

Reprinted under the *Reprints Act 1984* as at 23 May 1990

WESTERN AUSTRALIA

CHILD WELFARE ACT 1947

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Reprinted under the *Reprints
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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, for the control and treatment of children offending against the law, and for other purposes connected therewith.

[*Long title amended by No. 73 of 1976 s. 3.*]

Short title

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

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 *Section 2 repealed by No. 49 of 1988 s. 4.*]

Repeal

3. The Act specified in the First Schedule is repealed.

Interpretation

4. (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 under the apparent age of 18 years but also includes any boy or girl dealt with under the *Children’s Court of Western Australia Act (No. 2) 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;

“community service order” means an order made under section 39A (1);

“conditional release order” means an order made by the court under section 39Q for the release of a child sentenced to a term of detention conditional on the child’s participation in a conditional release programme;

“court” means the Children’s Court of Western Australia established by the *Children’s Court of Western Australia Act (No. 2) 1988*;

- “Department” means the Department for Community Services established under section 4 of the *Community Services Act 1972*;
- “detainee” means a child who is lawfully detained in a detention centre, but does not include a child subject to a direction under section 13J;
- “detention centre” means a place declared to be a detention centre by the Minister under section 13A;
- “Director-General” means the Director-General of the Department for Community Services appointed under section 7 of the *Community Services Act 1972*;
- “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” means, except as regards an illegitimate child, father, mother, stepfather, stepmother, brother, sister, or any grand-parent of the child; and as regards an illegitimate child, the mother and the father of such child, and the husband of the mother of such child, if born before their marriage;
- “overseer”, in relation to a community service order, means an overseer appointed under and in accordance with the regulations for the purposes of the provisions of this Act relating to community service orders;
- “parent” means father, mother, stepfather or stepmother and in the case of an adopted child includes his adoptors but in relation to an illegitimate child means “mother” only;
- “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;

“prescribed offence”, in relation to the power of a court to make a community service order, means—

- (a) an offence against a section of *The Criminal Code* specified in the first column of the Sixth Schedule but limited, in the case of an offence against section 390B (b) of that Code, to that offence when committed in the circumstances specified in the second column;
- (b) an offence of which an element is assault or injury to the person or an intent or attempt to commit an assault or to injure the person; or
- (c) an offence prescribed by regulation for the purposes of this definition;

“prescribed requirement”, in relation to a community service order, means a requirement imposed by this Act on a child in respect of whom the community service order is made;

“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;

“relevant officer”, in relation to a community service order, means the officer for the time being assigned under section 39A (6) to be the relevant officer in respect of that community service order;

“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 Revenue Fund, and declared to be such a facility under section 14;

“the regulations”, in relation to a community service order, means the regulations made for the purposes of the provisions of this Act relating to community service orders;

“the supervising court”, in relation to a community service order, means the court that is, pursuant to section 39A (3), the supervising court in respect of that community service order;

“work”, in relation to a community service order, includes any form of work, service, or activity.

(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*, 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 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 ss. 17 and 18; No. 49 of 1988 ss. 5 and 40.]

PART II—ADMINISTRATIVE PROVISIONS

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

Administration

5. The administration of this Act shall be vested in a responsible Minister of the Crown and, subject to the Minister, shall be carried out by the Department.

[Section 5 inserted by No. 27 of 1972 s. 6.]

Duty of Director-General

6. (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) The Minister may appoint any person who is an officer of the Department to exercise or perform, during any absence, illness, or incapacity of the Director-General or the Assistant Director-General of the Department, all the powers, functions, and duties conferred or imposed on the Director-General by this Act, or such of those powers, functions, and duties as may be specified in his appointment under this subsection and, during any such absence, illness, or incapacity, a person appointed under this subsection has, and may exercise or perform, such powers, functions, and duties as that person is appointed under this subsection to exercise or perform.

(3) The Minister may at any time revoke an appointment made under subsection (2).

(4) Where, under this Act, the exercise of a power or the performance of a function or duty by the Director-General is dependent upon the opinion, belief, or state of mind of the Director-General in relation to a matter and that power, function, or duty may be exercised or performed by another person pursuant to subsection (1a) or (2), that power, function, or duty may be exercised or performed by that other person upon the opinion, belief, or state of mind of that other person in relation to that matter.

[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 ss. 18 and 19.]

Inspectors and other officers

7. (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) All inspectors and other officers of the former Child Welfare Department holding office or being employed immediately prior to the coming into operation of the *Child Welfare Act Amendment Act (No. 2) 1972*, shall be deemed to have been appointed and engaged under the *Community Welfare Act 1972*, but shall otherwise be subject to this Act.

(3) A person appointed or engaged under the *Community Welfare Act 1972*, 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.]

Visitors

8. 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. Section 9 repealed by No. 29 of 1968 s. 2.]

Delegation

9A. (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, to a person appointed under section 6 (2), 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), section 34D (2), sections 47, 47A, 47B, 47C, 47D, 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 ss. 18 and 20.]

Review of decision of delegate

9B. (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 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 section 34D (2) and sections 47, 47A, 47B, 47C, 47D, 49, 66A and 66B.

[Section 9B inserted by No. 57 of 1982 s. 6; amended by No. 121 of 1984 s. 18.]

General powers of Director-General

10. (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.]

General function of the Director-General

10A. 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 the control of the Department or not, and the Director-General and any officer of the Department authorized 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.*]

Director-General may delegate and sub-delegate

10B. 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.*]

Records to be kept

11. 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.*]

Application of *Financial Administration and Audit Act 1985*

12. 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.*]

PART III—FACILITIES

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

Departmental facilities

13. (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.*]

Detention centres

13A. (1) The Minister may by notice published in the *Gazette*—

- (a) declare any building, enclosure or place to be a detention centre within the meaning and for the purposes of this Act;
- (b) alter the boundaries of a detention centre declared under this subsection.

(2) The Minister may by notice published in the *Gazette* amend or revoke a notice under subsection (1).

(3) Subject to this Act and to the control of the Minister, the Director-General is responsible for the management, control and security of all detention centres and the welfare of all children detained in them.

[*Section 13A inserted by No. 49 of 1988 s. 6.*]

Visiting justices for detention centres

13B. (1) The Governor may appoint for every detention centre visitors to be known as visiting justices.

(2) A visitor appointed under section 8 shall not carry out the duties of a visiting justice.

(3) Visiting justices shall be appointed from persons who are magistrates or members of the court.

(4) Appointments under this section shall be for a term of 2 years, but a visiting justice may resign at any time by notice in writing delivered to the Governor.

[*Section 13B inserted by No. 49 of 1988 s. 6.*]

Duties of visiting justice

13C. (1) A visiting justice shall—

- (a) visit and inspect the detention centre for which he is appointed at intervals of not more than 3 months;
- (b) furnish a report in writing to the Minister after each visit and inspection made under paragraph (a);
- (c) make a record of any complaint made by a child or other person and report that complaint to the Director-General or the Minister; and
- (d) communicate directly with the Director-General immediately after a visit made under paragraph (a) if the visiting justice considers it desirable to make a personal report to the Director-General on the visit.

(2) A visiting justice shall attend the detention centre for which he is appointed as soon as practicable upon being notified that a charge of a disciplinary offence has been laid and shall inquire into and dispose of the charge as soon as possible.

[*Section 13C inserted by No. 49 of 1988 s. 6.*]

Remission

13D. (1) Subject to this Act, a child who is sentenced to a term of detention in a detention centre of not less than 3 days is entitled to remission of one-third of the period of the sentence.

(2) The number of days' remission provided for by this section shall be calculated by reducing the term of the sentence to a number of days, dividing by 3 and disregarding any remainder.

[*Section 13D inserted by No. 49 of 1988 s. 6.*]

Detention offences

13E. A detainee who—

- (a) assaults a person;
- (b) escapes or prepares or attempts to escape from lawful custody;
- (c) is in possession of or under the influence of drugs not lawfully issued to the detainee or not taken as prescribed;
- (d) is in possession of a weapon or a facsimile of a weapon;

- (e) wilfully breaks, damages or destroys property; or
 - (f) behaves in a riotous manner,
- is guilty of a detention offence.

[*Section 13E inserted by No. 49 of 1988 s. 6.*]

Charge of detention offence

13F. A charge of a detention offence alleged to have been committed by a detainee may be made by any officer and shall be brought immediately to the attention of the superintendent who shall, having regard to the nature of the alleged offence and to the alleged circumstances—

- (a) if the detainee so agrees, suspend further action with respect to the charge on condition of the good behaviour of the detainee for a stated period not exceeding 2 months and order the withdrawal of the charge at the end of that period if the condition of good behaviour has been observed;
- (b) direct that the charge be withdrawn or that a further or different charge be laid;
- (c) hear and determine the charge; or
- (d) refer the charge to a visiting justice for hearing and determination.

[*Section 13F inserted by No. 49 of 1988 s. 6.*]

Hearing of charges

13G. (1) Every charge of a detention offence shall be heard and determined in the presence of the detainee charged in accordance with the prescribed procedure.

(2) The superintendent or visiting justice shall not be bound by the rules of evidence but may admit any evidence considered to be relevant to the charge and may decline to admit repetitious material.

(3) A detainee shall not be represented by a legal practitioner in proceedings before a superintendent or a visiting justice.

[*Section 13G inserted by No. 49 of 1988 s. 6.*]

Imposition of penalties

13H. (1) Where a detention offence is determined by a superintendent and either the detainee admits the charge or the superintendent finds the charge proved, the superintendent may impose either or both of the following penalties—

- (a) a reprimand;

(b) forfeiture of not more than 3 days' remission of sentence to which the detainee is entitled under section 13D, but not more than 14 days' remission of sentence in total may be forfeited under this paragraph in respect of detention offences of which the detainee is found guilty by a superintendent.

(2) Where a detention offence is determined by a visiting justice and either the detainee admits the charge or the visiting justice finds the charge proved, the visiting justice may impose either or both of the following penalties—

(a) a reprimand;

(b) forfeiture of not more than 28 days' remission of sentence to which the detainee is entitled under section 13D.

(3) The superintendent or visiting justice, as the case may be, may order that the penalty or penalties imposed under subsection (1) or (2) shall be suspended on condition of the good behaviour of the detainee for a period not exceeding 2 months and if the condition is observed during that period no penalty shall be imposed.

[Section 13H inserted by No. 49 of 1988 s. 6.]

Superintendent's power of early discharge

13I. The superintendent may authorize the discharge of a child from detention in a detention centre at any time during the period of 3 days immediately before the day when the child's sentence is due to expire.

[Section 13I inserted by No. 49 of 1988 s. 6.]

Removal from detention centre to prison

13J. (1) Subject to subsection (2), upon the application of the Director-General the court, when constituted so as to consist of or include a judge, may direct that the unserved portion of a child's sentence of detention in a detention centre shall be served as imprisonment under the *Prisons Act 1981* and deemed for all purposes to be a sentence of imprisonment for the appropriate period.

(2) A direction under subsection (1) may only be made where—

(a) the court is satisfied that the conduct of the child constitutes a significant risk to the safety or welfare of other children in the detention centre or the staff of the detention centre; or

(b) the child has attained the age of 18 years and has a substantial period of detention to serve.

[Section 13J inserted by No. 49 of 1988 s. 6.]

Removal from prison to detention centre

13K. (1) Subject to subsection (2), where a child is serving a sentence of imprisonment, the Governor may order that all or a specified part of the unserved remainder of the sentence of imprisonment shall be served as detention in a detention centre and deemed for all purposes to be a sentence of detention in a detention centre for the appropriate period, but no such order may be made in respect of any part of the sentence that will remain unserved when the child reaches the age of 18 years.

(2) Notwithstanding subsection (1), a child in respect of whom an order is made under subsection (1) shall continue to be regarded as a prisoner for the purposes of Part III of the *Offenders Probation and Parole Act 1963*.

[*Section 13K inserted by No. 49 of 1988 s. 6.*]

Subsidized facilities and voluntary facilities

14. (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 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.*]

Declaration of subsidized facilities

15. 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.*]

Manager to be approved

16. 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.]

