

Western Australia

Child Welfare Act 1947

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THE TEXT OF THE LEGISLATION FOLLOWS

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Western Australia

Child Welfare Act 1947

An Act to consolidate and amend the law relating to the protection, guidance and maintenance of children in need of care and protection and for other purposes connected therewith.

[Long title amended by No. 73 of 1976 s. 3; No. 104 of 1994 s. 198.]

Part I — Preliminary

[Heading inserted by No. 22 of 2002 s. 4.]

1. Short title

This Act may be cited as the *Child Welfare Act 1947*¹.

[2. *Repealed by No. 49 of 1988 s. 4.]*

[3. *Omitted under the Reprints Act 1984 s. 7(4)(e).]*

3A. Principle — interests of child paramount

In performing a function or exercising a power under this Act in relation to a child, a person or the court shall regard the best interests of the child as the paramount consideration.

[Section 3A inserted by No. 22 of 2002 s. 5.]

4. Interpretation

- (1) In this Act, unless the context or subject matter otherwise indicates or requires —

“child” means any boy or girl under the age of 18 years; and, in the absence of positive evidence as to age, means any boy or girl apparently under the age of 18 years but also includes any boy or girl dealt with under the *Children’s Court of Western Australia Act 1988* by virtue of section 19(2) of that Act;

“child in need of care and protection” means a child who —

- (a) has no sufficient means of subsistence apparent to the court and whose near relatives are, in the opinion of the court, in indigent circumstances or are otherwise unable or unwilling to support the child, or are dead, or unknown, or cannot be found, or are out of the jurisdiction, or in the custody of the law;

- (b) has been placed in a subsidized facility and whose near relatives have not contributed regularly towards the maintenance of the child;
- (c) associates or dwells with any person who has been convicted of vagrancy, or is known to the police as of bad repute, or who has been or is reputed to be a thief or habitually under the influence of alcohol or drugs;
- (d) is under the guardianship or in the custody of a person whom the court considers is unfit to have that guardianship or custody;
- (e) is not being maintained properly or at all by a near relative, or is deserted;
- (f) is found in a place where any drug or prohibited plant is used and is in the opinion of the court in need of care and protection by reason thereof;
- (g) being under the age of 14 years is employed or engaged in any circus, travelling show, acrobatic entertainment, or exhibition by which his life, health, welfare, or safety is likely to be lost, prejudiced, or endangered;
- (h) is unlawfully engaged in street trading;
- (i) is ill-treated, or suffers injuries apparently resulting from ill-treatment;
- (j) lives under conditions which indicate that the child is lapsing or likely to lapse into a career of vice or crime; or
- (k) is living under such conditions, or is found in such circumstances, or behaves in such a manner, as to indicate that the mental, physical or moral welfare of the child is likely to be in jeopardy;

“court” means the Children’s Court of Western Australia established by the *Children’s Court of Western Australia Act 1988*;

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“Department” means the department of the Public Service principally assisting the Minister in the administration of this Act;

“Director-General” means the Director-General of the department established under section 4 of the *Community Services Act 1972* appointed under section 7 of that Act;

“drug” means prohibited drug as defined by section 3 of the *Misuse of Drugs Act 1981*;

“foster parent” means any person with whom a ward or a child placed under the control of the Department is placed out under this Act, or under any enactment by this Act repealed, and includes the assignee of such person;

“governing authority” means the manager or committee of management of any subsidized facility;

“lying-in home” means a place for the accommodation of females during their confinement and lying-in, and includes any home maintained for such purpose by the Government;

“maintenance” means financial support, but may include provision for clothing, training and education;

“maintenance order” means an order made by a court for payment of money by any near relative in respect of the maintenance of a child;

“near relative”, in relation to a child, means parent, brother, sister or grandparent of the child;

“parent”, in relation to a child, means father, mother, stepfather or stepmother of the child;

“place out” means to place a child in the charge of some person for the purpose of being cared for, reared or supervised by that person, or to reside in the house of that person;

“police officer” includes any constable or officer of police;

“prohibited plant” means prohibited plant as defined by section 3 of the *Misuse of Drugs Act 1981*;

“public place” means any place whatsoever to which the public for the time being have or are permitted to have access whether on payment or otherwise;

“street” includes any highway or public place, whether a thoroughfare or not;

“street trading” means the selling, offering or exposing for sale, or the delivering for gain or reward of any article, which is wholly or in part carried out in or from a public place; but does not include the occasional selling of any article if the net proceeds of the sale are wholly applied for the benefit of a church or school or other charitable or cultural purpose;

“subsidized facility” means a facility, not being a Departmental facility, maintained wholly or in part by contributions from the Consolidated Fund, and declared to be such a facility under section 14.

- (2) A child who —
- (a) is declared to be a child in need of care and protection;
 - (b) is to be treated as a child in need of care and protection pursuant to section 32;
 - (c) was, immediately prior to the coming into operation of the *Child Welfare Act Amendment Act (No. 2) 1976*¹, a ward and in relation to whom the period of care or custody has not expired; or
 - (d) is committed to the care of the Department by the Minister under this Act, or to the custody of the Director-General, for a period which is not expired,

is for the purposes of this Act referred to as a **“ward”** and shall be under the guardianship of the Director-General.

- (3) Where a child is placed under the control of the Department under this Act he does not thereby come under the guardianship of the Director-General, but in all other respects he may be treated as though he was a ward and may be placed in any

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facility, required to carry out the lawful directions of the Director-General or his officers, and required not to leave the State without the consent of the Director General.

- (4) A person shall be taken to stand in loco parentis to a child if that person, whether male or female, is a person —
- (a) responsible for providing for the day to day needs of the child as required having regard to the age of the child, and whether or not financial support is provided from any other source; or
 - (b) with whom the child habitually resides, notwithstanding that the child may at any relevant time be in the custody of the law or living away from that person for the time being for educational or other reasons,

and the fact that a person stands in loco parentis to a child shall not be taken to derogate from the rights which the Director-General might otherwise exercise in relation to that child.

[Section 4 amended by No. 16 of 1952 s. 2; No. 45 of 1955 s. 2; No. 15 of 1959 s. 2; No. 79 of 1965 s. 3; No. 27 of 1967 s. 4; No. 85 of 1969 s. 3; No. 27 of 1972 s. 4; No. 73 of 1976 s. 5; No. 57 of 1981 s. 4; No. 57 of 1982 s. 3; No. 121 of 1984 s. 17 and 18; No. 49 of 1988 s. 5 and 40; No. 83 of 1990 s. 4; No. 15 of 1991 s. 21; No. 14 of 1992 s. 4(3); No. 6 of 1993 s. 11; No. 31 of 1993 s. 11; No. 104 of 1994 s. 199; No. 57 of 1997 s. 30(1); No. 22 of 2002 s. 6.]

Part II — Administrative provisions

[Heading inserted by No. 27 of 1972 s. 5.]

[5, 5A. Repealed by No. 104 of 1994 s. 200.]

6. Duty of Director-General

- (1) It shall be the duty of the Director-General, under the direction of the Minister, to carry into operation the provisions of this Act so far as the execution thereof is not expressly committed to any other person.
- (1a) Where this Act confers or imposes any power, function, or duty on the Director-General, that power, function, or duty may be exercised or performed by the person appointed under section 8 of the *Community Services Act 1972* to be the Assistant Director-General.

[(2)-(4) repealed]

[Section 6 amended by No. 45 of 1955 s. 2; No. 85 of 1969 s. 4; No. 27 of 1972 s. 7; No. 57 of 1982 s. 4; No. 121 of 1984 s. 18 and 19; No. 31 of 1993 s. 13; No. 104 of 1994 s. 201.]

7. Inspectors and other officers

- (1) The Governor may, from time to time, appoint inspectors and other officers with such powers and functions as he deems necessary to carry out the purposes of this Act.
- [(2) omitted under the Reprints Act 1984 s. 7(4)(g).]*
- (3) A person appointed or engaged under the *Community Services Act 1972*², shall, for the purpose of carrying into operation the provisions of this Act, have such powers, duties and functions under this Act as may be imposed or conferred upon him by the Minister.

[Section 7 amended by No. 45 of 1955 s. 3; No. 27 of 1972 s. 8.]

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8. Visitors

The Minister may, from time to time, appoint so many fit and proper persons as he thinks necessary to be visitors of Departmental facilities.

[Section 8 amended by No. 73 of 1976 s. 6; No. 49 of 1988 s. 40.]

[9. Repealed by No. 29 of 1968 s. 2.]

9A. Delegation

- (1) The Minister may from time to time, by writing under his hand either generally or in relation to a specified person, case, or circumstance, delegate to the Director-General, to the Assistant Director-General of the Department, or to each of them, as he thinks fit, all or any of —
 - (a) the powers exercisable by him under section 10(2)(b), section 29(1), sections 47, 47A, 47B, 47C, 54, 55, 65, 66, 66A, 66B, 110, 122, and 138B; and
 - (b) the powers exercisable by him in respect of a child under section 49 in so far as they are to be exercised in accordance with the consent of each parent or guardian of the child whose whereabouts are known or can be ascertained by reasonable inquiry and, where the child has attained the age of 14 years, of the child.
- (2) Subject to section 9B and to any general or special directions given or conditions attached by the Minister, any person to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation and, where, under this Act, the exercise of a power by the Minister is dependent upon the opinion, belief, or state of mind of the Minister in relation to a matter and that power is delegated under this section, that power may be

exercised by the delegate upon the opinion, belief, or state of mind of the delegate in relation to that matter.

- (3) Every delegation under this section shall be revocable at will, and no delegation prevents the exercise of any power by the Minister.
- (4) Where the Minister by whom a delegation was made under this section has not vacated his office but another Minister is for the time being discharging the duties of that office, the delegation has effect as if that other Minister were the Minister by whom the delegation was made.

[Section 9A inserted by No. 15 of 1959 s. 3; amended by No. 27 of 1972 s. 9; No. 73 of 1976 s. 7; No. 57 of 1982 s. 5; No. 121 of 1984 s. 18 and 20; No. 82 of 1990 s. 4; No. 31 of 1993 s. 14; No. 104 of 1994 s. 202; No. 57 of 1997 s. 30(2).]

9B. Review of decision of delegate

- (1) Where a person makes a decision in relation to a child pursuant to a power conferred on the Minister under a provision specified in subsection (6) and delegated to that person under section 9A —
 - (a) the child, if he has attained the age of 14 years;
 - (b) a parent or, where the Director-General is not the guardian, the guardian, of the child;
 - (c) any other person standing in loco parentis to the child; or
 - (d) any other person who satisfies the Minister that his paramount interest in the matter is the welfare of the child,

may request the Minister to review the decision and the Minister shall, on receiving such request, or in any case may of his own motion, review the decision and thereupon confirm, vary, or reverse the decision.

- (2) A person making a decision in respect of which a right to request a review is conferred by subsection (1) shall give to

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each person on whom a right to request a review is conferred by paragraph (a), (b), or (c) of that subsection whose whereabouts are known to, or can be ascertained by reasonable inquiry by, the delegate notice in writing of the right to request a review so conferred.

- (3) The notice required by subsection (2) to be given to a person may be given —
 - (a) by delivering it to him personally;
 - (b) by leaving it for him at his usual or last known place of abode, or, if he is a principal of a business, at his usual or last known place of business; or
 - (c) by posting the notice (under pre-paid post) as a letter addressed to him at a place referred to in paragraph (b).
- (4) Nothing in this section prejudices any right of appeal that a person may have, but where the right of appeal is exercisable in respect of a decision made pursuant to a power conferred on the Minister under a provision specified in subsection (6) and delegated under section 9A it shall not be exercised until any right to request a review of the decision under this section has been exhausted.
- (5) Where upon a review of the decision under this section the Minister varies or reverses a decision made pursuant to a power delegated under section 9A the validity of anything done for the purposes of or pursuant to the decision is not affected, but the Minister may direct that such measures be taken in relation to anything so done as in the circumstances he thinks fit and effect shall be given to any such direction.
- (6) The provisions in respect of which subsection (1) applies are sections 47, 47A, 47B, 47C, 49, 66A and 66B.

[Section 9B inserted by No. 57 of 1982 s. 6; amended by No. 121 of 1984 s. 18; No. 31 of 1993 s. 15; No. 57 of 1997 s. 30(3).]

10. General powers of Director-General

- (1) Subject to the regulations and the direction of the Minister, the Director-General shall —
 - (a) be the guardian and have the care, management and control of the persons and property of all wards;
 - (b) have the supervision and control of all children placed under the control of the Department; and
 - (c) have the supervision of all children to whom a licence granted under section 111 or section 112 applies.
- (2) Any ward and any child placed under the control of the Department may from time to time be dealt with by the Director-General in any one or more of the following ways —
 - (a) by placing the child in any suitable facility;
 - (b) with the approval of the Minister or a person to whom the power to give approval on behalf of the Minister has been delegated pursuant to section 9A, by transferring the child from one facility to another facility or from one kind of training or employment to any other which in the opinion of the Director-General is likely to prove more beneficial to the child;
 - (c) by placing out that child or placing the child in employment with some suitable person; or
 - (d) by placing that child in the care, charge or custody of a suitable person willing to take the child.

[Section 10 amended by No. 45 of 1955 s. 2; No. 15 of 1959 s. 4; No. 22 of 1962 s. 3; No. 29 of 1968 s. 3; No. 73 of 1976 s. 8; No. 121 of 1984 s. 18; No. 49 of 1988 s. 40.]

10A. General function of the Director-General

The Director-General may take such action or cause such action to be taken, not inconsistent with the provisions of this Act, as may be reasonably or probably necessary for promoting the welfare of a child, whether that child is a ward or placed under

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the control of the Department or not, and the Director-General and any officer of the Department authorised by the Director-General in that behalf has all such powers as may be reasonably necessary to enable such action to be taken.

[Section 10A inserted by No. 73 of 1976 s. 8; amended by No. 121 of 1984 s. 18.]

10B. Director-General may delegate and sub-delegate

The Director-General may from time to time by writing under his hand delegate to any officer of the Department any function conferred on the Director-General by, or delegated to the Director-General under, this Act and subject to this Act, but without affecting the provisions of section 59 of the *Interpretation Act 1984* as they apply to a delegation, those provisions apply to and in relation to a sub-delegation by the Director-General as though the sub-delegation were a delegation.

[Section 10B inserted by No. 127 of 1987 s. 4.]

10C. Exchange of information

(1) In this section —

“corresponding authority” means a person or body in another State or a Territory, or another country, that has functions corresponding to those of the Director-General under this Act;

“public authority” means —

- (a) a department of the Public Service;
- (b) a State agency or instrumentality;
- (c) a local government or regional local government; or
- (d) a body, whether corporate or not, or the holder of an office, post or position, established or continued for a public purpose under a written law;

“relevant information” means information that, in the opinion of the Director-General, is, or is likely to be, relevant to —

- (a) the health, safety or welfare of a child or class of children; or
 - (b) the performance of functions under this Act.
- (2) The Director-General may disclose relevant information to a public authority or a corresponding authority.
- (3) The Director-General may request a public authority or a corresponding authority that holds relevant information to disclose the information to the Director-General.
- (4) A public authority may, despite any other written law, comply with a request under subsection (3).
- (5) If information is disclosed, in good faith, under subsection (2) or in compliance with a request under subsection (3) —
- (a) no civil or criminal liability is incurred in respect of the disclosure;
 - (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
 - (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

[Section 10C inserted by No. 22 of 2002 s. 7.]

11. Records to be kept

The Director-General shall keep records of all moneys received and paid, and so far as known of the names, ages, dates of reception, near relatives, nationality, sex, religion and dates of departure of all wards and children placed under the control of the Department, and of all dispositions of and dealings with such children.

[Section 11 amended by No. 45 of 1955 s. 2; No. 73 of 1976 s. 9; No. 121 of 1984 s. 18.]

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[11A. Repealed by No. 104 of 1994 s. 203.]

12. Application of *Financial Administration and Audit Act 1985*

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in respect of the Department and its operations under this Act.

