

who is investigating the subject-matter of a notification under section 64 (1), submit a protection report to that member within 21 days.

(6) A member of the police force who receives a protection report under sub-section (5) or the author of that report must not disclose any information contained in it to any person other than another protective intervener who is investigating the subject-matter of the notification.

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

(7) Nothing in sub-section (6) prevents the disclosure to a court by a member of the police force of information contained in a protection report received by that member.

(8) Despite anything to the contrary in the *Freedom of Information Act* 1982, sub-section (4) does not have the effect of making the record of the investigation an exempt document for the purposes of that Act.

Protection of information

67. (1) The giving of information to a protective intervener during the course of the investigation of the subject-matter of a notification under section 64 (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 given; and
- (b) if given in good faith, does not make the person by whom it is given subject to any liability in respect of it; and
- (c) does not constitute a contravention of section 141 of the *Health Services Act* 1988.

(2) A protective intervener must not disclose to any person, other than another protective intervener—

- (a) the name of a person who gave information in confidence to a protective intervener during the course of the investigation of the subject-matter of a notification under section 64 (1); or
- (b) any information that is likely to lead to the identification of a person referred to in paragraph (a)—

without the written consent of the person referred to in paragraph (a).

Penalty: 10 penalty units.

Action by protective intervener

68. (1) If a protective intervener is satisfied on reasonable grounds that a child is in need of protection, he or she must record in the central register referred to in section 65 (1) (b) such information arising from the investigation as the Minister determines should be so recorded and may—

- (a) with or without a warrant, take the child into safe custody pending the hearing of a protection application; or

- (b) serve a notice directing that the child appear, or be produced, before the Court for the hearing of a protection application.
- (2) A protective intervener who proceeds as specified in sub-section (1) (a) or (b) must as soon as possible make a protection application to the Court and give a copy of the application to—
 - (a) the child's parents, unless they cannot be found after reasonable inquiries; and
 - (b) the child, if he or she is of or above the age of 12 years.

Protective intervener may take child in need of protection into safe custody

69. (1) If a protective intervener is satisfied on reasonable grounds that a child is in need of protection, he or she may —

- (a) without a warrant, take the child into safe custody; or
- (b) apply to a magistrate or, despite anything to the contrary in the *Magistrates' Court Act 1989*, to an authorised bail justice for the issue of a search warrant.
- (2) A search warrant issued under sub-section (1) —
 - (a) may only be directed to a named member of the police force or generally all members of the police force; and
 - (b) may be endorsed by the person issuing it with a direction that the child be released on an interim accommodation order of the type referred to in paragraph (a) or (b) of section 73 (3) as specified in the endorsement.
- (3) A protective intervener must on taking a child into safe custody give to —
 - (a) the child's parents, unless they cannot be found after reasonable inquiries; and
 - (b) the child, if he or she is of or above the age of 12 years—

a written statement containing the prescribed information relating to the taking of children into safe custody under this section.

(4) Subject to sub-section (6), a child taken into safe custody under this section must be brought before the Court for the hearing of an application for an interim accommodation order as soon as practicable and, in any event, within one working day after the child was taken into safe custody.

(5) Unless a child is brought before the Court under sub-section (4) within 24 hours after the child was taken into safe custody, he or she must, subject to sub-section (6), be brought before a bail justice as soon as possible within that period of 24 hours for the hearing of an application for an interim accommodation order.

(6) A child of tender years need not be brought before the Court under sub-section (4) or a bail justice under sub-section (5) unless the

Court or bail justice otherwise orders but the Court or bail justice may deal with the application in the absence of the child.

(7) Until a child taken into safe custody under this section is brought before the Court or a bail justice for the making of an interim accommodation order, the child may only be placed —

- (a) in a community service; or
- (b) in a secure welfare service; or
- (c) in any other accommodation approved by the Director-General.

(8) This section applies with any necessary modifications —

- (a) to the taking of a child into safe custody under sections 80 (1), 95 (3), 95 (4) (including sections 95 (3) and 95 (4) as applied to a supervised custody order by section 98 (3)), 111 (3) and 111 (4); and
- (b) to the issue and execution of a warrant under sections 80 (1), 95 (3), 95 (4) (including sections 95 (3) and 95 (4) as applied to a supervised custody order by section 98 (3)), 111 (3) and 111 (4).

