

- (c) the child is living in conditions which are unsatisfactory in terms of the safety and well-being of the child—

the Director-General may by notice direct—

- (d) the child to appear; and
- (e) the parent or other person with whom the child is living to produce the child—

before the Court.

(2) A notice under sub-section (1) must be served on the child's parent, or other person with whom the child is living and, if the child is of or above the age of 12 years, the child in accordance with section 70 (2) (c) as though it were a notice under section 70 (1).

(3) If a notice under sub-section (1) is served in accordance with sub-section (2) and the child does not appear before the Court at the time stated in the notice, the Director-General may, without a warrant, take the child into safe custody or 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.

(4) If —

- (a) the Director-General is satisfied that there is good reason not to proceed as specified in sub-section (1) or that service of a notice under sub-section (1) cannot be carried out; and
- (b) the Director-General is satisfied on reasonable grounds that—
 - (i) there has been a failure to comply with any condition of the supervision order; or
 - (ii) there has been a failure to comply with any direction given by the Director-General under section 93 (2); or
 - (iii) the child is living in conditions which are unsatisfactory in terms of the safety and well-being of the child—

the Director-General may, without a warrant, take the child into safe custody or 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.

(5) On the child being brought before the Court the Court may, if satisfied that there has been a failure to comply with any condition of the supervision order or that there has been a failure to comply with any direction given by the Director-General under section 93 (2) or that the child is living in conditions which are unsatisfactory in terms of the safety and well-being of the child—

- (a) confirm the supervision order as originally made; or
- (b) vary any of the conditions included in the supervision order or add or substitute a condition but must not extend the period of the order; or

- (c) revoke the supervision order and, if satisfied that the grounds for the finding under section 84 still exist, make any other protection order in respect of the child.

Subdivision 4—Custody to Third Party Order

Custody to third party order

- 96.** (1) A custody to third party order —
- (a) grants sole or joint custody of the child to the person or persons named in the order; and
 - (b) must not be made in favour of—
 - (i) the Director-General in his or her official capacity; or
 - (ii) a person employed by a community service in his or her official capacity; or
 - (iii) a parent of the child; and
 - (c) does not affect the guardianship of the child; and
 - (d) remains in force for the period (not exceeding 12 months) specified in the order; and
 - (e) may include any conditions that the Court considers to be in the interests or for the welfare of the child, including a condition concerning access by a parent or other person; and
 - (f) must not include any condition that gives powers or duties to, or otherwise involves, the Director-General.
- (2) The Court must not make a custody to third party order unless the Court—
- (a) has considered the effect of the order on the likelihood of the re-unification of the child with his or her family; and
 - (b) is satisfied that, so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child.
- (3) If two persons who have been granted joint custody of a child under a custody to third party order cannot agree on the exercise or performance of a right, power or duty vested in them as custodian of the child, either of them may apply to the Court and the Court may make such orders regarding the exercise of the right or power or the performance of the duty as it thinks fit.

Variation or revocation of custody to third party order

- 97.** (1) An application for the variation of a custody to third party order may be made to the Court by —
- (a) the child in respect of whom the order is made; or
 - (b) a person who has been granted custody of the child; or

(c) a parent of the child.

(2) On an application under sub-section (1) the Court may vary any of the conditions included in the order or add or substitute a condition but must not make any change in the custody of the child or extend the period of the order.

(3) An application for the revocation of a custody to third party order may be made to the Court by —

(a) the child in respect of whom the order is made; or

(b) a person who has been granted custody of the child; or

(c) a parent of the child.

(4) On an application under sub-section (3) the Court may revoke the order and, if satisfied that the grounds for the finding under section 84 still exist, make any other protection order in respect of the child.

Subdivision 5—Supervised Custody Order

Supervised custody order

98. (1) A supervised custody order is a custody to third party order that, despite section 96 (1) (f), includes a condition that gives powers or duties to the Director-General or otherwise involves the Director-General in the supervision of the order.