Maintenance by religious denominations

17. 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.]

Judges, magistrates and members may visit centres

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

[Section 18 inserted by No. 49 of 1988 s. 7.]

Visits by officers of Department

18A. The Director-General, or any officer of the Department authorized 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. Sections 19 and 20 repealed by No. 49 of 1988 s. 9.]

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

[20B., 20C., 21., 22., 23. Sections 20B, 20C, 21, 22 and 23 repealed by No. 49 of 1988 s. 9.]

Interpretation

23A². In this section and sections 23B and 23C—

“alternative procedure” means the procedure to be adopted under section 23C;

“child” means a child who has not attained the age of 16 years;

“proceedings” means—

[(a) *deleted*]

(b) the hearing of an application for a declaration that a child is in need of care and protection,

at which the respondent is represented by counsel;

“respondent”, in relation to—

[(a) *deleted*]

(b) a hearing of an application for a declaration that a child is in need of care and protection, means any person who, under section 30 (3) (b), is deemed to be a party to the proceedings.

[Section 23A inserted by No. 127 of 1987 s. 8 (as amended by No. 49 of 1988 s. 91).]

Declaration by Attorney General

23B². (1) Subject to this section, the Attorney General may by notice published in the *Government Gazette* declare that a court held at any place in the State specified in the notice is a court in which the alternative procedure specified in section 23C applies in proceedings.

(2) A declaration under subsection (1) may be revoked or amended by the Attorney General by notice published in the *Government Gazette*.

(3) The Attorney General shall not declare a court at any place to be a court in which the alternative procedure applies unless the Attorney General is satisfied upon a report furnished by the Permanent Head³ that—

(a) there is in the vicinity of the court held at that place a room or place set apart from the court in which the respondent can be held during the trial; and

(b) the respondent in the proceedings can—

(i) view the proceedings on a closed circuit television screen;

(ii) hear the proceedings;

(iii) communicate with his counsel by some efficient means of telecommunication; and

(iv) be viewed by the means of the closed circuit television system by the court,

but so that the respondent is not seen or heard by a witness.

(4) Production of a copy of the *Government Gazette* containing a notice under subsection (1) is conclusive proof that the court held at a place specified in the notice is a court in which the alternative procedure applies in proceedings.

[Section 23B inserted by No. 127 of 1987 s. 8.]

Alternative procedure

23C². (1) Where proceedings are conducted in any court in respect of which a declaration under section 23B is in force the respondent shall be held in a room that is set apart from the court and in which the facilities referred to in section 23B (3) (b) are provided during the taking of evidence given by a child and before that evidence is taken the court shall explain to the child in simple terms that the proceedings will be observed and heard by the respondent on a closed circuit television screen.

(2) Nothing in subsection (1) prevents the respondent being present in the court for the purpose of identification by a child, but for that purpose only, if in the opinion of the court it is necessary for the child to identify the respondent.

(3) Notwithstanding any law or rule of practice where the alternative procedure is adopted under subsection (1) in any proceedings the proceedings shall be deemed to have been held in the presence of the respondent.

[Section 23C inserted by No. 127 of 1987 s. 8.]

[24., 25., 26., 27. Sections 24, 25, 26 and 27 repealed by No. 49 of 1988 s. 9.]

Remand for observation

28. [(1) repealed]

(2) Where it appears to the court that a child charged with an offence or 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.]

Children in Need of Care and Protection and Uncontrolled Children

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

Power to apprehend child in need of care and protection

29. (1) Any officer of the Department authorized 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.

(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 ss. 10 and 40.]

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

30. (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 complaint 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.]

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

Order for detention

31. 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.]

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

31A. (1) Any person who has, either by wilful misconduct or habitual neglect, or by any wrongful or immoral act or omission encouraged or contributed to the commission of any offence by any child or of any act by a child under the age of 14 years which act, if it were committed by a child over 14 years of age, would be an offence, or 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: \$500 or imprisonment with hard labour for 6 months.

[(2) repealed]

(3) The court before whom any person is convicted of an offence under this section may (if such person is a parent or guardian of the child and the child has committed an offence) in lieu of or in addition to any other punishment, order the person convicted—

- (a) to pay any fine which may have been imposed on the child for the offence committed by such child;
- (b) to find good and sufficient security to the satisfaction of the court that the child will be of good behaviour for a period not exceeding 12 months.

(4) If the court orders such security as aforesaid, it may suspend any sentence of imprisonment imposed on the convicted person until there has been a breach in the conditions of the security, and on any such breach occurring the suspension shall be removed, and the sentence shall become operative and may be enforced, and in that case the period of imprisonment imposed by the sentence shall be calculated as from the date of the offender being actually received into prison.

(5) For the purposes of this section any person who in fact has the custody, care, or control of any child shall be deemed to be a guardian of such child.

[Section 31A: Formerly section 137 renumbered as section 31A and amended by No. 73 of 1976 s. 33.]

How an uncontrolled child may be dealt with

32. (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.]

Offending Children

[Heading inserted by No. 73 of 1976 s. 37.]

Bringing child before court and place of detention of child

33. (1) Where a child is required to appear before a court for an offence, the officer on whose decision the child would otherwise be arrested, or the justice or court by which a warrant to arrest may be issued, shall consider whether it would be appropriate to proceed by way of summons rather than arrest.

(2) If a child who is in custody is refused bail under the *Bail Act 1982*, or is not released on bail, he shall, subject to section 28 (2), be taken to and placed in a detention centre.

[Section 33 inserted by No. 87 of 1982 s. 51; amended by No. 49 of 1988 s. 13.]

Apprehension under section 53A of the *Police Act 1892*

33A. Where a child is apprehended under section 53A of the *Police Act 1892*, where practicable, the child should not be taken to a police station or lock-up to be detained until the police officer has first attempted—

- (a) to take the child to his or her place of residence and to release the child into the care of a responsible person, who the police officer reasonably believes is capable of taking care of the child; or
- (b) to release the child into the care of a person under section 53G of the *Police Act 1892*.

[Section 33A inserted by No. 35 of 1989 s. 9.]

How convicted children may be dealt with

34. (1) If any child is found guilty of any offence punishable by imprisonment, the court, in lieu of sentencing such child to imprisonment, may—

- (a) order that the child be detained in a detention centre for such period as the court considers appropriate; or
- (b) order the parent to give security for the good behaviour of such child until the child attains the age of 18 years, or during such shorter period as the court may think sufficient, and upon being satisfied that such security has been given, may dismiss the charge; or
- (c) on being satisfied that such undertakings as the court may approve have been or will be given by the child or the parent or that such punishment as the court may approve has been, or on the undertaking of a near relative will be, inflicted on the child, dismiss the charge or adjourn it until the punishment is carried out or the undertakings given and fulfilled, as the case requires; or
- (d) subject to section 34CA, release the child on probation subject to the supervision of the Department; or
- (e) discharge the child upon his entering into his own recognizance, with or without sureties, in such amount as the court thinks fit, that he will keep the peace and be of good behaviour for a term not exceeding one year; or

(f) impose on the child a fine not exceeding \$1 000.

(2) No order for security shall be made against a parent under this section unless such parent has been summoned to attend before the court and has had an opportunity of being heard.

(3) No order for the payment of a fine shall be imposed on a child unless the court is satisfied after enquiring into the means of that child that the child has the ability to pay either on demand or by instalments related to such means, and a default order shall not be made against a child for non-payment of a fine where that child is below the school leaving age or is receiving full time education unless—

(a) it is a community service order;

or

(b) it is an order made under section 36 (3)⁴ or (4), or section 39G (3) (b) (ii).

[Section 34 amended by No. 15 of 1959 s. 7; No. 29 of 1968 s. 11; No. 73 of 1976 s. 39; No. 57 of 1982 s. 13; No. 49 of 1988 s. 14.]

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

How child convicted of offence not punishable with imprisonment may be dealt with

34B. (1) If any child is found guilty of an offence, which is not punishable by imprisonment, the court in lieu of imposing a fine may—

(a) order the parent of the child to give security for the good behaviour of the child until he attains the age of 18 years, or during such shorter period as the court may think sufficient, and upon being satisfied that the security has been given, may dismiss the charge; or

(b) on being satisfied that such undertakings as the court may approve have been or will be given by the child or the parent or that such punishment as the court may approve has been, or on the undertaking of a near relative will be, inflicted on the child, dismiss the charge or adjourn it until the punishment is carried out or the undertakings given and fulfilled, as the case requires; or

(c) subject to section 34CA, release the child on probation subject to the supervision of the Department; or

(d) discharge the child upon his entering into his own recognizance, with or without sureties, in such amount as the court thinks fit, that he will keep the peace and be of good behaviour for a term not exceeding one year.

(2) No order for the payment of a fine shall be imposed on a child unless the court is satisfied after enquiring into the means of that child that the child has the ability to pay either on demand or by instalments related to such means, and a default order shall not be made against a child for non-payment of a fine where that child is below the school leaving age or is receiving full time education unless—

- (a) it is a community service order;
- or
- (b) it is an order made under section 36 (3)⁴ or (4), or section 39G (3) (b) (ii).

[Section 34B inserted by No. 15 of 1959 s. 8; amended by No. 85 of 1969 s. 7; No. 73 of 1976 s. 41; No. 57 of 1982 s. 14; No. 49 of 1988 s. 16.]

Drug offences

34C. Notwithstanding the provisions of any other Act and in addition to any powers exercisable pursuant to this Act or the *Misuse of Drugs Act 1981*, the court, in dealing with any offence by a child relating to the use, obtaining possession, or self administration of drugs may have regard to the antecedents, character, age and mental condition of the child and taking into account the treatment and future rehabilitation of that child, may—

- (a) remand the case for investigation, or for the parents or the Department to present proposals, and on being satisfied dismiss the case if—
 - (i) the involvement of the child with drugs is of a minor nature, and in the opinion of the court the home circumstances provide adequately for the child; or
 - (ii) acceptable proposals are made by the parents, the Department or any other appropriate authority; or
- (b) subject to section 34CA, release the child on probation subject to the supervision of the Department; or
- (c) order that the child be detained in a detention centre for such period as the court considers appropriate.

[Section 34C inserted by No. 73 of 1976 s. 42; amended by No. 57 of 1981 s. 5; No. 49 of 1988 s. 17.]

Probation orders

34CA. (1) Where a child is found guilty of an offence and the court is of the opinion that it may be appropriate to order the release of the child on probation under this Act, the court must require the

Director-General to cause to be prepared and submitted to the court a report concerning the child, the child's suitability for probation and such other issues as the court considers relevant; and the Director-General shall cause every such requirement to be complied with.

(2) Where the Director-General submits a report to the court that a child is suitable for probation or where otherwise requested to do so by the court, the Director-General shall cause to be submitted to the court in respect of that child a proposed probation agenda containing conditions and undertakings as may be considered appropriate for the benefit of the child.

(3) An order for the release of a child on probation under this Act may be made by the court only where the court considers probation to be suitable for the child in all the circumstances after considering the report submitted to it under subsection (2) and where a probation agenda containing conditions and undertakings considered appropriate for the benefit of the child has been prepared and attached as an annexure to the order.

(4) A probation order under this Act shall have effect for such period not exceeding 6 months as the court shall specify in the order, except that where the court is constituted so as to consist of or include a judge the court may specify a period not exceeding 2 years.

[Section 34CA inserted by No. 49 of 1988 s. 18.]

Minister may extend, discharge or abridge period of probation

34D. (1) Where a child is found guilty of an offence and is released on probation pursuant to the provisions of this Part during any period other than a period that ceases when he attains the age of 18 years, the Minister may, upon the recommendation of the Director-General in writing, order that the period of release on probation of the child be extended until the child attains the age of 18 years or for any shorter period as the Minister in his absolute discretion thinks fit, and subject to the provisions of section 38 such child shall continue to be released on probation accordingly.