Making a protection application without taking child into safe custody

70. (1) If a protective intervener is satisfied on reasonable grounds that a child is in need of protection, he or she may by notice direct—

- (a) the child to appear; and
- (b) the child's parent to produce the child —

before the Court for the hearing of a protection application.

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

- (a) be issued out of the Court by the appropriate registrar; and
- (b) set out the grounds on which the protective intervener intends to make a protection application; and
- (c) be served on the child's parent and, if the child is of or above the age of 12 years, the child —

- (i) by posting, not less than 14 days before the hearing date stated in the notice, a true copy of the notice addressed to the parent or the child (as the case requires) at the last known place of residence or business of the parent or the child; or
- (ii) by delivering, not less than 5 days before the hearing date stated in the notice, a true copy of the notice to the parent or the child (as the case requires); or
- (iii) by leaving, not less than 5 days before the hearing date stated in the notice, a true copy of the notice for the parent or the child (as the case requires) at the last known place of residence or business of the parent or the child with a person who apparently resides or works

there and who apparently is not less than 16 years of age.

(3) If a notice under sub-section (1) is served in accordance with sub-section (2)(c) and the child does not appear before the Court at the time stated in the notice, the Court may, if satisfied that the notice has come to the attention of the child's parent or, if the child is of or above the age of 12 years, the child and, if practicable, the child's parent, issue a search warrant for the purpose of having the child taken into safe custody and the provisions of section 69 apply to the issue and execution of the warrant as if it were a warrant issued under sub-section (1) of that section.

Division 3—Irreconcilable Differences

Application if there is an irreconcilable difference

71. (1) A person who has custody of a child and who believes that there is a substantial and presently irreconcilable difference between himself or herself and the child to such an extent that the care and control of the child are likely to be seriously disrupted may, subject to section 72, make an application to the Court for a finding that such a difference exists.

(2) A child who believes that there is a substantial and presently irreconcilable difference between himself or herself and the person who has custody of him or her to such an extent that the care and control of him or her are likely to be seriously disrupted may, subject to section 72, make an application to the Court for a finding that such a difference exists.

(3) The appropriate registrar must cause a copy of an irreconcilable difference application to be given or sent by post to all other parties to the application at least 5 days before the hearing date.

Conciliation counselling

72. (1) Before an irreconcilable difference application may be filed with the appropriate registrar by a person, he or she must lodge with the Director-General an application for conciliation counselling and produce to the appropriate registrar a certificate of conciliation counselling issued by the Director-General.

(2) If an application for conciliation counselling is lodged with the Director-General, he or she must—

(a) cause information relating to conciliation counselling and appropriate support services to be given or sent by post to the child, the person who has custody of the child and any other relevant parties; and

(b) ensure that conciliation counselling is provided to those persons—

as soon as possible within the period of 21 days after that lodgement.

(3) The purpose of conciliation counselling is to assist the parties in the resolution of their differences and thereby avoid proceedings in the Court.

(4) The person conducting conciliation counselling must —

- (a) undertake conciliation counselling with each of the parties separately; and
- (b) hold at least one conference involving all the parties.

(5) At the end of the period of 21 days referred to in sub-section (2) the Director-General must provide a certificate of conciliation counselling to each party who participated in the conciliation counselling.

(6) The Director-General may provide a certificate of conciliation counselling to a party even if a conference involving all the parties did not take place if —

- (a) that party was willing to attend a conference involving all the parties but one or more other parties refused to attend; or
- (b) the Director-General determined that exceptional circumstances existed which would have the effect that attendance at a conference involving all the parties would subject one of the parties to extreme duress or emotional distress.

(7) If the child does not appear before the Court for the hearing of the irreconcilable difference application, the Court may issue a search warrant for the purpose of having the child taken into safe custody and the provisions of section 69 apply to the issue and execution of the warrant as if it were a warrant issued under sub-section (1) of that section.