(2) A supervised custody order remains in force for the period (not exceeding 12 months) specified in the order and that period cannot be extended.

(3) In making a supervised custody order the Court must have regard to the fact that the ultimate objective is the re-unification of the child with his or her parent and must by the order direct the parties to it to take all appropriate steps to enable the re-unification of the child with his or her parent before the end of the period for which the order remains in force.

(4) Sections 93 and 95 apply to a supervised custody order as if —

(a) any references in those sections to a supervision order were references to a supervised custody order; and

(b) any references in those sections to the parent of the child were references to the person who has custody of the child; and

(c) in section 95 (5) (b) after “but must not” there were inserted “make any change in the custody of the child or”.

(5) Section 97 applies to a supervised custody order as if—

(a) any references in that section to a custody to third party order were references to a supervised custody order; and

(b) the following paragraph were inserted at the end of sub-sections (1) and (3):

“(d) the Director-General.”.

Subdivision 6—Custody to Director-General Order**Custody to Director-General order**

99. (1) A custody to Director-General order —

- (a) grants sole custody of the child to the Director-General; and
- (b) does not affect the guardianship of the child; and
- (c) subject to this Subdivision, remains in force for the period (not exceeding 12 months) specified in the order; and
- (d) may include any conditions that the Court considers to be in the interests or for the welfare of the child, including a condition concerning access by a parent or other person.

(2) The Court may only make a custody to Director-General order if the Director-General is satisfied that the making of such an order is a workable option.

Extension of custody to Director-General order by up to 12 months

100. (1) At any time while a custody to Director-General order is in force an application for an extension of the period of the order may be made to the Court by the Director-General.

(2) If an application is made under sub-section (1) the custody to Director-General order continues in force until the application is determined.

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

- (a) must extend the order for a period not exceeding 12 months if it is satisfied that—
 - (i) the Director-General, the child and the child's parent have agreed to the extension; and
 - (ii) the extending of the order is in the best interests of the child; and
- (b) in any other case, may extend the order for a period not exceeding 12 months if it is satisfied that it is in the best interests of the child to do so.

(4) The Court must not under this section make an order that would result in the period of the custody to Director-General order being more than 2 years.

Extension of custody to Director-General order beyond 2 years

101. (1) If —

- (a) a custody to Director-General order has been in force for a period of more than 23 months but less than 2 years; and
- (b) the order is still in force—

the Director-General may apply to the Court for an extension of the period of the order.

(2) If an application is made under sub-section (1) the custody to Director-General order continues in force until the application is determined.

(3) On an application under sub-section (1) the Court must give due consideration to the following matters in the following order:

- (a) The likelihood of the re-unification of the child with his or her parent;
- (b) The appropriateness of making a permanent care order in respect of the child;
- (c) The benefits for the child of remaining in the custody of the Director-General.

(4) In determining whether or not to extend the period of a custody to Director-General order on an application under sub-section (1), the Court must take into account —

- (a) the safety and well-being of the child; and
- (b) the nature of the relationship of the child with his or her parent, including the nature of the access between the child and the parent during the period of the order; and
- (c) the capacity of the parent to fulfil the responsibilities and duties of parenthood, including the capacity to provide adequately for the emotional, intellectual, educational and other needs of the child; and
- (d) any action taken by the parent to give effect to the goals set out in the case plan; and
- (e) the effects on the child of continued separation from the parent; and
- (f) any other fact or circumstance that, in the opinion of the Court, should be taken into account in considering the welfare and interests of the child.

(5) On an application under sub-section (1) the Court, if satisfied that it would not be in the best interests of the child to be returned to the custody of his or her parent, may —

- (a) if satisfied that a permanent care order or similar order made by another court would be in the best interests of the child and that there is no likelihood of re-unification of the child with his or her parent, extend the custody to Director-General order for a period not exceeding 12 months and direct the Director-General to take steps to ensure that at the end of the period of the order a person other than the child's parent or the Director-General applies to a court for an order relating to —
 - (i) the custody; or
 - (ii) the custody and guardianship; or
 - (iii) the custody and joint guardianship—
of the child; and

(b) in any other case, extend the order for a period not exceeding 2 years if it is satisfied that it is in the best interests of the child to do so.

