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**CONSENT TO MEDICAL TREATMENT OF YOUNG PEOPLE**

**MEDICAL EXAMINATIONS IN CASES OF  
SUSPECTED CHILD ABUSE**

**Research Paper  
MP 17**

**Queensland Law Reform Commission  
June 1996**

The short citation for this Research Paper is Q.L.R.C. M.P.17.  
Published by the Queensland Law Reform Commission, June 1996.  
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Printed by: Queensland Law Reform Commission.

# Queensland Law Reform Commission

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## CONSENT TO MEDICAL TREATMENT OF YOUNG PEOPLE:

### MEDICAL EXAMINATIONS IN CASES OF SUSPECTED CHILD ABUSE

RESEARCH PAPER, MP 17, JUNE 1996

The enclosed Research Paper was produced as a result of concerns raised by a number of people during the Commission's work on its reference *Consent to Medical Treatment of Young People*. The Research Paper discusses an apparent deficiency in existing Queensland legislation relating to the examination and treatment of victims of alleged child abuse. Submissions were received on this matter following the release of the Commission's Discussion Paper on *Consent to Medical Treatment* (WP 44 1995).

The Research Paper does not call for submissions. Its principal aims are to inform the community of the perceived deficiency of the current law and to suggest a solution. The Department of Families, Youth and Community Care is currently reviewing the *Children's Services Act 1965* (Qld) and the subject matter of this Research Paper is relevant to that review.



Wayne Briscoe  
Commissioner  
12 July 1996



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Previous Queensland Law Reform Commission publications on this reference:

Information Paper	<i>Consent by Young People to Medical Treatment</i>	MP 2 1993
Research Paper	<i>Circumcision of Male Infants</i>	MP 6 1993
Research Paper	<i>Female Genital Mutilation</i>	MP 7 1993
Draft Report	<i>Female Genital Mutilation</i>	WP 42 1994
Report	<i>Female Genital Mutilation</i>	R 47 1994
Discussion Paper	<i>Consent to Medical Treatment of Young People</i>	WP 44 1995



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# MEDICAL EXAMINATIONS IN CASES OF SUSPECTED CHILD ABUSE

## 1. INTRODUCTION

In its Discussion Paper *Consent to Medical Treatment of Young People*<sup>1</sup> the Commission described a particular problem concerning consent to the medical examination and treatment of victims of alleged child abuse. The problem had been raised with the Commission in response to the Commission's earlier Information Paper *Consent by Young People to Medical Treatment*.<sup>2</sup>

Upon an allegation being made to police, health care providers or social workers of physical, sexual or other abuse or neglect of a young person, it is common practice for a medical examination to be made of the young person. A physical examination may reveal evidence of the abuse to assist in the prosecution of the alleged perpetrator. A psychological or psychiatric examination may confirm suspicions and, in some cases, may provide the only indication or evidence of abuse having taken place. This is particularly so in cases of suspected sexual abuse.

An early examination may indicate physical injury, a sexually transmitted disease and/or psychological injury, which may require an appropriate course of treatment, including counselling. This may assist the young person to overcome or at least deal with the consequences of the abuse.

However, where a parent or a guardian of a person who is too young or immature to be able to consent to his or her own medical examination, refuses consent to the examination taking place, it appears that the current law in Queensland may actually hinder the investigation of the alleged offence.

For the purposes of this Research Paper "child" or "young person" refers to a young person under or apparently under the age of 17 years. Seventeen is the age in Queensland under which statutory provisions in relation to child abuse apply.<sup>3</sup>

## 2. INVESTIGATION OF SUSPECTED ABUSE

In 1980 the Co-ordinating Committee on Child Abuse was established in Queensland. That committee has representatives from the principal government departments concerned

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1 WP 44 May 1995 at 128 - 129.

2 MP 2 May 1993.

3 See, for example, *Health Act 1937* (Qld) s76M.

with child abuse and neglect services. These are the Department of Families, Youth and Community Care; Queensland Health; Queensland Police Service; the Department of Education and the Department of Justice.

The Co-ordinating Committee oversees a system of hospital-based Suspected Child Abuse and Neglect Teams (S.C.A.N. teams) to ensure the co-ordination of responses to reports of child abuse and neglect. The core members of each S.C.A.N. team are authorised representatives from each of the three disciplines with responsibilities to respond to child abuse and neglect matters, that is, an officer of the Department of Families, Youth and Community Care, a police officer and a medical practitioner.

The S.C.A.N. teams consider reported cases of child abuse and neglect and make recommendations about how to respond in a co-ordinated manner. The S.C.A.N. teams ensure that one of the represented departments takes responsibility for the case, and co-ordinate the involvement of others. An examination of the young person will be a priority.

### 3. EXAMINATION OF THE YOUNG PERSON

In the legal as well as the medical contexts, information gained from the young person is preferable to "second-hand" interpretations from a parent or guardian.

The examination is also important to identify problems other than abuse which may account for the suspicion of abuse.

The medical examination is regarded, at least by the medical profession,<sup>4</sup> as being for the benefit of the young person and not primarily to collect forensic evidence to assist in the prosecution of an alleged offender. However, the importance of the collection of such evidence to assist in prosecution cannot be ignored, particularly as cases of suspected child abuse are difficult to prove. In relation to suspected sexual abuse, a medical examination may lead to:<sup>5</sup>

- (a) reassurance to the young person and his or her parents;
- (b) detection of other conditions not associated with sexual abuse (e.g. threadworms or thrush which may be the cause of genital symptoms);
- (c) detection of damage to the young person's genitals or anus requiring treatment;
- (d) detection of a sexually transmitted disease;

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4 See, for example, Harry Dr J, *Vicspcan* Second Annual Conference, June 1989, Conference Proceedings at 100.

5 Id at 100 - 105.

- (e) confirmation or discounting of pregnancy;
- (f) forensic evidence (evidencing sexual assault).

There are a number of people who may have an interest in the results of a medical examination of a young person suspected of being abused. This interest usually stems from a concern for the welfare of the young person and from the fact that the results and findings of such an examination will often form part of the evidence in a subsequent court case.

The court case may involve allegations of a criminal offence. Alternatively, the case may be "civil" in nature and involve the young person's future welfare and upbringing. For example, it may involve a dispute between the young person's estranged parents over parenting arrangements. It may also involve the question of whether the young person should be removed from his or her parents.

