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WESTERN AUSTRALIA

CHILD WELFARE ACT 1947

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WESTERN AUSTRALIA

CHILD WELFARE ACT 1947

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

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

Short title

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

[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 *Repealed by No. 49 of 1988 s.4.*]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 The Act specified in the First Schedule is repealed.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 apparently under the age of 18 years but also includes any boy or girl dealt with under the *Children’s Court of Western Australia Act 1988* by virtue of section 19 (2) of that Act;

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

- (a) has no sufficient means of subsistence apparent to the court and whose near relatives are, in the opinion of the court, in indigent circumstances or are otherwise unable or unwilling to support the child, or are dead, or unknown, or cannot be found, or are out of the jurisdiction, or in the custody of the law;
- (b) has been placed in a subsidized facility and whose near relatives have not contributed regularly towards the maintenance of the child;
- (c) associates or dwells with any person who has been convicted of vagrancy, or is known to the police as of bad repute, or who has been or is reputed to be a thief or habitually under the influence of alcohol or drugs;
- (d) is under the guardianship or in the custody of a person whom the court considers is unfit to have that guardianship or custody;
- (e) is not being maintained properly or at all by a near relative, or is deserted;

- (f) is found in a place where any drug or prohibited plant is used and is in the opinion of the court in need of care and protection by reason thereof;
- (g) being under the age of 14 years is employed or engaged in any circus, travelling show, acrobatic entertainment, or exhibition by which his life, health, welfare, or safety is likely to be lost, prejudiced, or endangered;
- (h) is unlawfully engaged in street trading;
- (i) is ill-treated, or suffers injuries apparently resulting from ill-treatment;
- (j) lives under conditions which indicate that the child is lapsing or likely to lapse into a career of vice or crime; or
- (k) is living under such conditions, or is found in such circumstances, or behaves in such a manner, as to indicate that the mental, physical or moral welfare of the child is likely to be in jeopardy;

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

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

“Director-General” means the Director-General of the Department 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*;

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“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;

“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;

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

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

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

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

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

(2) A child who —

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

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

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(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; No. 83 of 1990 s.4; No. 15 of 1991 s.21; No. 14 of 1992 s.4 (3); No. 6 of 1993 s.11; No. 31 of 1993 s.11; No. 104 of 1994 s.199.]

PART II — ADMINISTRATIVE PROVISIONS

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

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

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), (3) and (4) repealed]

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

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*¹, shall be deemed to have been appointed and engaged under the *Community Welfare Act 1972*, but shall otherwise be subject to this Act.

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(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. 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, or to each of them, as he thinks fit, all or any of —

- (a) the powers exercisable by him under section 10 (2) (b), section 29 (1), sections 47, 47A, 47B, 47C, 47D, 54, 55, 65, 66, 66A, 66B, 108B, 108D, 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; No. 82 of 1990 s.4; No. 31 of 1993 s.14; No. 104 of 1994 s.202.]

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;

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- (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 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; No. 31 of 1993 s.15.]

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

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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.]

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

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; amended by No. 31 of 1993 s.17; No. 104 of 1994 s.204.]

PART III — FACILITIES

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

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.]

[13A, 13B, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, 13K. Repealed by No. 104 of 1994 s.205.]

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.]

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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 Departmental facility declared to be such under this Act.

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

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. Repealed by No. 49 of 1988 s.9.]

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

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

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

[24, 25, 26, 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 in respect of whom an application is made —

- (a) is suffering from mental or nervous disorder; or
- (b) should be remanded for observation, assessment and recommendation as to his future treatment,

then, notwithstanding the provisions of any other Act, the court may, after giving the parents or guardian of the child an opportunity of being heard, if present, remand the child, and

order that he be placed in some suitable place, for a period not exceeding one month, for observation, assessment and the making of a report on his condition or a recommendation as to his future treatment, as the case may require.

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

*Children in Need of Care and Protection and
Uncontrolled Children*

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

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.]

s. 30

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. *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 caused or suffered any child to become, or to continue to be, a child in need of care and protection, or contributed to any child becoming, or continuing to be, a child in need of care and protection, shall be guilty of an offence.

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

[(2), (3), (4) and (5) repealed]

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

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

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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.]

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

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

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

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

[34E, 35, 36, 37, 38, 39, 39A, 39B, 39C, 39D, 39E, 39F, 39G, 39H, 39J, 39K, 39L, 39M, 39N, 39P, 39Q, 39R, 40. Repealed by No. 104 of 1994 s.209.]

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

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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. *Repealed by No. 79 of 1965 s.19.*]

[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 Departmental or other facility, stating that the child named in such order was duly received, and was at the signing thereof detained therein, or had been otherwise dealt with under this Act, shall in all proceedings whatsoever be *prima facie* evidence of the facts stated in such certificate, and of the identity of the child therein named.