(2) Where a child is found guilty of an offence and is released on probation pursuant to the provisions of this Part for any period, the Minister may, upon the recommendation of the Director-General in writing, order that the child be discharged from probation or order that the period of his release on probation be abridged by such period as the Minister, in his absolute discretion thinks fit and, in that event, the child shall be discharged from probation or continue to be released on probation for the abridged period, as the case may require.

[Section 34D: Section 34D inserted as s. 34C by No. 22 of 1962 s. 6; amended by No. 79 of 1965 s. 13; renumbered as 34D and amended by No. 73 of 1976 s. 43; amended by No. 121 of 1984 s. 18.]

Power to order parent to pay fine, etc., in lieu of child

34E. (1) Where a child is found guilty of an offence with respect to which a fine is imposed on the child or payment of compensation, costs or restitution is ordered, the court on being satisfied that any parent or guardian of the child has condoned to the commission of the offence by neglecting to exercise due care or control of the child and having regard to the financial circumstances of the child and the parent or guardian, shall order that the fine or compensation, costs or restitution be paid—

- (a) by the child; or
- (b) by the parent or guardian; or
- (c) by both the child and the parent or guardian, in such proportions as the court may determine; or
- (d) by the child, but subject to the condition that in default of payment by the child, the fine, compensation, costs or restitution shall be paid by the parent or guardian of the child.

In an order for payment of any sum, the court may direct that such sum be paid by periodical payments.

(2) In any case where a child is charged with an offence, the court may order the parent or guardian of the child to give security for the good behaviour of the child and such order may be made by the court in addition to any order made in respect of the child.

(3) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without the parent or guardian having first been given an opportunity of being heard.

(4) Any sum, other than compensation or restitution ordered to be paid under this section, or payable on the forfeiture of any security as aforesaid, by a parent, may be recovered in the same manner as if the order had been made on the conviction of the parent of the offence with which the child was charged.

(5) An order under subsection (1) or (2) may be made against more than one person and where such an order is made the obligations of the persons against whom the order is made shall be joint and several.

(6) Where the court has made an order for the payment of compensation or restitution under this section, payment shall be made to the clerk of the court for the transmission to the person in whose favour the order was made.

(7) A person to whom payment of compensation or restitution is to be made under this section may recover any amount in arrear by obtaining from the clerk of the court a certificate given by the clerk as to the amount due under the order to the person and not paid, and

upon the filing of the certificate in the office of the clerk of a Local Court, the certificate shall be deemed to be a judgment that requires payment of money duly made by a Local Court and may be enforced accordingly.

(8) For the purposes of this section, “guardian” in relation to a child includes any person having the custody, care or control of the child for a period other than one which the court considers to be limited or temporary, or who receives any pension, benefit or allowance for or in respect of that child, but does not include the Director-General or any officer of the Department, licensed foster parents, school teachers, or members of the staff of any detention centre or Departmental or other facility.

[Section 34E: Section 34E inserted as s. 137A by No. 36 of 1956 s. 2; amended by No. 113 of 1965 s. 8 (1); renumbered as 34E and amended by 73 of 1976 s. 44; amended by No. 77 of 1979 s. 5; No. 121 of 1984 s. 18; No. 49 of 1988 s. 19.]

Child not to be imprisoned for non-payment of fine, etc.

35. (1) No child shall be liable to imprisonment for failure to pay any penalty, compensation, or sum of money or costs adjudged to be paid by a conviction or order of any court of summary jurisdiction, but a child shall be liable to be sent to and detained in a detention centre for such period as he might have been imprisoned but for the provisions of this section, and the provisions of the *Justices Act 1902*, shall apply, the necessary changes and adaptations being made, in respect of such child as if detention in a detention centre were substituted therein for imprisonment.

(2) The provisions of subsection (1) do not apply to a person where he is convicted, or the order is made, after he attains the age of 18 years.

(3) Where a person—

- (a) became, after he attained the age of 17 years but before he attained the age of 18 years, liable to pay a penalty, compensation, or sum of money or costs adjudged to be paid by a conviction or order of the court a court of summary jurisdiction; and
- (b) has since attained the age of 18 years and has failed to pay the penalty, compensation, or sum of money or costs adjudged by the conviction or order of the court,

the court may, notwithstanding that the person has attained the age of 18 years, require the person to appear before that court or some other more convenient court of summary jurisdiction specified by that court and, in default of his appearance, issue a warrant ordering the person to be apprehended and be brought before such a court to show cause why a warrant of commitment for the imprisonment of the person should not be issued.

(4) The court before which a person appears or is brought pursuant to subsection (3) shall hear and determine the matter and may—

(a) issue a warrant of commitment of the person to gaol for such period as it thinks fit, but not exceeding the period that would be applicable according to the scale specified in section 167 of the *Justices Act 1902*; or

(b) decline to issue such a warrant, in which event the person shall cease to be liable to be imprisoned in respect of his failure to pay the penalty, compensation, or sum of money or costs.

(5) The provisions of the *Justices Act 1902*, insofar as those provisions are not inconsistent with subsection (4), shall apply, with such modifications and adaptation as are necessary, to the imprisonment of a person pursuant to that subsection, as if the person were committed to imprisonment under a warrant of commitment issued under section 157 or 158 of that Act.

(6) The Director-General or some officer of the Department may be present at, and if present is entitled to be heard on any matter concerning, any proceedings brought before a court pursuant to subsection (4).

(7) Where for the purposes of this section a court other than the court originally dealing with the matter is concerned with the enforcement of any conviction or order that other court shall be deemed to have the like jurisdiction as the court originally dealing with the matter.

(8) Where under this section a child would be liable to be sent to and detained in a detention centre pursuant to a warrant of commitment for default but is at the material time serving a sentence of imprisonment the period of detention required by that warrant may be served concurrently with the period of imprisonment and the warrant shall be given effect to accordingly.

[Section 35 amended by No. 27 of 1967 s. 12; No. 85 of 1969 s. 8; No. 39 of 1970 s. 3; No. 73 of 1976 s. 45; No. 121 of 1984 s. 18; No. 49 of 1988 s. 40.]

No execution or detention in default of payment of fine

36. (1) Notwithstanding anything contained in sections 155, 159, and 167, of the *Justices Act 1902*, or in section 35 of this Act, it shall not be obligatory upon the court to issue any warrant of execution or to impose any alternative of detention in default of a payment to which this section applies by any child.

(2) No warrant of execution or warrant of commitment shall be issued against any child until 14 days have lapsed since—

(a) the relevant conviction or order; and

- (b) the release of the child from prison, or from any detention centre in which he has been detained, whether for the same or any other offence,

unless that child is at the material time serving a sentence of imprisonment or is detained in a detention centre on other grounds.

[(3) *repealed*]

(4) Where a child, in respect of whom a community service order may, subject to the consent of the child, be made, defaults in making a payment to which this section applies, the court may, whether or not any order has been made for detention in default of the payment, issue a summons requiring the child to appear before the court and, in default of the child so appearing, issue a warrant ordering the child to be apprehended and be brought before the court and, upon the child so appearing or being so brought before the court, the court may invite the child to consent to the making of a community service order by the court in respect of the payment and, where the child declines to so consent and an order has not been made for detention in default of the payment, the court shall, unless sufficient cause to the contrary is shown, make an order for the detention of the child in respect of the default and issue a warrant of commitment accordingly or make an order for the detention of the child to take effect if, after such further time as may be fixed by the order, the child is still in default.

(5) Where a child appears or is brought before a court pursuant to subsection (4) and the court makes a community service order under section 39A (1) (b) for the performance of unpaid work as an alternative to the payment—

- (a) notwithstanding any order that has been made for detention in default of the payment, no warrant of commitment for the default shall be issued except in accordance with section 39G (3); and

- (b) the discharge of the community service order—

(i) by performance of the work; or

(ii) by a court pursuant to section 39J,

shall be taken to be satisfaction of the obligation to make the payment.

(6) This section applies to—

- (a) the payment of a fine imposed by a court under this Act or under the provisions of any other Act; and

- (b) the payment of costs or charges incurred in relation to proceedings or a sum ordered to be paid upon the forfeiture of a recognizance under this Act or under the provisions of any other Act.

[Section 36 amended by No. 27 of 1967 s. 13; No. 73 of 1976 s. 46; No. 57 of 1982 s. 15; No. 61 of 1984 s. 2; No. 49 of 1988 ss. 20 and 40.]

Detention of a child pending trial

37. Any child may be detained in a detention centre during the period for which he has been remanded by a court or any justice or justices, or during the period of his detention on committal for trial in the Supreme Court or The District Court of Western Australia.

[Section 37 amended by No. 79 of 1965 s. 14; No. 73 of 1976 s. 47; No. 49 of 1988 s. 40.]

Child released on probation may be arrested without warrant in certain cases

38. (1) If the conditions upon which any child is released by the court pursuant to the provisions of this Part are not observed by the child or responsible person or persons, or if the Director-General shall not be satisfied with the conduct of the child or the responsible person or persons aforesaid whilst the child is released whether by order of the court or pursuant to the order of the Minister made under section 34D the probation officer having the control of the child may, without any authority other than that of this section, cause the child to be apprehended and disposed of, in the manner provided for the disposition of an apprehended child, under section 33.

(2) Where a child has been apprehended pursuant to subsection (1), a responsible officer with the approval of the Director-General may cause the child to be brought before the court, and the court may exercise such of the powers conferred by this Act as are appropriate and the circumstances require.

[Section 38 amended by No. 45 of 1955 s. 2; No. 22 of 1962 s. 7; No. 79 of 1965 s. 15; No. 85 of 1969 s. 9; No. 73 of 1976 s. 48; No. 121 of 1984 s. 18; No. 49 of 1988 s. 40.]

Child over 17 years may be placed on probation

39. [(1) repealed]

(2) Where a child is convicted of an offence but will attain the age of 18 years within the period of one year thereafter, the court may release the child on probation for a period not exceeding 12 months and effect shall be given to that order notwithstanding any other provision of this Act or the fact that the child during that period attains the age of 18 years, and the provisions of section 38 shall apply thereto.

[Section 39 inserted by No. 73 of 1976 s. 49; No. 49 of 1988 s. 21.]

Community service orders

39A. (1) Subject to sections 39C and 39D—

- (a) where a child is before the court and may be dealt with under section 34 (1), or section 34B (1), the court may, upon recording a conviction or without proceeding to conviction, make an order requiring the child to perform unpaid work, in accordance with this section and sections 39B to 39P and the regulations, for such number of hours as may, subject to section 39D, be specified in the order;
- (b) where a child appears or is brought before the court at a specified place pursuant to section 36 (4), the court may make an order requiring the child to perform unpaid work, in accordance with this section and sections 39B to 39P and the regulations, for such number of hours as may, subject to section 39D, be specified in the order.

(2) Subsection (1) applies to—

- (a) a child who is before the court and may be dealt with under section 34 (1), or section 34B (1);

or

- (b) a child who appears or is brought before the court pursuant to section 36 (4) by reason of a default in the payment of a fine,

notwithstanding that the offence for which the child is before the court was committed, or the default occurred, as the case may be, before the day of the coming into operation of section 16 of the *Child Welfare Amendment Act 1982*.

(2a) Subsection (1) applies to a child who appears or is brought before the court pursuant to section 36 (4) by reason of a default in the payment of costs, charges or a sum ordered to be paid upon the forfeiture of a recognizance notwithstanding that the default occurred before the coming into operation of the *Child Welfare Amendment Act (No. 2) 1984*.

(3) A community service order shall appoint the court at a specified place being—

- (a) the court nearest to the place where the child in respect of whom the community service order is made intends to reside;
- or
- (b) the court that the court making the community service order deems most convenient in the circumstances,

to be the supervising court in respect of the community service order, and the court so appointed, or such other court as is appointed pursuant to section 39B, shall for the purposes of this Act be the supervising court in respect of that community service order.

(4) A community service order shall require the child in respect of whom it is made to present himself in person at a place specified in the community service order, to an officer of the Department so specified, at or within such time (if any) as is so specified.