#### 4. REFUSAL BY THE YOUNG PERSON TO UNDERGO EXAMINATION

Where a young person of any age refuses to be medically examined following allegations of abuse, it is usually considered inappropriate to force him or her to undergo the examination. Respondents to the Information Paper and to the Discussion Paper generally agreed with this proposition. The academic literature on child abuse also supports the need for the child's co-operation. From the medical point of view, Gardiner notes:<sup>6</sup>

We believe children should never be forced to have an examination of their genitals. Very apprehensive children may find postponing the examination acceptable; they then have time to prepare themselves emotionally, and to become more familiar with the examiner and setting.

Cashmore and Bussey observe:<sup>7</sup>

These examinations may be embarrassing to children and interpreted by them as meaning that there is something wrong with them. Although the child's consent may not be required legally for a medical examination, depending on their age, such consent is important and should be sought regardless of the child's age so that their sense of control over their own body is not further violated. It is also important that children are provided with adequate information about the medical examination and its purpose to allay any fears or sense of guilt surrounding it.

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6 Gardiner J, "The Medical Assessment of Sexually Abused Children: Mythology & Reality" in Hetherington P (ed) *Incest and the Community: Australian Perspective* (1991) 97 at 101.

7 Cashmore J and Bussey K, "Disclosure of Child Sexual Abuse: Issues from A Child-Oriented Perspective" (1987) *22 Aust Journal of Social Issues* 13 at 19.

In South Australia, section 26(3) of the *Children's Protection Act 1993 (SA)*<sup>8</sup> enables a person who is to examine, test, assess or treat a young person in certain circumstances to do so despite the absence or refusal of consent of the young person's guardians, but the examining person is not obliged to proceed if the young person refuses consent. In most Australian jurisdictions if a young person refuses consent, an attempt is made to explain the relevance and procedure of the examination to the young person or to provide any counselling if necessary, but if consent is still not forthcoming from the young person, then usually the examination does not proceed. However, in some jurisdictions<sup>9</sup> in the case of a very young person who may be traumatised by the abuse or any subsequent examination, the young person may be placed under sedation or general anaesthetic with the written consent of the young person's parents or guardian in order to carry out the examination (which, as indicated above, is not usually performed solely for forensic purposes, but within the context of determining the causes of any physical complaints and the appropriate treatment).

## 5. STATUTORY CONSENT WHERE PARENTS REFUSE AND/OR YOUNG PERSON REFUSES EXAMINATION

In Queensland there are two statutory provisions which may facilitate the medical examination or treatment of a young person suspected of having been maltreated or neglected in the absence of consent by the young person and/or his or her parents.

### (a) Section 76L *Health Act 1937 (Qld)*

Section 76L<sup>10</sup> of the *Health Act 1937 (Qld)* provides that a medical officer in charge of a hospital (or other authorised person) may order the admission or detention of a "child" suspected of being maltreated or neglected in hospital for up to 96 hours. The officer may also, if, before making that order, the child leaves or is removed from the hospital without permission, order the young person to be returned and detained in hospital for a period of up to 96 hours.

A police officer may assist in detaining the young person in hospital and conveying the young person to hospital. A police officer may also "take into custody" a young person who has left or been removed from hospital, and convey him or her to the hospital. The police officer may use such force as is necessary to do the above.<sup>11</sup>

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8 This provision is set out in part 2 of the Appendix to this Research Paper.

9 Such as Western Australia and Victoria. Other jurisdictions such as Queensland and South Australia do not follow this practice. A general anaesthetic will be administered for treatment purposes only. See the further discussion of this issue at 9 of this Research Paper.

10 S76L of the *Health Act 1937 (Qld)* is set out in full in part 2 of the Appendix to this Research Paper.

11 *Health Act 1937 (Qld)* s76L(5), 76L(6).

The acts of taking a young person into custody; detaining him or her in hospital for the specified period; and subjecting the young person to necessary diagnostic procedures, tests and treatment are all deemed lawful under subsection 76L(12) despite the wishes of any parent, guardian or person claiming to be entitled to custody of the young person.

Subsection 76L(13)<sup>12</sup> relieves doctors who treat young people pursuant to section 76L, and those assisting the doctors, in certain circumstances, from any liability at law arising by reason only that any parent, guardian or person having authority to consent to the administration of the treatment refused consent to the administration of the treatment or such consent was not obtained. Those circumstances include:

if the medical officer in charge of the hospital (or other authorised person) was of the opinion that the treatment was necessary in the young person's interests and, either-

- \* a second medical practitioner agreed with that opinion after personally examining the young person but before the administration of treatment; or
- \* if the hospital medical superintendent, upon being satisfied that a second medical practitioner was not available and treatment was necessary in the young person's interests, consented to the treatment before its administration.

It would seem from the terms of section 76L that any examination performed would have to be in the course of determining or providing treatment - that is, a medical examination could not be carried out with impunity if it were conducted merely for forensic purposes.

Subsection 76L(14)<sup>13</sup> provides that treatment administered to a young person in accordance with section 76L is, for all purposes, deemed to have been administered with the consent of the parent or guardian or person having authority to consent to the administration of the treatment.

There is no mention in section 76L of the need for, or desirability of, seeking the young person's consent<sup>14</sup> and no mention of a possible conflict between the wishes of the young person, the medical officer and/or the young person's parents.<sup>15</sup>

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12 See part 2 of the Appendix to this Research Paper.

13 Ibid.

14 Note that, in practice, despite the lack of statutory clarification on the matter, a medical examination will generally not proceed if a young person refuses to consent to the examination.

15 As to the ability of young people to consent to their own treatment, see Queensland Law Reform Commission, Discussion Paper, *Consent to Medical Treatment of Young People*, May 1995 and the Commission's forthcoming Report on the same topic.

There is also no reference made to any rights of privacy or self-determination of young people consistent with their growing maturity and autonomy.<sup>16</sup>

**(b) Section 49 *Children's Services Act 1965* (Qld)**

An alternative method of proceeding with a medical examination without the consent of the young person or his or her parents is for an authorised officer of the Department of Families, Youth and Community Care or any police officer to apply to the Childrens Court under section 49 of the *Children's Services Act 1965* (Qld)<sup>17</sup> for an order that the young person be admitted to the care and protection of the director.<sup>18</sup> Where it appears to, or it is reasonably suspected by, the authorised officer or police officer that a young person is in need of care and protection, the officer may, without further authority, take the young person into custody.<sup>19</sup> However, an application must be made to the Childrens Court as soon as practicable thereafter for an order that the young person be admitted to the care and protection of the director.<sup>20</sup> The Court may determine who is to care for the young person pending determination of the care and protection application.<sup>21</sup>

Upon the making of an application, the Court shall order any necessary or desirable investigations and medical examinations in relation to the young person, in which case the young person is remanded into the temporary custody of the director.<sup>22</sup>

If the Court is satisfied that a care and protection order is necessary, the Court has a number of options.<sup>23</sup> It may order a parent or guardian of the young person to enter into a recognisance, with or without surety, on the condition that the parent or guardian exercise proper care, protection and guardianship in respect of the young person; it may grant the director protective supervision over the young person; or, if it appears to the Court that any other order is not appropriate, it may order that the young person be admitted to the care and protection of the director.