[Section 12 inserted by No. 98 of 1985 s. 3; amended by No. 31 of 1993 s. 17; No. 104 of 1994 s. 204.]

Part III — Facilities

[Heading inserted by No. 73 of 1976 s. 11; amended by No. 49 of 1988 s. 40.]

13. Departmental facilities

- (1) The Governor may by order declare any building, place, educational establishment or other thing to be a Departmental facility for the purposes of this Act and effect shall be given to any such declaration.
- (2) The Governor may by order discontinue and close any Departmental facility and direct the transfer of any child thereby affected to some other facility.
- (3) Any order under this section may be altered or revoked by the Governor.

[Section 13 amended by No. 73 of 1976 s. 12; No. 49 of 1988 s. 40.]

[13A-13K. Repealed by No. 104 of 1994 s. 205.]

14. Subsidized facilities and voluntary facilities

- (1) The Governor may by order declare any building, place, educational establishment, training facility, or other thing to be a subsidized facility or a voluntary facility for the purposes of this Act and effect shall be given to any such declaration.
- (2) The Governor may by order declare that any subsidized facility or any voluntary facility shall cease to be such for the purposes of this Act, and thereupon any ward or child placed under the control of the Department thereby affected may be transferred to some other facility or otherwise dealt with in accordance with the provisions of this Act.
- (3) Any order made under this section may direct that any such facility shall cease to be used in the manner therein specified on

s. 15

the expiry of the period therein specified and effect shall be given to any such direction.

- (4) Any order under this section may be altered or revoked by the Governor.

[Section 14 inserted by No. 73 of 1976 s. 13; amended by No. 49 of 1988 s. 40.]

15. Declaration of subsidized facilities

Subject to the provisions of section 14(2) the facilities specified in the Second Schedule to this Act are declared to be subsidized facilities.

[Section 15 inserted by No. 73 of 1976 s. 14; amended by No. 49 of 1988 s. 40.]

16. Manager to be approved

No facility shall be eligible to be or to continue to be a subsidized facility or a voluntary facility for the purposes of this Act unless the person holding office as manager in chief control of that facility is a person approved in that office by the Governor.

[Section 16 inserted by No. 73 of 1976 s. 15; amended by No. 49 of 1988 s. 40.]

17. Maintenance by religious denominations

Where a subsidized facility or a voluntary facility is or is to be established or maintained for the children of persons of any particular religious denomination exclusively, the Governor may have regard to that limitation.

[Section 17 inserted by No. 73 of 1976 s. 16; amended by No. 49 of 1988 s. 40.]

18. Judges, magistrates and members may visit centres

A judge or magistrate of the court, or a member of the court authorised by a judge or magistrate, has the right to enter, visit and inspect a Departmental facility declared to be such under this Act.

[Section 18 inserted by No. 49 of 1988 s. 7; amended by No. 104 of 1994 s. 206.]

18A. Visits by officers of Department

The Director-General, or any officer of the Department authorised in that behalf by the Minister, shall have the right at any time to enter, visit and inspect any subsidized facility or any voluntary facility.

[Section 18A inserted by No. 73 of 1976 s. 18; amended by No. 121 of 1984 s. 18; No. 49 of 1988 s. 40.]

Part IV — Wards and children under Departmental control

[Heading inserted by No. 49 of 1988 s. 8(1).]

[Subheading repealed by No. 49 of 1988 s. 8(2).]

[19, 20. Repealed by No. 49 of 1988 s. 9.]

[20A. Repealed by No. 29 of 1968 s. 6.]

[20B, 20C, 21-23. Repealed by No. 49 of 1988 s. 9.]

[23A-23C. Repealed by No. 36 of 1992 s. 12.]

[24-27. Repealed by No. 49 of 1988 s. 9.]

28. Remand for observation

[(1) repealed]

- (2) Where it appears to the court that a child in respect of whom an application is made —
- (a) is suffering from mental or nervous disorder; or
 - (b) should be remanded for observation, assessment and recommendation as to his future treatment,

then, notwithstanding the provisions of any other Act, the court may, after giving the parents or guardian of the child an opportunity of being heard, if present, remand the child, and order that he be placed in some suitable place, for a period not exceeding one month, for observation, assessment and the making of a report on his condition or a recommendation as to his future treatment, as the case may require.

[Section 28 amended by No. 45 of 1955 s. 2; No. 27 of 1967 s. 8; No. 73 of 1976 s. 27; No. 87 of 1982 s. 50; No. 121 of 1984 s. 18; No. 49 of 1988 s. 9; No. 104 of 1994 s. 207.]

Children in Need of Care and Protection and Uncontrolled Children

[Heading inserted by No. 57 of 1982 s. 8.]

29. Power to apprehend child in need of care and protection

- (1) Any officer of the Department authorised by the Minister and any police officer may, without warrant, apprehend any child appearing or suspected to be in need of care and protection.
- (2) When any such child is apprehended, pending the hearing of the application, the child shall be —
 - (a) taken to his place of residence and there left, upon the recognizance of a near relative for his appearance;
 - (b) placed with some respectable person and such arrangement or agreement may be made as may be necessary or proper for the care and maintenance of that child; or
 - (c) taken to and placed in any Departmental facility of an appropriate kind, or such other suitable place as is approved by the Director-General.
- (3) Where any child is apprehended in any of the circumstances described in subsection (1) or section 38(1), he shall, as soon as practicable, be brought before the court to be dealt with according to law.
- (3aa) The court may order that a child appearing or suspected to be in need of care and protection shall during any adjournment of the hearing —
 - (a) be allowed to live at home;
 - (b) be placed, or be directed to remain in the care of, a specified suitable person; or
 - (c) be placed in a Departmental facility or other suitable place as approved by the Director-General,and the order of the court may include such provisions relating to custody of and access to the child as the court thinks appropriate.

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- (3a) Where a child under the age of 6 years is admitted to a hospital and there are reasonable grounds to suspect that the child is a child in need of care and protection, the medical officer in charge of that hospital, or his deputy, may order that the child be detained in the hospital for a period not exceeding 48 hours for the purposes of observation, assessment or treatment, but shall thereupon give notice to the Department in the prescribed manner.
- (3b) Where a child is detained in a hospital pursuant to subsection (3a), on the expiration of the period of detention that child shall —
- (a) be discharged from the hospital; or
 - (b) remain in the hospital with the consent of a parent or guardian; or
 - (c) be apprehended and dealt with in accordance with the provisions of this section or of section 47B,

as the case may require.

[Section 29 amended by No. 27 of 1967 s. 9; No. 29 of 1968 s. 10; No. 85 of 1969 s. 5; No. 73 of 1976 s. 29; No. 57 of 1982 s. 9; No. 49 of 1988 s. 10 and 40.]

30. Powers of court with respect to children in need of care and protection

- (1) The court upon the hearing of an application to declare a child in need of care and protection may on being satisfied that the application should be granted, declare the child to be in need of care and protection and may order the child until he attains the age of 18 years, or during such shorter period as the court may think sufficient to be —
- (a) committed to the care of the Department; or
 - (b) placed under the control of the Department.

[(2) repealed]

- (3) In relation to any application for a declaration that a child is in need of care and protection, or on any allegation that a child is a habitual truant, —
- (a) the court shall admit in evidence any statement, whether oral or otherwise, voluntarily expressed or necessarily implied and whether made in the presence of a party to those proceedings or not; and
 - (b) the child, the parents and any guardian of the child, and any person who is alleged to have contributed by action or neglect towards the need of the child for care and protection, shall be deemed to be parties to the proceedings.
- (4) Where in any proceedings under this section an allegation that a child is in need of care and protection, or is a habitual truant, is found to be proved the child shall not thereby be taken to be guilty or convicted of an offence.

[Section 30 inserted by No. 16 of 1952 s. 3; amended by No. 79 of 1965 s. 10; No. 73 of 1976 s. 30; No. 57 of 1982 s. 10; No. 49 of 1988 s. 11; No. 84 of 2004 s. 80.]

[30A. Repealed by No. 73 of 1976 s. 31.]

31. Order for detention

Whenever a child is committed to the care of, or placed under the control of, the Department, the order of the court shall be sufficient authority to any police officer or officer of the Department to take the child to such place as the Director-General may direct, or in default of any such direction to such Departmental facility of an appropriate kind as may be nearest or most convenient.

[Section 31 amended by No. 45 of 1955 s. 2; No. 73 of 1976 s. 32; No. 57 of 1982 s. 11; No. 121 of 1984 s. 18; No. 49 of 1988 s. 40.]

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31A. Punishment for misconduct or neglect causing a child to be in need of care and protection

- (1) Any person who has, either by wilful misconduct or habitual neglect, or by any wrongful or immoral act or omission caused or suffered any child to become, or to continue to be, a child in need of care and protection, or contributed to any child becoming, or continuing to be, a child in need of care and protection, shall be guilty of an offence.

Penalty: \$10 000 or imprisonment for 12 months, or both.

[(2)-(5) repealed]

[Section 31A, formerly section 137, renumbered as section 31A and amended by No. 73 of 1976 s. 33; No. 82 of 1990 s. 6; No. 104 of 1994 s. 208.]

32. How an uncontrolled child may be dealt with

- (1) Subject to the provisions of this section, a near relative of a child over whom he is unable to exercise proper control may bring the child before the court on an application for an order under this section; and the court, if satisfied that the application is well founded, may deal with the child as though it were a child in need of care and protection.
- (2) No order of committal of an uncontrolled child on the application of his near relative shall be made unless such relative proves that he has not by his own omissions lost control of the child.
- (3) No application under subsection (1) shall be heard unless the court is satisfied that the applicant gave reasonable notice in writing to the Department of his intention to bring the child before the court pursuant to the provisions of this section.

[Section 32 amended by No. 79 of 1965 s. 11; No. 27 of 1967 s. 10; No. 73 of 1976 s. 35; No. 49 of 1988 s. 12.]

[Heading deleted by No. 57 of 1997 s. 30(4).]

[33, 33A, 33B, 34. Repealed by No. 104 of 1994 s. 209.]

[34A. Repealed by No. 49 of 1988 s. 15.]

[34B-34CA. Repealed by No. 104 of 1994 s. 209.]

[34D. Repealed by No. 31 of 1993 s.18.]

[34E, 35-39, 39A-39H, 39J-39N, 39P-39R, 40. Repealed by No. 104 of 1994 s. 209.]

General Provisions

[Heading inserted by No. 73 of 1976 s. 51.]

40A. Orders for maintenance of wards

- (1) Where, in any proceeding under this Part a child is committed to the care of the Department or is placed under the control of the Department, the court shall by an order under this section require any of the parents of the child who is able to pay for, or contribute towards, the past or future maintenance of the child to pay to the Department —
 - (a) such amount for the past maintenance of the child; and
 - (b) such amount, or such amounts over such period, for the future maintenance of the child,as to the court may appear sufficient.
- (2) An order may be made under this section notwithstanding that no claim has been made against, or summons served on, the parent and, if that parent is not present before the court, the court shall —
 - (a) if satisfied that the parent had due and sufficient notice of the proceedings, make the order in the absence of the parent; or
 - (b) grant liberty to apply for maintenance and on the hearing of that application, whether or not before the same magistrate, make the order.

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- (3) Where an order is made under this section for the payment of maintenance, the court shall cause a certified copy of the order to be sent to the Family Court for registration in accordance with the *Family Court Act 1997* and the order shall, when so registered, be deemed, for all purposes, to be an order of the Family Court.

[Section 40A inserted by No. 79 of 1965 s. 18; amended by No. 85 of 1969 s. 10; No. 106 of 1975 s. 5; No. 73 of 1976 s. 52; No. 41 of 1997 s. 29(2); No. 36 of 1999 s. 247; No. 84 of 2004 s. 80.]

[41. Repealed by No. 79 of 1965 s. 19.]

[42. Repealed by No. 43 of 1962 s. 3.]

43. Form of order

- (1) Every order of the court committing a child to the care of the Department or placing a child under the control of the Department, shall be in writing setting forth the age and religion, so far as known, of such child, and the cause for which the order was made.
- (2) In the absence of evidence as to the age of any child, the court may on view determine the age of such child, and shall insert in the order the age so determined.

[Section 43 amended by No. 79 of 1965 s. 20; No. 73 of 1976 s. 53.]

44. Statement of age and religion to be prima facie evidence

The statement in any order that the child therein named is of a certain age and religion shall, for the purposes of this Act, be taken to be true unless within 6 months from the date of the order the Director-General shall be satisfied to the contrary, and shall indorse on the order the correct age or religion.

[Section 44 amended by No. 45 of 1955 s. 2; No. 121 of 1984 s. 18.]

44A. Director-General to give child a name

- (1) The Director-General shall, in the absence of positive evidence as to the name of a child, give the child a name, and for the purposes of this Act the name so given shall be regarded as the correct name of the child.
- (2) If at any time thereafter the Director-General is satisfied by positive evidence that the child should be known by some other name the records of the court and the Department shall be amended accordingly and thereafter the child shall be known by that other name.

[Section 44A inserted by No. 16 of 1952 s. 5; amended by No. 45 of 1955 s. 2; No. 73 of 1976 s. 54; No. 121 of 1984 s. 18.]

45. Certificate of person in charge of detention centre, etc., indorsed on order to be prima facie evidence

A certificate indorsed upon or annexed to any order and signed by the person in charge of any Departmental or other facility, stating that the child named in such order was duly received, and was at the signing thereof detained therein, or had been otherwise dealt with under this Act, shall in all proceedings whatsoever be prima facie evidence of the facts stated in such certificate, and of the identity of the child therein named.

[Section 45 amended by No. 73 of 1976 s. 55; No. 49 of 1988 s. 40; No. 104 of 1994 s. 210.]

46. Absconders may be apprehended without warrant

A ward or child placed under the control of the Department who runs away from any Departmental facility or other centre or facility, from a foster parent or from any situation in which he has been placed at the requirement of the Director-General may

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be apprehended, without warrant, by a police officer or by an officer of the Department and be conveyed to such place as the Director-General may direct.

[Section 46 inserted by No. 79 of 1965 s. 21; amended by No. 73 of 1976 s. 56; No. 121 of 1984 s. 18; No. 49 of 1988 s. 40; No. 104 of 1994 s. 211.]

47. Minister may release child

- (1) Where any child has been committed to the care of the Department or placed under the control of the Department the Minister may order the release of that child, and effect shall be given to any such order upon production of the order to the Director-General or other person in charge of the facility in which the child is placed.
- (2) A parent of a child committed to the care of the Department or placed under the control of the Department, or a near relative or guardian of the child, may apply to the Minister for an order for the release of the child pursuant to this section and where the Minister declines to make the order may apply to the court for the release of the child.
- (3) The court may grant an application made under this section unconditionally or subject to such conditions as in the circumstances of the case the court considers are in the best interests of the child, or may refuse the application.

[Section 47 inserted by No. 73 of 1976 s. 57; amended by No. 121 of 1984 s. 18; No. 49 of 1988 s. 26 and 40.]

47A. Authority for Minister to commit child to care of Department

- (1) Where it appears to the Minister that a person has placed a child in the care of another person or of a body but that maintenance for the child is not being paid to that other person or body by the person responsible for payment of the maintenance, the Minister

may, by written order signed by him, commit the child to the care of the Department.

- (2) Unless modified or cancelled on appeal brought under this section, an order made under subsection (1) has effect according to its tenor.
- (3) Before the Minister makes an order under subsection (1) in respect of a child, the person responsible for placing the child in the care of such person or body and the person responsible for payment of the maintenance and the parents of the child shall, if the whereabouts of such persons and parents are known or can be ascertained by reasonable inquiry, be notified by the Department that the Minister proposes to make the order, unless they show or any one or more of them shows, within such time as is specified in the notification, good cause why he should not do so.
- (4) The Minister shall consider such representations, if any, as such persons or parents make as to why he should not make the order.
- (5) A parent of a child in respect of whom an order made under subsection (1) is in force or the person responsible as aforesaid for placing the child in the care of such firstmentioned person or body may make application to the court for cancellation of the order and the release of the child from the care of the Department and the court may grant the application unconditionally or subject to such conditions as in the circumstances of the case the court considers just.