(5) The court by which a community service order is made shall cause the community service order to be evidenced in writing and, as soon as practicable after the community service order is made, shall—

- (a) cause a copy of the community service order to be given to the child in respect of whom it is made;
- (b) cause a copy of the community service order to be sent to the Department; and
- (c) where the court is not itself the supervising court, cause a copy of the community service order to be sent to the clerk of the supervising court, together with such documents and information relating to the child in respect of whom, and the offence in respect of which, the community service order is made as the court making the community service order considers likely to be of assistance to the supervising court.

(6) The Department shall assign an officer of the Department to be the relevant officer in respect of a community service order and may from time to time so assign another officer in place of the officer previously assigned.

(7) Where the court makes a community service order under subsection (1) (a) in respect of a child found guilty of an offence—

- (a) subject to paragraph (b), for the purpose of the making, under this or any other Act, of any order that may be, or is required to be, made by the court upon convicting a person of such an offence (but not for any other purpose), the making of the community service order is deemed to be a conviction of the offence in respect of which the community service order is made;
- (b) the court shall not sentence the child to imprisonment or impose a fine on the child or deal with him under section 34 (1) or section 34B (1), for the offence in respect of which the community service order was made except pursuant to section 39G (3) or section 39J (2).

(8) Where a child discharges a community service order made under subsection (1) (a) by performing work, in accordance with section 39E, for the number of hours specified in the community service order, the relevant officer shall give to the supervising court notice in writing, a copy of which is sent to the child, that the community service order has been so discharged and where the supervising court—

- (a) receives notice given pursuant to this subsection that the community service order has been discharged; or
- (b) itself discharges the community service order pursuant to section 39J (1) (a),

the supervising court shall, without proceeding to conviction, and, in the circumstances referred to in paragraph (a), without requiring the attendance of any party to the proceedings, dismiss the complaint of the offence in respect of which the community service order was made, but the dismissal of the complaint shall not be taken to affect any other order made, or disqualification imposed, by the court that made the community service order.

[Section 39A inserted by No. 57 of 1982 s. 16; amended by No. 61 of 1984 s. 3; No. 49 of 1988 ss. 22 and 40.]

Substitution of new supervising court

39B. (1) Where the court at a place, or the clerk of the court at a place, that is the supervising court in respect of a community service order is satisfied that a child has changed or proposes to change his place of residence and that, as a result of that change, the court at some other place is or will be the nearest court to the new place of residence of the child or the most convenient in the circumstances of the case, the supervising court or the clerk of the supervising court may, from a date to be endorsed on the community service order, appoint the court at that other place as the supervising court.

(2) Where under subsection (1) a court is appointed as the supervising court in respect of a community service order the clerk by whom the appointment is made shall endorse the community service order to that effect and send to the new supervising court a copy of the endorsed community service order, together with such documents and information relating to the child in respect of whom, and the offence in respect of which, the community service order is made, as the clerk considers likely to be of assistance to that court.

[Section 39B inserted by No. 57 of 1982 s. 16; amended by No. 49 of 1988 ss. 23 and 40.]

Circumstances in which a community service order may be made

39C. (1) The court shall not make a community service order requiring the performance of work by a child unless—

- (a) the child consents to the making of the community service order;
- (b) at all times during which the work is to be performed the child will have attained the age of 12 years;
- (c) the court has been notified by the Department that arrangements exist for children who reside in the area in which the child intends to reside to perform work under a community service order; and

(d) the court is satisfied, after considering a report from the Department about the child and the circumstances of the child and, if the court thinks necessary, hearing an officer of the Department, that—

- (i) the child is a suitable child to perform work under a community service order; and
- (ii) work of a suitable nature can be provided for the child under the arrangements mentioned in paragraph (c) if a community service order is made.

(2) For the purposes of subsection (1) the court may, in order to obtain—

- (a) any notification or report from the Department; or
- (b) the attendance before the court of any officer of the Department,

adjourn the hearing of the proceedings.

(3) Before making a community service order the court shall explain, or cause to be explained, to the child in respect of whom it is proposed to make the community service order, in language likely to be readily understood by the child—

- (a) the purpose and effect of the community service order;
- (b) the consequences that may follow if the child fails to comply with the community service order or with any of the prescribed requirements; and
- (c) that the community service order may be reviewed on the application of the child or of the relevant officer.

(4) Where the court has made a community service order in respect of a child, the child and any parent, guardian, or other person *in loco parentis* who was present when the community service order was made shall, upon request, sign a written acknowledgement endorsed on a copy of the community service order to the effect that the community service order was made with the consent of the child and the purpose and effect of the community service order are understood, but the fact that in a particular case such an acknowledgement may not have been signed shall not be taken to postpone or otherwise alter the effect of the community service order.

[Section 39C inserted by No. 57 of 1982 s. 16; amended by No. 87 of 1982 s. 52; No. 49 of 1988 ss. 24 and 40.]

Hours of service under community service orders

39D. The court shall not make a community service order requiring a child to perform work where, after the making of that community service order, the aggregate number of hours of work required to be performed by the child under that community service order, or under that and any other community service order, would be—

- (a) less than the number prescribed for the purposes of this paragraph, or if no number is so prescribed, 10; or
- (b) more than the number prescribed for the purposes of this paragraph, or if no number is so prescribed, 70.

[Section 39D inserted by No. 57 of 1982 s. 16; amended by No. 49 of 1988 s. 40.]

Obligations of offender

39E. (1) A child in respect of whom a community service order is in force shall—

- (a) perform such work as the relevant officer directs at such times as the relevant officer directs for the number of hours specified in the community service order;
- (b) perform that work in a satisfactory manner;
- (c) while performing that work comply with any reasonable direction of an overseer; and
- (d) inform the relevant officer of any change in his address.

(2) Where a child in respect of whom a community service order is in force fails to comply with the community service order or with any prescribed requirement, the relevant officer shall make a complaint of the failure under section 39G (1) unless the relevant officer is satisfied that, having regard to the circumstances and gravity of the failure, it would be inappropriate to make such a complaint.

(3) In giving directions to a child under subsection (1) the relevant officer and any overseer shall, so far as practicable, avoid—

- (a) any conflict with the religious beliefs of the child; or
- (b) any interference with the times, if any, at which the child normally works or attends a school or other educational establishment.

(4) A child in respect of whom a community service order is in force shall perform the number of hours of work specified in the community service order during the period of 3 months commencing from the date of the community service order or such extension of that period as the court may allow under section 39G or 39H, but that period shall not be

extended under section 39G or 39H so as to permit work to be performed under the community service order by the child at a time when he has attained the maximum age set out in section 39C (1) (b).

[Section 39E inserted by No. 57 of 1982 s. 16.]

Duration of community service order

39F. (1) A community service order made under section 39A (1) (a) in respect of a child remains in force until—

- (a) the community service order is discharged by the child performing work, in accordance with section 39E, for the number of hours specified in the community service order;
- (b) the community service order is discharged, pursuant to section 39J (1) (a), by the court; or
- (c) the child is dealt with, under section 39G (3) (a) or section 39J (2), for the offence in respect of which the community service order was made.

(2) A community service order made under section 39A (1) (b) in respect of a child remains in force until—

- (a) the community service order is discharged by the child performing work, in accordance with section 39E, for the number of hours specified in the community service order;
- (b) the community service order is discharged, pursuant to section 39J (1) (a), by the court;
- (c) the obligation to make the payment in respect of which the community service order was made is otherwise satisfied; or
- (d) the child serves the period of detention specified in a warrant of commitment issued pursuant to an order for detention in default of a payment, or such period as reduced in accordance with section 39J (3) (b) or section 167 (4) of the *Justices Act 1902*.

[Section 39F inserted by No. 57 of 1982 s. 16; amended by No. 61 of 1984 s. 4; No. 49 of 1988 s. 40.]

Breach of requirements of, or relating to, community service order

39G. (1) If at any time while a community service order is in force in respect of a child it appears on complaint in writing to the court that the child has failed to comply with the community service order or with any prescribed requirement, the court may issue a summons requiring the child to appear, at the time specified in the summons, at the court

by which the community service order was made or at the supervising court, or may, if the complaint is in writing and on oath, issue a warrant for the arrest of the child directing that the child be brought before one of those courts as soon as practicable after his arrest.

(2) The court before which the child is required to appear or is directed to be brought pursuant to subsection (1) has jurisdiction to exercise the powers conferred on it by this section notwithstanding any provision of any other Act.

(3) If the court before which a child appears or is brought pursuant to subsection (1) finds that the child has failed to comply with any requirement of the community service order or with any prescribed requirement, that court may, subject to subsection (4), with or without extending, in relation to the community service order, the period of 3 months specified in section 39E (4), or that period as previously extended under this Act, increase the number of hours for which the child is required to perform work under the community service order or may—

- (a) where the community service order was made under section 39A (1) (a)—deal with the child for the offence in respect of which the community service order was made in any manner in which the court by which the community service order was made could have dealt with him at the time it found him guilty of that offence;
- (b) where the community service order was made under section 39A (1) (b) upon default in making a payment—
 - (i) if any order has been made for detention in default of making the payment—issue a warrant of commitment for the default; or
 - (ii) if an order has not been made for detention in default of making the payment—make an order for the detention of the child in respect of the default and issue a warrant of commitment accordingly.

(4) The court shall not increase the number of hours for which a child is required to perform work under a community service order in circumstances in which the court would be prevented by section 39C (1) from making a community service order nor so as to require the performance of work where, or to an extent that, section 39D (b) would prevent the making of such a requirement in a community service order.

(5) A complaint under this section that a child has failed to comply with a requirement of a community service order, or with a prescribed requirement, may aver that the child is the child in respect of whom the relevant community service order was made, and in any proceedings under this section upon a complaint containing such an averment the child may be asked by the court before which he appears or is brought whether he was found guilty of the offence in respect of which the relevant community service order was made or, as the case may be,

whether the fine in respect of which the community service order was made was imposed on him and whether he defaulted in the payment of the fine, or whether the costs, charges or sum in respect of which the community service order was made were ordered to be paid by him and whether he defaulted in such payment, and if he admits that he was so found guilty, or that the fine was imposed on him and he defaulted in the payment of the fine, or that the costs, charges or sum were ordered to be paid by him and he defaulted in the payment, as the case may be, no further or other proof of the fact or facts so admitted is required.

[Section 39G inserted by No. 57 of 1982 s. 16; amended by No. 61 of 1984 s. 5; No. 49 of 1988 s. 40.]

Extension of time for performing work

39H. Subject to section 39E (4), where a community service order is in force in respect of a child and, on the application of the child or the relevant officer, it appears to the supervising court that it would be in the interests of justice to do so having regard to circumstances that have arisen since the community service order was made, the court may extend, in relation to the community service order, the period of 3 months specified in that section.

[Section 39H inserted by No. 57 of 1982 s. 16.]

Discharge and amendment of community service orders and substitution of other penalties or orders

39J. (1) Where a community service order is in force in respect of a child and, on the application of the child or the relevant officer, it appears to the court that it would be in the interests of justice to do so having regard to circumstances that have arisen or become known since the community service order was made, the court may—

- (a) discharge the community service order; or
- (b) reduce the number of hours for which the child is required to perform work under the community service order.

(2) Where a community service order made under section 39A (1) (a) in respect of a child is in force and, on the application of the relevant officer, it appears to the court that it would be in the interests of justice to do so having regard to circumstances that have arisen or become known since the community service order was made, the court may deal with the child for the offence in respect of which the community service order was made in any manner in which the court by which the community service order was made could have dealt with the child at the time it found him guilty of that offence.

(3) Where a child satisfactorily performs work under a community service order made under section 39A (1) (b) for a number of hours less than that specified in the community service order—

- (a) the amount required to be paid in full satisfaction of the obligation to make a payment shall be reduced by a sum that bears the same ratio to that amount as the number of whole hours of work so performed bears to the number of hours of work specified in the community service order; and
- (b) any term of detention that, before the community service order was made, was ordered to be served in default of the payment shall be reduced by a period that bears the same ratio to that term as the number of whole hours of work so performed bears to the number of hours of work specified in the community service order.

(4) The court has jurisdiction to exercise the powers conferred by this section notwithstanding any provision of any other Act.