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16 See Child Sexual Abuse Task Force, *Report to the Government of Western Australia*, December 1987 at paras 6.87 and 6.89.

17 This Act is currently undergoing a review by the Department of Families, Youth and Community Care. S49 of the *Children's Services Act 1965* (Qld) is set out in full in part 2 of the Appendix to this Research Paper.

18 "Director" is defined in s8 of the *Children's Services Act 1965* (Qld) as the chief executive for the purposes of the *Family Services Act 1987* (Qld), that is, the chief executive of the Department of Families, Youth and Community Care.

19 *Children's Services Act 1965* (Qld) s49(2).

20 Id s49(2A).

21 Id s49(2B)(a).

22 Id s49(3).

23 Id s49(4)(a).

If the Court is not of the opinion that the young person is in need of care and protection, it may refuse to make any order.<sup>24</sup>

## 6. THE PRACTICE IN QUEENSLAND

The Commission has been informally advised that in Queensland, if a young person refuses to undergo a medical examination, his or her wishes are usually respected, although some effort is commonly made to convince the young person of the positive aspects of an examination.

If a young person consents to an examination taking place, but his or her parents refuse, the practice has been to proceed with the examination, if the young person is considered sufficiently mature.

In most cases, it appears that police are able to negotiate the relevant consent from a young person's parents, often by making the parents or guardian aware of the options open to police if consent is not forthcoming, such as seeking a care and protection order.<sup>25</sup>

It is a commonly held belief that an order under section 76L of the *Health Act 1937* (Qld) applies only to suspected cases of abuse presented at hospitals. Invariably, such cases relate only to physical abuse - for example, where a young person has suffered a broken bone or has other obvious injuries. The Commission has been informed that rarely, if ever, has an order under section 76L been made in relation to a case of suspected sexual abuse.

Where a care and protection order has been made under section 49 of the *Children's Services Act 1965* (Qld), a medical examination can proceed against the wishes of the parents and, presumably, against the wishes of the young person, particularly those of a very young child. However, it appears from consultation with those working in the area that, if a young person refuses to undergo an examination, the young person's wishes are respected. Two exceptions are where a young person is in need of medical treatment and an examination has to be performed in the course of providing such treatment and where a very young child is incapable of understanding the nature of the treatment involved.

In cases of alleged child sexual abuse, it is not uncommon for there to be very little, if any, obvious physical signs of the abuse. Courts may be reluctant to grant an order without the evidence that only a psychiatric or other detailed medical examination could provide.

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24 Id s49(4)(b).

25 If a parent is suspected of being the abuser, and denies any such allegation, he or she may be persuaded to consent by an argument such as "If you did not abuse your child, obviously you would not object to the child being examined?"

## 7. OTHER AUSTRALIAN JURISDICTIONS<sup>26</sup>

From informal consultations with police and child abuse workers in other Australian jurisdictions, it appears that police rarely have difficulty in obtaining parental consent for the examination of suspected child abuse victims.<sup>27</sup>

The Australian Capital Territory,<sup>28</sup> the Northern Territory<sup>29</sup> and Western Australia<sup>30</sup> have provisions similar to section 76L of the *Health Act 1937* (Qld).

Until 1 January 1994, when the *Children's Protection Act 1993* (SA) came into operation, South Australia also had a provision similar to section 76L of the *Health Act 1937* (Qld).<sup>31</sup> Such a provision was not re-enacted in the 1993 Act, and the Commission has been advised that a number of problems were encountered with the former provision. For example, if the parents or guardian of a young person detained in hospital appeared at the hospital and absconded with the young person, hospital staff could do nothing as there was no warrant officially detaining the young person. Moreover, the provision placed the nursing and medical staff in the position of guardian of the young person without any legal authority. It should be added that the former South Australian provision was much less specific than section 76L of the *Health Act 1937* (Qld) and lacked the backing of written orders and the availability of police assistance which are embodied in the Queensland provision.

In all jurisdictions except Queensland, Western Australia and the Australian Capital Territory,<sup>32</sup> there are statutory schemes, in addition to care and protection proceedings, which enable suspected child abuse victims who have not been admitted to, or presented at, hospital, to be detained for examination against the wishes of the young person's

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- 26 See the comparative table of child protection legislation in Australian jurisdictions in part 1 of the Appendix to this Research Paper.
- 27 Informal consultations with Western Australian Police; Princess Margaret Hospital (Perth); Victoria Police (Child Exploitation Unit); Royal Children's Hospital (Melbourne); New South Wales Police (Major Crime Squad, Parramatta); Royal Children's Hospital (Sydney); Tasmania Police; Northern Territory Police; Sexual Assault Centre (Darwin); Australian Capital Territory Police; South Australian Police; Child Protection Unit (Adelaide).
- 28 *Children's Services Act 1986* (ACT) ss74, 75(2) - authorised person can detain young person in hospital for up to 48 hours without any application being made to a magistrate. A magistrate can order the detention to continue for a further 72 hours: s75(3). The Magistrates Court can order the detention to continue for 7 days, extendable once only for a further 7 days: s76. In practice, medical examinations are carried out during these 48 and 72 hour periods even though the Act does not specifically authorise them.
- 29 *Community Welfare Act 1983* (NT) s15 - person in charge of hospital who reasonably believes young person has suffered or is suffering maltreatment may detain, examine and treat young person in hospital for up to 48 hours.
- 30 *Child Welfare Act 1947* (WA) s29(3a) - a child under 6 years of age who is admitted to a hospital and is reasonably suspected of being in need of care and protection may be detained in the hospital for up to 48 hours for observation, assessment and treatment. The Commission has been advised that this provision is rarely used.
- 31 *Community Welfare Act 1972* (SA) s94.
- 32 See part 1 of the Appendix to this Research Paper.



parents.<sup>33</sup> In most jurisdictions it appears to be rare for a young person to be examined against his or her express wishes,<sup>34</sup> although in some States, in the case of a very young child who has been traumatised by the abuse, some medical examinations are conducted under sedation or general anaesthetic with the written consent of the young person's parents.<sup>35</sup> Under the *Children's Protection Act 1993* (SA), the views of a young person who is able to form and express his or her own views as to his or her ongoing care and protection must be sought and serious consideration must be given to them.