[Section 47A inserted by No. 45 of 1958 s. 4; amended by No. 73 of 1976 s. 58; No. 49 of 1988 s. 40.]

47B. Minister may commit to Departmental care a child left without parents, etc.

- (1) Where it appears to the Minister that a child is left without parent or guardian, or the whereabouts of any parent, near

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relative or guardian of the child are not readily ascertainable, if the child is not a child in need of care and protection within the meaning of this Act, the Minister may by written order signed by him commit the child to the care of the Department.

- (2) A parent of a child in respect of whom an order made under subsection (1) is in force, or a near relative or any guardian of the child, may apply to the court for cancellation of that order and the release of the child from the care of the Department.
- (3) The court may grant an application made under this section unconditionally or subject to such conditions as in the circumstances of the case the court considers are in the best interests of the child, or may refuse the application.

[Section 47B inserted by No. 22 of 1962 s. 8; amended by No. 73 of 1976 s. 59; No. 49 of 1988 s. 40.]

47C. Parents may apply for committal of child

- (1) The parents, or the surviving parent, of a child, or where the child is maintained or taken care of only by one of the parents, that parent may apply to the Minister for an order committing the child to the care of the Department or placing the child under the control of the Department, for a period, or until the child attains the age, specified in the application; and the Minister may, if he is satisfied that it is in the best interests of the child that the application be granted and upon the parents or parent giving a written undertaking to provide such maintenance for the child as the Minister may require, commit the child to the care of the Department or place the child under the control of the Department for the period, or until the child attains the age, specified in the application.
- (2) The amount of maintenance from time to time due to the Minister, by virtue of an undertaking given pursuant to subsection (1), is deemed to be an advance under, and for the purposes of, the *Welfare and Assistance Act 1961*.

- (3) A parent of the child who has not applied to the Minister for an order under this section may apply to the court for cancellation of any order made by the Minister under this section and the release of the child, and the court may grant the application unconditionally or subject to such conditions as in the circumstances of the case the court considers to be in the best interests of the child or may refuse the application.

[Section 47C inserted by No. 27 of 1967 s. 14; amended by No. 73 of 1976 s. 60; No. 49 of 1988 s. 40.]

[47D. Repealed by No. 9 of 1994 s. 145.]

[48. Repealed by No. 73 of 1976 s. 62.]

49. Minister may extend committal

- (1) The Minister may, from time to time, order that the period for which a child was committed to the care of the Department or was placed under the control of the Department, whether by his or any other order, be extended; but an order made under this section ceases to have effect after the ward attains the age of 21 years.
- (2) Where the period for which a child was committed to the care of the Department or was placed under the control of the Department is extended pursuant to subsection (1), any provision for the maintenance of the child, whether made pursuant to an order of a court or otherwise, shall be deemed to have been extended in like manner.
- (3) Where an order for the payment of maintenance for a child has been registered under section 40A in the Family Court and the Minister makes an order under this section, the Department shall cause a copy of the order of the Minister to be sent to the Family Court for registration in accordance with the *Family Court Act 1997* and the order shall, when so registered, be deemed, for all purposes, to be an order of the Family Court.

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[Section 49 inserted by No. 79 of 1965 s. 23; amended by No. 73 of 1976 s. 63; No. 41 of 1997 s. 29(3).]

50. Power to sign documents

- (1) In any case where the consent of a parent or guardian of a child is required or is customarily sought the Director-General may, by writing under his hand, give that consent in relation to —
 - (a) any ward; or
 - (b) any child placed under the control of the Department, where the parent or guardian of that child is unwilling or is unable so to do.
- (2) Without limiting the generality of the power conferred by subsection (1), the Director-General may sign —
 - (a) indentures or agreements relating to apprenticeship or training, including applications to join the armed forces; and
 - (b) consents to surgical operations or anaesthesia.

[Section 50 inserted by No. 73 of 1976 s. 65; amended by No. 121 of 1984 s. 18.]

[51. Repealed by No. 73 of 1976 s. 66.]

52. Wards to attend school regularly

- (1) Every ward shall be sent regularly to school in accordance with the *School Education Act 1999*.
- [(2) repealed]*
- (3) Any parent or foster-parent committing or permitting any breach of this section shall be guilty of an offence against this Act, unless for good cause shown he shall be specially exempted by the Minister.

[Section 52 amended by No. 27 of 1967 s. 16; No. 73 of 1976 s. 67; No. 36 of 1999 s. 247.]

[53. *Repealed by No. 73 of 1976 s. 68.*]

54. Wages may be paid into a savings bank

- (1) The Director-General may in any indenture or agreement provide that all, or such portion as may be specified, or any wages to become due to the child shall be deposited in a savings bank in the name of such child, and every such payment shall be deemed to be a payment to that child.
- (2) No money deposited pursuant to this section shall be withdrawn without the consent of the Minister until the child is released from the care or control of the Department.
- (3) All accounts under this section shall be audited at prescribed periods by the Auditor General.

[Section 54 amended by No. 45 of 1955 s. 2; No. 74 of 1957 s. 5; No. 73 of 1976 s. 69; No. 121 of 1984 s. 18.]

55. Moneys banked may be expended for child's benefit

- (1) All or any part of the money deposited pursuant to section 54(1), and any interest thereon, may, with the consent of the Minister, be expended for the benefit of the child when and in such manner as the Director-General may from time to time deem advisable.
- (2) All moneys so deposited, and not expended as aforesaid, shall be payable to the child upon his release from the care or control of the Department.
- (3) On the death of any such child any debt due to the Department in respect of such child shall be a first charge on moneys so deposited, and shall be payable to the Department on demand.

[Section 55 amended by No. 45 of 1955 s. 2; No. 73 of 1976 s. 70; No. 121 of 1984 s. 18.]

56. Director-General may recover wages

The wages or earnings due by any person to any child, whether a child committed to the care of the Department or placed under the control of the Department or not and whether payable to such child or not, may be sued for and recovered by and in the name of the Director-General for the benefit of such child.

[Section 56 amended by No. 45 of 1955 s. 2; No. 73 of 1976 s. 71; No. 121 of 1984 s. 18.]

[57-59. Repealed by No. 27 of 1967 s. 17.]

60. Change of residence to be notified by foster-parent

No foster-parent shall change his place of residence without in every case giving to the Director-General notice in writing forthwith.

[Section 60 amended by No. 45 of 1955 s. 2; No. 73 of 1976 s. 72; No. 121 of 1984 s. 18.]

61. Notice to be given in certain cases

Where a ward or child under the control of the Department is placed out, and that child runs away, becomes ill, meets with an accident, or dies the foster-parent of the child shall immediately notify the Director-General and take such further necessary action as the Director-General may require.

[Section 61 inserted by No. 73 of 1976 s. 73; amended by No. 121 of 1984 s. 18.]

[62. Repealed by No. 73 of 1976 s. 74.]

[63. Repealed by No. 73 of 1976 s. 75.]

64. Placed out children to be visited

- (1) The Director-General shall cause all wards and children placed under the control of the Department who have been placed out

to be visited once at least in every 6 months by an officer of the Department, or person appointed for that purpose by the Director, to ascertain whether the treatment, education, and care of such children are satisfactory.

- (2) At the request of any officer of the Department or any authorised person, every foster-parent shall produce personally the child placed out to or with him or show cause to the satisfaction of that officer or authorised person for the failure to produce the child personally.

[Section 64 amended by No. 45 of 1955 s. 2; No. 73 of 1976 s. 76; No. 121 of 1984 s. 18.]

65. Minister may pay for maintenance of child

The Minister may pay to the governing authority of any subsidized facility for the maintenance therein of any child, such sum and for such periods as he may determine.

[Section 65 amended by No. 73 of 1976 s. 77; No. 49 of 1988 s. 40.]

66. Payments for maintenance of children to foster-parent

The Minister may pay to the foster-parent of any child, for the care and maintenance of such child, such sum as he may determine.

[Section 66 amended by No. 73 of 1976 s. 78.]

66A. Reciprocity between States as to care of wards and children under control of Department

- (1) The Minister may, by arrangement or agreement made from time to time with the responsible Minister or some other authorised person of another State of, or a Territory of, the Commonwealth, or of another country, commit to the care of the Department or place under the control of the Department a child brought to, or resorting to, this State.

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- (2) Where the Minister is satisfied that another State of, or a Territory of, the Commonwealth, or another country, has enacted a provision substantially similar to that of subsection (1), he may, by arrangement or agreement made from time to time with the responsible Minister or some other authorised person there, procure the committal or transfer of control, to the care of that Minister, other person or a department of state there, of a ward or child placed under the control of the Department taken to, or resorting to, that State or Territory or other country.
- (3) This section does not apply in relation to a State, Territory or country that is a participating State for the purposes of Part VIIIA.

[Section 66A inserted by No. 27 of 1967 s. 18; amended by No. 73 of 1976 s. 79; No. 22 of 2002 s. 8.]

66B. Restriction on removal of children out of the State

- (1) A person in whose care a child is placed under the provisions of this Act shall not, except with the consent of the Minister, remove the child, or suffer him to remove or be removed, out of the State.
- (2) Where a child is placed out under the provisions of this Act with or in the care of any person, that child shall not leave the State without the consent of the Minister.

[Section 66B inserted by No. 27 of 1967 s. 19; amended by No. 73 of 1976 s. 80.]

66C. Director-General may assist children of absent parents

Notwithstanding, but without limiting, any other provision of this Act, where a child is left without a parent, guardian or some person in loco parentis present within the State or is left by a parent or guardian who is in a remote part of the State without a person in loco parentis present where the child then is, the Director-General may, at the requirement of, and without

affecting the status of, the child, extend to him such benefits as he might have extended if the child were a ward.

[Section 66C inserted by No. 27 of 1967 s. 20; amended by No. 73 of 1976 s. 81; No. 121 of 1984 s. 18.]

66D. Recovery of certain moneys

- (1) Where in relation to any child, not being a ward or a child placed under the control of the Department, the court is satisfied that moneys have been or are likely to be lawfully expended under this Act by the Department the court may, on an application made on behalf of the Department, by an order require any parent or guardian of that child to pay to the Department such amount in reimbursement or anticipation of that expenditure as the court thinks just.
- (2) An order shall not be made under this section against a person who is not then present before the court unless the court is satisfied that he received due and sufficient notice of the intention to move the court in that regard.
- (3) Where an order is made under this section the court shall cause a certified copy of the order to be sent to —
 - (a) the Family Court; or
 - (b) a court of a kind referred to in section 39(a) of the *Family Court Act 1997* that can, under that section, exercise the Family Court's non-federal jurisdictions,

whichever is nearest to the place at which the order was made, for registration in accordance with the *Family Court Act 1997* and the order shall, when so registered, be deemed, for all purposes, to be an order made under that Act by the Family Court or the court referred to in paragraph (b), as the case requires.

[Section 66D inserted by No. 73 of 1976 s. 82; amended by No. 49 of 1988 s. 40; No. 41 of 1997 s. 29(4).]

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67. Warrant to apprehend certain children

- (1) In this section, other than subsection (7) —
 “officer” means an officer of the Department or a police officer.
- (2) If an officer suspects on reasonable grounds that —
- (a) a ward;
 - (b) a child placed under the control of the Department; or
 - (c) a child apprehended under section 29(1),
- is absent, or has been taken, without lawful authority, from any situation in which the ward or child has been placed at the requirement of the Director-General or the court, the officer may apply to a magistrate of the court for a warrant to apprehend the ward or child.
- (3) An application under subsection (2) shall be made in accordance with section 68.
- (4) On an application under subsection (2) a magistrate may issue a warrant if the magistrate is satisfied that there are reasonable grounds for the suspicion referred to that in subsection.
- (5) A warrant issued under subsection (4) authorises an officer —
- (a) to enter, at any time, any place where the officer reasonably suspects the ward or child to be;
 - (b) to search the place for the purpose of finding the ward or child;
 - (c) to remain at the place for as long as the officer considers reasonably necessary to find the ward or child; and
 - (d) if the ward or child is found, to apprehend the ward or child and take the ward or child to such place as the Director-General directs.
- (6) When executing a warrant issued under subsection (4), an officer —
- (a) may use reasonable force and assistance; and

(b) shall produce the warrant if asked to do so by a person at the place where the warrant is, or is to be, executed.

(7) An officer of the Department who is executing a warrant issued under subsection (4) may be accompanied by a police officer.

[Section 67 inserted by No. 22 of 2002 s. 9.]

68. Applying for warrant

(1) In this section —

“remote communication” means any way of communicating at a distance including by telephone, fax, email and radio.

(2) This section applies to and in respect of an application under section 67(2).

(3) The application shall be made, and any information in support of it shall be given, on oath.

(4) The application shall be made in person before a magistrate unless —

(a) the warrant is needed urgently; and

(b) the applicant reasonably suspects that a magistrate is not known to be available within a reasonable distance of the applicant,

in which case it may be made to a magistrate by remote communication.

(5) If the application is made by remote communication —

(a) the applicant shall prepare a written application and if practicable send it to the magistrate;

(b) if it is not practicable to send the written application to the magistrate, the applicant may make the application orally;

(c) if it is not reasonably practicable to comply with subsection (3), the applicant may make the application,

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and give any information in support of it, in unsworn form; and

- (d) the magistrate shall not grant the application unless satisfied that there are grounds under subsection (4) for the application not to be made in person.
- (6) If the application is made orally under subsection (5)(b), the magistrate shall complete a written application.
- (7) If information in support of the application is given orally, the magistrate shall make a record of it.
- (8) If —
 - (a) the applicant gives the magistrate unsworn information under subsection (5)(c); and
 - (b) the magistrate issues a warrant,the applicant shall send the magistrate an affidavit containing the information as soon as practicable after the warrant is issued.
- (9) If the application is not made in person and the magistrate issues a warrant, then —
 - (a) if it is reasonably practicable to send a copy of the warrant to the applicant by remote communication, the magistrate shall immediately do so; or
 - (b) if it is not reasonably practicable to so send a copy of the warrant —
 - (i) the magistrate shall immediately give the applicant by remote communication any information that is required to be set out in the warrant;
 - (ii) the applicant shall complete a form of the warrant with the information given by the magistrate;

- (iii) the applicant shall give the magistrate a copy of the completed form as soon as practicable after the warrant is issued; and
 - (iv) the magistrate shall attach the copy of the completed form to the original warrant issued by the magistrate and any affidavit received from the applicant in support of the application, and make them available for collection by the applicant.
- (10) If a copy of a warrant is received by remote communication under subsection (9)(a) or a form of warrant is completed in accordance with subsection (9)(b)(ii) it has the same effect as the original warrant issued by the magistrate.

[Section 68 inserted by No. 22 of 2002 s. 9.]

[69. *Repealed by No. 79 of 1965 s. 25.]*

[Part V repealed by No. 104 of 1994 s. 212.]

[Part VI repealed by No. 27 of 1967 s. 21.]

Part VII — Restrictions on employment of children

[Heading amended by No. 73 of 1976 s. 93.]

106. Definition

In this Part “**exempt child**” means a child who holds a certificate granted under section 11 of the *School Education Act 1999* exempting him from attendance at school to enable him to engage in employment.

[Section 106 inserted by No. 82 of 1990 s. 7; amended by No. 36 of 1999 s. 247.]

107. Supply of false information to employers an offence

- (1) It is an offence for a child or a person who has the custody or guardianship of the child to give false or misleading information as to —

- (a) the age of the child; or
- (b) the matter of whether or not the child is an exempt child,

to a person who employs or may employ the child for a purpose specified in section 107A(1), 107B(2) or 108(1).

Penalty: \$200.

- (2) A child under 10 years of age who gives false or misleading information as referred to in subsection (1) does not commit an offence.

[Section 107 inserted by No. 82 of 1990 s. 7; amended by No. 79 of 1995 s. 68(2); No. 57 of 1997 s. 30(5).]