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

Absconders may be apprehended without warrant

46. A ward or child placed under the control of the Department who runs away from any Departmental facility or other centre or facility, from a foster parent or from any situation in which he has been placed at the requirement of the Director-General may be apprehended, without warrant, by a police officer or by an

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officer of the Department and be conveyed to such place as the Director-General may direct.

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

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,

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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.]

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

[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

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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. 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. *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.]

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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. 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. *Repealed by No. 73 of 1976 s.74.]*

[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

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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.]

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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. Repealed by No. 79 of 1965 s.25.]

[PART V. Repealed by No. 104 of 1994 s.212.]

[PART VI. Repealed by No. 27 of 1967 s.21.]

PART VII — RESTRICTIONS ON EMPLOYMENT OF CHILDREN

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

Definition

106. In this Part “**exempt child**” means a child who holds a certificate granted under section 13 (4) of the *Education Act 1928* exempting him from attendance at school to enable him to engage in employment.

[Section 106 inserted by No. 82 of 1990 s.7.]

Supply of false information to employers an offence

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

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

to a person who employs or may employ the child for a purpose specified in section 107A (1), 108 (1) or 108A (3).

Penalty: \$200.

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

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

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Street trading

107A. (1) A child under 12 years of age shall not engage in street trading.

(2) A child who has attained the age of 12 years and is under 15 years of age shall not engage in street trading —

(a) during the hours when the child is required to attend school; or

(b) outside the time between 6 a.m. and 7 p.m.

(3) Subsection 2 (a) does not apply to an exempt child.

(4) Where the Director-General is of the opinion that the welfare of a child is likely to be jeopardized by the fact of or the manner or extent of the engagement by the child in street trading, he may, by written notice given to the child —

(a) prohibit the child from engaging in street trading; or

(b) impose limitations on the engagement by the child in street trading,

and a child who receives such a notice shall comply with it.

(5) The Director-General shall serve a copy of a notice issued under subsection (4) on —

(a) the employer of the child; and

(b) each person who has custody or guardianship of the child.

(6) A person who knowingly causes, procures or employs a child to engage in street trading in contravention of subsection (1) or (2) or of a notice under subsection (4) or who

knowingly allows a child in his custody or guardianship to so engage, commits an offence.

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

(7) It shall be a requirement for —

- (a) the custodian or guardian of a child seeking street trading employment to provide a declaration of age and details relating to any notice of prohibition from engaging in street trading; and
- (b) the employer to sight and hold a copy of any declaration provided under paragraph (a).

(8) Where a person is prosecuted for an alleged offence of causing, procuring or employing a child to engage in street trading in contravention of a notice under subsection (4), or of allowing a child in his custody or guardianship to so engage, it is a defence for the person to show —

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

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

Restriction on employment of children for indecent purposes

108. (1) A person shall not —

- (a) employ a child;
- (b) cause or procure a child to be employed; or

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- (c) being a person who has the custody or guardianship of a child, allow the child to be employed,

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

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

(2) Without prejudice to the generality of the expression “purpose of the child performing in an indecent, obscene or pornographic manner” in subsection (1), a child is employed for the purpose of performing in an indecent, obscene or pornographic manner if, in the course of the employment, the child —

- (a) is engaged in an activity of a sexual nature;
- (b) is in the presence of another person who is engaged in an activity of a sexual nature; or
- (c) is required to pose or move in a manner calculated to give prominence to sexual organs, the anus or, in the case of a female, her breasts.

(3) Without prejudice to its generality, the expression “**taking part in an entertainment or exhibition**” in subsection (1) and sections 108A (3) and 108B (1) includes the circumstances where the performance of the child —

- (a) consists in whole or in part of modelling or posing of any kind;
- (b) is only for the person employing the child or for some other particular person or a class of persons; or
- (c) is recorded for later visual or audible presentation to an audience of one or more persons.

(4) For the purposes of subsection (1) and sections 108A (3) and 108B (1) —

- (a) a child who takes part in an entertainment or exhibition carried on for profit or in the making of an advertisement for commercial purposes is to be taken to be employed by the person carrying on the entertainment or exhibition or making the advertisement, notwithstanding that the child is not an employee of that person or receives no consideration from that person; and
- (b) “**employ**” includes the engaging of a child to perform professional work under a contract of service and the engaging of a child to perform any work under a contract for services.

[*Section 108 inserted by No. 82 of 1990 s.8.*]

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: \$2 000.

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

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**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 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; No. 51 of 1992 s.16 (1).]

s. 114

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

[118A, 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

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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. *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. *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

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

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

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

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

Departmental facility, in which a child is detained, holds or attempts to hold any communication with that child; or

- (b) enters any Departmental facility or any premises belonging thereto or used in connection therewith, and does not depart therefrom when required so to do by the officer or other person for the time being in charge thereof; or
- (c) after being forbidden by the Director-General or governing authority, as the case may be, so to do, holds or attempts to hold any communication directly or indirectly with any ward,

shall be guilty of an offence against this Act.