(6) On an application under sub-section (1) the Court must make the order applied for if it is satisfied that —

- (a) the Director-General and the child's parent have agreed on the terms of the order; and
- (b) the extending of the custody to Director-General order accords with the wishes and feelings of the child so far as they have been capable of being ascertained having regard to the age and understanding of the child; and
- (c) the extending of the custody to Director-General order is in the best interests of the child.

(7) The Court must not make an order under this section unless it has received and considered a disposition report.

Additional extensions of custody to Director-General order

102. (1) If—

- (a) a custody to Director-General order has been in force for a period of more than 2 years; and
- (b) the order is still in force; and
- (c) the order has not been extended under sub-section (5) (a) of section 101 or under that sub-section as applied to this section by sub-section (2)—

the Director-General may from time to time apply to the Court for further extensions of the period of the order.

(2) Sub-sections (2) to (7) of section 101 apply to an application under sub-section (1) of this section in the same manner as they apply to an application under sub-section (1) of that section.

Lapsing of custody to Director-General order

103. (1) A custody to Director-General order—

- (a) is, subject to sub-section (2), suspended on the making, with the prior consent of the Director-General, of an application under the *Family Law Act 1975* of the Commonwealth by a person who is not a parent of the child, seeking an order with respect to the custody or the guardianship and custody of the child, on the terms of which the parties to the application have agreed; and
- (b) ceases to be in force on the making of that order under the *Family Law Act 1975*.

(2) A custody to Director-General order that has been suspended under sub-section (1) (a) revives if—

- (a) the application for the order sought under the *Family Law Act 1975* is withdrawn; or
- (b) the order sought is refused.

Variation of custody to Director-General order

104. (1) An application for a variation of a custody to Director-General order may be made to the Court by —

- (a) the Director-General; or
- (b) the child in respect of whom the order is made; or
- (c) a parent of the child.

(2) On an application under sub-section (1) the Court may vary any of the conditions included in the order or add or substitute a condition but must not make any change in the custody of the child or extend the period of the order.

Revocation of custody to Director-General order

105. (1) An application for the revocation of a custody to Director-General order may be made to the Court by —

- (a) the Director-General; or
- (b) the child in respect of whom the order is made; or
- (c) a parent of the child.

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

- (a) must revoke the order if it is satisfied that —
 - (i) the Director-General, the child and the child's parent have agreed to the revocation; and
 - (ii) the revocation of the order is in the best interests of the child—

but may, if satisfied that the grounds for the finding under section 84 still exist, make an order requiring a person to give an undertaking or a supervision order in respect of the child or, if the application is by the Director-General and the Court is satisfied that the changed circumstances justify it in doing so, make a guardianship to Director-General order in respect of the child; and

- (b) in any other case, may revoke the order if it is satisfied that it is in the best interests of the child to do so but may, if satisfied that the grounds for the finding under section 84 still exist, make an order requiring a person to give an undertaking or a supervision order in respect of the child or, if the Court is satisfied that the changed circumstances justify it in doing so, make a guardianship to Director-General order in respect of the child.

(3) An order requiring a person to give an undertaking or a supervision order or a guardianship to Director-General order made

under sub-section (2) remains in force for the period for which the revoked order would have remained in force had it not been revoked.

Subdivision 7—Guardianship to Director-General Order

Guardianship to Director-General order

106. (1) A guardianship to Director-General order —

- (a) grants custody and guardianship of the child to the Director-General to the exclusion of all other persons; and
- (b) subject to this Subdivision, remains in force for the period (not exceeding 2 years) specified in the order; and
- (c) ceases to be in force —
 - (i) when the child attains the age of 18 years; or
 - (ii) when the child marries—
 whichever happens first.