Protocols have been developed for medical examinations in cases of alleged child sexual assault by the Health Commission in South Australia and by the New South Wales Department of Health.<sup>36</sup> The New South Wales protocol<sup>37</sup> sets out the following consent requirements:

Medical examinations should never be carried out against the expressed wish of the child.

- (a) Children age 16 years and over can legally give consent to or refuse medical examination.

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33 In South Australia, the *Children's Protection Act 1993* (SA) s17 empowers the police or an authorised officer to remove a young person who is reasonably believed to be at risk from the young person's parents or guardian. Section 26 of that Act provides that a young person may be medically examined and treated (without parental or guardian consent) where the young person has been removed under s17 or where there is an examination and assessment order (made under s21) in force.

In Victoria, the *Children and Young Persons Act 1989* (Vic) s271 empowers the Director-General to consent to a young person (who is in the custody of the Director-General) being admitted to hospital and/or being medically examined and treated if the young person's parents refuse to consent.

In the Northern Territory, the *Community Welfare Act 1983* (NT) ss11,12 empowers an authorised person or the police to take a young person reasonably believed to be in need of care into custody and to consent to an urgent medical procedure or treatment for the young person.

In New South Wales, the *Children (Care and Protection) Act 1987* (NSW) ss23, 24 empowers a medical practitioner to examine a young person presented pursuant to a s23(1) notice or removed and presented pursuant to a search warrant. The young person can be detained for up to 72 hours (to allow the medical examination to take place).

In Tasmania, a young person who appears to have suffered maltreatment can be detained for up to 120 hours. A magistrate can order the detention to continue for 30 days, extendable once only for a further 30 days. A young person in custody can be medically examined: see *Child Protection Act 1974* (Tas) ss9,10,17.

34 *Children's Protection Act 1993* (SA) s26(3) provides:

A person who is to examine, test, assess or treat a child pursuant to this section may do so notwithstanding the absence or refusal of the consent of the child's guardians, but nothing in this section requires the person to carry out any examination, test, assessment or treatment if the child refuses consent.

35 This will usually only be carried out after an attempt has been made to counsel or calm the young person if possible. Other jurisdictions do not undertake this practice, feeling that to do so would be to commit a further assault on the young person, thereby adding to the young person's disempowerment. The provision of necessary treatment requiring sedation or general anaesthetic, such as where the young person is haemorrhaging as a result of the abuse, is a different issue involving other considerations such as determining the best treatment for the young person.

36 South Australian Health Commission, *Guidelines for the Medical Evaluation of Sexually Abused Children*, March 1990; New South Wales Department of Health, *Child Sexual Assault Medical Protocol*, April 1990.

37 The New South Wales protocol has been adopted by medical practitioners in the Australian Capital Territory and the Northern Territory.

- (b) Children age **14-16 years** can legally give consent to or refuse medical examination. *Minors (Properties and Contractors) Act 1976*. If possible, approval of parent or guardian should also be sought.
- (c) Children under **14 years** of age
  - (i) Consent in writing must be given by parent or guardian for medical examination.
  - (ii) Medical examination order - The Director-General of F.A.C.S.<sup>38</sup> may service a notice requiring medical examination. *Children (Care and Protection) Act 1987* No 54 section 23.
  - (iii) New South Wales State Wards - Approval must be granted by a person delegated by the Director-General of the Department of Family and Community Services.

A consent form is an integral part of the protocol. The form includes a statement to be signed by the young person, a parent, guardian or other person, in the following terms:

I hereby consent to a complete medical examination including genital examination, and to the recording of the findings. I also authorise the collection of all necessary specimens for laboratory tests and the taking of necessary photographs of injuries related to the reason for this examination.

I understand that a copy of the Sexual Assault Medical Protocol and any relevant laboratory reports will be released to the Department of Family and Community Services and may be released to the Police Department and the Office of the Crown Prosecutor, as requested, for medico-legal purposes. I understand that some of the laboratory specimens may be forwarded to a forensic laboratory.

The signing of the consent form and the examination must be witnessed.

## 8. THE COMMISSION'S POSITION

Child abuse, particularly child sexual abuse, is often difficult to detect and difficult to prove. It is therefore essential that those people who seek to protect young people from abuse have the ability firstly, to remove and take young people who are reasonably suspected of being at risk to a safe place until suitable action can be taken and secondly, to examine and treat such young people without parental consent, if necessary. At present in Queensland, the only powers of removal are found in section 49 of the *Children's Services Act 1965* (Qld) and section 76L of the *Health Act 1937* (Qld). Under the first provision, a care and protection application must be made as soon as practicable after the young person is removed, although the success of that application will depend on the available evidence. The second provision only applies where a young person has been presented, or has presented himself or herself, at a hospital, or is a patient in a hospital.

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38 F.A.C.S. is an abbreviation for the New South Wales Department of Family and Community Services. Note that this New South Wales Department is now known as the Department of Community Services.

In the Commission's Discussion Paper *Consent to Medical Treatment of Young People*,<sup>39</sup> the Commission expressed the view that the 96 hour detention provision embodied in section 76L of the *Health Act 1937* (Qld) should be retained, particularly as it gives hospital authorities and members of S.C.A.N. teams the ability to negotiate with parents to obtain consent, or to act in cases where young people are in urgent need of medical treatment and their parents or guardians refuse to consent to the provision of such treatment. However, the Commission was of the view that the powers contained in section 76L should be extended to include situations where a young person has not been presented, or has not presented himself or herself, at a hospital.

The Commission suggested that a power of removal and detention for a 96 hour period should be granted to authorised officers (such as S.C.A.N. team members and police officers) without the need for prior court sanction or an application for a care and protection order. The Commission also suggested that - whether the young person is in hospital or some other safe place - the 96 hour period should be able to be extended for a further 96 hour period upon an application being made to the Childrens Court. An application to the Childrens Court for a temporary care and protection order would need to be made within the first 96 hour period. The Commission also suggested that health care professionals should be able to conduct a medical examination or administer necessary treatment during a 96 hour detention period without the consent of a young person's parents or guardian and without the need for bringing a care and protection application. The director of the Department of Family and Community Services<sup>40</sup> or his or her delegate could be granted custody or guardianship during this time solely for the purpose of conducting such examination or providing such treatment.