107A. Street trading

- (1) A child under 12 years of age shall not engage in street trading.
- (2) A child who has attained the age of 12 years and is under 15 years of age shall not engage in street trading —
- (a) during the hours when the child is required to attend school; or

- (b) outside the time between 6 a.m. and 7 p.m.
- (3) Subsection (2)(a) does not apply to an exempt child.
- (4) Where the Director-General is of the opinion that the welfare of a child is likely to be jeopardized by the fact of or the manner or extent of the engagement by the child in street trading, he may, by written notice given to the child —
 - (a) prohibit the child from engaging in street trading; or
 - (b) impose limitations on the engagement by the child in street trading,and a child who receives such a notice shall comply with it.
- (5) The Director-General shall serve a copy of a notice issued under subsection (4) on —
 - (a) the employer of the child; and
 - (b) each person who has custody or guardianship of the child.
- (6) A person who knowingly causes, procures or employs a child to engage in street trading in contravention of subsection (1) or (2) or of a notice under subsection (4) or who knowingly allows a child in his custody or guardianship to so engage, commits an offence.
Penalty: \$2 000 for a first offence and \$5 000 for a later offence.
- (7) It shall be a requirement for —
 - (a) the custodian or guardian of a child seeking street trading employment to provide a declaration of age and details relating to any notice of prohibition from engaging in street trading; and
 - (b) the employer to sight and hold a copy of any declaration provided under paragraph (a).
- (8) Where a person is prosecuted for an alleged offence of causing, procuring or employing a child to engage in street trading in

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contravention of a notice under subsection (4), or of allowing a child in his custody or guardianship to so engage, it is a defence for the person to show —

- (a) that the Director-General had not served a copy of the notice on him or otherwise informed him of the contents of the notice; and
- (b) that he was otherwise unaware of the contents of the notice.

[Section 107A inserted by No. 82 of 1990 s. 7.]

107B. Employment other than street trading

- (1) In this section “**employment**” does not include street trading.
- (2) A child who is under 15 years of age shall not engage in employment —
 - (a) during the hours when the child is required to attend school; or
 - (b) outside the time between 6 a.m. and 9.30 p.m.
- (3) Subsection (2)(a) does not apply to an exempt child.
- (4) Where the Director-General is of the opinion that the welfare of a child is likely to be jeopardized by the fact of or the manner or extent of the engagement by the child in employment, the Director-General may, by written notice given to the child —
 - (a) prohibit the child from engaging in employment; or
 - (b) impose limitations on the engagement by the child in employment,and a child who receives such a notice shall comply with it.
- (5) The Director-General shall serve a copy of a notice issued under subsection (4) on —
 - (a) the employer of the child; and
 - (b) each person who has custody or guardianship of the child.

- (6) A person who knowingly causes, procures or employs a child to engage in employment in contravention of subsection (2) or of a notice under subsection (4) or who knowingly allows a child in the custody or guardianship of that person to so engage, commits an offence.

Penalty: \$2 000 for a first offence and \$5 000 for a later offence.

- (7) It shall be a requirement for —
- (a) the custodian or guardian of a child seeking employment to provide a declaration of details relating to any notice of prohibition from engaging in employment; and
 - (b) the employer to sight and hold a copy of any declaration provided under paragraph (a).
- (8) Where a person is prosecuted for an alleged offence of causing, procuring or employing a child to engage in employment in contravention of a notice under subsection (4), or of allowing a child in the custody or guardianship of that person to so engage, it is a defence for the person to show —
- (a) that the Director-General had not served a copy of the notice on that person or otherwise informed that person of the contents of the notice; and
 - (b) that the person was otherwise unaware of the contents of the notice.

[Section 107B inserted by No. 79 of 1995 s. 68(2).]

107C. Proceedings against employers may be taken by industrial inspectors

- (1) The powers of an industrial inspector appointed under the *Industrial Relations Act 1979* extend to the prosecution of a person for —
- (a) an offence under section 107A(6) of causing procuring or employing a child to engage in street trading contrary to section 107A(1) or (2) or a notice under section 107A(4); or

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- (b) an offence under section 107B(6) of causing, procuring or employing a child to engage in employment contrary to section 107B(2) or a notice under section 107B(4).
- (2) An industrial magistrate's court established under Part III of the *Industrial Relations Act 1979* has jurisdiction to hear and determine prosecutions commenced by industrial inspectors under subsection (1).

[Section 107C inserted by No. 79 of 1995 s. 68(2); amended by No. 84 of 2004 s. 80.]

108. Restriction on employment of children for indecent purposes

- (1) A person shall not —
 - (a) employ a child;
 - (b) cause or procure a child to be employed; or
 - (c) being a person who has the custody or guardianship of a child, allow the child to be employed,

for the purpose of the child performing in an indecent, obscene or pornographic manner in the course of taking part in an entertainment or exhibition or the making of an advertisement.

Penalty: \$20 000 or imprisonment for 3 years, or both.

- (2) Without prejudice to the generality of the expression “purpose of the child performing in an indecent, obscene or pornographic manner” in subsection (1), a child is employed for the purpose of performing in an indecent, obscene or pornographic manner if, in the course of the employment, the child —
 - (a) is engaged in an activity of a sexual nature;
 - (b) is in the presence of another person who is engaged in an activity of a sexual nature; or
 - (c) is required to pose or move in a manner calculated to give prominence to sexual organs, the anus or, in the case of a female, her breasts.

- (3) Without prejudice to its generality, the expression “**taking part in an entertainment or exhibition**” in subsection (1) includes the circumstances where the performance of the child —
- (a) consists in whole or in part of modelling or posing of any kind;
 - (b) is only for the person employing the child or for some other particular person or a class of persons; or
 - (c) is recorded for later visual or audible presentation to an audience of one or more persons.
- (4) For the purposes of subsection (1) —
- (a) a child who takes part in an entertainment or exhibition carried on for profit or in the making of an advertisement for commercial purposes is to be taken to be employed by the person carrying on the entertainment or exhibition or making the advertisement, notwithstanding that the child is not an employee of that person or receives no consideration from that person; and
 - (b) “**employ**” includes the engaging of a child to perform professional work under a contract of service and the engaging of a child to perform any work under a contract for services.

[Section 108 inserted by No. 82 of 1990 s. 8; amended by No. 57 of 1997 s. 30(6).]

109. Power for Director-General or authorised officer to enter certain places

The Director-General or any officer authorised in this behalf by the Director-General may at all reasonable hours of the day or night enter any theatre, place of amusement, shop, factory, warehouse, or other place in which children are employed, or are reasonably supposed by him to be employed, and may make all such investigations and inquiries relative to such children as he shall consider advisable.

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No person shall resist or obstruct such Director-General or officer in the exercise of any power under this section, and any person to whom such Director-General or officer shall put any question pursuant to this section shall forthwith answer such questions truthfully to the best of his knowledge, information, and belief.

Penalty: \$2 000.

[Section 109 amended by No. 45 of 1955 s. 2; No. 113 of 1965 s. 8(1); No. 121 of 1984 s. 18; No. 82 of 1990 s. 10.]

Part VIII — Lying-in homes, the care, charge or custody of children, and the adoption of children

[Heading amended by No. 10 of 1977 s. 5.]

110. Power to assist women in lying-in homes

The Minister may, under special circumstances contribute towards the support of any woman in a lying-in home for a period not exceeding 12 months after her confinement, or partly before and partly after her confinement, on such terms and conditions as he may determine, and may maintain Government homes for the same purpose.

[Section 110 amended by No. 73 of 1976 s. 97.]

111. Foster-parents to be licensed

No person other than a near relative shall have the care, charge or custody of any child under the age of 6 years other than on a casual or day time basis, without being licensed by the Department or approved by the Director-General in writing for that purpose.

[Section 111 amended by No. 39 of 1970 s. 4; No. 73 of 1976 s. 98; No. 121 of 1984 s. 18.]

112. Department may license foster-parents

- (1) The Department may grant annual licences to fit and proper persons to have the care, charge or custody of children under the age of 6 years, other than on a casual or day time basis, and may by any such licence fix the number of children authorised to be kept by the person therein named.
- (2) The Department may, in its discretion, revoke any licences granted under this section.
- (3) If it appears to the Director-General that any person is incapable of providing the children in his charge with proper food or

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attention, or is guilty of neglecting to do so, or that the place in respect of which he is licensed is unfit for the purpose for which it is used, or that he has not complied with the regulations, or that for any other reason it is not desirable that the licence granted to such person shall continue, the Director-General may cancel that licence and remove the children, and recover the cost of and incidental to the removal from the licensee by action in any court of competent jurisdiction.

- (4) Where the licence of a person is cancelled pursuant to subsection (3), the person may appeal in the prescribed manner to the Minister against the cancellation and the Minister may reverse or confirm the cancellation, and may restore the licence and make such other order (including an order for the return of the children) as may be just.

[Section 112 amended by No. 73 of 1976 s. 99; No. 121 of 1984 s. 18.]

113. Penalty for unlicensed foster-parents

- (1) Every person other than a near relative of the child, who, not being licensed to do so by the Department, shall take the care, charge, or custody of any child under the age of 6 years to maintain such child, other than on a casual or day time basis, apart from his parent, shall be guilty of an offence against this Act, and shall, on conviction, be liable to a penalty not exceeding \$50, or in case of a second or subsequent offence to a penalty not exceeding \$1 000.
- (2) No information shall be laid for any offence under this section except by the Director-General or an officer of the Department or other person authorised by the Director-General.

[Section 113 amended by No. 45 of 1955 s. 2; No. 113 of 1965 s. 8(1); No. 39 of 1970 s. 5; No. 73 of 1976 s. 100; No. 121 of 1984 s. 18; No. 51 of 1992 s. 16(1); No. 78 of 1995 s. 147.]

114. Exceeding licensed numbers

A person who is licensed to have the care, charge or custody of any children under this Act and who has in his care, charge or custody children in excess of the number for which he is so licensed shall be guilty of an offence against this Act.

[Section 114 inserted by No. 73 of 1976 s. 101.]

115. Lying-in homes to be open for inspection

- (1) Every lying-in home, and the home or place of residence of every person licensed to have the care, charge or custody of children, shall, at all times, be open to inspection by the Director-General or any officer of the Department.
- (2) Every person who resists or obstructs any such inspector shall be guilty of an offence against this Act.

[Section 115 amended by No. 45 of 1955 s. 2; No. 73 of 1976 s. 102; No. 121 of 1984 s. 18.]

[116. Repealed by No. 73 of 1976 s. 103.]

117. Register to be kept by foster-parents

- (1) Every person licensed under this Act to have the care, charge or custody of children shall keep, so far as such particulars are capable of being ascertained, a register setting out in respect of each child received the following particulars —
 - (a) The name, age, religion, and place of birth of the child.
 - (b) The names, addresses, and description of the parents.
 - (c) The name, address, and description of any persons other than the parents from or to whom the child was received or delivered over.
 - (d) The dates of receipt and delivery over.
 - (e) Particulars of any accident to or illness of the child, and the name of the medical practitioner (if any) by whom attended.

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- (2) The register required to be kept by subsection (1) shall be regularly maintained and shall be at all times available for inspection by the Department or an authorised officer.
- (3) A person so licensed shall maintain and make available for inspection such further or other particulars and records as the Director-General requires and shall submit to the Director-General from time to time such returns and information as the Director-General requires.

[Section 117 amended by No. 73 of 1976 s. 104; No. 121 of 1984 s. 18.]

[118. Repealed by No. 73 of 1976 s. 105.]

[118A, 119. Repealed by No. 105 of 1987 s. 12.]

120. Person taking entire charge of child to give notice to Director-General

- (1) If any person other than a near relative of any child under 6 years of age or other than a person obtaining an order of adoption under the *Adoption of Children Act 1896*³ assumes the entire charge of such a child such person shall, within 7 days of his so doing, give notice of the fact to the Director-General, and shall in such notice state his name and place of residence and his occupation, together with the name, age, religion, and place of birth of such child.

Penalty: \$50.

[(2) and (3) repealed]

[Section 120 amended by No. 45 of 1955 s. 2; No. 113 of 1965 s. 8(1); No. 73 of 1976 s. 108; No. 121 of 1984 s. 18.]

Part VIII A — Transfer of child protection orders and proceedings

[Heading inserted by No. 22 of 2002 s. 10.]

Division 1 — Preliminary

[Heading inserted by No. 22 of 2002 s. 10.]

120A. Purpose of Part

The purpose of this Part is to provide for the transfer of child protection orders and proceedings between this State and another State —

- (a) so that children who are in need of protection may be protected despite moving from one jurisdiction to another; and
- (b) so as to facilitate the timely and expeditious determination of court proceedings relating to the protection of a child.

[Section 120A inserted by No. 22 of 2002 s. 10.]

120B. Interpretation

- (1) In this Part, unless the contrary intention appears —

“child protection order”, in relation to a child, means a final order made under a child welfare law in respect of the child that gives —

- (a) a Minister of the Crown in right of a State;
- (b) a government department or statutory authority;
- (c) a person who is the chief executive officer (however described) of a government department or statutory authority or otherwise holds an office or position in, or is employed in, a government department or statutory authority; or

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- (d) an organisation or the chief executive officer (however described) of an organisation, responsibility in relation to the guardianship, custody or supervision of the child, however that responsibility is described;

“child protection proceeding” means a proceeding brought in a court under a child welfare law for —

- (a) the making of a finding that a child is in need of protection or any other finding (however described) the making of which is a prerequisite under the child welfare law to the exercise by the court of a power to make a child protection order; or
- (b) the making of a child protection order or an interim order or for the variation or revocation, or the extension of the period, of such an order;

“child welfare law” means —

- (a) Part IV;
- (b) a law of another State that, under an order in force under subsection (2), is declared to be a child welfare law for the purposes of this Part; or
- (c) a law of another State that substantially corresponds to Part IV;

“Children’s Court”, in relation to another State, means the court with jurisdiction to hear and determine a child protection proceeding at first instance;

“home order” means —

- (a) an order made under section 30; or
- (b) an order taken, by operation of section 120U(1), to be an order made under section 30;

“interim order” means —

- (a) an order made under section 120P; or
- (b) an equivalent order made under an interstate law;

“interstate law” means —

- (a) a law of another State that, under an order in force under subsection (3), is declared to be an interstate law for the purposes of this Part; or
- (b) a law of another State that substantially corresponds to this Part;

“interstate officer”, in relation to another State, means —

- (a) the person holding the office or position to which there is given by or under the child welfare law of that State principal responsibility for the protection of children in that State; or
- (b) the holder of an office or position that, under an order in force under subsection (4), is declared to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Part;

“participating State” means a State in which an interstate law is in force;

“registrar of the court” means —

- (a) in relation to an application made to the court, the registrar of the court at the place where the application was made; or
- (b) in relation to a document filed in the court, the registrar of the court at the place where the document was filed; and
- (c) in relation to the revocation by the court of the registration of an order, the registrar of the court at the place where the registration was revoked;

“sending State” means the State from which a child protection order or proceeding is transferred under this Part or an interstate law;

“State” means —

- (a) a State or a Territory; or

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(b) New Zealand;

“**working day**” means —

- (a) in relation to a court, a day on which the offices of the court are open; and
 - (b) in relation to the Director-General, a day on which the principal office of the Department is open.
- (2) The Minister may, by order published in the *Gazette*, declare a law of another State to be a child welfare law for the purposes of this Part if satisfied that the law substantially corresponds to Part IV.
- (3) The Minister may, by order published in the *Gazette*, declare a law of another State to be an interstate law for the purposes of this Part if satisfied that the law substantially corresponds to this Part.
- (4) The Minister may, by order published in the *Gazette*, declare an office or position in another State to be an office or position the holder of which is the interstate officer in relation to that State for the purposes of this Part.

[Section 120B inserted by No. 22 of 2002 s. 10; amended by No. 59 of 2004 s. 141.]

Division 2 — Transfer of child protection orders

[Heading inserted by No. 22 of 2002 s. 10.]

Subdivision 1 — Administrative transfers

[Heading inserted by No. 22 of 2002 s. 10.]