[Section 39J inserted by No. 57 of 1982 s. 16; amended by No. 61 of 1984 s. 6; No. 49 of 1988 s. 40.]

Notice of applications, etc.

39K. (1) Where an application is made to the court by the relevant officer under section 39H or section 39J (1) or (2), the court shall issue a summons requiring the child concerned to appear before the court on the hearing of the application and, if the child does not appear in answer to the summons, may issue a warrant for the arrest of the child.

(2) Where an application is made to the court by a child under section 39H or section 39J (1), the court shall cause notice of the application and of the time and place fixed for the hearing to be served on the relevant officer.

[Section 39K inserted by No. 57 of 1982 s. 16; amended by No. 49 of 1988 s. 40.]

Notification of discharge, amendment of orders, etc.

39L. (1) Where, pursuant to section 39G, 39H or 39J, the court—

- (a) discharges a community service order;
 - (b) varies the number of hours for which a child is required to perform work under a community service order;
- or

(c) extends the period of 3 months specified in section 39E (4), the court shall cause notice in writing of the discharge, variation or extension to be given to—

- (d) the child;

- (e) a parent, guardian, or other person standing in *loco parentis* to the child, if the whereabouts of such a person are known to, or can be ascertained by reasonable inquiry by, the clerk of the court;
- (f) the relevant officer; and
- (g) if that court is not the supervising court, the supervising court.

(2) A reference in subsection (1) of this section or in section 39A, 39D, 39E, 39F, 39G, or 39J to the number of hours of work specified in, or required to be performed under, a community service order shall, where that number has been varied pursuant to section 39G or 39J, be construed as a reference to that number as so varied.

[Section 39L inserted by No. 57 of 1982 s. 16; amended by No. 49 of 1988 s. 40.]

Order and subsequent conduct to be taken into account in sentencing

39M. Where a child in respect of whom a community service order has been made under section 39A (1) (a) is subsequently dealt with by the court for the offence in respect of which the community service order was made the court, in dealing with the child, shall take into account—

- (a) that the community service order was made;
- (b) anything done under the community service order,

and may take into account, either as an aggravating or a mitigating factor, the behaviour of the child since the community service order was made.

[Section 39M inserted by No. 57 of 1982 s. 16; amended by No. 49 of 1988 s. 40.]

Compensation

39N. Where a child in respect of whom a community service order is in force is lawfully engaged in remunerative employment he shall, in respect of—

- (a) work performed by him under the community service order; and
- (b) travelling done by him in order to perform work under the community service order,

be deemed to be a worker employed by the Crown for the purposes of the *Workers' Compensation and Assistance Act 1981* and where, for the purposes of calculating the compensation payable under that Act,

reference must be made to weekly earnings, the weekly earnings shall be deemed to be equal to the weekly earnings of the child in his lawful employment at the relevant time.

[Section 39N inserted by No. 57 of 1982 s. 16.]

Regulations under this Part

39P. Without limiting the generality of section 149 regulations made for the purposes of the provisions of this Act relating to community service orders may—

- (a) prescribe offences for the purposes of the definition of “prescribed offence” in section 4;
- (b) provide for the appointment of overseers to oversee children in the performance of work under community service orders;
- (c) regulate the conduct of overseers, and of children in respect of whom a community service order is made, and provide for the health and safety of overseers, and of such children;
- (d) prescribe for the purposes of paragraphs (a) and (b), respectively, of section 39D, minimum and maximum numbers of hours in lieu of those set out in those paragraphs;
- (e) prescribe the maximum number of hours of work that a child may be required to perform under a community service order on any one day;
- (f) provide for travelling and transport arrangements to be made for children performing work under community service orders;
- (g) prescribe the effect of injury and sickness in relation to community service orders;
- (h) prescribe periods to be taken into account in computing the number of hours of work performed by a child under a community service order.

[Section 39P inserted by No. 57 of 1982 s. 16.]

Conditional release orders

39Q. (1) Where a child is found guilty of an offence and sentenced to a term of detention in a detention centre, and the court is of the opinion that it may be appropriate to order the release from detention of the child conditional upon the child’s participation in a conditional release programme, the court must require the Director-General to cause to be prepared and submitted to the court a report concerning the availability of a programme, the child’s suitability for conditional release for participation in the programme, an outline of the programme proposed to be undertaken by the child and such other issues as the court considers relevant.

(2) The Director-General shall cause every requirement under subsection (1) to be complied with.

(3) An order for the release of a child who is sentenced to detention in a detention centre may be made conditionally upon participation by the child in a conditional release programme and the conditions and undertakings considered appropriate for the benefit of the child shall be set out and attached as an annexure to the order.

(4) If at any time while a conditional release order is in force in respect of a child it appears to the Director-General or other person responsible for the child's participation in the programme that the child has failed to comply with an undertaking or condition of the order or any prescribed requirement, a complaint on oath must be made by or on behalf of the Director-General or that person to the court and the court may issue a warrant for the arrest of the child directing that the child be brought before the court as soon as practicable after arrest.

(5) If after hearing the complaint the court finds that the child has failed to comply with any undertaking or condition of the order or any prescribed requirement, the court may—

- (a) cancel the conditional release order and direct that the child serve that part of the sentence of detention in a detention centre that has not been served; or
- (b) amend the conditions of the conditional release order and permit the child a further opportunity to satisfy the order.

[Section 39Q inserted by No. 49 of 1988 s. 25.]

Recording of convictions

39R. (1) If a child is found guilty of an offence and is dealt with in respect of that offence by the court under—

- (a) section 34 (1) (d), 34B (1) (c) or 34C (b);
- (b) section 34 (1) (e) or 34B (1) (d);
- (c) section 34 (1) (f); or
- (d) section 39A,

or by the imposition of a fine, the court need not record a conviction, but the court may in any particular case direct that a conviction be recorded.

(2) If a child is found guilty of an offence and is dealt with in respect of that offence by the court imposing a sentence of imprisonment or detention in a detention centre (whether or not a conditional release order is made), the court must in every case record a conviction.

[Section 39R inserted by No. 49 of 1988 s. 25.]

Rehabilitated offenders

40. (1) The provisions of this section do not apply to, or in relation to persons convicted of, wilful murder, murder, manslaughter or infanticide or of attempting any of those crimes.

(2) Where a child is convicted of an offence and—

- (a) a probation order is made with respect to that child in relation to the offence and the child has not been subsequently dealt with for that offence under any law relating, whether in the State or elsewhere, to probation orders in respect of child offenders; or
- (b) a period of 2 years has expired since—
 - (i) the date of conviction; or
 - (ii) the discharge of any sentence or order imposed in relation to the conviction,
 whichever is the later,

that conviction shall, subject to the provisions of this section, be deemed not to be a conviction for any purpose including the purposes of any enactment imposing or authorizing or requiring the imposition of any disqualification or disability on a convicted person, except in relation to—

- (c) the making of the order, or any other order arising out of the conviction, or any other record thereof; or
- (d) any subsequent proceedings that may be taken against the offender under this Act or on indictment in relation to that offence or for a subsequent offence.

(3) The provisions of this section do not affect—

- (a) the right of any person to appeal against his conviction or to rely thereon in bar of any subsequent proceedings for the same offence;
- (b) the revesting or restoration of any property in consequence of the conviction;
- (c) the right of the court to disqualify a person from holding or obtaining a driver's licence issued under the *Road Traffic Act 1974*; or
- (d) the operation of section 39C (1).

[Section 40 inserted by No. 73 of 1976 s. 50; amended by No. 57 of 1982 s. 17; No. 89 of 1986 s. 13; No. 49 of 1988 s. 40; No. 70 of 1988 s. 46.]

General Provisions

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

Orders for maintenance of wards

40A. (1) Where, in any proceeding under this Part, or under section 17B or 18 of the *Education Act 1928*, 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 complaint 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.

(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 of Western Australia created by the *Family Court Act 1975* for registration in the manner provided by the regulations in force under that Act or by the rules in force of that family court; and the order shall, when so registered, be deemed, for all purposes, to be an order of that 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.]

[41. *Section 41 repealed by No. 79 of 1965, s. 19.*]

[42. *Section 42 repealed by No. 43 of 1962, s. 3.*]

Form of order

43. (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.*]

Statement of age and religion to be *prima facie* evidence

44. 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.*]

Director-General to give child a name

44A. (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.*]

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

45. A certificate indorsed upon or annexed to any order and signed by the person in charge of any detention centre or 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.]

Absconders may be apprehended without warrant

46. A ward or child placed under the control of the Department who runs away from any detention centre, 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 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.]

Minister may release child

47. (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 ss. 26 and 40.]

Authority for Minister to commit child to care of Department

47A. (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.]

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

47B. (1) Where it appears to the Minister that a child is left without parent or guardian, or the whereabouts of any parent, near 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.]

Parents may apply for committal of child

47C. (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.]

Adoptive children

47D. (1) Where it appears to the Minister that a child has been given up for adoption by one of the parents, adoptive parents or guardians of the child and that—

- (a) such parent, adoptive parent or guardian has consented to the adoption of the child pursuant to the *Adoption of Children Act 1896*, the time for the revocation of such consent pursuant to section 4D of that Act having expired; and

- (b) the consent of another parent or guardian of the child must be given or dispensed with before an order of adoption can be made,

the Minister may by order under his hand commit the child to the care of the Department.

(2) Where an order is made by the Minister pursuant to this section, a parent, adoptive parent or guardian of the child who has not consented to the adoption of the child or whose consent has not been dispensed with may apply to the court within 3 months of the making of that order for cancellation of the order and 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 47D inserted by No. 73 of 1976 s. 61; amended by No. 49 of 1988 s. 40.]

[48. Section 48 repealed by No. 73 of 1976 s. 62.]

Minister may extend committal

49. (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 with the Family Court of Western Australia under this Act 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 the manner provided by the regulations of that court; and the order shall, when so registered, be deemed, for all purpose, to be an order of that court.

[Section 49 inserted by No. 79 of 1965 s. 23; amended by No. 73 of 1976 s. 63.]

Power to sign documents

50. (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. Section 51 repealed by No. 73 of 1976 s. 66.]

Wards to attend school regularly

52. (1) Every ward shall be sent regularly to school in accordance with the *Education Act 1928*.

[(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.]

[53. Section 53 repealed by No. 73 of 1976 s. 68.]

Wages may be paid into a savings bank

54. (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.]

Moneys banked may be expended for child's benefit

55. (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.]

Director-General may recover wages

56. 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., 58., 59. Sections 57, 58 and 59 repealed by No. 27 of 1967 s. 17.]

Change of residence to be notified by foster-parent

60. 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.]

Notice to be given in certain cases

61. 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. Section 62 repealed by No. 73 of 1976 s. 74.]

[63. Section 63 repealed by No. 73 of 1976 s. 75.]

Placed out children to be visited

64. (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 authorized 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 authorized 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.]

Minister may pay for maintenance of child

65. 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.]

Payments for maintenance of children to foster-parent

66. 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.]

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

66A. (1) The Minister may, by arrangement or agreement made from time to time with the responsible Minister or some other authorized 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.

(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 authorized 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.

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

Restriction on removal of children out of the State

66B. (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.]

Director-General may assist children of absent parents

66C. 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.]

Recovery of certain moneys

66D. (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 the Family Court of Western Australia at the place nearest to that at which the order was made, for registration in the manner provided by the regulations of that court, and the order shall, when so registered, be deemed for all purposes to be an order of that court.

[Section 66D inserted by No. 73 of 1976 s. 82; amended by No. 49 of 1988 s. 40.]

[67., 68., 69. Sections 67, 68 and 69 repealed by No. 79 of 1965 s. 25.]

PART V—CHILDREN'S PANELS

[Heading inserted by No. 73 of 1976 s. 83.]

The children's panel

70. (1) For the purpose of dealing with certain first offenders, in the public interest and in the interest of the child, by means of a procedure other than that of the court there shall be established a body of persons, to be called the Children's (Suspended Proceedings) Panel from which shall be constituted, at such times and in such places as is necessary, children's panels.