(8) If the person who has custody of the child does not appear before the Court for the hearing of the irreconcilable difference application, the Court may proceed to hear and determine the application in that person's absence if satisfied that a copy of the application was given or sent by post to that person in accordance with section 71 (3).

Division 4—Interim Accommodation Orders

Interim accommodation order

73. (1) If —

- (a) a child has been taken into safe custody by a protective intervener or the Director-General under this Part pending the hearing by the Court of a protection application or an application in respect of a failure to comply with a protection order or an interim protection order; or
- (b) an irreconcilable difference application is filed with the appropriate registrar; or

- (c) a child appears before the Court on the hearing of a protection application; or
- (d) an application for conciliation counselling is lodged with the Director-General under section 72; or
- (e) any condition attached to an interim accommodation order has not been complied with; or
- (f) an application for variation of an interim accommodation order or for a new interim accommodation order has been made to the Court under section 78 (1); or
- (g) a child is brought before the Court on a warrant issued under this Part; or
- (h) an appeal has been instituted under this Part to the Supreme Court or the County Court against an order made by the Court under this Part —

the Court or a bail justice may make an interim accommodation order in respect of the child.

(2) An application for an interim accommodation order may be made—

- (a) by the child or a parent of the child; or
- (b) by the Director-General or a member of the police force.

(3) An interim accommodation order may provide for —

- (a) the release of the child on the signing by the child of an undertaking to appear on the hearing of the relevant proceeding; or
- (b) the release of the child into the care of his or her parent pending that hearing on the entering into (whether orally or in writing) by that parent of an undertaking to produce the child before the Court for the hearing of the relevant proceeding; or
- (c) the placement of the child with a suitable person or suitable persons pending that hearing on the entering into (whether orally or in writing) by that person or those persons of an undertaking to produce the child before the Court for the hearing of the relevant proceeding and following a report (whether oral or written) from the Director-General on that person's or those persons' suitability; or
- (d) the placement of the child in a community service pending that hearing; or
- (e) the placement of the child in a secure welfare service pending that hearing if there is a substantial and immediate risk of harm to the child.

(4) Conditions to be complied with by the child or a parent of the child may be included in an interim accommodation order.

(5) Conditions included in an interim accommodation order may relate to the access of a parent to the child.

(6) If a bail justice makes an interim accommodation order, he or she must cause a written copy of the order to be given to every party to the application for the order at the time the order is made.

(7) If an interim accommodation order is made by a bail justice, the protective intervener or, if there is no protective intervener involved, the bail justice must cause a copy of the order to be filed with the appropriate registrar as soon as possible.

Duration of interim accommodation order

74. (1) Subject to this section, an interim accommodation order remains in force for the period (not exceeding 21 days in the case of an order of a kind referred to in paragraph (c), (d) or (e) of section 73 (3)) specified in the order.

(2) An interim accommodation order made by a bail justice only remains in force until the application is heard by the Court on the next working day.

(3) An interim accommodation order made in any case referred to in section 73 (1) (d) only remains in force until an irreconcilable difference application has been made to the Court or for the period of 21 days, whichever is the shorter.

Limitation on making of order placing child in secure welfare service

75. (1) An interim accommodation order must not be made providing for the placement of a child in a secure welfare service in any case referred to in section 73 (1) (b) or (d) unless the Court or bail justice making the order is of the opinion that the placement is necessary to ensure the attendance of the child on the hearing of the irreconcilable difference application.

(2) The fact that the child does not have adequate accommodation is not by itself a sufficient reason for the making of an order providing for the placement of a child in a secure welfare service.

Circumstances in which child's whereabouts may be withheld from parent

76. The Court or bail justice making an interim accommodation order in respect of a child may direct that details of the child's whereabouts be withheld from a parent of the child if the Court or bail justice is of the opinion that —

- (a) special circumstances exist which justify withholding those details; or
- (b) the safety or well-being of the child may be in jeopardy if those details are not withheld.

Power of Director-General to transfer child

77. (1) If an interim accommodation order provides for the placement of a child in a community service or a secure welfare service, the Director-General may from time to time, if he or she believes that it is advisable in the interests of the child, transfer the child from one community service or secure welfare service to another community service or secure welfare service, as the case requires.