120C. When Director-General may transfer order

- (1) The Director-General may transfer a home order to a participating State if —
 - (a) in his or her opinion a child protection order to the same or a similar effect as the home order could be made under the child welfare law of that State;

- (b) the home order is not subject to an appeal and the time for instituting an appeal has expired; and
 - (c) the relevant interstate officer has consented in writing to the transfer and to the proposed terms of the order to be transferred (the “**proposed interstate order**”).
- (2) The Director-General may include in the proposed interstate order any conditions that could be included in a child protection order of that type made in the relevant participating State.
- (3) In determining whether a child protection order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the Director-General shall not take into account the period for which it is possible to make such an order in that State.
- (4) The Director-General shall determine, and specify in the proposed interstate order, the period for which it is to remain in force.
- (5) The period is to be the lesser of —
- (a) the period for which the home order would have remained in force if it were not transferred to the relevant participating State; and
 - (b) the maximum period for which a child protection order of that type made in the relevant participating State could remain in force.

[Section 120C inserted by No. 22 of 2002 s. 10.]

120D. Director-General to have regard to certain matters

In determining whether to transfer a home order to a participating State, the Director-General shall have regard to —

- (a) whether the Director-General or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child; and

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- (b) the desirability of a child protection order being an order under the child welfare law of the State where the child resides.

[Section 120D inserted by No. 22 of 2002 s. 10.]

120E. Notification of decision to transfer

- (1) If the Director-General has decided to transfer a home order to a participating State, the Director-General shall cause notice of the decision to be given to —
 - (a) the child if the child has reached 10 years of age unless the Director-General considers that the child is not sufficiently mature to understand the transfer and its consequences;
 - (b) the child's parents; and
 - (c) any other person considered by the Director-General to have a direct interest in the care, welfare or development of the child,

as soon as practicable but in any event no later than 3 working days after the decision was made.

- (2) A notice under subsection (1) is to —
 - (a) state the date of the decision; and
 - (b) state that a person who wishes to apply to the Supreme Court for judicial review of the decision shall institute the proceeding, and give written notice of it to the Director-General, within 21 working days after the date of the decision.
- (3) Notice is not required to be given to a person under subsection (1) if it cannot be given after all reasonable efforts.

[Section 120E inserted by No. 22 of 2002 s. 10.]

120F. Limited period for review of decision

- (1) A proceeding in the Supreme Court for judicial review of a decision of the Director-General to transfer a home order to a

participating State shall be instituted, and written notice of it shall be given to the Director-General, within 21 working days after the date of the decision.

- (2) The Supreme Court cannot extend the time fixed by subsection (1).
- (3) Subject to subsections (1) and (2), a proceeding referred to in subsection (1) shall be brought in accordance with the Supreme Court's rules of court.
- (4) The institution of a proceeding referred to in subsection (1) and the giving of written notice of it to the Director-General stays the operation of the decision pending the determination of the proceeding.

[Section 120F inserted by No. 22 of 2002 s. 10.]

Subdivision 2 — Judicial transfers

[Heading inserted by No. 22 of 2002 s. 10.]

120G. When court may transfer order

The court may make an order transferring a home order to a participating State if —

- (a) an application for the making of the order is made by the Director-General;
- (b) the home order is not subject to an appeal and the time for instituting an appeal has expired; and
- (c) the relevant interstate officer has consented in writing to the transfer and to the proposed terms of the order to be transferred.

[Section 120G inserted by No. 22 of 2002 s. 10.]

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120H. Service of application

The Director-General shall, as soon as possible after making an application referred to in section 120G(a), cause a copy of it to be given to —

- (a) any person who was a party to the proceedings in which the home order to be transferred was made; and
- (b) any other person considered by the Director-General to have a direct interest in the care, welfare or development of the child.

[Section 120H inserted by No. 22 of 2002 s. 10.]

120I. Court to have regard to certain matters

In determining what order to make on an application under this Subdivision the court shall have regard to —

- (a) whether the Director-General or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child; and
- (b) the desirability of a child protection order being an order under the child welfare law of the State where the child resides.

[Section 120I inserted by No. 22 of 2002 s. 10.]

120J. Type of order

- (1) If the court determines to transfer a home order to a participating State, the proposed terms of the order to be transferred (the “**proposed interstate order**”) shall be terms that could be the terms of a child protection order made under the child welfare law of the participating State and that the court believes to be —
 - (a) to the same or a similar effect as the terms of the home order; or
 - (b) otherwise in the best interests of the child.

- (2) The court may include in the proposed interstate order any conditions that could be included in a child protection order of that type made in the relevant participating State.
- (3) In determining whether an order to the same or a similar effect as the home order could be made under the child welfare law of a participating State, the court shall not take into account the period for which it is possible to make such an order in that State.
- (4) The court shall determine, and specify in the proposed interstate order, the period for which it is to remain in force.
- (5) The period shall not be longer than the maximum period for which a child protection order of that type made in the relevant participating State could remain in force.

[Section 120J inserted by No. 22 of 2002 s. 10.]

120K. Court shall consider report from the Director-General

The court shall not make an order under section 120G in relation to a child unless it has received and considered a report from the Director-General regarding the child.

[Section 120K inserted by No. 22 of 2002 s. 10.]

120L. Appeals

- (1) A party to an application for an order under section 120G may appeal to the Supreme Court, on a question of law, from a final order made in that proceeding transferring, or refusing to transfer, a home order to a participating State.
- (2) An appeal under subsection (1) —
 - (a) shall be instituted, and (except where instituted by the Director-General) written notice of it shall be given to the Director-General, within 10 working days after the day on which the order appealed from was made; and
 - (b) operates as a stay of the order.

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- (3) The Supreme Court cannot extend the time fixed by subsection (2)(a).
- (4) Subject to subsections (2) and (3), an appeal under subsection (1) shall be brought in accordance with the Supreme Court's rules of court.
- (5) The Supreme Court shall hear and determine the appeal as expeditiously as possible.
- (6) Pending the determination of the appeal, the Supreme Court may make any order that the court can make under section 29(3aa).
- (7) On determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for rehearing to the court with or without any direction in law.
- (8) An order made by the Supreme Court on an appeal under subsection (1), other than an order remitting the case for rehearing to the court, may be enforced as an order of the Supreme Court.

[Section 120L inserted by No. 22 of 2002 s. 10.]

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[Heading inserted by No. 22 of 2002 s. 10.]

120M. When court may make order under this Division

- (1) The court may make an order transferring a child protection proceeding pending in the court to the Children's Court in a participating State if —
 - (a) an application for the making of the order is made by the Director-General; and
 - (b) the relevant interstate officer has consented in writing to the transfer.

- (2) The proceeding is discontinued in the court on the registration in the Children's Court in the participating State in accordance with the interstate law of an order referred to in subsection (1).

[Section 120M inserted by No. 22 of 2002 s. 10.]

120N. Service of application

The Director-General shall, as soon as possible after making an application referred to in section 120M(1)(a), cause a copy of it to be given to —

- (a) each party to the child protection proceeding the subject of the application; and
- (b) any other person considered by the Director-General to have a direct interest in the care, welfare or development of the child.

[Section 120N inserted by No. 22 of 2002 s. 10.]

120O. Court to have regard to certain matters

- (1) In determining whether to make an order under section 120M(1) the court shall have regard to —
- (a) whether any other proceedings relating to the child are pending, or have previously been heard and determined, under the child welfare law in the participating State;
 - (b) the place where any of the matters giving rise to the proceeding in the court arose;
 - (c) the place of residence, or likely place of residence, of the child, the child's parents and any other people who are significant to the child;
 - (d) whether the Director-General or an interstate officer is in the better position to exercise powers and responsibilities under a child protection order relating to the child;

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- (e) the desirability of a child protection order being an order under the child welfare law of the State where the child resides; and
 - (f) any information given to the court under subsection (2).
- (2) If the Director-General is aware that —
- (a) a sentence or order imposed under the *Sentencing Act 1995* or the *Young Offenders Act 1994*, other than a fine, is in force in respect of the child who is the subject of the proceeding to which an application referred to in section 120M(1)(a) relates; or
 - (b) a criminal proceeding is pending against that child in any court,

the Director-General shall, as soon as possible, inform the court of that fact and of the details of the sentence, order or pending criminal proceeding.

[Section 120O inserted by No. 22 of 2002 s. 10.]

120P. Interim order

- (1) If the court makes an order under section 120M(1), the court may also make an interim order.
- (2) An interim order —
 - (a) may place the child in the care of any person, subject to any conditions that the court considers to be appropriate; and
 - (b) may give responsibility for the supervision of the child to the interstate officer in the participating State or any other person in that State to whom responsibility for the supervision of a child could be given under the child welfare law of that State.
- (3) An interim order remains in force for the period (not exceeding 30 days) specified in the order.

- (4) The Children’s Court in the participating State may vary or revoke, or extend the period of, an interim order in accordance with the relevant interstate law.

[Section 120P inserted by No. 22 of 2002 s. 10.]

120Q. Appeals

- (1) A party to an application for an order under section 120M(1) may appeal to the Supreme Court, on a question of law, from a final order made in that proceeding transferring, or refusing to transfer, a child protection proceeding to a participating State.
- (2) An appeal under subsection (1) —
- (a) shall be instituted, and (except where instituted by the Director-General) written notice of it shall be given to the Director-General, within 10 working days after the day on which the order appealed from was made; and
 - (b) operates as a stay of the order but not of any interim order made at the same time as the order.
- (3) The Supreme Court cannot extend the time fixed by subsection (2)(a).
- (4) Subject to subsections (2) and (3), an appeal under subsection (1) shall be brought in accordance with the Supreme Court’s rules of court.
- (5) The Supreme Court shall hear and determine the appeal as expeditiously as possible.
- (6) On determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for rehearing to the court with or without any direction in law.
- (7) An order made by the Supreme Court on an appeal under subsection (1), other than an order remitting the case for rehearing to the court, may be enforced as an order of the Supreme Court.

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- (8) The Supreme Court may —
- (a) if an interim order was made at the same time as the order appealed from, make an order —
 - (i) staying the operation of the interim order;
 - (ii) varying or revoking the interim order; or
 - (iii) extending the period of the interim order;and
 - (b) make any order pending the determination of the appeal that the court can make under section 29(3aa).

[Section 120Q inserted by No. 22 of 2002 s. 10.]

Division 4 — Registration

[Heading inserted by No. 22 of 2002 s. 10.]

120R. Filing of interstate orders in the court

- (1) Subject to subsection (3), the Director-General shall, as soon as possible, file in the court a copy of a child protection order transferred to this State under an interstate law.
- (2) Subject to subsection (3), the Director-General shall, as soon as possible, file in the court a copy of an order under an interstate law to transfer a child protection proceeding to this State, together with a copy of any interim order made at the same time.
- (3) The Director-General shall not file in the court a copy of a child protection order or of an order to transfer a child protection proceeding if, under the interstate law —
 - (a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) is subject to appeal or review or a stay; or
 - (b) the time for instituting an appeal or seeking a review has not expired.

[Section 120R inserted by No. 22 of 2002 s. 10.]

120S. Registration of interstate orders

If the Director-General files a copy of an order in the court under section 120R, the registrar of the court shall register the order.

[Section 120S inserted by No. 22 of 2002 s. 10; amended by No. 59 of 2004 s. 141.]

120T. Notification by registrar of court

The registrar of the court shall immediately notify the appropriate officer of the Children's Court in the sending State and the interstate officer in that State of —

- (a) the registration of an order under section 120S; or
- (b) the revocation under section 120V of the registration of an order.

[Section 120T inserted by No. 22 of 2002 s. 10; amended by No. 59 of 2004 s. 141.]

120U. Effect of registration

- (1) A child protection order registered in the court under section 120S is to be taken for all purposes (except for the purposes of appeal) to be an order made by the court under section 30 on the day on which the order is registered, and the provisions of Part IV apply accordingly.
- (2) An interim order registered in the court under section 120S is to be taken for all purposes (except for the purposes of appeal) to be an order made by the court under section 29(3aa) on the day on which the order is registered, and the provisions of Part IV apply accordingly.
- (3) If an order under an interstate law to transfer a child protection proceeding to this State is registered under section 120S, the proceeding is to be taken to have been commenced in the court, under Part IV, on the day on which the order is registered.

[Section 120U inserted by No. 22 of 2002 s. 10.]

120V. Revocation of registration

- (1) An application for the revocation of the registration of an order under section 120S may be made to the court by —
 - (a) the Director-General;
 - (b) the child concerned;
 - (c) a parent of the child concerned; or
 - (d) a party to the proceeding in the Children’s Court in the sending State in which the decision to transfer the order or proceeding (as the case requires) was made.
- (2) The registrar of the court shall cause a copy of an application made under subsection (1) to be given as soon as possible to —
 - (a) the relevant interstate officer; and
 - (b) any person by whom the application could have been made.
- (3) The court may only revoke the registration of an order if satisfied that it was inappropriately registered because, under the interstate law —
 - (a) the decision or order to transfer the child protection order or the order to transfer the child protection proceeding (as the case requires) was at the time of registration subject to appeal or review or a stay; or
 - (b) the time for instituting an appeal or seeking a review had not expired.
- (4) If the registration of an order is revoked, the registrar of the court shall cause the copy of the order to be sent to the Children’s Court in the sending State.
- (5) The revocation of the registration of an order does not prevent the later re-registration of that order.

[Section 120V inserted by No. 22 of 2002 s. 10; amended by No. 59 of 2004 s. 141.]

Division 5 — Miscellaneous

[Heading inserted by No. 22 of 2002 s. 10.]

120W. Effect of registration of transferred order

- (1) In this section —
“transferred order” means a child protection order transferred to a participating State under section 120C(1) or 120G.
- (2) A home order ceases to have effect on the registration of the transferred order under an interstate law of the participating State.
- (3) A home order that has ceased to have effect under subsection (2) is revived if the registration of the transferred order is revoked under an interstate law of the participating State.
- (4) The period for which a home order is revived is the balance of the period for which it would have remained in force but for the registration of the transferred order.

[Section 120W inserted by No. 22 of 2002 s. 10.]

120X. Transfer of court file

The registrar of the court shall cause all documents filed in the court in connection with a child protection proceeding, and an extract from any part of the register that relates to a child protection proceeding, to be sent to the Children’s Court in a participating State if, under this Part —

- (a) the child protection order or proceeding is transferred to the participating State;
- (b) the decision or order to transfer the child protection order or the order to transfer the child protection

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proceeding (as the case requires) is not subject to appeal or review or a stay; and

- (c) the time for instituting an appeal or seeking a review has expired.

[Section 120X inserted by No. 22 of 2002 s. 10; amended by No. 59 of 2004 s. 141.]

120Y. Hearing and determination of transferred proceeding

In hearing and determining a child protection proceeding transferred to the court under an interstate law, the court —

- (a) is not bound by any finding of fact made in the proceeding in the Children's Court in the sending State before its transfer; and
- (b) may have regard to the transcript of, or any evidence adduced in, the proceeding referred to in paragraph (a).

[Section 120Y inserted by No. 22 of 2002 s. 10.]

120Z. Disclosure of information

- (1) Despite anything to the contrary in this Act, the Director-General may disclose to an interstate officer any information that has come to his or her notice in the performance of duties or exercise of powers under this Act if the Director-General considers that it is necessary to do so to enable the interstate officer to perform duties or exercise powers under a child welfare law or an interstate law.
- (2) Any information disclosed to the Director-General under a provision of a child welfare law or an interstate law that substantially corresponds to subsection (1) is to be taken for the purposes of any provision of this Act relating to the disclosure of information to have been information given directly to the Director-General instead of to an interstate officer.

[Section 120Z inserted by No. 22 of 2002 s. 10.]

120ZA. Discretion of Director-General to consent to transfer

- (1) If, under an interstate law, there is a proposal to transfer a child protection order to this State, the Director-General may consent or refuse to consent to the transfer and the proposed terms of the child protection order to be transferred.
- (2) If, under an interstate law, there is a proposal to transfer a child protection proceeding to the court, the Director-General may consent or refuse to consent to the transfer.

[Section 120ZA inserted by No. 22 of 2002 s. 10.]