It was suggested that, in all cases of suspected abuse, and particularly if it is a young person who makes the complaint of abuse, clear guidelines should exist as to the age at which a young person's consent to medical examination or treatment is sufficient, despite the absence or refusal of parental or guardian consent. This is especially useful where "homeless" young people are involved or either parent is, or both parents are, implicated in the abuse. The Commission suggested that one way of clarifying this issue would be to prepare a written protocol for police, officers of the Department of Family and Community Services<sup>41</sup> and medical practitioners which clearly sets out guidelines on consent to medical examination and treatment. The Commission was adamant that, as in the South Australian legislation<sup>42</sup> and the New South Wales protocol,<sup>43</sup> an examination of a young person - of any age - should not proceed over the refusal of the young person.

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39 Queensland Law Reform Commission, Discussion Paper No 44, *Consent to Medical Treatment of Young People*, May 1995 at 197.

40 Now known as the Department of Families, Youth and Community Care.

41 Ibid.

42 *Children's Protection Act 1993* (SA) s26(3).

43 New South Wales Department of Health, *Child Sexual Assault Medical Protocol*, April 1990.

The submissions to the Discussion Paper were generally in favour of the Commission's proposals. In the Discussion Paper, the Commission also queried whether the removal and detention of a child should be preceded by a written request to the young person's parent or guardian (as in New South Wales and Tasmania). There was almost unanimous rejection of that suggestion.

A Child and Adolescent Mental Health Service commented:<sup>44</sup>

[I] suspect that this would permit abusive parents or guardians to apply increasing pressure and/or further abuse to a young person prior to removal.

A Regional Health Authority noted:<sup>45</sup>

In cases where there is an acute situation and the young person is at grave risk, it would be negligent to waste time in terms of providing parents with a written request to hand over their child.

A senior medical officer from a community mental health centre warned that:<sup>46</sup>

[A] written request for parents to hand over the young person, may lead to unnecessary siege states and kidnapping ...

The then Department of Family and Community Services<sup>47</sup> stated:<sup>48</sup>

It is this Department's experience that this would not be in the interests of the child. If there is sufficient evidence of abuse to warrant the child being removed it is inappropriate and not in the interest of the child to delay removal whilst the parent or guardian who may be guilty of abuse is given notice of the intention of the Department. Given that the person to whom the notice is to be given may be the very person abusing the child it is likely that the notice may serve only to cause the parent to accuse the child of reporting the abuse and place the child in further danger. Another scenario would be the parent absconding with the child or hiding the child if forewarned of the Department's actions. In every case the risk to the child far outweighs any concept of natural justice that might lie in the parents' favour for giving prior notice.

The Commission is persuaded by these and similar concerns expressed in the submissions to the Discussion Paper, and is now of the view that it would be inappropriate for removal of a young person to be preceded by a notice to the young person's parents of intention to do so. The most important thing is to remove the young person if there is a reasonable suspicion of abuse. The Commission accepts that a notice requirement would, in some cases, put the young person at further risk.

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44 Sub 18.

45 Sub 29.

46 Sub 60.

47 Now known as the Department of Families, Youth and Community Care.

48 Sub 79.

Most respondents to the Discussion Paper agreed that medical examinations for suspected child abuse should not proceed in the face of a refusal by a young person. For example, the then Department of Family and Community Services<sup>49</sup> noted:<sup>50</sup>

This Department supports the view that where, after attempts have been made to convince the young person of the benefits of a medical examination, the young person continues to object, the young person's view should be respected and the examination should not proceed.

However, some respondents suggested that this proposal should be subject to a number of limitations. For example, some respondents drew a distinction between young people who are capable of understanding the nature and consequences of a proposed examination or treatment and young people who are not so capable.<sup>51</sup> Other respondents suggested that young people should be treated differently depending on their age and/or the type of examination or treatment.

A public policy organisation stated:<sup>52</sup>

The proposal that a medical examination not proceed over the refusal of the young person seems unduly restrictive. We suggest this restriction should only apply to children aged 13 or over. For younger children, the officials concerned should be able to use their judgment.

A community organisation noted:<sup>53</sup>

While this would be ideal, it would need to be determined whether the term "medical examination" also covers non-invasive assessment procedures such as a mental status examination and art therapy which may be useful assessment techniques.

It is difficult to imagine that forcing a resistant young person to undergo either type of assessment against his or her will would be productive.

The Commission is of the view that if a young person refuses a medical examination relating to suspected child abuse, after having the reasons for such an examination explained to him or her, then such an examination should not proceed without an appropriate court order.

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49 See note 47 above.

50 Sub 79.

51 See, for example, *Children Act 1989* (UK) s43(8) which provides:

[I]f the child is of sufficient understanding to make an informed decision he [or she] may refuse to submit to a medical or psychiatric examination or other assessment.

52 Sub 3.

53 Sub 7.

The Commission is aware that the Department of Families, Youth and Community Care is currently reviewing the appropriateness of section 76L of the *Health Act 1937* (Qld). In its submission to the Discussion Paper, the then Department of Family and Community Services<sup>54</sup> outlined the policy behind the Department's review of section 76L in the following terms:<sup>55</sup>

*The Children's Services Act 1965* is currently under review by this Department. The preparation of new child protection legislation to replace the *Children's Services Act 1965* has been approved by Cabinet.

In order to ensure equity and consistency in statutory responses to the protection needs of all children, it is proposed that a single piece of legislation cover the field in relation to child protection. Consequently, it is proposed that section 76L of the *Health Act 1937* be repealed. The powers of designated medical officers to take action to ensure a child's safety and well being where they believe a child who is at a hospital is, or is at risk of, being abused or neglected will be incorporated in the new child protection legislation.

One of the primary principles guiding the review of the legislation is that powers used to protect children should be exercised in an open and just way and that, where appropriate, the exercise of those powers should be subject to the supervision of the Court.

It is proposed that designated medical officers, as well as family services officers and police officers, would apply to a Childrens Court Magistrate for a short assessment order which may include an order to have the child medically examined and to take or retain the child into the custody of the Chief Executive if this is necessary. Officers will be empowered to take a child into custody prior to the making of this application where the officer reasonably believes a child is at current risk of serious harm. It is also proposed that a longer term assessment order be available. These orders will enable investigation and assessment of a child's protection needs without the necessity of first applying for a care and protection order.

Consequently, where parents are refusing to consent to the medical examination of a child in a case of suspected child abuse, the medical examination would occur pursuant to a Magistrate's or Childrens Court order and consent of the parents would not be required. A medical officer would still be liable to the same extent as if the examination was carried out with the consent of the parents.