(2) If the Court specifies in a guardianship to Director-General order a period exceeding 12 months for the 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.

(3) Unless the Director-General makes a notification in accordance with sub-section (2), the guardianship to Director-General order ceases to be in force at the end of the period of 12 months after it was made.

Extension of guardianship to Director-General order up to 2 years

107. (1) If the Court specifies in a guardianship to Director-General order a period not exceeding 12 months for the order to remain in force, then, at any time while the order is in force the Director-General may apply to the Court for an extension of the period of the order for a period not exceeding 12 months.

(2) If an application is made under sub-section (1) the guardianship to Director-General order continues in force until the application is determined.

(3) The Director-General must not apply under sub-section (1) unless he or she has reviewed the operation of the order and is of the opinion that an extension of the order is in the best interests of the child.

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

- (a) must extend the order for a period not exceeding 12 months if it is satisfied that —

- (i) the Director-General, the child and the child's parent have agreed to the extension; and
 - (ii) the extending of the order is in the best interests of the child; and
- (b) in any other case, may extend the order for a period not exceeding 12 months if it is satisfied that it is in the best interests of the child to do so.
- (5) The Court must not under this section make an order that would result in the period of the guardianship to Director-General order being more than 2 years.
- (6) The Court must not make an order under this section unless it has received and considered a disposition report.

Additional extensions and lapsing of guardianship to Director-General order

108. Sections 101, 102 and 103 apply to a guardianship to Director-General order as if—

- (a) any references in those sections to a custody to Director-General order were references to a guardianship to Director-General order; and
- (b) any references in those sections to the custody of the child included references to the guardianship of the child.

Revocation of guardianship to Director-General order

109. (1) An application for the revocation of a guardianship to Director-General order may be made to the Court by—

- (a) the Director-General; or
 - (b) subject to sub-section (2), the child in respect of whom the order is made or a parent of the child.
- (2) A person referred to in sub-section (1) (b) may only apply to the Court under that sub-section if—
- (a) circumstances have changed since the making of the guardianship to Director-General order and the person has asked the Director-General to review the case plan and the Director-General has either refused to review the case plan or has reviewed it in a way which the person finds unsatisfactory; or
 - (b) the Director-General makes a notification in accordance with section 106 (2) in respect of the order.
- (3) On an application under sub-section (1) the Court—
- (a) must revoke the order if it is satisfied that—
 - (i) the Director-General, the child and the child's parent have agreed to the revocation; and

(ii) the revocation of the order is in the best interests of the child; and

(b) in any other case, may revoke the order if it is satisfied that it is in the best interests of the child to do so—

but may, if satisfied that the grounds for the finding under section 84 still exist, make an order requiring a person to give an undertaking or a supervision order in respect of the child.

(4) An order requiring a person to give an undertaking or a supervision order made under sub-section (3) remains in force for the period stated by the Court which must be no greater than the period for which the revoked order would have remained in force had it not been revoked.

Subdivision 8—Interim Protection Orders

Interim protection order

110. (1) If the Court in hearing and determining a protection application or an irreconcilable difference application is satisfied—

(a) that the child is in need of protection or that there is a substantial and presently 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; and

(b) that it is desirable, before making a protection order, to test the appropriateness of a particular course of action —

it may make an interim protection order.

(2) An interim protection order—

(a) makes the Director-General accountable to the Court for the implementation of the order; and

(b) states who has responsibility for the supervision of the child; and

(c) may direct the preparation and submission to the Court of an additional report by a person specified in the order; and

(d) remains in force for the period (not exceeding 3 months) specified in the order; and

(e) may include any conditions to be observed by—

(i) the child in respect of whom the order is made; or

(ii) the parent of the child; or

(iii) the person with whom the child is living—

that the Court considers to be in the interests or for the welfare of the child, including conditions as to where the child lives or concerning access by a parent or other person.

(3) On the expiry of an interim protection order and after considering a further disposition report the Court must make, or refuse

to make, a protection order but must not extend the interim protection order or make a new interim protection order.