120ZB. Evidence of consent of relevant interstate officer

A document or copy of a document —

- (a) purporting to be the written consent of the relevant interstate officer to —
 - (i) the transfer of a child protection order to a participating State and to the proposed terms of the child protection order to be transferred; or
 - (ii) the transfer of a child protection proceeding pending in the court to the Children’s Court in a participating State;

and

- (b) purporting to be signed by the relevant interstate officer or his or her delegate,

is admissible in evidence in any proceeding under this Part and, in the absence of evidence to the contrary, is proof that consent in the terms appearing in the document was duly given by the relevant interstate officer.

[Section 120ZB inserted by No. 22 of 2002 s. 10.]

Part IX — Procedure, penalties, and general provisions

[121. Repealed by No. 49 of 1988 s. 29.]

122. Person appointed by Minister may conduct cases where complaint made

- (1) All prosecutions commenced or applications made under this Act by or on behalf of the Department may be conducted by any person appointed by the Minister in that behalf.
- (2) The production of an appointment, in writing, signed by the Minister, shall be prima facie evidence that the person therein named has been duly appointed and authorised to commence such prosecution or make such application and to conduct the case.

[Section 122 amended by No. 22 of 1962 s. 12; No. 84 of 2004 s. 80.]

[123, 124. Repealed by No. 49 of 1988 s. 29.]

125. Interfering with wards or children placed under control of the Department an offence

A person who —

- (a) without the authority of the Director-General, takes or removes a ward or child placed under the control of the Department from any situation in which he has been placed at the requirement of the Director-General;
- (b) directly or indirectly, counsels or induces a ward or child placed under the control of the Department to abscond or escape from any situation in which he has been placed at the requirement of the Director-General;
- (c) knowingly, aids or abets a ward or child placed under the control of the Department in absconding or escaping from, harbours a ward or child placed under the control of the Department, who has been taken or removed or

has absconded or escaped from, or prevents the return of any such person to, any situation in which he has been placed at the requirement of the Director-General; or

- (d) having a ward or child placed under the control of the Department placed in his care, fails or refuses to hand over such person to an officer of the Department or a police officer, authorised to receive the child, on demand,

commits an offence.

Penalty: \$4 000 or imprisonment for 12 months.

[Section 125 inserted by No. 27 of 1967 s. 25; amended by No. 73 of 1976 s. 112; No. 121 of 1984 s. 18; No. 49 of 1988 s. 30; No. 78 of 1995 s. 147.]

[126. Repealed by No. 49 of 1988 s. 31.]

[126A. Repealed by No. 104 of 1994 s. 213.]

[126B. Repealed by No. 49 of 1988 s. 31.]

127. Communicating with children in Departmental centres, etc. an offence

Any person who —

- (a) without the authority or permission of the Director-General or of the governing authority of the Departmental facility, in which a child is detained, holds or attempts to hold any communication with that child; or
- (b) enters any Departmental facility or any premises belonging thereto or used in connection therewith, and does not depart therefrom when required so to do by the officer or other person for the time being in charge thereof; or

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- (c) after being forbidden by the Director-General or governing authority, as the case may be, so to do, holds or attempts to hold any communication directly or indirectly with any ward,

shall be guilty of an offence against this Act.

[Section 127 amended by No. 45 of 1955 s. 2; No. 73 of 1976 s. 115; No. 121 of 1984 s. 18; No. 49 of 1988 s. 40; No. 31 of 1993 s. 21; No. 104 of 1994 s. 214.]

128. Offence to permit escape

An officer or servant of the Department or of the governing authority of a Departmental facility, who negligently or knowingly permits a child to escape from that facility commits an offence.

Penalty: \$5 000 or imprisonment for 12 months, or both.

[Section 128 inserted by No. 49 of 1988 s. 32; amended by No. 104 of 1994 s. 215.]

[129. Repealed by No. 104 of 1994 s. 216.]

130. Offence of deserting children

- (1) Every person who, being a parent of a child —
- (a) deserts the child; or
 - (b) wilfully leaves the child without, or wilfully neglects to provide the child with, adequate means of support,

commits an offence.

Penalty: \$4 000 or imprisonment for 12 months.

- (2) Subsection (1) does not apply to a person who is obliged under a provision of an order of any court to make a payment or payments of maintenance for the benefit of the child.
- (3) Upon an application supported by evidence on oath by the Director-General, or any other officer of the Department, that he has reasonable grounds for believing that any person has

committed or is about to commit an offence under subsection (1), any justice, if satisfied that there are reasonable grounds for believing that such offence has been or is about to be committed, may issue a warrant for the apprehension of the person, and such person may thereupon be apprehended by any police officer accordingly.

- (4) Upon the hearing of a prosecution of an offence under subsection (1), the court may determine the matter in a summary way, and if satisfied that the child has been or is about to be unlawfully deserted by the accused, or is actually without adequate means of support, and that the accused is a parent of such child, liable and able to contribute towards his maintenance, may, whether committing the child to the care of the Department or not, order the accused, either immediately or at some adjournment to pay or contribute towards the past and future maintenance of such child, in the manner provided by section 40A.
- (5) Where an order is made under subsection (4) and it appears to the court that a person has legal custody of the child for the time being the court may by a further order transfer to that person the benefit of and the right to enforce the order made under subsection (4).

[Section 130 inserted by No. 79 of 1965 s. 27; amended by No. 73 of 1976 s. 118, 119 and 124; No. 121 of 1984 s. 18; No. 49 of 1988 s. 33; No. 84 of 2004 s. 80.]

130A. Parents who leave the State

- (1) Where it appears upon an application to the court that the parent of a child or a person who stands in loco parentis to a child is about to leave the State but that the child will remain in the State and no provision has been made for the maintenance of the child during the absence of that person from the State, the court may order that person before he leaves the State to appear before the court or a specified Justice of the Peace and to enter into before the court or that justice and file in the registry of the

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court a written undertaking under his hand to provide maintenance for the child while the child remains in the State.

- (2) An order made under subsection (1) may require that one or more persons of good financial standing shall join in the undertaking as surety for its performance, and a person who so signs an undertaking as surety shall be deemed, in the event of any default, to stand in the place of the person for whom he stands surety and shall be liable, subject to subsection (3), to the extent of the undertaking to such and the like summary or other proceedings as that person would be if he were present in the State.
- (3) A person who stands as surety under this section but who is not a near relative of the child to which the undertaking relates shall not be required to provide in the aggregate more than \$500, or such lesser sum as the court may have determined to be appropriate, towards the maintenance of that child.
- (4) The person giving the undertaking required by this section, and any surety, may be released from the undertaking by the court if it appears to the court —
 - (a) that such parent or person standing in loco parentis has returned to the State with the intention of residing permanently in the State; or
 - (b) that the child has left the State and is likely to reside permanently elsewhere.
- (5) Where an application is made pursuant to subsection (1) against a person and is served upon or otherwise brought to the notice of that person but has not been determined, or where an order of the entering into and filing of an undertaking with or without surety has not been complied with, a person against whom the application is made or the order made who leaves the State commits an offence.

Penalty: \$400 or imprisonment for 6 months, or both such fine and such imprisonment.

[Section 130A inserted by No. 73 of 1976 s. 126; amended by No. 40 of 1988 s. 40; No. 51 of 1992 s. 16(1); No. 84 of 2004 s. 80.]

[131. Repealed by No. 73 of 1976 s. 119.]

[131A. Repealed by No. 79 of 1965 s. 29.]

[132-136. Repealed by No. 73 of 1976 s. 120-124.]

[137. Repealed by No. 73 of 1976 s. 33.]

[137A. Repealed by No. 73 of 1976 s. 44.]

[138. Repealed by No. 73 of 1976 s. 127.]

138A. Tattooing

Except where the Director-General, with the consent of the parents or guardians of the child given by reason of long standing cultural or religious belief, otherwise authorises, a person over the age of 18 years who for gain or reward tattoos, or otherwise makes a permanent mark or design resembling a tattoo on the skin of, any child or causes any such tattoo, mark or design to be made commits an offence.

Penalty: \$400 or imprisonment for 6 months, or both such fine and such imprisonment.

[Section 138A inserted by No. 73 of 1976 s. 128; amended by No. 121 of 1984 s. 18.]

138B. Immediate care

- (1) Where any police officer, or an officer of the Department authorised by the Minister, finds a child —
 - (a) which he has reason to believe is away from the usual place of residence of that child and is not under the immediate supervision of a parent or responsible person;
and

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- (b) which is in his opinion in physical or moral danger, misbehaving, or truanting from school, he may apprehend the child without warrant and forthwith take the child to its usual place of residence or school.
- (2) An officer apprehending a child pursuant to subsection (1) shall make inquiries as to whether or not it may be necessary to make application to the court to declare the child to be in need of care and protection.
- (3) Where on inquiry no responsible person can be found to take care of the child for the time being the officer may cause the child to be detained at some convenient place until such time as the child can be returned to the care of a parent or responsible person.
- (4) The officer apprehending a child under subsection (1) may make application to the court for an order, and the court may make an order, requiring a parent of or person standing in loco parentis to the child to pay to the appropriate authority the cost of apprehending and detaining the child, or not more than \$20 whichever is the less.
- (5) An order for payment made under subsection (4) may be enforced by warrant in like manner to a fine, but it does not for any purpose constitute a conviction for an offence.

[Section 138B inserted by No. 73 of 1976 s. 129 (as amended by No. 10 of 1977 s. 8); amended by No. 49 of 1988 s. 40; No. 31 of 1993 s. 22; No. 104 of 1994 s. 217.]

[139. Repealed by No. 29 of 1968 s. 13.]

[140. Repealed by No. 73 of 1976 s. 130.]

[141. Repealed by No. 104 of 1994 s. 218.]

142. General penalty

- (1) Any person who in any particular makes default in compliance with the provisions of this Act, other than section 107A(1), (2) or (4) or section 107B(2) or (4), shall be guilty of an offence against this Act.
- (2) Any person guilty of an offence against this Act shall except as otherwise expressly provided, be liable, on conviction, to a fine not exceeding \$2 000.

[Section 142 amended by No. 113 of 1965 s. 8(1); No. 29 of 1968 s. 14; No. 73 of 1976 s. 132; No. 49 of 1988 s. 35; No. 82 of 1990 s. 11; No. 79 of 1995 s. 68(2); No. 78 of 1995 s. 147.]

[143, 144. Repealed by No. 49 of 1988 s. 36.]

145. Order to be a defence to actions

In every action for anything done in obedience to any order it shall be sufficient for the accused to justify under such order only, without setting forth the previous proceedings, and the production of the order or a duplicate or certified copy thereof shall be sufficient evidence to prove the fact of making such order.

[Section 145 amended by No. 84 of 2004 s. 82.]

[146. Repealed by No. 73 of 1976 s. 134.]

146A. Entry of premises

- (1) Where a justice is satisfied by information on oath that there is reasonable ground for suspecting that a child in need of care and protection is residing on any premises or in any place he may grant an order authorising the Director-General or other officer of the Department or any member of the police force named therein to enter at all reasonable times the premises or place named in the order, by force if necessary, and to inspect the

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premises or place and there investigate and inquire into the information and apprehend any such child.

- (2) The person named in the order seeking to exercise his powers under it shall, if so required, produce the order.
- (3) A person who refuses to permit the person named in the order to enter or inspect the premises or place in respect of which the order is issued or hinders or obstructs him in the execution of his duty under this Act, is guilty of an offence.

[Section 146A inserted by No. 16 of 1952 s. 9; amended by No. 45 of 1955 s. 2; No. 29 of 1968 s. 15; No. 73 of 1976 s. 135; No. 10 of 1977 s. 6; No. 121 of 1984 s. 18.]

146B. Personation of officers of Department an offence

A person, not being an officer of the Department who takes the name, designation, or description of any officer of the Department or pretends or asserts that he is an officer of the Department, is guilty of an offence.

[Section 146B inserted by No. 16 of 1952 s. 9; amended by No. 31 of 1993 s. 23; No. 104 of 1994 s. 219.]

146C. Exemption from personal liability

- (1) A person who occupies or has occupied the office of Minister, Director-General, or officer of the Department, or who otherwise carries out or has carried out any duty or function under this Act, is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any power conferred or which purports to be conferred, or the carrying out of any duty imposed or which purports to be imposed, by this Act.
- (2) For the purposes of subsection (1), anything done or omitted to be done by a person therein mentioned, in good faith and for reasonable or probable cause in promoting the welfare of a

child, is deemed to have been done pursuant to a duty imposed by this Act.

- (3) A person who on reasonable grounds and in good faith for the purposes of facilitating the enforcement of the provisions of this Act makes a report with respect to the circumstances of a child is not liable to any action for damage or any other legal proceeding in respect of that report.

[Section 146C inserted by No. 45 of 1958 s. 10; amended by No. 29 of 1968 s. 16; No. 121 of 1984 s. 18; No. 127 of 1987 s. 9; No. 31 of 1993 s. 24; No. 104 of 1994 s. 220.]

[147. Repealed by No. 73 of 1954 s. 8.]

[148. Repealed by No. 78 of 1995 s. 11.]

149. Regulations

- (1) The Governor may, from time to time, make, repeal, alter, and vary all such regulations as may appear necessary or advisable for regulating —
- (a) the duties, powers, authorities, and privileges of inspectors, visitors, and all other persons employed in the administration of this Act;
 - (b) the management, control, and supervision of Departmental facilities and other facilities and lying-in houses;
 - (c) the custody, maintenance, education, employment, apprenticing, and placing out of wards and children placed under the control of the Department;
 - (d) the visitation of children at Departmental facilities and other facilities or apprenticed, or placed out;
 - (e) the punishment that may be imposed upon, and the wages and rewards that may be earned by, wards and children placed under the control of the Department;

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- (f) the grant or refusal of licences pursuant to section 112, including all matters relating to the welfare of children received and kept pursuant to any such licence, the conduct, staffing and inspection of the premises so used, the control of advertising and the maintenance of records;
 - (g) the management and control of property vested in the Department;
 - (h) the accounts and records to be maintained and the reports to be furnished by Departmental facilities and other facilities, whether subsidized or otherwise;
 - [(i) deleted]*
 - (j) the form and contents of agreements, appointments, apprenticeship articles, authorities, applications, licences, notices, orders, summonses, and all other instruments and documents, and the mode of executing, serving, or delivering the same;
 - (k) the fees to be paid;
 - (l) the imposing of penalties;
 - (m) the time and manner in which any act, deed, matter, or thing required by this Act to be done, and as to which the time or procedure is not provided, is to be done or performed;
 - (n) all other matters and things arising under and consistent with this Act not herein expressly provided for, and otherwise for fully and effectually carrying out and giving force and effect to the objects, purposes, powers, and authorities of this Act.
- (2) Regulations may be made pursuant to this section —
- (a) so as to require a matter or thing affected by the regulations to be in accordance with a specified standard or a specified requirement or as approved by, or to the satisfaction of, a specified person or body, or class of

person or body; and so as to delegate to, or confer upon a specified person or body, or class of person or body, a discretionary authority; and

- (b) so as to provide that, in specified cases, in specified class of case or specified classes of cases, persons or things or a class or classes of persons or things may, whether on specified conditions or unconditionally, be exempted from the provisions of the regulations or any of them, either wholly or to such extent as may be specified.

[Section 149 amended by No. 29 of 1968 s. 17; No. 85 of 1969 s. 12; No. 73 of 1976 s. 136; No. 105 of 1987 s. 13; No. 49 of 1988 s. 37 and 40; No. 104 of 1994 s. 221; No. 84 of 2004 s. 80.]

[First Schedule omitted under the Reprints Act 1984 s. 7(4)(e).]

Second Schedule

[Section 15]

Subsidized facilities⁴

CATHOLIC

Catherine McAuley Centre
St. Vincent's
St. Joseph's
"Salvado"
Castledare
Christian Community Inc.
Clontarf
Good Shepherd Teen Centre
Pallotine Centre Rossmoyne
Catherine House Inc.
Balgo Mission
Beagle Bay Mission
Benedictine Mission Kalumburu
La Grange Mission
Lombardina Mission
Nazareth House Geraldton
Pallotine Mission Tardun
St. Francis Xavier's Native Mission
St. Joseph's Hostel Derby

ANGLICAN

Parkerville Children's Homes (Inc.)
Swanleigh

BAPTIST

Katukutu Hostel
Marribank Mission

CHRISTIAN BROTHERS ASSEMBLIES

Kurrawang Aboriginal Christian Centre Inc.