The Department also supports the development of a formal protocol with Queensland Health on the obtaining of consent to medical examinations from young people.

The Commission notes that it is proposed by the Department's review to repeal 76L of the *Health Act 1937*. The advantage of that provision is that it permits the administration of diagnostic procedures, tests and treatment without the necessity of first obtaining a care and protection order.

The regime now proposed by the Department of Families, Youth and Community Care would also permit a young person to be medically examined without the necessity of first

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54 Now known as the Department of Families, Youth and Community Care.

55 Some time after the Department delivered its submission to the Discussion Paper there was a change of government in Queensland. At the time this Research Paper was being finalised, the new government's policy on child protection had not been publicly announced.

obtaining a care and protection order, although it would require a "short assessment order" to be first obtained.

The Commission is in general agreement with the Department's proposals in so far as they are outlined above. However, the Commission would wish to have the opportunity to review and comment on any draft legislation intended to implement the above proposals. In particular, the Commission is concerned to ensure that the legislation:

- (a) enables the "short assessment order" to be obtained promptly;
- (b) does not impose unduly high requirements in order to obtain a short assessment order, as this could prevent the gathering of evidence necessary to found a care and protection application; and
- (c) permits the prompt administration of treatment to a young person who is injured. While there is not at law a consent requirement for the provision of emergency treatment, there may be circumstances which fall short of an emergency where it is nevertheless desirable that the young person be treated promptly.

Subject to the conditions in section 76L(13) being satisfied, section 76L(12) currently enables the young person to receive treatment considered by the prescribed medical officer to be necessary in his or her interests, notwithstanding the wishes of any parent or guardian.





APPENDIX

AUSTRALIAN LEGISLATION RELATING TO THE EXAMINATION OF ALLEGED CHILD ABUSE VICTIMS

1. COMPARATIVE TABLE OF CHILD PROTECTION LEGISLATION

QLD	SA	NSW	VIC	WA	TAS	NT	ACT
Children's Services Act 1965 (Qld) Health Act 1937 (Qld)	Children's Protection Act 1993 (SA)	Children (Care and Protection) Act 1987 (NSW)	Children and Young Persons Act 1989 (Vic)	Child Welfare Act 1947 (WA)	Child Protection Act 1974 (Tas)	Community Welfare Act 1983 (NT)	Children's Services Act 1986 (ACT)
Requirement to present young person for examination		Notice issued to person who appears to have the care of a young person (<16) who is reasonably believed to have been abused requiring person to present young person to a specified medical practitioner to be medically examined: s23(1).	Protective intervener may serve a notice requiring young person to be brought before the Children's Court for hearing of protection application: s68(1)(a). Once application made young person may be medically examined.		Authorised officer may require a parent or anyone having the care of a young person who appears to have suffered maltreatment to cause the young person to be taken to an assessment centre to be examined: s9(1).		

## Consent to Medical Treatment of Young People

	QLD	SA	NSW	VIC	WA	TAS	NT	ACT
Removal of young person	<p>Authorised officer or police may take young person reasonably suspected of being in need of care &amp; protection into custody. Care &amp; protection application must be made as soon as practicable after young person taken into custody: s49(2),(2A) Children's Services Act 1965.</p>	<p>Young person at risk may be removed from parent/ guardian using force that is reasonably necessary: s17. After removal under s17, custody rests in Minister for 1 working day: s18(2). Chief Executive Officer may apply to Youth Court for an order granting custody of young person to Minister: s21.</p>	<p>If s23(1) notice not compiled with, search warrant may be issued: s24. Authorised officer or police may enter specified premises, search for the young person &amp; remove &amp; present young person to a medical practitioner: s24.</p>	<p>If inappropriate to serve notice, protective intervener may, with or without a warrant, take the young person into safe custody pending hearing of a protection application: ss68(1)(b),69.</p>	<p>Young person in need of care &amp; protection may be apprehended by police or authorised officer without a warrant: s29(1).</p>	<p>If the requirement to present young person to an assessment centre has not been complied with a Justice may issue a warrant authorising a police officer to remove &amp; take the young person to a place of safety: s9(3). The Child Protection Board may apply to a magistrate for an order that a young person be taken and/or detained in a place of safety for up to 30 days, extendable for a further 30 days: s10.</p>	<p>Authorised person or police may take young person reasonably believed to be in need of care into custody using force that is reasonably necessary: s11(1),(2).</p>	<p>Authorised person may take young person reasonably believed to be in need of care into custody and place young person in a shelter, approved home or hospital: s73(1).</p>

	QLD	SA	NSW	VIC	WA	TAS	NT	ACT
Examination of young person after removal	Upon care & protection application being made, the court shall order necessary investigations & medical examinations, in which case the young person is remanded into the temporary custody of the director: s49(3) Children's Services Act 1965.	Chief Executive Officer may apply to Youth Court for an order authorising examination and assessment of young person: s21. Young person may be medically examined and treated where removed under s17 or where there is an examination and assessment order in force: s26.	A medical practitioner may examine a young person pursuant to a s23(1) notice or removed and presented pursuant to a search warrant: ss23,24. Seventy-two hrs allowed for the medical examination; D-G deemed guardian for purposes of examination: s23(4)(b).	Young person in safe custody must be brought before the Children's Court for hearing of application for interim accommodation order: ss69(4),73,74. Whilst young person is in safe custody, D-G may at any time order young person to be medically examined: s271.	After apprehension, young person must be brought, as soon as practicable, before the court so that a care & protection order can be made if appropriate: s29(3). A medical examination may then be performed.		Young person in custody may be held for max 48 hrs, during which time an application must be made to a Justice of the Peace for a holding order: s11(3). Holding order authorises young person to be held for max 14 days: s11(4). Person taking young person into custody may consent to urgent medical procedure or treatment: s12.	Young person taken into custody may be held for up to 48 hrs without any application being made to a magistrate: s75(2). Magistrate may order detention of young person for max 72 hrs: s75(3). In practice, medical examinations are carried out during these 48 and 72 hr periods - even though the Act does not specifically authorise them.
Detention of young person in hospital	Where young person presented at hospital & maltreatment or neglect is suspected, prescribed medical officer may order admission & detention of young person at hospital for max 96 hrs: s76L(2) Health Act 1937.				Where a young person <6 is admitted to a hospital and is reasonably suspected of being in need of care & protection, the medical officer or deputy in charge of the hospital may order the detention of the young person in the hospital for max 48 hrs: s29(3a).	A young person may be detained in a place of safety (including a hospital) for a max 120 hrs: s9(4).	Person in charge of hospital who reasonably believes young person has suffered or is suffering maltreatment may detain, examine and treat young person in hospital for up to 48 hrs & may apply for a holding order: s15.	Authorised person who reasonably believes young person in hospital is in need of care may order young person to be detained in hospital: s74(1). Young person may be detained for up to 48 hrs without any application being made to a magistrate: s75(2).