(2) Subject to the provisions of subsection (3), no child shall be dealt with by a children's panel—

- (a) unless the child has attained the age of 10 years and it appears to the panel that the child —
 - (i) at the time of the commission of the alleged offence had not attained the age of 16 years; and
 - (ii) at the time of being dealt with by the panel has not attained the age of 16 years and 6 months;
- (b) if that child has on any previous occasion been found to have committed an offence by a children's panel, a children's court or the court;
- (c) unless the offence alleged is an offence to which this Part applies;

- (d) until the panel has caused to be explained to the child—
 - (i) the nature of the allegation, and of the offence, and the penalty that may be imposed; and
 - (ii) that the child may elect to have the matter dealt with by the court;
- (e) unless the panel is satisfied that the child is in no doubt as to the nature of the allegation and of the offence but admits the offence and wishes to have the matter determined by the panel rather than the court;
- (f) if the child elects, or a parent of or person standing in *loco parentis* to the child requests, that the matter shall be dealt with by the court; or
- (g) if, in relation to the kind or amount of any restitution that may be ordered, the parties affected are not agreed.

(3) Notwithstanding the provisions of the *Justices Act 1902*, where a child who has attained the age of 10 years but who appears to that court not to have attained at the time of the commission of the alleged offence the age of 16 years is found by the court to have committed an offence to which this Part applies the court may instead of determining the matter refer the child to a children's panel.

(4) A panel, in dealing with a child, shall have regard to the future welfare of the child.

(5) A person shall not publish in any newspaper or other printed medium, or broadcast or televise, any report of the proceedings of a children's panel or any information likely to identify any child as a person dealt with by a children's panel.

(6) At any proceedings before a children's panel no person, other than a person directly interested in the matter, shall be present without the express permission of the panel.

[Section 70 inserted by No. 73 of 1976 s. 84 (as amended by No. 10 of 1977 s. 7); No. 49 of 1988 ss. 27 and 40.]

Constitution of the panel

71. (1) The Governor may appoint persons who are—

- (a) nominated by the Director-General and authorized by him to represent the Department, being officers of the Department; or
- (b) nominated by the Commissioner of Police and authorized by him to represent the police, being police officers or retired police officers,

to hold office during his pleasure as members of the Children's (Suspended Proceedings) Panel and the appointment of any such person to that office shall be notified in the *Gazette*.

(2) A member of the Children's (Suspended Proceedings) Panel shall hold office until notice of the termination of that appointment by the Governor is published in the *Gazette*.

(3) The chairman of the Children's (Suspended Proceedings) Panel shall—

- (a) be selected by the Director-General from the officers of the Department appointed under subsection (1);
- (b) constitute panels to deal with matters at the places and times that are necessary and practicable;
- (c) report to the Director-General on any matter referred to him by the Director-General or on any matter that a member of a panel considers necessary; and
- (d) keep such records as the Director-General may require.

(4) For the purposes of dealing with any matter, a children's panel shall be constituted from amongst the membership of the Children's (Suspended Proceedings) Panel, shall comprise 2 persons, one of whom is authorized to represent the Department and the other of whom is authorized to represent the police, and shall sit in such places and at such times as the chairman may determine.

(5) Where the members of a children's panel cannot agree on a matter it shall be referred to the court for determination.

(6) The powers of a person sitting as a member of a children's panel derive solely from this Part, notwithstanding that such a person may be a Justice of the Peace or is otherwise authorized to exercise any power under any other Act.

(7) The remuneration and allowances to be paid to a person appointed as a member shall be determined by the Minister after consultation with the Public Service Commissioner⁵.

(8) For every children's panel there shall be a seal; and summonses, orders and notices and other processes issued out of that panel shall be sealed or stamped with the seal.

[Section 71 inserted by No. 73 of 1976 s. 85; amended by No. 121 of 1984 s. 18; No. 49 of 1988 s. 40.]

Offences to which this Part applies

72. (1) The provisions of this Part apply to all offences other than—

- (a) the offences, or the offences in the circumstances therein specified, referred to in the Fourth Schedule, or the offence of counselling or procuring the commission of any such offence; and
- (b) such other offences as may be prescribed.

(2) Where—

- (a) a complaint relates to more than one offence and any of those offences is an offence to which the provisions of this Part do not apply; or
- (b) a number of offences arising out of the same or closely related facts are dealt with by way of separate complaints, and any of those offences is an offence to which the provisions of this Part do not apply,

the matter shall not be dealt with by a children's panel.

(3) A children's panel shall not hear any application or complaint made under the *Education Act 1928*.

[Section 72 inserted by No. 73 of 1976 s. 86.]

Panel procedure

73. (1) A children's panel is not bound by the provisions of the *Evidence Act 1906*, or any rule of evidence at common law or otherwise, and where an offence is admitted the panel may inform itself of the relevant circumstances in such manner and may adopt such procedures, subject to this Act, as the panel determines to be appropriate.

(2) Where any complaint is made against a child and—

- (a) the child is eligible to have the matter dealt with by a children's panel; and
- (b) subject to the provisions of subsection (2) of section 72, the offence is an offence to which this Part applies,

the complaint shall be forwarded to the Children's (Suspended Proceedings) Panel or a children's panel in the prescribed manner and the complaint shall as soon as is practicable thereafter be heard by a children's panel.

(3) Subject to the provisions of this Part, where a complaint to which subsection (2) applies is lodged with the court, the court on ascertaining the nature of the complaint shall refer the matter to the Children's (Suspended Proceedings) Panel and shall not proceed to determine it.

(4) The chairman of the Children's (Suspended Proceedings) Panel at any time, and a children's panel on inquiry or during the course of any hearing, may refer any matter to the court—

- (a) if it appears that the interest and welfare of the child so require;
- (b) where the gravity of the allegations so requires;
- (c) where the child or any other person may be required to make restitution or to pay damages or compensation;
- (d) if the child, or a parent of or person standing in *loco parentis* to the child, fails after due notice to appear before the panel; or

(e) if it appears that the powers conferred by this Part are not adequate in the circumstances.

(5) Where a child is arrested for an offence to which this Part applies and that child is eligible to have the matter dealt with by a children's panel, the child shall be released as soon as is practicable.

(6) Where a child is arrested for an offence to which this Part applies that child shall not be held in custody by reason only of the need to ascertain whether or not he is eligible to have any matter dealt with by a children's panel but the powers in regard to admission to bail may be exercised from time to time until the matter is ascertained.

(7) A notice requiring a person to appear before a panel may be posted to or served upon a person at his usual place of residence.

[Section 73 inserted by No. 73 of 1976 s. 87; amended by No. 87 of 1982 s. 53; No. 49 of 1988 s. 40.]

Powers of the panel

74. (1) Where a children's panel is of the opinion having regard to the antecedents, character, age, health, or mental condition of the child, the nature of the offence, or any special circumstances of the case, that no punishment or penalty should be imposed on a child for an offence the panel may—

(a) dismiss the complaint; or

(b) determine, and explain or cause to be explained to the offender in language likely to be understood by him, that no action will be taken by the panel to award any punishment or penalty in regard to that offence for a period of not more than 6 months but that if during that period he fails to comply with any of the requirements of an order as to supervision or commits a further offence he will, in addition to being liable to be dealt with for that further offence, be liable to be sentenced by the court for the offence for which he is then before the panel.

(2) Where a children's panel determines in accordance with subsection (1) (b) that no action will be taken in relation to an offence for a specified period and the child in question complies with the requirements of any order as to supervision that may be made and commits no further offence during that period, the finding shall be recorded for the purposes of this Act but that finding shall not be taken to be a conviction recorded in relation to the offence for which the child was brought before the panel and the child shall, by force of this section, be discharged from any further obligation in respect of that offence.

(3) Where a children's panel determines in accordance with subsection (1) (b) that no action will be taken in relation to an offence for a specified period and within that period the child in question fails to comply with the requirements of any order as to supervision that may

be made, or is alleged to have committed a further offence, the panel may refer the matter to the court which may deal with the matter and impose sentence.

(4) A children's panel has power to refer any matter in relation to a child to the court if in the opinion of the panel that is the appropriate course, notwithstanding any other provision of this Act.

[Section 74 inserted by No. 73 of 1976 s. 88; amended by No. 49 of 1988 s. 40.]

Effect of admissions

75. Subject to the provisions of section 76, the admission of an allegation of an offence made to a children's panel by a child after the notice of the allegation, and of the offence, and the penalty that may be imposed has been explained to him shall be recorded and for the purposes of any subsequent proceedings before the panel or in any court in respect of that offence constitutes a plea of guilty.

[Section 75 inserted by No. 73 of 1976 s. 89.]

Appeal from decision of a panel

76. Where it is alleged that an admission recorded by a children's panel was improperly obtained or was incorrectly recorded, or where a child, the parent of the child or the person standing *in loco parentis* to the child, is aggrieved by a determination of or order made by a children's panel an appeal lies on application to the court which may make such order in the matter as it thinks just.

[Section 76 inserted by No. 73 of 1976 s. 90; amended by No. 49 of 1988 s. 28.]

Civil liability

77. The provisions of this Part shall be construed so as not to prejudice or affect any civil liability incurred in respect of an act or omission that constitutes an offence.

[Section 77 inserted by No. 73 of 1976 s. 91.]

Departmental services

78. (1) For the purposes of this Part, the Department may make available any service that may be conducive to the welfare of a child brought before a children's panel, notwithstanding that the child is not committed to the care of the Department or placed under the control of the Department.

(2) Where a complaint or application has been made against or concerning a child under this or any other Act the Department, with the written consent of a parent of the child or a person standing in *loco parentis* to the child, may supervise the child or cause the child to be supervised for a period of not more than 6 months.

[Section 78 inserted by No. 73 of 1976 s. 92.]

[79., to 91. Sections 79 to 91 repealed by No. 79 of 1965 s. 25.]

[Part VI. 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.]

Street trading

106. (1) Any female child under school leaving age, and any male child who has not attained the age of 12 years, who engages in street trading shall be guilty of an offence against this Act.

(2) Any male child over the age of 12 years but under school leaving age who engages in street trading after the hour of 11 in the evening or before the hour of 6 in the morning, or during such time as the school which that child should attend is in session, shall be guilty of an offence against this Act unless—

- (a) he has attained the age of 14 years; and
- (b) the trading is engaged in on a casual or part-time basis during the annual or term vacation period of his school; and
- (c) the provisions of subsection (3) have not been applied to him.

(3) Where the Director-General is of the opinion that the moral, physical or mental welfare of a child is likely to be in jeopardy he may, by notice in writing given to that child, expressly prohibit the child from street trading or limit the participation of that child in street trading.

(4) Any child who contravenes the provisions of a notice given to him pursuant to subsection (3) shall be guilty of an offence against this Act.

[Section 106 inserted by No. 73 of 1976 s. 94; amended by No. 121 of 1984 s. 18.]

Penalty for employing child in street trading

107. (1) Any person who causes, procures or employs a child to engage unlawfully in street trading, or who having the custody or guardianship of a child allows that child to engage unlawfully in street trading, shall be guilty of an offence against this Act.

(2) It shall be a defence for a person having the custody or guardianship of a child and charged with allowing that child to engage in street trading contrary to a notice given pursuant to section 106 (3), to show that he was not aware of the imposition of the prohibition or limitation referred to in that notice and had not been informed of that notice by the Director-General.

[Section 107 inserted by No. 73 of 1976 s. 95; amended by No. 121 of 1984 s. 18.]

[108. Section 108 repealed by No. 73 of 1976 s. 96.]

Power for Director-General or authorized officer to enter places of amusement

109. The Director-General or any officer authorized 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.

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: \$20.

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

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.]

Power to assist women in lying-in homes

110. 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.]

Foster-parents to be licensed

111. 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.]

Department may license foster-parents

112. (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 authorized 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 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.]

Penalty for unlicensed foster-parents

113. (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 \$100 or to imprisonment with or without hard labour for not exceeding 3 months.

(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 authorized 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.]

Exceeding licensed numbers

114. 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.]