CHURCHES OF CHRIST

"Bamburra" Hostel
Churches of Christ Ingada Village — Carnarvon

Second Schedule

Churches of Christ Aborigines Mission-Norseman
Churches of Christ Roelands Village
“Fairhaven” Training Hostel Esperance

METHODIST

Homes for Children
“Mofflyn”
“Allendale”
“Werribee”
“Bourkedale”
“Coinda”
“Meribah”
“Warminda”
Mogumber Training Centre
Applecross Cottage
Ardross Hostel
Greenmount Hostel (Innaminka)
Mt. Yokine Hostel
Nollamara Cottage

PRESBYTERIAN

Sister Kate’s Children’s Homes (Inc.)
Collins House

SALVATION ARMY

Hollywood Children’s Village
“Cottesloe House”

UNDENOMINATIONAL

Fairbridge
Ngal-a Mothercraft Home & Training Centre (Inc.)
Wanslea Hostel
Yaandina Babies & Childrens Centre Inc.

[Second Schedule inserted by No. 73 of 1976 s. 137 (as amended by No. 10 of 1977 s. 9); amended by No. 49 of 1988 s. 38.]

[Third Schedule repealed by No. 49 of 1988 s. 39.]

[Fourth Schedule repealed by No. 104 of 1994 s. 222.]

Second Schedule

[Fifth Schedule repealed by No. 49 of 1988 s. 39.]

[Sixth Schedule repealed by No. 83 of 1990 s. 14.]

Notes

- ¹ This is a compilation of the *Child Welfare Act 1947* and includes the amendments made by the other written laws referred to in the following table^{1a 11 12}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Child Welfare Act 1947</i>	66 of 1947	10 Jan 1948	10 Jan 1948
<i>Child Welfare Act Amendment Act 1950</i>	52 of 1950	18 Dec 1950	18 Dec 1950
<i>Child Welfare Act Amendment Act 1952</i>	16 of 1952	7 Nov 1952	7 Nov 1952
<i>Limitation Act Amendment Act 1935 .s 48A(1)</i>	35 of 1935 (as amended by No. 73 of 1954 s. 5)	14 Jan 1955	Relevant amendments (see Second Sch. ⁵) took effect on 1 Mar 1955 (see No. 73 of 1954 s. 2 and <i>Gazette</i> 18 Feb 1955 p. 343)
<i>Child Welfare Act Amendment Act 1955</i>	45 of 1955	9 Dec 1955	9 Dec 1955
<i>Child Welfare Act Amendment Act 1956</i>	36 of 1956	18 Dec 1956	18 Dec 1956
<i>Child Welfare Act Amendment Act (No. 2) 1956</i>	77 of 1956	14 Jan 1957	14 Jan 1957
Reprint of the <i>Child Welfare Act 1947</i> approved 7 May 1957 in Vol. 11 of Reprinted Acts (Includes amendments listed above)			
<i>Child Welfare Act Amendment Act 1957</i>	69 of 1957	6 Dec 1957	6 Dec 1957
<i>Child Welfare Act Amendment Act (No. 2) 1957</i>	74 of 1957	10 Dec 1957	1 Feb 1958 (see s. 2 and <i>Gazette</i> 31 Jan 1958 p. 167)
<i>Child Welfare Act Amendment Act 1958</i>	45 of 1958	12 Dec 1958	12 Dec 1958
<i>Child Welfare Act Amendment Act 1959</i>	15 of 1959	8 Oct 1959	8 Oct 1959

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Short title	Number and year	Assent	Commencement
<i>Interstate Maintenance Recovery Act 1959 s. 3(3)</i>	28 of 1959	15 Oct 1959	1 Jan 1961 (see s. 2 and <i>Gazette</i> 16 Dec 1960 p. 3973)
Reprint of the <i>Child Welfare Act 1947</i> approved 25 Aug 1961 (not in a volume) (includes amendments listed above)			
<i>Child Welfare Act Amendment Act 1962</i>	22 of 1962	4 Oct 1962	1 Dec 1962 (see s. 2 and <i>Gazette</i> 30 Nov 1962 p. 3833)
<i>Child Welfare Act Amendment Act (No. 2) 1962</i>	43 of 1962	1 Nov 1962	9 Nov 1962 (see s. 2 and <i>Gazette</i> 9 Nov 1962 p. 3679)
<i>Child Welfare Act Amendment Act 1965</i>	79 of 1965	7 Dec 1965	1 Mar 1966 (see s. 2 and <i>Gazette</i> 25 Feb 1966 p. 550; 4 Mar 1966 p. 589)
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<i>Child Welfare Act Amendment Act 1967</i>	27 of 1967	17 Nov 1967	s. 23 and 24: 15 Jul 1968 (see s. 2 and <i>Gazette</i> 15 Jul 1968 p. 1996); balance: 8 Mar 1968 (see s. 2 and <i>Gazette</i> 8 Mar 1968 p. 673)
<i>Child Welfare Act Amendment Act (No. 2) 1967</i>	42 of 1967	21 Nov 1967	21 Nov 1967
<i>Child Welfare Act Amendment Act 1968</i>	29 of 1968	25 Oct 1968	25 Oct 1968
Reprint of the <i>Child Welfare Act 1947</i> approved 22 Nov 1968 in Vol. 22 of Reprinted Acts (includes amendments listed above)			
<i>Child Welfare Act Amendment Act 1969</i>	85 of 1969	17 Nov 1969	1 Feb 1970 (see s. 2 and <i>Gazette</i> 31 Dec 1969 p. 4363)
<i>Child Welfare Act Amendment Act 1970</i>	39 of 1970	23 Sep 1970	23 Sep 1970
Reprint of the <i>Child Welfare Act 1947</i> approved 5 Apr 1971 (includes amendments listed above)			
<i>Child Welfare Act Amendment Act 1971</i>	52 of 1971	10 Dec 1971	10 Dec 1971
<i>Child Welfare Act Amendment Act (No. 2) 1972</i>	27 of 1972	9 Jun 1972	1 Jul 1972 (see s. 2 and <i>Gazette</i> 30 Jun 1972 p. 2097)

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Defined Terms

Short title	Number and year	Assent	Commencement
Reprint of the Child Welfare Act 1947 approved 26 Apr 1974 (includes amendments listed above)			
<i>Family Court Act 1975 s. 5</i>	106 of 1975	1 Dec 1975	1 Jun 1976 (see s. 2 and <i>Gazette</i> 7 May 1976 p. 1381)
<i>Child Welfare Act Amendment Act 1976</i>	36 of 1976	9 Jun 1976	3 Sep 1976 (see s. 2 and <i>Gazette</i> 3 Sep 1976 p. 3271)
<i>Child Welfare Act Amendment Act (No. 2) 1976</i>	73 of 1976 (as amended by No. 10 of 1977 s. 7-9)	6 Oct 1976	s. 20(1): 1 Oct 1977 (see s. 2 and <i>Gazette</i> 30 Sep 1977 p. 3519); balance: 1 Jan 1978 (see s. 2 and <i>Gazette</i> 9 Dec 1977 p. 4499)
<i>Child Welfare Act Amendment Act 1977</i>	10 of 1977	30 Sep 1977	1 Jan 1978 (see s. 2 and <i>Gazette</i> 9 Dec 1977 p. 4499)
Reprint of the Child Welfare Act 1947 approved 11 Nov 1977 (includes amendments listed above)			
<i>Child Welfare Act Amendment Act 1979</i>	77 of 1979	6 Dec 1979	6 Dec 1979
<i>Acts Amendment (Misuse of Drugs) Act 1981 Pt. II</i>	57 of 1981	13 Oct 1981	1 Sep 1982 (see s. 2 and <i>Gazette</i> 20 Aug 1982 p. 3250)
<i>Acts Amendment (Criminal Penalties and Procedure) Act 1982 Pt. III</i>	20 of 1982	27 May 1982	27 May 1982
<i>Child Welfare Amendment Act 1982</i>	57 of 1982	22 Sep 1982	s. 1, 2, 4-6, 8-12, 18 and 19: 1 Nov 1982 (see s. 2 and <i>Gazette</i> 1 Nov 1982 p. 4377); balance: 1 Jul 1983 (see s. 2 and <i>Gazette</i> 17 Jun 1983 p. 1865)
<i>Acts Amendment (Bail) Act 1982 Pt. V</i>	87 of 1982	17 Nov 1982	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
Reprint of the Child Welfare Act 1947 approved 30 Aug 1984 (includes amendments listed above except those in the <i>Acts Amendment (Bail) Act 1982</i>)			

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Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984 Pt. V</i>	52 of 1984	5 Sep 1984	3 Oct 1984
<i>Child Welfare Amendment Act (No. 2) 1984</i>	61 of 1984	24 Oct 1984	21 Nov 1984
<i>Acts Amendment (Department for Community Services) Act 1984 Pt. III</i>	121 of 1984	19 Dec 1984	1 Jan 1985 (see s. 2 and <i>Gazette</i> 28 Dec 1984 p. 4197)
<i>Acts Amendment (Sexual Assaults) Act 1985 Pt. IV</i>	74 of 1985	20 Nov 1985	1 Apr 1986 (see s. 2 and <i>Gazette</i> 28 Feb 1986 p. 605)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Criminal Law Amendment Act 1986 Pt. III</i>	89 of 1986	10 Dec 1986	14 Mar 1988 (see s. 2 and <i>Gazette</i> 11 Mar 1988 p. 781)
<i>Acts Amendment (Child Care Services) Act 1987 Pt. III</i>	105 of 1987	16 Dec 1987	1 Mar 1989 (see s. 2 and <i>Gazette</i> 25 Nov 1988 p. 4679)
<i>Child Welfare Amendment Act (No. 2) 1987⁶</i>	127 of 1987 (as amended by No. 49 of 1988 s. 91)	21 Jan 1988	s. 8 and 11: 23 Jun 1989 (see s. 2 and <i>Gazette</i> 23 Jun 1989 p. 1797); balance: 1 Mar 1988 (see s. 2 and <i>Gazette</i> 26 Feb 1988 p. 600)
<i>Acts Amendment (Children's Court) Act 1988 Pt. 2</i>	49 of 1988	22 Dec 1988	1 Dec 1989 (see s. 2 and <i>Gazette</i> 24 Nov 1989 p. 4327)
<i>Acts Amendment (Spent Convictions) Act 1988 Pt. 2</i>	56 of 1988	8 Dec 1988	1 Jul 1992 (see s. 2 and <i>Gazette</i> 26 Jun 1992 p. 2644)
<i>Criminal Law Amendment Act 1988 Pt. 5</i>	70 of 1988	15 Dec 1988	1 Feb 1989 (see s. 2(1) and <i>Gazette</i> 20 Jan 1989 p. 110)
<i>Acts Amendment (Detention of Drunken Persons) Act 1989 Pt. 3</i>	35 of 1989	21 Dec 1989	27 Apr 1990 (see s. 2 and <i>Gazette</i> 27 Apr 1990 p. 2089)
Reprint of the Child Welfare Act 1947 as at 23 May 1990 (includes amendments listed above)			

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Defined Terms

Short title	Number and year	Assent	Commencement
<i>Child Welfare Amendment Act 1990</i>	82 of 1990	20 Dec 1990	s. 5: 1 Dec 1989 (see s. 2(2)); s. 9: to be proc. ^{1a} ; balance: 20 Dec 1990 (see s. 2(1))
<i>Child Welfare Amendment Act (No. 2) 1990</i>	83 of 1990	22 Dec 1990	1 Aug 1991 (see s. 2 and <i>Gazette</i> 1 Aug 1991 p. 3983)
<i>Criminal Law Amendment Act 1990 Pt. 6</i>	101 of 1990	20 Dec 1990	14 Feb 1991 i.e. 56 days after Royal Assent (see s. 2(1))
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991 s. 21</i>	15 of 1991	21 Jun 1991	9 Aug 1991 (see s. 2(2) and <i>Gazette</i> 9 Aug 1991 p. 4101)
<i>Acts Amendment (Sexual Offences) Act 1992 s. 4(3) and 6(8)</i>	14 of 1992	17 Jun 1992	1 Aug 1992 (see s. 2 and <i>Gazette</i> 28 Jul 1992 p. 3671)
<i>Acts Amendment (Evidence of Children and Others) Act 1992 Pt. 4⁸</i>	36 of 1992	22 Sep 1992	16 Nov 1992 (see s. 2 and <i>Gazette</i> 6 Nov 1992 p. 5415)
<i>Criminal Law Amendment Act (No. 2) 1992 s. 16(1)</i>	51 of 1992	9 Dec 1992	6 Jan 1993
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Ministry of Justice) Act 1993 Pt. 4⁹</i>	31 of 1993	15 Dec 1993	1 Jul 1993 (see s. 2)
<i>Criminal Procedure Amendment Act 1993 Pt. 3</i>	45 of 1993	20 Dec 1993	17 Jan 1994 (see s. 2(1))
<i>Adoption Act 1994 s. 145</i>	9 of 1994	15 Apr 1994	1 Jan 1995 (see s. 2 and <i>Gazette</i> 25 Nov 1994 p. 5905)
<i>Criminal Law Amendment Act 1994 s. 13(3)</i>	82 of 1994	23 Dec 1994	20 Jan 1995 (see s. 2)
<i>Young Offenders Act 1994 Pt. 11 Div. 1¹⁰</i>	104 of 1994	11 Jan 1995	13 Mar 1995 (see s. 2 and <i>Gazette</i> 10 Mar 1995 p. 895)
Reprint of the Child Welfare Act 1947 as at 12 Jul 1995 (includes amendments listed above)			
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 8 and s. 147</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)

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Short title	Number and year	Assent	Commencement
<i>Industrial Relations Legislation Amendment and Repeal Act 1995</i> s. 68(2)	79 of 1995	16 Jan 1996	18 May 1996 (see s. 3(2) and <i>Gazette</i> 14 May 1996 p. 2019)
<i>Acts Amendment and Repeal (Family Court) Act 1997</i> s. 29	41 of 1997	9 Dec 1997	26 Sep 1998 (see s. 2 and <i>Gazette</i> 25 Sep 1998 p. 5295)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 30	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2)
<i>School Education Act 1999</i> s. 247	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<i>Child Welfare Amendment Act 2002</i>	22 of 2002	29 Aug 2002	29 Aug 2002 (see s. 2)
Reprint of the <i>Child Welfare Act 1947</i> as at 20 Sep 2002 (includes amendments listed above)			
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnote referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Child Welfare Amendment Act 1990</i> s. 9 ⁷	82 of 1990	20 Dec 1990	To be proclaimed (see s. 2)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 44 ¹³	50 of 2003	9 Jul 2003	To be proclaimed (see s. 2)
<i>Children and Community Services Act 2004</i> s. 250(1)(a) ^{14, 15}	34 of 2004	20 Oct 2004	To be proclaimed (see s. 2)

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² Formerly referred to the *Community Welfare Act 1972* the short title of which was changed to the *Community Services Act 1972* by the *Acts Amendment (Department for Community Services) Act 1984* Pt. II. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

³ Repealed by the *Adoption Act 1994*.

⁴ At the date of this compilation the subsidized facilities under the Act are set out in an Order in Council under section 14 published in the *Gazette* of 24 November 1989 p. 4328.

⁵ The Second Schedule was inserted by No. 73 of 1954 s. 8.

⁶ The *Child Welfare Amendment Act (No. 2) 1987* s. 11 reads as follows:

“

11. Review and report

- (1) The Attorney General shall, commencing on the second anniversary of the commencement day, carry out a review of the operation and effectiveness of sections 23A to 23C of the principal Act as enacted by this Act and shall prepare a report based on his review of those provisions.
- (2) The Attorney General shall cause the report prepared for the purpose of subsection (1) to be laid before each House of Parliament not later than 6 months after the second anniversary of the commencement day and if a House of Parliament is not then sitting, shall cause the report to be laid before such house within 6 sitting days of the House.
- (3) In subsections (1) and (2) “**commencement day**” means the day on which section 8 of this Act comes into operation.