Consent to Medical Treatment of Young People

	QLD	SA	NSW	VIC	WA	TAS	NT	ACT
Examination of young person without parental consent	During 96 hr period it is lawful for young person to undergo necessary diagnostic procedures, tests & treatment despite lack of parental or guardian consent if certain conditions are satisfied: s76L(12),(13) Health Act 1937.	Section 26 authorises young person to be medically examined and treated without parental/ guardian consent, but not over refusal of young person: s26(3).		Interim accommodation order may be made for up to 21 days, extendable for further periods of 21 days: ss75,78. Whilst an interim accommodation order is in force, D-G may consent to the young person being admitted to hospital and/or given medical treatment: s271.		A young person who has been taken to an assessment centre (including a young person who is the subject of a s10 child protection order) may be medically examined: s17.	Whilst young person in hospital or custody, Minister assumes responsibility for care, protection & maintenance of young person: s17(a). Minister in receipt of report of maltreatment may order medical examination of young person: s16.	Court may authorise continued detention of young person for period of 7 days, extendable for a further 7 days: s76.
Consent for special medical examinations of young person			Young person in a facility or residential child care centre cannot undergo a special medical examination (vaginal, anal or penile) unless consent obtained from parents & young person: s21.					

## 2. RELEVANT STATUTORY PROVISIONS

### Queensland

#### Section 76L *Health Act 1937* (Qld):

- (1) In this section -
- "prescribed medical officer"** means the medical superintendent or other medical officer in charge of a hospital in question or any nominee (being a medical practitioner) of such medical superintendent or other medical officer (such medical superintendent or other medical officer being hereby authorised to make any such nomination as the person thinks fit).
- (2) Where -
- (a) a child has presented itself or been presented at a hospital; and
- (b) the prescribed medical officer suspects upon reasonable grounds the maltreatment or neglect of the child in such a manner as to subject or be likely to subject it to unnecessary injury, suffering or danger;
- the prescribed medical officer -
- (c) may order in writing the admission of that child as a patient to, and the detention of that child in, that hospital for a period not exceeding 96 hours from the time of that presentation; or
- (d) if prior to the making of that order the child leaves or is removed from the hospital without the permission of the prescribed medical officer - may order in writing that the child be taken into custody and conveyed to such hospital as that officer directs and detained there for a period not exceeding 96 hours from the time of the making of the order.
- (3) If whilst a child is a patient in a hospital the prescribed medical officer suspects upon reasonable grounds the maltreatment or neglect of the child in such a manner as to subject or be likely to subject it to unnecessary injury, suffering or danger, the prescribed medical officer -
- (a) may order in writing the detention of that child in hospital for a period not exceeding 96 hours from the time of the making of that order; or
- (b) if prior to the making of that order or at any time within the duration of that order the child leaves or is removed from the hospital without the permission of the prescribed medical officer - may order in writing that the child be taken and conveyed to such hospital as that officer directs and detained there as a patient for a period not exceeding 96 hours from the time of the making of that order.
- (4) Where the prescribed medical officer who makes an order in writing pursuant to either subsection (2) or (3) is of the opinion that the assistance of a police officer is necessary for the purpose of enforcing the order, the medical officer may certify as to the medical officer's opinion by endorsement upon the order.
- (5) It shall be the duty of a police officer to whose notice that endorsement is

brought to assist the prescribed medical officer as required and in accordance with this Act and a police officer so assisting may without other authority than this Act detain or assist in detaining in hospital, prevent any person from removing from hospital or take and convey or assist in taking and conveying to such hospital as the prescribed medical officer directs that child, for the purpose of enforcing that order.

- (6) It is lawful for any police officer acting in accordance with any authority vested in the police officer by this section and all persons acting in aid of the police officer to use such force as is necessary to detain or assist in detaining in hospital, prevent any person removing from hospital or take and convey or assist in taking and conveying to hospital a child, for the purpose of enforcing an order made pursuant to this section with respect to that child.
- (7) A justice who is satisfied upon the complaint of a police officer acting in accordance with authority vested in the police officer by this section, that there is reasonable cause to suspect -
- (a) that an order has been made by a prescribed medical officer in respect of a child pursuant to either subsection (2) or (3); and
  - (b) that the child has left or been removed from the hospital without the permission of that prescribed medical officer;

may issue a warrant authorising all police officers to search for that child and for that purpose to enter any place or premises and to take into custody that child and to convey the child to the hospital.

- (8) For the purpose of executing the warrant made pursuant to subsection (7) the person executing the same -
- (a) may enter any place or premises wherein the person executing the warrant reasonably suspects that child to be; and
  - (b) may search that place or those premises; and
  - (c) may exercise therein the powers conferred upon a police officer by this Act; and
  - (d) may use such force as may reasonably be necessary to perform any of the things referred to therein.
- (9) For the purpose of gaining entry to any place or premises a police officer may call to the officer's aid those persons that the officer thinks necessary and those persons, while acting in aid of the officer in the lawful exercise by the officer of the officer's power of entry and search shall have a like power of entry and search.

...

- (12) Notwithstanding the wishes of any parent, guardian or person claiming to be entitled to the custody of a child in respect of whom an order has been made in accordance with subsection (2) or (3), it shall be lawful for -
- (a) the child to be detained in, or taken into custody and conveyed to and detained in, the hospital for the period specified in the order;
  - (b) the child to be subjected to such diagnostic procedures and tests as

- the prescribed medical officer considers necessary to determine its medical condition;
- (c) such treatment to be administered to the child as the prescribed medical officer considers necessary in the interests of the child, subject to the conditions specified in subsection (13).
- (13) Where treatment is administered to a child pursuant to subsection (12)(c), neither the prescribed medical officer administering the treatment or in charge of its administration nor any person acting in aid of the prescribed medical officer and under the prescribed medical officer's supervision in the administration of the treatment shall incur any liability at law by reason only that any parent, guardian or person having authority to consent to the administration of the treatment refused consent to the administration of the treatment or such consent was not obtained if -
- (a) in the opinion of the prescribed medical officer the treatment was necessary in the interests of the child; and
- (b) either -
- (i) upon and after in person examining the child, a second medical practitioner concurred in such opinion before the administration of the treatment; or
- (ii) the medical superintendent of a hospital, being satisfied of the unavailability of a second medical practitioner to examine the child and of the necessity of the treatment in the interests of the child, consented to the treatment before it was administered (which consent may be obtained and given by any means of communication whatsoever).
- (14) Treatment administered to a child in accordance with this section shall, for all purposes, be deemed to have been administered with the consent of the parent or guardian or person having authority to consent to the administration of the treatment.