Lying-in homes to be open for inspection

115. (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. Section 116 repealed by No. 73 of 1976, s. 103.]

Register to be kept by foster-parents

117. (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.

(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 authorized 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. Section 118 repealed by No. 73 of 1976 s. 105.]

[118A., 119. Sections 118A and 119 repealed by No. 105 of 1987 s. 12.]

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

120. (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* 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 IX—PROCEDURE, PENALTIES, AND GENERAL PROVISIONS

[121. Section 121 repealed by No. 49 of 1988 s. 29.]

Officer of Department may conduct cases where complaint made

122. (1) All cases under this Act heard on complaint or application 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 authorized to lay such complaint or make such application and to conduct the case.

[Section 122 amended by No. 22 of 1962 s. 12.]

[123., 124. Sections 123 and 124 repealed by No. 49 of 1988 s. 29.]

Offence of interfering with wards or children placed under control of the Department

125. 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, authorized to receive the child, on demand,

commits an offence.

Penalty: \$2 000 or imprisonment for 3 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.]

[126. Section 126 repealed by No. 49 of 1988 s. 31.]

Disclosure of convictions of rehabilitated persons

126A. (1) Where a conviction is deemed not to have been made pursuant to section 40 then in any proceedings, other than proceedings for that or a subsequent offence in the court or on indictment, no evidence of that conviction shall be admissible.

(2) Except for the purposes of this Act or of any court of law, a person other than the child, shall not disclose the fact of a conviction which by virtue of section 40 is deemed not to have been a conviction.

[Section 126A inserted by No. 73 of 1976 s. 114; amended by No. 49 of 1988 s. 40.]

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

Offence of communicating with children in Departmental centres, etc.

127. Any person who—

- (a) without the authority or permission of the Director-General, or of the governing authority of the detention centre or Departmental facility, in which a child is detained, as the case may be, holds or attempts to hold any communication with that child; or
- (b) enters any detention centre or 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
- (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.]

Offence to permit escape

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

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

[Section 128 inserted by No. 49 of 1988 s. 32.]

Certain persons deemed to be guardians of female child for purposes of *The Criminal Code*

129. When a female child is detained or resides in a detention centre, a Departmental facility or other centre or facility, or has been placed out with any person, then the manager or person having the chief control of that centre or facility (being a male) or such person as aforesaid (if a male) or the husband of such person (if a female) shall be deemed to be the guardian of such child within the meaning of the provisions of *The Criminal Code* relating to sexual offences by guardians.

[Section 129 amended by No. 73 of 1976 s. 117; No. 49 of 1988 s. 40.]

Offence of deserting children

130. (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 complaint 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 complained against, and such person may thereupon be apprehended by any police officer accordingly.

(4) Upon the hearing of a complaint 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 person complained against, or is actually without adequate means of support, and that such person 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 such person, 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 ss. 118, 119 and 124; No. 121 of 1984 s. 18; No. 49 of 1988 s. 33.]

Parents who leave the State

130A. (1) Where it appears upon complaint 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 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 a complaint 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 complaint is laid or the order made who leaves the State commits an offence.

Penalty: \$400 or imprisonment with, or without hard labour 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.]

[131. Section 131 repealed by No. 73 of 1976 s. 119.]

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

[132. Section 132 repealed by No. 73 of 1976 s. 120.]

[133. Section 133 repealed by No. 73 of 1976 s. 121.]

[134. Section 134 repealed by No. 73 of 1976 s. 122.]

[135. Section 135 repealed by No. 73 of 1976 s. 123.]

[136. Section 136 repealed by No. 73 of 1976 s. 124.]

[137. Section 137 repealed by No. 73 of 1976 s. 33.]

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

[138. Section 138 repealed by No. 73 of 1976 s. 127.]

Tattooing

138A. 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 authorizes, 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.]

Immediate care

138B. (1) Where any police officer, or an officer of the Department authorized 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
- (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 this section may make application to the court for an order, and the court may make an order, requiring a parent 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.]

[139. Section 139 repealed by No. 29 of 1968 s. 13.]

[140. Section 140 repealed by No. 73 of 1976 s. 130.]

Persons having custody

141. (1) Any—

- (a) police officer;
- (b) officer of the Department, or officer employed by the Minister in a detention centre or Departmental facility; or
- (c) other person specifically authorized by a court or by an officer of the Department,

who has for the time being charge of a child detained under this Act, the *Children's Court of Western Australia Act (No. 2) 1988* or section 666 of *The Criminal Code*, whether on remand or otherwise, has while engaged in any duty to which this Act relates all such powers, authorities, protection, and privileges for the purpose of the execution of his duty as any police officer has by common law or statute and the child shall be deemed to be in legal custody.

(2) Without prejudice to the generality of subsection (1), a child detained under this Act, the *Children's Court of Western Australia Act (No. 2) 1988* or section 666 of *The Criminal Code* shall be deemed to be in legal custody whilst—

- (a) attending at or travelling between, a court and the place to which he is remanded;
- (b) attending or travelling, to or from a medical or dental practitioner or a hospital;
- (c) attending, or travelling directly to or from, school;
- (ca) in the case of a child sentenced to be detained in a detention centre, participating outside the detention centre in a programme approved by the Minister for children so detained;
- (d) attending, or travelling directly to or from, any activity organized or supervised by officers of the Department employed at a detention centre or Departmental facility to which the child has been remanded; or
- (e) absent from the place to which he has been remanded at a time and for a purpose approved by the Director-General.

[Section 141 inserted by No. 73 of 1976 s. 131; amended by No. 121 of 1984 s. 18; No. 49 of 1988 ss. 34 and 40.]

General penalty

142. (1) Any person who in any particular makes default in compliance with the provisions of this Act 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 or imprisonment for 3 months.

[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.]

[143., 144. Sections 143 and 144 repealed by No. 49 of 1988 s. 36.]

Order to be a defence to actions

145. In every action for anything done in obedience to any order it shall be sufficient for the defendant 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.

[146. *Section 146 repealed by No. 73 of 1976, s. 134.*]

Entry of premises

146A. (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 authorizing 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 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.*]

Personation of officers of Department

146B. 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.*]

Exemption from personal liability

146C. (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.]

[147. Section 147 repealed by No. 73 of 1954 s. 8.]

Appropriation of penalties

148. All moneys received for penalties imposed for offences against this Act shall be paid to the Treasurer, on behalf of Her Majesty, for the public uses of the State.

Regulations

149. (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, visiting justices, visitors, and all other persons employed in the administration of this Act;
- (b) the management, control, and supervision of detention centres, Departmental facilities and other centres and 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;
- (ca) the custody, maintenance, education, work, employment, and discipline of children sentenced to detention in a detention centre;
- (cb) conditional release programmes and the duties and requirements of children participating in such programmes;
- (d) the visitation of children at detention centres, Departmental facilities and other centres and 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;
 - (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 detention centres, Departmental facilities and other centres and facilities, whether subsidized or otherwise;
 - (i) the procedure to be followed in relation to matters, and the offences that may be dealt with, by a children's panel;
 - (j) the form and contents of agreements, appointments, apprenticeship articles, authorities, complaints, 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 ss. 37 and 40.]

FIRST SCHEDULE

(Section 3)

The Child Welfare Act 1907-1941

SECOND SCHEDULE

(Section 15)

SUBSIDIZED FACILITIES⁶

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 BRETHERN ASSEMBLIES

Kurrawang Aboriginal Christian Centre Inc.

CHURCHES OF CHRIST

"Bamburra" Hostel
 Churches of Christ Ingada Village—Carnarvon
 Churches of Christ Aborigines Mission—Norseman
 Churches of Christ Roelands Village
 "Fairhaven" Training Hostel Esperance

METHODIST

Homes for Children
 "Mofflyn"
 "Allendale"
 "Werribee"
 "Bourkedale"
 "Cooinda"
 "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: Third Schedule repealed by No. 49 of 1988 s. 39.*]

FOURTH SCHEDULE

(Section 72)

PART I—OFFENCES UNDER *THE CRIMINAL CODE*

Division A

The offences specified in this Division shall not be dealt with by a children's panel

<i>Section of The Criminal Code</i>	Offence
125	Perjury— if the offender commits the crime in order to procure the conviction of another person for a crime punishable with strict security life imprisonment, or with imprisonment with hard labour for life
134	Conspiracy to bring false accusation— if the offence is such that a person convicted of it is liable to be sentenced to strict security life imprisonment or to imprisonment with hard labour for life
144	Forcibly rescuing offenders sentenced or liable to strict security life imprisonment
185	Unlawful carnal knowledge of child under 13 years ⁷
186	Householder permitting defilement of young person on his premises—if the person is under the age of 13 years ⁸

Section of <i>The Criminal Code</i>	Offence
197	Incest by man
281A	Infanticide
282	Wilful murder Murder
283	Attempt to murder
287	Manslaughter
288	Aiding suicide
290	Killing unborn child
292	Disabling in order to commit an indictable offence
293	Stupefying in order to commit indictable offence
294	Acts intended to cause grievous bodily harm or prevent arrest
295	Preventing escape from wreck
296	Intentionally endangering the safety of persons travelling by railway
296A	Endangering safety of persons travelling by aircraft
298	Causing explosion likely to endanger life
324D	Sexual assault
324E	Aggravated sexual assault
343	Child stealing
390B	Unauthorized use of aircraft— where the offender at or immediately before or immediately after the time he so takes or exercises such control of the aircraft— (i) uses or threatens to use actual violence to any person or persons in order to so take or exercise control of the aircraft or to prevent or overcome resistance to such control being taken or exercised; or (ii) is armed with any dangerous or offensive weapon or instrument; or (iii) is in company with one or more other persons or persons, or if the offender so takes or exercises such control by any fraudulent representation, trick, or device
393	Robbery— if the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds or uses any other personal violence to any person
394	Attempted robbery accompanied by wounding or in company— if the offender is armed with any kind of loaded arms, and at or immediately before or immediately after the time of the assault he wounds any person by discharging the loaded arms
398	Attempts at extortion by threats— if the accusation or threat or accusation is— (a) an offence for which the punishment of imprisonment for life may be inflicted; or (b) any of the offences defined in Chapter 22 of <i>The Criminal Code</i> , or any attempt to commit any of such offences; or (c) any assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful or indecent assault upon a male person; or (d) any attempt to commit the crime of rape, or assault with intent to commit the crime of rape, or an unlawful or indecent assault upon a woman or girl; or

<i>Section of The Criminal Code</i>	Offence
	(e) a solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid
401	Housebreaking: Burglary— if the offence is committed in the night
444	Arson
449	Casting away ships
451	Obstructing and injuring railways
451A	Endangering safety of aircraft with intent
453	Malicious injuries— (i) destroying or damaging an inhabited house, or a vessel with explosives (ii) destroying or damaging sea bank or sea wall, navigation works, or bridges
454	Causing explosion likely to do serious injury to property
473	Forgery—public seals
511	Personation of owner of shares

Division B

The offences specified in this Division shall not be dealt with by a children's panel where, as a result of the alleged offence, a person has been killed or has suffered bodily harm or unlawful wounding as defined in *The Criminal Code*.