Breach of interim protection order, etc.

111. (1) If at any time while an interim protection order is in force the Director-General is satisfied on reasonable grounds that there has been a failure to comply with any condition of the order or that the child is living in conditions which are unsatisfactory in terms of the safety and well-being of the child, the Director-General may by notice direct—

- (a) the child to appear; and
- (b) the parent or other person with whom the child is living to produce the child—

before the Court.

(2) A notice under sub-section (1) must be served on the child's parent or other person with whom the child is living and, if the child is of or above the age of 12 years, the child in accordance with section 70 (2) (c) as though it were a notice under section 70 (1).

(3) If a notice under sub-section (1) is served in accordance with sub-section (2) and the child does not appear before the Court at the time stated in the notice, the Director-General may, without a warrant, take the child into safe custody or 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.

(4) If—

- (a) the Director-General is satisfied that there is good reason not to proceed as specified in sub-section (1) or that service of a notice under sub-section (1) cannot be carried out; and
- (b) the Director-General is satisfied on reasonable grounds that there has been a failure to comply with any condition of the interim protection order or that the child is living in conditions which are unsatisfactory in terms of the safety and well-being of the child—

the Director-General may, without a warrant, take the child into safe custody or 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.

(5) On the child being brought before the Court the Court may, if satisfied that there has been a failure to comply with any condition of the interim protection order or that the child is living in conditions which are unsatisfactory in terms of the safety and well-being of the child—

- (a) confirm the interim protection order as originally made; or

- (b) vary any of the conditions included in the interim protection order or add or substitute a condition but must not extend the period of the order; or
- (c) revoke the interim protection order and, if satisfied that the grounds for the finding under section 84 still exist, make a protection order in respect of the child.

Division 7—Permanent Care Orders

When Court may make permanent care order

112. (1) The Court may make a permanent care order in respect of a child if—

- (a) the child's parent has not had care of the child for a period of at least 2 years or for periods that total at least 2 of the last 3 years; and
- (b) it is satisfied that—
 - (i) the parent is unable or unwilling to resume custody and guardianship of the child; or
 - (ii) it would not be in the best interests of the child for the parent to resume custody and guardianship of the child; and
- (c) it is satisfied that the applicant is a suitable person, or the applicants are suitable persons, to have custody and guardianship of the child having regard to—
 - (i) any prescribed matters; and
 - (ii) any wishes expressed by the parent in relation to those prescribed matters; and
- (d) it is satisfied that the applicant is, or the applicants are, willing and able to assume responsibility for the permanent care of the child by having custody and guardianship of the child; and
- (e) in the case of an Aboriginal child, it has received a report from an Aboriginal agency that recommends the making of the order; and
- (f) it is satisfied that, so far as practicable, the wishes and feelings of the child have been ascertained and due consideration given to them, having regard to the age and understanding of the child; and
- (g) it is satisfied that the welfare and interests of the child will be promoted by the making of the order.

(2) An application for a permanent care order may be made by a person who is, or persons who are, approved by the Director-General as suitable to have custody and guardianship of the child.

- (3) A permanent care order —
- (a) subject to paragraph (b), grants custody and guardianship of the child to the person or persons named in the order (not being the child's parent or the Director-General) to the exclusion of all other persons; and
 - (b) may vest guardianship of the child jointly in the applicant or applicants and the child's parent if the Court is satisfied that—
 - (i) the Director-General, the child and the persons to be named in the order as guardians have agreed on the terms of the order; and
 - (ii) special circumstances exist which justify the making of such an order; and
 - (c) may continue in force after the child attains the age of 17 years but ceases to be in force—
 - (i) when the child attains the age of 18 years; or
 - (ii) when the child marries—
whichever happens first; and
 - (d) must include conditions that the Court considers to be in the interests of the child concerning access by the child's parent.
- (4) The appropriate registrar must cause a copy of an application under this section to be given or sent by post as soon as possible to—
- (a) the child who is the subject of the application; and
 - (b) the parent of the child; and
 - (c) the Director-General; and
 - (d) such other persons as the Court directs.
- (5) On the making of a permanent care order any protection order then in force in respect of the child ceases to be in force.
- (6) If two persons who have been granted joint custody or guardianship of a child under a permanent care order cannot agree on the exercise or performance of a right, power or duty vested in them as custodian or guardian of the child, either of them may apply to the Court and the Court may make such orders regarding the exercise of the right or power or the performance of the duty as it thinks fit.