...

**Section 49 *Children's Services Act 1965* (Qld):**

- (1) An officer of the department authorised in that behalf by the director or a police officer may apply to the Childrens Court for an order that a child be admitted to the care and protection of the director.
- (2) An officer of the department authorised in that behalf by the director or any police officer may, without further authority than this Act, take into custody on behalf of the director any child who appears or who such officer suspects on reasonable grounds to be in need of care and protection.
- (2A) The person so taking a child into custody shall -
- (a) forthwith upon such taking notify the director of that fact; and
- (b) as soon as practicable after such taking apply to the Childrens Court for an order that such child be admitted to the care and protection of

the director.

(2B) Pending determination by the Childrens Court of such an application the child shall be cared for in a manner consistent with the child's best interests -

- (a) by a person chosen by the court; or
- (b) in the absence of such a choice, by the person who took the child into custody or by a person chosen by the person;

and for this purpose the person entrusted with the child's care may retain custody of the child.

(2C) If under subsection (2) the court chooses the director to care for a child it shall remand the child into the temporary custody of the director.

(3) Upon an application made to it under this section the Childrens Court shall -

(a) order to be made in relation to the child concerned such investigations and medical examinations as to the court appear necessary or desirable and, if it does so, the court -

- (i) shall remand the child into the temporary custody of the director; and
- (ii) shall be furnished with reports of such investigations and examinations;

(b) hear any objection to such application;

(c) if it appears to such court that the best interests of such child require it, adjourn such application to another Childrens Court whereupon it shall be deemed that such application was made in the first instance to such other Childrens Court.

(4) The Childrens Court -

(a) if it is satisfied that such child is in need of care and protection, may -

- (i) order a parent or guardian (other than the director) of such child to enter into a recognisance in such amount as the court fixes without a surety or with such surety or sureties as the court orders conditioned that such parent or guardian exercise proper care, protection and guardianship in respect of such child;
- (ii) order that the director shall have protective supervision over and in relation to such child;
- (iii) subject to section 52, order that such child be admitted to the care and protection of the director;
- (iv) make such order as to the costs of the application and of any investigation or assessment made in respect of such child pursuant to the court's order as the court thinks just;

(b) if it is not so satisfied, shall refuse to make any order.



## South Australia

### Section 26 *Children's Protection Act 1993* (SA):

- (1) While -
  - (a) a child is in the custody of the Minister pursuant to having been removed from any person, premises or place under Division 2; or
  - (b) an investigation and assessment order under Division 4 authorising examination and assessment of a child is in force,

an employee of the Department may take the child to such persons or places (including admitting the child to hospital) as the Chief Executive Officer may authorise for the purpose of having the child professionally examined, tested or assessed.
- (2) A medical practitioner or dentist to whom a child is referred under this section may give such treatment to the child as he or she thinks necessary for alleviating any immediate injury or suffering of the child.
- (3) A person who is to examine, test, assess or treat a child pursuant to this section may do so notwithstanding the absence or refusal of the consent of the child's guardians, but nothing in this section requires the person to carry out any examination, test, assessment or treatment if the child refuses consent.
- (4) A person to whom a child is referred under this section, or the agency for whom the person works, must, as soon as practicable after any examination, assessment, test or treatment of the child is completed, furnish the Chief Executive Officer with a written report on the examination, assessment, test or treatment.
- (5) A person who is required to furnish a report under subsection (4) does not, insofar as he or she has acted in good faith, incur any civil liability in respect of complying with the requirement.

## New South Wales

### Sections 23 and 24 *Children (Care and Protection) Act 1987* (NSW):

- 23(1) If the Director-General or a member of the police force believes on reasonable grounds (which may consist wholly or partly of information received by that person) that a child who is under the age of 16 years has been abused, the Director-General or the member of the police force, as the case may be, may serve a notice, in such form as may be prescribed by the regulations:
  - (a) naming or describing the child; and
  - (b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or some other place so specified for the purpose of the child's being medically examined,

on the person (whether or not a parent of the child) who appears to the Director-General or the member of the police force to have the care of the child for the time being.

- (2) A person who fails to comply with the requirement contained in a notice served on the person under subsection (1) is guilty of an offence unless it is proved that the person did not have the care of the child at the time the notice was served.
- (3) If a person fails to comply with the requirement contained in a notice served on the person under subsection (1), an authorised officer or a member of the police force may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a hospital or elsewhere for the purpose of the child's being medically examined.
- (4) When a child is presented to a medical practitioner under subsection (1) or (3):
- (a) the medical practitioner may carry out or cause to be carried out such medical examination of the child as the medical practitioner thinks fit, including examination at a hospital or place that is not the hospital or place specified in the notice referred to in subsection (1) in respect of the child;
  - (b) the Director-General shall, from the time at which the child is presented to the medical practitioner until the expiration of:
    - (i) such period of time as is reasonably necessary for the child to be examined in accordance with paragraph (a); or
    - (ii) 72 hours,whichever period first expires, be deemed to be the guardian of the child for the purpose only of enabling the examination to be carried out; and
  - (c) the medical practitioner or other person by whom any such medical examination has been carried out shall prepare a written report of the examination for transmission to the Director-General.
- (5) No proceedings lie against an officer, medical practitioner, member of the police force or person employed at any hospital or other place at which a child is examined for or on account of any act, matter or thing done or ordered to be done by that person, and purporting to be done for the purpose of carrying out or assisting in carrying out the provisions of this section, if that person has acted in good faith and with reasonable care.

...

- 24(1) An officer or member of the police force may apply to an authorised justice for a search warrant if the officer or member of the police force has reasonable grounds for believing that a person on whom a notice has been served under section 23(1) has failed to comply with the requirement contained in the notice.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an officer or member of the police force named in the warrant:
- (a) to enter any premises specified in the warrant;
  - (b) to search the premises for the presence of the child the subject of the notice under section 23(1); and

- (c) to remove the child and to present the child to a medical practitioner under section 23(3).

...

- (6) An officer named in a search warrant, or a member of the police force, may, for the purpose of removing a child pursuant to the warrant, use all reasonable force.