<i>Section of The Criminal Code</i>	Offence
268	Unlawful killing
271	Death by acts done at child birth
272	Causing death by threats
273	Acceleration of death
275	Injuries causing death in consequence of subsequent treatment
277	Unlawful homicide
278	Wilful murder
279	Murder
280	Manslaughter
281	Killing on provocation
282	Punishment for wilful murder and murder
283	Attempted murder
287	Manslaughter
288	Aiding suicide
290	Killing an unborn child
294	Acts intended to cause grievous bodily harm or prevent arrest
297	Grievous bodily harm
299	Attempting to cause explosion likely to endanger life
300	Maliciously administering poison with intent to harm
301	Unlawful wounding
305	Setting mantraps
306	Negligent acts causing harm
317	Assaults occasioning bodily harm

PART II—OFFENCES IN WHICH THE POSSESSION OF DRUGS OR PROHIBITED PLANTS FOR THE PURPOSE OF SALE IS AN ELEMENT

Item	Section of <i>Misuse of Drugs Act 1981</i>	Offence
1.	6 (1) (a).....	Having in possession drug with intent to sell or supply it to another
2.	6 (1) (c).....	Selling or supplying, or offering to sell or supply, drug to another
3.	7 (1) (a).....	Having in possession or cultivating prohibited plant with intent to sell or supply it, or drug obtainable therefrom, to another
4.	7 (1) (b).....	Selling or supplying, or offering to sell or supply, prohibited plant to another
5.	33 (1).....	Attempting, or inciting another, to commit, or becoming an accessory after the fact to, an offence referred to item 1, 2, 3 or 4
6.	33 (2).....	Conspiring with another to commit an offence referred to in item 1, 2, 3 or 4

PART III—ROAD TRAFFIC ACT 1974

Section of <i>The Road Traffic Act 1974</i>	Offence
59	Dangerous driving causing death or injury

[*Fourth Schedule inserted by No. 73 of 1976 s. 138; amended by No. 57 of 1981 s. 7; No. 52 of 1984 s. 42; No. 74 of 1985 s. 20; No. 89 of 1986 s. 13; No. 70 of 1988 s. 46.*]

[*FIFTH SCHEDULE: Fifth Schedule repealed by No. 49 of 1988 s. 39.*]

SIXTH SCHEDULE

(Section 4)

OFFENCES REFERRED TO IN PARAGRAPH (a) OF THE DEFINITION OF "PRESCRIBED OFFENCE"

Section of <i>Criminal Code</i> by which offence created	General description of offence
278	Wilful murder
279	Murder
280	Manslaughter
281A	Infanticide
283	Attempted murder

Section of <i>Criminal Code</i> by which offence created	General description of offence
292	Disabling in order to commit an indictable offence
293	Stupefying in order to commit an indictable offence
294	Acts intended to cause grievous bodily harm or prevent arrest
296	Intentionally endangering safety of persons travelling by railway
296A	Intentionally endangering safety of persons travelling by aircraft
298	Causing explosion likely to endanger life
300	Maliciously administering poison with intent to harm
301	Wounding and similar acts
324D	Sexual assault ⁹
324E	Aggravated sexual assault ¹⁰
390B (b)	Unauthorized use of aircraft when threats are used, when offender is armed, or in company
393	Robbery
394	Attempted robbery
396	Demanding property with menaces with intent to steal

[Sixth Schedule inserted by No. 57 of 1982 s. 20; amended by No. 89 of 1986 s. 13.]

NOTES

¹ This reprint is a compilation as at 23 May 1990 of the *Child Welfare Act 1947* and includes all amendments effected by the other Acts referred to in the following table¹¹.

Table of Acts

Act	No. and Year	Assent	Commencement	Miscellaneous
<i>Child Welfare Act 1947</i>	66 of 1947	10 January 1948	10 January 1948	
<i>Child Welfare Act Amendment Act 1950</i>	52 of 1950	18 December 1950	18 December 1950	
<i>Child Welfare Act Amendment Act 1952</i>	16 of 1952	7 November 1952	7 November 1952	
<i>Limitation Act Amendment Act 1954, section 5</i>	73 of 1954	14 January 1955	1 March 1955 (see <i>Gazette</i> 18 February 1955 p. 343)	
<i>Child Welfare Act Amendment Act 1955</i>	45 of 1955	9 December 1955	9 December 1955	
<i>Child Welfare Act Amendment Act 1956</i>	36 of 1956	18 December 1956	18 December 1956	

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Child Welfare Act Amendment Act (No. 2) 1956</i>	77 of 1956	14 January 1957	14 January 1957	
<i>Child Welfare Act Amendment Act 1957</i>	69 of 1957	6 December 1957	6 December 1957	
<i>Child Welfare Act Amendment Act (No. 2) 1957</i>	74 of 1957	10 December 1957	1 February 1958 (see <i>Gazette</i> 31 January 1958 p. 167)	
<i>Child Welfare Act Amendment Act 1958</i>	45 of 1958	12 December 1958	12 December 1958	
<i>Child Welfare Act Amendment Act 1959</i>	15 of 1959	8 October 1959	8 October 1959	
<i>Interstate Maintenance Recovery Act 1959, section 3 (3)</i>	28 of 1959	15 October 1959	1 January 1961 (see <i>Gazette</i> 16 December 1960 p. 3973)	
<i>Child Welfare Act Amendment Act 1962</i>	22 of 1962	4 October 1962	1 December 1962 (see <i>Gazette</i> 30 November 1962 p. 3833)	
<i>Child Welfare Act Amendment Act (No. 2) 1962</i>	43 of 1962	1 November 1962	9 November 1962 (see section 2 and <i>Gazette</i> 9 November 1962 p. 3679)	
<i>Child Welfare Act Amendment Act 1965</i>	79 of 1965	7 December 1965	1 March 1966 (see section 2 and <i>Gazettes</i> 25 February 1966 p. 550; 4 March 1966 p. 589)	
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see section 2 (2)); balance: 21 December 1965	
<i>Child Welfare Act Amendment Act 1967</i>	27 of 1967	17 November 1967	Act (other than sections 23 and 24): 8 March 1968 (see <i>Gazette</i> 8 March 1968 p. 673); sections 23 and 24: 15 July 1968 (see <i>Gazette</i> 15 July 1968 p. 1996)	
<i>Child Welfare Act Amendment Act (No. 2) 1967</i>	42 of 1967	21 November 1967	21 November 1967	
<i>Child Welfare Act Amendment Act 1968</i>	29 of 1968	25 October 1968	25 October 1968	
<i>Child Welfare Act Amendment Act 1969</i>	85 of 1969	17 November 1969	1 February 1970 (see <i>Gazette</i> 31 December 1969 p. 4363)	
<i>Child Welfare Act Amendment Act 1970</i>	39 of 1970	23 September 1970	23 September 1970	
<i>Child Welfare Act Amendment Act 1971</i>	52 of 1971	10 December 1971	10 December 1971	

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Child Welfare Act Amendment Act (No. 2) 1972</i>	27 of 1972	9 June 1972	1 July 1972 (see <i>Gazette</i> 30 June 1972 p. 2097)	
<i>Family Court Act 1975, section 5</i>	106 of 1975	1 December 1975	Section 5: 1 June 1976 (see <i>Gazette</i> 7 May 1976 p. 1381)	
<i>Child Welfare Act Amendment Act 1976</i>	36 of 1976	9 June 1976	3 September 1976 (see section 2 and <i>Gazette</i> 3 September 1976 p. 3271)	
<i>Child Welfare Act Amendment Act (No. 2) 1976</i>	73 of 1976	6 October 1976	Section 20 (1): 1 October 1977 (see <i>Gazette</i> 30 September 1977 p. 3519); balance: 1 January 1978 (see <i>Gazette</i> 9 December 1977 p. 4499)	Amended by sections 7, 8 and 9 of Act No. 10 of 1977
<i>Child Welfare Act Amendment Act 1977</i>	10 of 1977	30 September 1977	1 January 1978 (see <i>Gazette</i> 9 December 1977 p. 4499)	
<i>Child Welfare Act Amendment Act 1979</i>	77 of 1979	6 December 1979	6 December 1979	
<i>Acts Amendment (Misuse of Drugs) Act 1981, Part II</i>	57 of 1981	13 October 1981	Part II: 1 September 1982 (see section 2 and <i>Gazette</i> 20 August 1982 p. 3250)	
<i>Acts Amendment (Criminal Penalties and Procedure) Act 1982, Part III</i>	20 of 1982	27 May 1982	Part III: 27 May 1982	
<i>Child Welfare Amendment Act 1982</i>	57 of 1982	22 September 1982	Sections 1, 2, 4, 5, 6, 8, 9, 10, 11, 12, 18 and 19: 1 November 1982 (see <i>Gazette</i> 1 November 1982 p. 4377); balance: 1 July 1983 (see <i>Gazette</i> 17 June 1983 p. 1865)	
<i>Acts Amendment (Bail) Act 1982, Part V</i>	87 of 1982	17 November 1982	Part V: 6 February 1989 (see section 2 and <i>Gazette</i> 27 January 1989 p. 263)	
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984, Part V</i>	52 of 1984	5 September 1984	Part V: 3 October 1984	
<i>Child Welfare Amendment Act (No. 2) 1984</i>	61 of 1984	24 October 1984	21 November 1984	
<i>Acts Amendment (Department for Community Services) Act 1984, Part III</i>	121 of 1984	19 December 1984	Part III: 1 January 1985 (see <i>Gazette</i> 28 December 1984 p. 4197)	

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Sexual Assaults) Act 1985, Part IV</i>	74 of 1985	20 November 1985	Part IV: 1 April 1986 (see <i>Gazette</i> 28 February 1986 p. 605)	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	Section 3: 1 July 1986 (see section 2 and <i>Gazette</i> 30 June 1986 p. 2255)	
<i>Criminal Law Amendment Act 1986, Part III</i>	89 of 1986	10 December 1986	Part III: 14 March 1988 (see <i>Gazette</i> 11 March 1988 p. 781)	
<i>Acts Amendment (Child Care Services) Act 1987, Part III</i>	105 of 1987	16 December 1987	Part III: 1 March 1989 (see <i>Gazette</i> 25 November 1988 p. 4679)	
<i>Child Welfare Amendment Act (No. 2) 1987</i> (as amended by No. 49 of 1988)	127 of 1987	21 January 1988	Act (other than sections 8 and 11): 1 March 1988 (see <i>Gazette</i> 26 February 1988 p. 600); sections 8 and 11: 23 June 1989 (see <i>Gazette</i> 23 June 1989 p. 1797)	Section 11 Review and report ²
<i>Acts Amendment (Childrens Court) Act 1988, Part 2</i>	49 of 1988	22 December 1988	Part 2: 1 December 1989 (see <i>Gazette</i> 24 November 1989 p. 4327)	
<i>Criminal Law Amendment Act 1988, Part 5</i>	70 of 1988	15 December 1988	Part 5: 1 February 1989 (see <i>Gazette</i> 20 January 1989 p. 110)	
<i>Acts Amendment (Detention of Drunken Persons) Act 1989, Part 3</i>	35 of 1989	21 December 1989	27 April 1990 (See <i>Gazette</i> 27 April 1990 p. 2089)	

². Section 11 of Act No. 127 of 1987 reads as follows—

Review and report

“ 11. (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. ”.

³. Now refers to the chief executive officer of the department that is for the time being assisting the Minister in administering the *Child Welfare Act 1947*. See section 31 (1) (f) of the *Acts Amendment (Public Service) Act 1987*.

⁴. Section 36 (3) was repealed by Act No. 49 of 1988 s. 20.

5. Title amended under section 7 (5) (a) of the *Reprints Act 1984* to give effect to sections 31 (1) (b) of the *Acts Amendment (Public Service) Act 1987*.

6. At the date of this reprint 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.

7. Description of offence amended under section 7 (3) (g) of the *Reprints Act 1984* to give effect to section 8 of the *Law Reform (Decriminalization of Sodomy) Act 1989*.

8. Description of offence amended under section 7 (3) (g) of the *Reprints Act 1984* to give effect to section 9 of the *Law Reform (Decriminalization of Sodomy) Act 1989*.

9. Reference to *Criminal Code* and description of offence amended under section 7 (3) (g) of the *Reprints Act 1984* to give effect to section 8 of the *Acts Amendment (Sexual Assaults) Act 1985*.

10. Reference to *Criminal Code* and description of offence amended under section 7 (3) (g) of the *Reprints Act 1984* to give effect to section 8 of the *Acts Amendment (Sexual Assaults) Act 1985*.

11. As at the date of this reprint the following enactments containing amendments to the *Child Welfare Act 1947* had been assented to but had not come into operation—

(a) Part 1 of the *Acts Amendment (Mental Health) Act 1981*;

(b) *Child Welfare Amendment Act 1984*; and

(c) Part 2 of the *Acts Amendment (Spent Convictions) Act 1988*.