(2) If the whereabouts of a child are changed under sub-section (1) the Director-General must, unless an order has been made under section 76, notify the child's parents and the appropriate registrar of that change.

Application for variation of interim accommodation order or for new order

78. (1) If the Court makes an interim accommodation order in respect of a child, the child or a parent of the child may apply to the Court for variation of the terms of the order or for a new interim accommodation order if —

- (a) the applicant was not legally represented at the hearing of the application for the order; or
- (b) new facts or circumstances have arisen since the making of the order.

(2) If—

- (a) the Court makes an interim accommodation order in respect of a child; and
- (b) new facts or circumstances have arisen since the making of the order—

the Director-General or a member of the police force or a person with whom the child has been placed in accordance with section 73 (3) (c) may apply to the Court for variation of the terms of the order or for a new interim accommodation order.

(3) The Court must not, subject to sub-section (4), proceed to hear an application under sub-section (1) or (2) unless the applicant gave notice of the application to—

- (a) the person who applied for the interim accommodation order; and
- (b) any other party to the proceeding in which that order was made; and
- (c) any person with whom the child is living—

a reasonable time before the hearing of the application.

(4) Sub-section (3) does not apply if in the opinion of the Court special circumstances exist which justify it in proceeding to hear the application without notice of it having been given in accordance with that sub-section and, if it does so, it must cause a written copy of any order made by it on the application to be given as soon as possible to

the persons and parties referred to in paragraphs (a), (b) and (c) of that sub-section.

- (5) On an application under sub-section (1) or (2) the Court may—
- (a) if the application is for variation of the terms of the interim accommodation order, vary the terms of the order; or
 - (b) if the application is for a new interim accommodation order, make a new interim accommodation order.

Appeal against interim accommodation order

79. (1) If the Court makes an interim accommodation order in respect of a child or dismisses an application for an interim accommodation order in respect of a child, then —

- (a) the child; or
- (b) a parent of the child; or
- (c) the Director-General; or
- (d) a member of the police force—

may appeal to the Supreme Court against the order or the dismissal.

(2) On an appeal under this section against an interim accommodation order, the Supreme Court must —

- (a) if it thinks that a different interim accommodation order should have been made —
 - (i) set aside the order of the Children's Court; and
 - (ii) make any other order which it thinks ought to have been made; or
- (b) in any other case, dismiss the appeal.

(3) On an appeal under this section against the dismissal of an application for an interim accommodation order, the Supreme Court must—

- (a) if it thinks that the application should not have been dismissed, make the order which it thinks ought to have been made; or
- (b) in any other case, dismiss the appeal.

Procedure on breach of interim accommodation order

80. (1) If the Director-General or a member of the police force has reasonable grounds for believing that any condition attached to an interim accommodation order has not been, or is not being, complied with, he or she may —

- (a) without a warrant, take the child in respect of whom the order has been made into safe custody; or
- (b) apply to a magistrate or, despite anything to the contrary in the *Magistrates' Court Act 1989*, to an authorised bail justice for the issue of a search warrant.

(2) A child taken into safe custody under sub-section (1) must be brought before the Court or a bail justice as soon as possible after being taken into safe custody and in any event within 24 hours after that event.

(3) On the child being brought before the Court or a bail justice under sub-section (2), the Court or bail justice —

(a) may revoke the interim accommodation order and make another interim accommodation order; or

(b) may refuse to revoke the interim accommodation order.

(4) Subject to section 74 (1), a new interim accommodation order made under sub-section (3) (a) remains in force for the period for which the revoked order would have remained in force had it not been revoked.

Division 5—Procedures in Family Division

How proceeding in Family Division commenced

81. A proceeding in the Family Division is commenced by filing an application with the appropriate registrar.

Conduct of proceedings in Family Division

82. (1) The Family Division —

(a) must conduct proceedings before it in an informal manner; and

(b) must proceed without regard to legal forms; and

(c) must consider evidence on the balance of probabilities; and

(d) may inform itself on a matter in such manner as it thinks fit, despite any rules of evidence to the contrary.

(2) The Attorney-General may appear or be represented in any proceeding before the Family Division and may call and examine or cross-examine witnesses and make submissions.