Restrictions on the making of permanent care orders

113. (1) The Court must not make a permanent care order unless it has received and considered a disposition report.

- (2) The Court must not make a permanent care order if—
- (a) a protection order is in force in respect of the child but an application to the Court to revoke it has been made but not yet determined; or
 - (b) there is a current proceeding under the *Family Law Act 1975* of the Commonwealth seeking an order (on the terms

of which the parties to the proceeding have agreed) with respect to the custody and guardianship of the child, being a proceeding commenced by a person who is not a parent of the child.

Lapsing of permanent care order

114. (1) A permanent care order —

- (a) is, subject to sub-section (2), suspended on the making, with the prior consent of the Director-General, of an application under the *Family Law Act 1975* of the Commonwealth by a person who is not a parent of the child in respect of whom the permanent care order is made, seeking an order with respect to the custody and guardianship of the child, on the terms of which the parties to the proceeding have agreed; and
- (b) ceases to be in force on the making of that order under the *Family Law Act 1975*.

(2) A permanent care order that has been suspended under sub-section (1) (a) revives if—

- (a) the application for the order sought under the *Family Law Act 1975* is withdrawn; or
- (b) the order sought is refused.

Variation or revocation of permanent care order

115. (1) An application for a variation of a permanent care order or for the revocation (in whole or in part) of such an order may be made to the Court by —

- (a) the child in respect of whom the order is made; or
- (b) a parent of the child; or
- (c) a person granted custody and guardianship of the child under the order.

(2) The appropriate registrar must cause a copy of an application under sub-section (1) to be given or sent by post as soon as possible to any person by whom such an application could have been made under this section.

(3) On an application under sub-section (1) the Court may, if satisfied that it is in the best interests of the child to do so—

- (a) if the application is for a variation of the order, vary any of the conditions included in the order or add or substitute a condition but must not make any change in the custody or guardianship of the child; or
- (b) if the application is for the revocation of the order, revoke the order in whole or in part.

Division 8—Appeals

Appeal to County Court

116. (1) A person to whom this section applies may appeal to the County Court against—

- (a) a protection order; or
- (b) the dismissal of a protection application or an irreconcilable difference application; or
- (c) an interim protection order; or
- (d) an order varying or revoking 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
- (e) an order extending a custody to Director-General order or a guardianship to Director-General order; or
- (f) an order revoking a guardianship to Director-General order; or
- (g) an order made in respect of a failure to comply with any condition of a supervision order, a supervised custody order or an interim protection order; or
- (h) the dismissal of an application for an order referred to in paragraph (d), (e) or (f); or
- (i) a permanent care order; or
- (j) the dismissal of an application for a permanent care order.

(2) This section applies to —

- (a) the child who is the subject of the order or application; or
- (b) the parent of that child; or
- (c) the protective intervener, if one has been involved in the proceeding; or
- (d) the Director-General; or
- (e) the Attorney-General, if he or she appeared or was represented in the proceeding under section 82 (2).

(3) If the appellant is a child under the age of 15 years an appeal may be made on the child's behalf and in the name of the child by the child's parent.

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

(5) If a person appeals under this Act to the Supreme Court on a question of law, that person is deemed to have abandoned finally and conclusively any right under this or any other Act to appeal to the County Court.

(6) Subdivision 1 of Division 4 of Part 4 (except sections 83, 84, 87 and 90) of, and Schedule 6 (except clauses 4 and 8) to, the *Magistrates'*