chief General Manager of the Department of Health.

##### **Contents of pre-sentence report**

54. (1) A pre-sentence report may set out all or any of the following matters but no others:

- (a) The sources of information on which the report is based;
  - (b) The circumstances of the offence of which the child has been found guilty;
  - (c) Any previous sentencing orders in respect of the child involving the Director-General;
  - (d) The family circumstances of the child;
  - (e) The education of the child;
  - (f) The employment history of the child;
  - (g) The recreation and leisure activities of the child;
  - (h) Medical and health matters relating to the child.
- (2) Any statement made in a pre-sentence report must be relevant—
- (a) to the offence of which the child has been found guilty in the proceeding before the Court; and
  - (b) to the sentencing order (if any) recommended in the report.
- (3) The author of a pre-sentence report may, in his or her report, recommend an appropriate sentencing order for the child who is the subject of the report.
- (4) If a recommendation is made under sub-section (3) for a probation order, a youth supervision order or a youth attendance order, it must state—

- (a) whether, and if so where, the recommended service or program is available; and
- (b) the proposed date of commencement of the child's participation in the recommended service or program; and
- (c) the child's suitability for the recommended service or program; and
- (d) the child's attitude towards the recommended service or program.

#### **Pre-sentence report to be filed with registrar**

**55.** A pre-sentence report must be filed with the appropriate registrar at least 4 working days before the return date and in any event no later than 21 days after the report was ordered by the Court.

#### **Access to pre-sentence reports**

**56. (1)** The author of a pre-sentence report must, within the period referred to in section 55, send a copy of the report to—

- (a) the child who is the subject of the report; and
- (b) the legal practitioners representing the child; and
- (c) any other person whom the Court has ordered is to receive a copy of the report.

(2) The author of a pre-sentence report is not under sub-section (1) required to send copies of the report in accordance with paragraph (a) or (c) of that sub-section if—

- (a) he or she is of the opinion that information contained in the report may be prejudicial to the physical or mental health of the child; or
- (b) the child notifies him or her of the child's objection to the forwarding of copies of the report.

(3) If because of sub-section (2) the author of a pre-sentence report is not required to send a copy of the report to a person in accordance with sub-section (1), he or she may forward to that person a copy of part of the report.

(4) If because of sub-section (2) the author of a pre-sentence report does not send copies of the report in accordance with paragraph (a) or (c) of sub-section (1)—

- (a) he or she must inform the appropriate registrar of that fact; and
- (b) the Court may by order direct the appropriate registrar to forward a copy of the report or of a specified part of the report, together with a copy of the order, to a person named or described in the order as soon as possible and before the hearing.

(5) A person who receives a copy of a pre-sentence report or of part of a pre-sentence report under this section (part of all of which was not sent to the child who is the subject of the report because of sub-section (2)) must not, unless otherwise directed by the Court, disclose to that child any information contained in the report or the part of it (as the case requires) that was not sent to that child.

Penalty applying to this sub-section: 10 penalty units.

### **PART 3—PROTECTION OF CHILDREN**

#### **Division 1—Services for Children**

##### **Establishment of community services and secure welfare services**

57. The Governor in Council may, by Order published in the *Government Gazette*, establish or abolish community services and secure welfare services to be operated by the Department to meet the needs of children requiring protection, care or accommodation.

##### **Approval of community services**

58. (1) The Director-General may approve a service operated by any person or body of persons (other than the Department) as a community service to meet the needs of children requiring protection, care or accommodation.

(2) An approval under sub-section (1)—

(a) may be of general or limited application; and

(b) is given by sending by post to the person or body of persons concerned a notice of approval; and

(c) may, if at any time the Director-General is satisfied that the service is unable to provide services of an adequate standard, be withdrawn by sending by post to the person or body of persons concerned a notice of withdrawal of approval.

(3) The Director-General may out of money appropriated by Parliament for the purpose make a grant to an approved community service to assist the service in carrying out its functions.

(4) A grant under sub-section (3) may be made on any terms and conditions that are determined by the Director-General.

##### **Standard of services to be provided by community services**

59. The Minister may issue directions relating to the standard of services to be provided by community services or any class of community services and take steps to ensure that they are complied with.

**Minister to determine rates**

**60. (1)** The Minister must determine the rates to be paid in respect of children—

- (a) of whom the Director-General has guardianship or custody; or
- (b) who are the subject of a permanent care order or an order with respect to custody and guardianship made under the *Family Law Act 1975* of the Commonwealth.

(2) The Minister may determine special rates to be paid in respect of persons under the age of 21 years in particular circumstances specified by the Minister.

**Inspection of community services**

**61. (1)** The Director-General or any officer authorised by the Director-General in that behalf may at any time visit any community service and make any examinations and inspections that appear to be necessary regarding the state and management of the service and the condition and treatment of the children to whom it provides services.

(2) The person in charge of a community service must provide the Director-General or any officer visiting the service under sub-section (1) with all reasonable facilities for making any examination or inspection authorised by that sub-section.