Power of Family Division to make certain orders by consent in absence of parties

83. If on an application to the Family Division for the extension of a custody to Director-General order or a guardianship to Director-General order the Court is satisfied that the parties to the proceeding have agreed on the terms of the order and that the making of the order is in the best interests of the child, the Court may make the order without requiring the parties to attend, or be represented at, the proceeding.

Division 6—Protection Orders**Subdivision 1—General****When Court may make order under this Division**

84. The Court may make an order under this Division in respect of a child if the Court finds —

- (a) that the child is in need of protection; or
- (b) that there is a substantial and irreconcilable difference between the person who has custody of the child and the child to such an extent that the care and control of the child are likely to be seriously disrupted.

Types of order

85. (1) If the Court makes a finding under section 84, it may make—

- (a) any one of the following protection orders:
 - (i) An order requiring a person to give an undertaking;
 - (ii) A supervision order;
 - (iii) A custody to third party order;
 - (iv) A supervised custody order;
 - (v) A custody to Director-General order;
 - (vi) A guardianship to Director-General order; or
- (b) an interim protection order.

(2) A protection order may continue in force after the child attains the age of 17 years but ceases to be in force when the child attains the age of 18 years.

Restrictions on the making of protection orders

86. (1) Subject to section 48 (2), the Court must not make a protection order or an interim protection order unless it has received and considered a disposition report.

(2) The Court must not make a protection order that has the effect of removing a child from the custody of his or her parent unless—

- (a) the Court has considered and rejected as being contrary to the safety and well-being of the child, an order allowing the child to remain in the custody of his or her parent; and
- (b) the Court is satisfied that all reasonable steps have been taken by the Director-General to provide the services necessary to enable the child to remain in the custody of his or her parent; and
- (c) the Court considers that the making of the order is in the best interests of the child.

Court to have regard to certain matters

87. In determining what finding or order to make on a protection application or an irreconcilable difference application the Court, as far as practicable —

- (a) must have regard to the need to give the widest possible protection and assistance to the family as the fundamental group unit of society and, accordingly, must ensure that intervention into family life should be to the minimum extent that is necessary to secure the protection of the child; and
- (b) must have regard to the need to strengthen and preserve the relationship between the child and the child's family; and
- (c) must have regard to the desirability of allowing the child to live at home; and
- (d) must have regard to the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance; and
- (e) must take into consideration the effect of the finding or order on the stability of family relationships and the welfare and interests of the child; and
- (f) must have regard to the need, when the child is removed from his or her family, to plan the re-unification of the child with his or her family, wherever practicable; and
- (g) must have regard to the need to protect children from harm and to protect their rights and to promote their welfare; and
- (h) must ensure that, if there is a conflict between the interests of the child and some other person, the welfare and interests of the child are the paramount considerations; and
- (i) must consider any wishes expressed by the child and give those wishes such weight as the Court considers appropriate in the circumstances; and
- (j) must ensure that a child is only removed from his or her family if there is an unacceptable risk of harm to the child; and
- (k) must have regard to the suitability of the order in terms of the welfare and interests of the child, bearing in mind all the matters referred to in paragraphs (a) to (j).

Service of applications and orders

88. (1) The appropriate registrar or, if he or she is the applicant, the Director-General, must as soon as possible cause a copy of an application for—

- (a) the variation or revocation of a supervision order; or
- (b) the variation or revocation of a custody to third party order or a supervised custody order; or

- (c) the extension of the period of a custody to Director-General order or a guardianship to Director-General order; or
- (d) the variation or revocation of a custody to Director-General order; or
- (e) the revocation of a guardianship to Director-General order; or
- (f) an order in respect of a failure to comply with a supervision order, a supervised custody order, or an interim protection order or an interim accommodation order; or
- (g) an order regarding the exercise of any right, power or duty vested in a person as joint custodian or guardian of a child—

to be given or sent by post to any person by or on behalf of whom such an application could have been made and, in the case of an application referred to in paragraph (c) or an application under section 107 (1), to the child and the parent of the child.