”.

⁷ On the date as at which this compilation was prepared, the *Child Welfare Amendment Act 1990* s. 9 had not come into operation. It reads:

“

9. Sections 108A, 108B, 108C, 108D and 108E inserted

After section 108 of the principal Act, as inserted by section 8, the following sections are inserted —

“

Defined Terms

108A Licence to employ children required in relation to an entertainment, exhibition or advertisement

- (1) In this section and sections 108B, 108C and 108D, “child” means a child under the age of 15 years.
- (2) The Minister may by order published in the *Government Gazette* fix a day as the appointed day for the purposes of subsection (3).
- (3) On or after the appointed day a person shall not —
 - (a) employ a child;
 - (b) cause or procure a child to be employed; or
 - (c) being a person who has the custody or guardianship of a child, allow the child to be employed,

for the purpose of the child taking part in an entertainment or exhibition or the making of an advertisement, unless the employment of the child is authorized by a licence granted under section 108B.

Penalty: \$1 000.

- (4) Subsection (3) does not apply in respect of the employment of a child where —
 - (a) the child is employed for the purpose of an occasional entertainment the net proceeds of which are wholly applied for the benefit of a school or charitable object;
 - (b) the child is an exempt child; or
 - (c) the Minister has granted an exemption under section 108D, if the conditions, if any, subject to which the exemption was granted are complied with.

108B. Grant of licences

- (1) The Minister may, on receipt of an application containing the information required by the regulations to be supplied in respect of the class of licence sought, grant a

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Defined Terms

- licence of that class authorizing a child or children to be employed for the purpose of taking part in an entertainment or exhibition or the making of an advertisement, being an entertainment, exhibition or advertisement specified or of a kind specified in the licence.
- (2) The Minister shall not grant a licence for a child to be employed for the purpose of performing in an indecent, obscene or pornographic manner in the course of employment referred to in subsection (1) and section 108(2) applies for the purposes of this subsection.
- (3) In exercising his powers under subsection (1), the Minister may grant —
- (a) an individual licence in respect of one child;
 - (b) a group licence in respect of a prescribed number of children to be employed as a group in a common activity; or
 - (c) a fixed term licence in respect of the employment of any number of children during a prescribed period.
- (4) The Minister shall not grant an individual licence unless he is satisfied that proper provision has, in the manner specified in the application, been made to safeguard the health, welfare and education of the child.
- (5) In the case of an application for the grant of a group licence or a fixed term licence, it is not necessary to identify individual children who will be employed under any licence granted.
- (6) The Minister shall not grant a group licence or a fixed term licence unless he is satisfied that the person applying for the licence has made or will make proper provision to safeguard the health, welfare and education of children employed under the license.
- (7) Subject to subsection (8) —

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- (a) an individual licence or a group licence is to be in force for such period as is prescribed or as the Minister may determine, either generally or in each case;
- (b) a fixed term licence is to be in force for the period prescribed under subsection (3)(c); and
- (c) a licence is to be subject to such conditions as are prescribed or as the Minister may determine, either generally or in each case,

and where the period or conditions of a licence are determined by the Minister they are to be endorsed on the licence.

- (8) The Minister may on reasonable grounds vary or cancel a licence.

108C. Regulations for section 108B

Regulations may be made under section 149 prescribing —

- (a) the form of and information to be contained in an application for a licence;
- (b) the period for which a class of licence is to be in force;
- (c) the number of children that may be employed under a group licence;
- (d) the minimum age of a child for employment under a class of licence; and
- (e) conditions attaching to the grant of a class of licence, including conditions limiting the hours of work of a child in a day or during a period or the number of consecutive days of work.

108D. Exemption from licensing requirement

- (1) The Minister may exempt a person from the requirement under section 108A to obtain a licence to employ a child where the Minister is satisfied that the nature and circumstances of the employment concerned are such as to make the obtaining of a licence unwarranted.

- (2) The Minister may on reasonable grounds withdraw an exemption or vary a condition on which it was granted.

108E. Right of appeal

- (1) A person who applies for or holds a licence under section 108B or who applies for or holds an exemption under section 108D may appeal to the court against a decision of the Minister —
- (a) to refuse to grant a licence;
 - (b) to grant a licence subject to a condition that was imposed in the individual case;
 - (c) to cancel a licence;
 - (d) to refuse to grant an exemption; or
 - (e) to withdraw an exemption.
- (2) An appeal is to be instituted within 21 days of receipt by the person of notification of the decision of the Minister, but the court may, on application by the person, extend the time for instituting an appeal to a period that it considers reasonable in the circumstances of the case.
- (3) The Minister is a party to an appeal and the appellant shall serve on the Minister a copy of the document instituting the appeal.
- (4) Where an appeal against a decision of the Minister to cancel a licence or to withdraw an exemption is instituted, the decision of the Minister is stayed pending determination of the appeal, unless the court orders otherwise.
- (5) The court has jurisdiction to hear and determine an appeal under subsection (1) and may confirm the decision of the Minister or direct the Minister to reverse his decision or vary it in the manner specified by the court.
- (6) The Minister shall give effect to a direction under subsection (5).
- (7) Each party is to bear his own costs of an appeal, unless the court considers that the

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circumstances justify the making of an award of costs, in which case the court may award costs.

”

”

⁸ The *Acts Amendment (Evidence of Children and Others) Act 1992* s. 13 reads as follows:

“

13. Transitional provisions

- (1) The following proceedings are to be determined as if this Act had not come into operation —
 - (a) a proceeding on an existing complaint and an indictment arising therefrom and any appeal in respect of any such proceeding;
 - (b) a proceeding on an existing indictment under section 579 of *The Criminal Code* and any appeal in respect of any such proceeding;
 - (c) any other proceeding within the meaning in section 106A of the principal Act that is an existing proceeding.
- (2) In subsection (1) “**existing**” in relation to a complaint or indictment means made or presented before the day on which this Act comes into operation, and in relation to any other proceeding means commenced before that day.

”

⁹ The *Acts Amendment (Ministry of Justice) Act 1993* Pt. 19 reads as follows:

“

Part 19 — Savings and transitional

68. Savings

If this Act is not passed until after 1 July 1993, anything done after that day but before this Act is passed that would have been in accordance with law if this Act had not come into operation but as a result of the coming into operation of this Act is contrary to law, is deemed to be in accordance with law.

69. Transitional

Unless the contrary intention appears, a reference, however expressed, in any law or document to the former Department of Corrective Services or Crown Law Department, the chief executive officer of either of those departments, or an office or organizational unit within either of those departments, is to be read

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as a reference to the Ministry of Justice, the chief executive officer of the Ministry of Justice, or the corresponding office or unit within the Ministry of Justice, as is appropriate.

¹⁰ The *Young Offenders Act 1994* Pt. 11 Div. 3 reads as follows:

“

Division 3 — Transitional provisions

231. Interpretation Act 1984 applies

- (1) This Division does not limit the operation of the *Interpretation Act 1984*.
- (2) Unless the context otherwise requires, a reference in a written law to an enactment repealed by this Act includes a reference to the corresponding provision, if any, of this Act.
- (3) A reference in a written law to a facility under the *Child Welfare Act 1947* may, where the context so requires, be read as including or being a reference to a facility of a corresponding kind, if any, under this Act.

232. Orders for past matters

- (1) An order can be made under this Act by the court in dealing with an offence even though —
 - (a) the offence for which the person is before the court may have been committed;
 - (b) the default in payment may have occurred; or
 - (c) the sentence to which the order relates may have been imposed,

as the case requires, before the commencement of the provision of this Act under which the order is made.

233. Orders under former provisions

This Act applies to an order made under a provision repealed by this Act that is still in force when that provision is repealed as if the order were made under the provision of this Act that most nearly corresponds to the repealed provision.

234. Detention centres under *Child Welfare Act 1947*

- (1) In this section —

“**former provisions**” means the provisions of the *Child Welfare Act 1947* as in force immediately before the commencement of section 13.

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- (2) The declaration of a detention centre under the former provisions is to be taken to have been made under this Act.
- (3) The appointment of a person as a visiting justice for a detention centre under the former provisions is taken to have been an appointment under this Act.

235. Proceedings pending before children’s panels

- (1) In this section —
“**former provisions**” means the provisions of the *Child Welfare Act 1947* as in force immediately before the commencement of section 32.
- (2) If proceedings for a matter are pending before a children’s panel under the former provisions when section 32 commences, the matter is to be taken to have been referred under this Act to a juvenile justice team.

”.

¹¹ The amendments in the *Child Welfare Amendment Act 1984* are not included because they were repealed by the *Child Welfare Amendment Act 1990* s. 12 before they came into operation.

¹² The amendments to this Act in the *Acts Amendment Mental Health Act 1981* Pt. I never came into operation. This was because the *Mental Health Act 1981* never came into operation and was repealed by the *Mental Health Act 1996* s. 73.

¹³ On the date as at which this compilation was prepared, the *Sentencing Legislation Amendment and Repeal Act 2003* s. 44 had not come into operation. It reads as follows:

“

44. Child Welfare Act 1947 amended

- (1) The amendments in this section are to the *Child Welfare Act 1947*.
- (2) Sections 130A(5) and 138A are each amended by deleting the penalty clause and inserting the following penalty clause instead —

“ Penalty: \$400. ”.

”.

¹⁴ On the date as at which this compilation was prepared, the *Children and Community Services Act 2004* s. 250(1)(a) had not come into operation. It reads as follows:

“

250. Repeal, transitional and savings provisions

- (1) The following Acts are repealed —
 - (a) the *Child Welfare Act 1947*;
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.....

”.

¹⁵ On the date as at which this compilation was prepared, the *Children and Community Services Act 2004* s. 250(3) which gives effect to Sch. 1, had not come into operation. It reads as follows:

“

250. Repeal, transitional and savings provisions

- (3) Schedule 1 has effect in relation to the repeals effected by subsection (1).

”.

Schedule 1 reads as follows:

“

Schedule 1 — Transitional and savings provisions

[s. 250(3)]

Division 1 — Introductory matters

1. Meaning of terms used in this Schedule

In this Schedule, unless the contrary intention appears —

“**authorisation**” means —

- (a) an approval under the *Child Welfare Act 1947* section 111; or
(b) a licence under the *Child Welfare Act 1947* section 112;

“**commencement day**” means the day on which section 250 comes into operation;

“**existing appeal**” means an appeal under the *Children’s Court of Western Australia Act 1988* section 42(1) or 43(4) that has not been finally determined before commencement day;

“**existing order**” means an order made under the *Child Welfare Act 1947* section 30 that is in force immediately before commencement day;

“**existing proceedings**” means proceedings under the *Child Welfare Act 1947* section 30 that have not been finally determined before commencement day;

“**extended order**” means an existing order that applies to a child after the child reaches 18 years of age because of an extension under the *Child Welfare Act 1947* section 49(1);

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“**repealed Act**” means an Act repealed by section 250.

2. Interpretation Act 1984 not affected

The provisions of this Schedule do not affect the application of the *Interpretation Act 1984* to and in relation to the repeals effected by section 250.

Division 2 — Provisions related to repeal of *Child Welfare Act 1947*

3. Existing orders

- (1) On and after commencement day an existing order that applies to a child until the child reaches 18 years of age has effect as if it were a protection order (until 18).
- (2) On and after commencement day an existing order, other than an existing order referred to in subclause (1) or an extended order, has effect as if it were a protection order (time-limited).
- (3) An order to which subclause (2) applies has effect —
 - (a) if the period until the order is due to expire is less than 2 years, for that period; or
 - (b) in any other case, for a period of 2 years from commencement day.

4. Extended orders

On and after commencement day the *Child Welfare Act 1947* continues to apply to and in respect of an extended order as if that Act had not been repealed.

5. Existing proceedings

- (1) Existing proceedings are to be dealt with and determined under the *Child Welfare Act 1947* as if that Act had not been repealed.
- (2) If, at the conclusion of existing proceedings, an order commits a child to the care of the Department or places the child under the control of the Department, the order has effect —
 - (a) if the order applies to the child until the child reaches 18 years of age, as if it were a protection order (until 18); or
 - (b) in any other case, as if it were a protection order (time-limited).
- (3) An order to which subclause (2)(b) applies has effect —
 - (a) if a period of less than 2 years is specified in the order, for that period; or
 - (b) in any other case, for a period of 2 years from the day on which the order is made.

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Defined Terms

- (4) An order made under the *Child Welfare Act 1947* section 29(3aa) that is in force immediately before commencement day has effect on and after that day as if that Act had not been repealed.

6. Existing appeals

- (1) An existing appeal is to be dealt with and determined as if —
- (a) the *Children’s Court of Western Australia Act 1988* had not been amended by this Act; and
 - (b) the *Child Welfare Act 1947* had not been repealed.
- (2) If, at the conclusion of an existing appeal, an order commits a child to the care of the Department or places a child under the control of the Department, the order has effect —
- (a) if the order applies to the child until the child reaches 18 years of age, as if it were a protection order (until 18); or
 - (b) in any other case, as if it were a protection order (time-limited).
- (3) An order to which subclause (2)(b) applies has effect —
- (a) if a period of less than 2 years is specified in the order, for that period; or
 - (b) in any other case, for a period of 2 years from the day on which the order is made.

7. Records under s. 11

On and after commencement day records kept under the *Child Welfare Act 1947* section 11 in respect of wards and children placed under the control of the Department are to be taken to be records kept by the CEO for the purposes of section 128.

8. Operation of orders under s. 13 or 14

An order made under the *Child Welfare Act 1947* section 13 or 14 that is in force immediately before commencement day ceases to have effect on that day.

9. Children detained under s. 29(3a)

- (1) A child who immediately before commencement day is detained in a hospital under the *Child Welfare Act 1947* section 29(3a) is to be taken on and after that day to be kept in the hospital under section 40(2).
- (2) If subclause (2) applies to a child the period for which the child was detained in the hospital before commencement day is to be taken into account for the purposes of section 40(7).

Defined Terms

10. Orders under s. 40A

An order made under the *Child Welfare Act 1947* section 40A that is in force immediately before commencement day has effect on and after that day as if it were an order under section 73.

11. Applications under s. 47

An application made to the Minister or the Court under the *Child Welfare Act 1947* section 47(2) that has not been finally determined immediately before commencement day is to be dealt with and determined under that Act as if it had not been repealed.

12. Notices under s. 107A or 107B

A notice under the *Child Welfare Act 1947* section 107A(4) or 107B(4) that is in force immediately before commencement day has effect on and after that day as if it were a notice under section 193(2).

13. Warrants

A warrant issued under the *Child Welfare Act 1947* section 67 that is in force immediately before commencement day has effect on and after that day as if it had been issued under this Act.

14. Authorisations under s. 111 or 112

- (1) An authorisation that is in force immediately before commencement day has effect on and after that day as if it were an approval under section 104(3).
- (2) Despite section 104(4)(b), an authorisation referred to in subclause (1) has effect, under and subject to this Act, for the remainder of the period for which it would have had effect if the *Child Welfare Act 1947* had not been repealed.

15. Orders and proceedings under Part VIIIA

- (1) An application under the *Child Welfare Act 1947* Part VIIIA that has not been finally determined immediately before commencement day is to be dealt with and determined under the corresponding provision of Part 6.
- (2) An interim order made under the *Child Welfare Act 1947* section 120P that is in force immediately before commencement day has effect on and after that day as if it were an interim order under the corresponding provision of Part 6.
- (3) An appeal under the *Child Welfare Act 1947* section 120L or 120Q that has not been finally determined immediately before commencement day is to be dealt with and determined as if it were an appeal under the corresponding provision of Part 6.

16. Orders under s. 146A

An order made under the *Child Welfare Act 1947* section 146A that is in force immediately before commencement day has effect on and after that day as if that Act had not been repealed.

Division 5 — General

24. References to repealed Acts

If in a written law or other document or instrument there is a reference to a repealed Act, the reference is to be read, unless the context otherwise requires, as if it had been amended to be a reference to this Act.

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