**Restrictions on who may provide long-term care of children**

**62. (1)** A person must not, for fee or reward, provide care for a period longer than 24 hours for a child who is under 15 years of age.

Penalty: 15 penalty units.

(2) Sub-section (1) does not apply to the provision of care for a child—

- (a) by a parent or relative of the child; or
- (b) by a community service or secure welfare service; or
- (c) by a person under a child care agreement under section 13A of the *Community Welfare Services Act 1970* or a long-term child care agreement under section 13C of that Act; or
- (d) by an institution or establishment conducted wholly for educational purposes or as a hospital or convalescent home; or
- (e) by an institution or establishment conducted wholly as a holiday camp or for another similar purpose; or
- (f) in a private house (including a boarding house) in which the child is temporarily accommodated; or
- (g) by an institution or establishment or an institution or establishment included in a class of institutions or establishments exempted from the operation of sub-section

(1) by the Director-General by notice sent by post to the institution or establishment concerned.

### **Division 2—Children in Need of Protection**

#### **When is a child in need of protection?**

**63.** For the purposes of this Act a child is in need of protection if any of the following grounds exist:

- (a) The child has been abandoned by his or her parents and after reasonable inquiries—
  - (i) the parents cannot be found; and
  - (ii) no other suitable person can be found who is willing and able to care for the child;
- (b) The child's parents are dead or incapacitated and there is no other suitable person willing and able to care for the child;
- (c) The child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (d) The child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (e) The child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;
- (f) The child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care.

#### **Notification to protective intervener**

**64.** (1) Any person who believes on reasonable grounds that a child is in need of protection may notify a protective intervener of that belief.

- (2) The following persons are protective interveners:
  - (a) The Director-General;
  - (b) All members of the police force.

- (3) A notification made under sub-section (1) —
- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the person by whom it is made; and
  - (b) if made in good faith, does not make the person by whom it is made subject to any liability in respect of it; and
  - (c) is not admissible in evidence in any proceedings unless —
    - (i) the person by whom it is made otherwise consents in writing; or
    - (ii) the proceedings relate to the performance by a person of that person's duties under this Act and the fact of the making of the notification is relevant in those proceedings; and
  - (d) does not constitute a contravention of section 141 of the *Health Services Act 1988*.

(4) If a notification is made under sub-section (1), a person (other than the person who made it) must not, subject to sub-section (3) (c), disclose to any person other than a protective intervener —

- (a) the name of the person who made the notification; or
- (b) any information that is likely to lead to the identification of the person who made the notification.

Penalty applying to this sub-section: 10 penalty units.

**Minister to be responsible for children in need of protection**

**65. (1) The Minister has the following responsibilities:**

- (a) The establishment and maintenance of child protection services;
- (b) The issuing of directions in respect of the establishment and maintenance of a central register in which there is recorded such information as is required to be recorded under section 68 (1);
- (c) The provision of a consultation and advice service and of information to community services and other persons and bodies working with children and their families in a professional capacity regarding measures to be taken to ensure that children are protected from harm;
- (d) The promotion of the development of a clear definition of the respective responsibilities, in relation to children at risk of harm, of protective interveners, community services and other persons and bodies working with children and their families in a professional capacity;
- (e) The preparation and dissemination of information regarding child protection services and actions necessary to ensure the safety and well-being of children.

(2) The Minister may (after consultation with the Minister administering the *Police Regulation Act 1958* in the case of directions relating to protective interveners who are members of the police force)—

- (a) issue directions to be followed by protective interveners in the exercise of their functions; or
- (b) amend, in whole or in part, any directions previously issued under paragraph (a).

(3) The Minister must cause any directions issued and any amendments made under sub-section (2) to be published in the *Government Gazette*.

### **Investigation by protective intervener**

**66.** (1) A protective intervener must, as soon as practicable after receiving a notification under section 64 (1), investigate, or cause another protective intervener to investigate, the subject-matter of the notification in a way that will best ensure the safety and well-being of the child.

(2) A protective intervener who is investigating the subject-matter of a notification—

- (a) must inform the child and the child's parents that any information they give may be used for the purposes of a protection application; and
- (b) must not disclose any information arising from the investigation to anyone other than a court or a person referred to in any paragraph of sub-section (4).

(3) On completing an investigation of a notification, the protective intervener must, as soon as practicable, make a written record of—

- (a) details of the investigation; and
- (b) the results of the investigation.

(4) If after completing an investigation of a notification the protective intervener decides not to make a protection application, a person must not disclose the record of the investigation made under sub-section (3) to anyone other than—

- (a) the child; or
- (b) the child's parents; or
- (c) the Director-General; or
- (d) the Chief Commissioner of Police; or
- (e) a person who is, or is a member of a class of persons who are, authorised in writing by the Director-General or the Chief Commissioner of Police to have access to that record or the class of records to which that record belongs.

Penalty applying to this sub-section: 10 penalty units.

(5) The Director-General must, on a request made in accordance with any directions of the Minister by a member of the police force