(2) The appropriate registrar must cause a copy of an order varying or revoking a supervision order to be given or sent by post as soon as possible after the making of the order to any person by or on behalf of whom an application for the order could have been made.

Subdivision 2—Undertaking

Undertaking

89. (1) By an order referred to in section 85 (1) (a) (i) the Court may require—

- (a) the child; or
- (b) the child's parent; or
- (c) the person with whom the child is living —

to enter into an undertaking in writing to do or refrain from doing the thing or things specified in the undertaking for the period specified in the undertaking, being a period not exceeding 6 months or, if the Court is satisfied that there are special circumstances which warrant the making of an order for such a period, exceeding 6 months but not exceeding 12 months.

(2) An undertaking may contain any conditions that the Court considers to be in the interests or for the welfare of the child.

(3) The Court may only make an order requiring a person to enter into an undertaking if that person consents to the making of the order.

Variation or revocation of undertaking

90. (1) An application for a variation of an undertaking or of any conditions contained in an undertaking or for the revocation of an undertaking may be made to the Court by —

- (a) the child; or
- (b) the child's parent; or

- (c) the person with whom the child is living.
- (2) On an application under sub-section (1) the Court may —
 - (a) if the application is for a variation of an undertaking or of any conditions contained in an undertaking, vary the undertaking or any of the conditions contained in the undertaking or add or substitute a condition but must not extend the period of the undertaking; or
 - (b) if the application is for the revocation of an undertaking, revoke the undertaking.

Subdivision 3—Supervision Order

Supervision order

- 91. (1) A supervision order —**
- (a) gives the Director-General responsibility for the supervision of the child; and
 - (b) does not affect the guardianship or custody of the child.
- (2) A supervision order remains in force for the period specified in the order which must either be a period —
- (a) not exceeding 12 months; or
 - (b) exceeding 12 months but not exceeding 2 years, if the Court is satisfied that there are special circumstances which warrant the making of an order for such a period.
- (3) If under sub-section (2) (b) the Court specifies a period exceeding 12 months for a supervision order to remain in force it must direct the Director-General to review the operation of the order before the end of the period of 12 months after the making of the order and to notify the Court, the child, the child's parent and such other persons as the Court directs before the end of that period if he or she considers that, to ensure the safety and well-being of the child, the order should continue for the duration of the period specified in the order.
- (4) Unless the Director-General makes a notification in accordance with sub-section (3) the supervision order ceases to be in force at the end of the period of 12 months after it was made.

Supervision order may impose conditions

- 92. (1) A supervision order may include conditions to be observed by —**
- (a) the child in respect of whom it is made; or
 - (b) a parent of the child; or
 - (c) the person with whom the child is living—
- being conditions that the court considers to be in the interests or for the welfare of the child.

(2) A supervision order must not include any condition as to where the child lives, unless the condition relates to the child living with a specified parent.

Powers of Director-General under supervision order

93. (1) If the Court makes a supervision order in respect of a child, the parent or other person with whom the child is living must permit the Director-General to visit the child at his or her place of residence and to carry out the duties of the Director-General under the order.

(2) The Director-General may, by notice in the prescribed form, give to—

- (a) the child in respect of whom a supervision order is made; or
- (b) a parent of the child; or
- (c) the person with whom the child is living—

any direction that the Director-General considers to be in the interests or for the welfare of the child and that is both reasonable and lawful.

Variation or revocation of supervision order

94. (1) An application for a variation of the conditions of a supervision order or for the revocation of a supervision order may be made to the Court—

- (a) by or on behalf of the child in respect of whom the order is made; or
- (b) by a parent of the child; or
- (c) by a person with whom the child is living; or
- (d) by the Director-General.

(2) On an application under sub-section (1) the Court may —

- (a) if the application is for a variation of the conditions of a supervision order, vary any of the conditions included in the order or add or substitute a condition but must not extend the period of the order; or
- (b) if the application is for the revocation of a supervision order, revoke the order.

Breach of supervision order, etc

95. (1) If at any time while a supervision order is in force the Director-General is satisfied on reasonable grounds that—

- (a) there has been a failure to comply with any condition of the order; or
- (b) there has been a failure to comply with any direction given by the Director-General under section 93 (2); or