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

Offence to permit escape

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

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

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

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

s. 130

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.

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(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 for 6 months, or both such fine and such imprisonment.

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

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

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

[132. *Repealed by No. 73 of 1976 s.120.]*

[133. *Repealed by No. 73 of 1976 s.121.]*

[134. *Repealed by No. 73 of 1976 s.122.*]

[135. *Repealed by No. 73 of 1976 s.123.*]

[136. *Repealed by No. 73 of 1976 s.124.*]

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

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

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

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

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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.

[(1a) and (1b) repealed]

(2) An officer apprehending a child pursuant to subsection (1) shall make inquiries as to whether or not it may be necessary to make application to the court to declare the child to be in need of care and protection.

(3) Where on inquiry no responsible person can be found to take care of the child for the time being the officer may cause the child to be detained at some convenient place until such time as the child can be returned to the care of a parent or responsible person.

(4) The officer apprehending a child under subsection (1) may make application to the court for an order, and the court may make an order, requiring a parent or person standing in *loco parentis* to the child to pay to the appropriate authority the cost of apprehending and detaining the child, or not more than \$20 whichever is the less.

(5) An order for payment made under subsection (4) may be enforced by warrant in like manner to a fine, but it does not for any purpose constitute a conviction for an offence.

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

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

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

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

General penalty

142. (1) Any person who in any particular makes default in compliance with the provisions of this Act, other than section 107A (1), (2) or (4), 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; No. 82 of 1990 s.11.]

[143, 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. *Repealed by No. 73 of 1976 s.134.*]

s. 146A

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; amended by No. 31 of 1993 s.23; No. 104 of 1994 s.219.]

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; No. 31 of 1993 s.24; No. 104 of 1994 s.220.]

[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, visitors, and all other persons employed in the administration of this Act;
- (b) the management, control, and supervision of Departmental facilities and other facilities and lying-in houses;
- (c) the custody, maintenance, education, employment, apprenticing, and placing out of wards and children placed under the control of the Department;

[(ca) and (cb) deleted]

- (d) the visitation of children at Departmental facilities and other facilities or apprenticed, or placed out;
- (e) the punishment that may be imposed upon, and the wages and rewards that may be earned by, wards and children placed under the control of the Department;
- (f) the grant or refusal of licences pursuant to section 112, including all matters relating to the welfare of children received and kept pursuant to any such licence, the conduct, staffing and inspection of the premises so used, the control of advertising and the maintenance of records;
- (g) the management and control of property vested in the Department;
- (h) the accounts and records to be maintained and the reports to be furnished by Departmental facilities and other facilities, whether subsidized or otherwise;

- [(i) *deleted*]
- (j) the form and contents of agreements, appointments, apprenticeship articles, authorities, 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; No. 104 of 1994 s.221.]

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Sch. 1

FIRST SCHEDULE

[Section 3]

The Child Welfare Act 1907-1941

SECOND SCHEDULE

[Section 15]

SUBSIDIZED FACILITIES²

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 BRETHREN 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. Repealed by No. 49 of 1988 s.39.]

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

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

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

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NOTES

¹ This reprint is a compilation as at 12 July 1995 of the *Child Welfare Act 1947* and includes the amendments effected by the other Acts referred to in the following Table³.

Table of Acts

Act	Number 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</i> , section 5	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	
<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	

Child Welfare Act 1947

Act	Number and Year	Assent	Commencement	Miscellaneous
<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)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<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	
<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	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	1 September 1982 (see section 2 and <i>Gazette</i> 20 August 1982 p.3250)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Criminal Penalties and Procedure) Act 1982, Part III</i>	20 of 1982	27 May 1982	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	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	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	1 January 1985 (see <i>Gazette</i> 28 December 1984 p.4197)	
<i>Acts Amendment (Sexual Assaults) Act 1985, Part IV</i>	74 of 1985	20 November 1985	1 April 1986 (see <i>Gazette</i> 28 February 1986 p.605)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	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	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	1 March 1989 (see <i>Gazette</i> 25 November 1988 p.4679)	
<i>Child Welfare Amendment Act (No. 2) 1987</i>	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)	Amended by section 91 of Act No. 49 of 1988. Section 11 Review and report ⁴
<i>Acts Amendment (Childrens Court) Act 1988, Part 2</i>	49 of 1988	22 December 1988	1 December 1989 (see <i>Gazette</i> 24 November 1989 p.4327)	
<i>Acts Amendment (Spent Convictions) Act 1988, section 3</i>	56 of 1988	8 December 1988	1 July 1992 (see section 2 and <i>Gazette</i> 26 June 1992 p.2644)	
<i>Criminal Law Amendment Act 1988, section 46</i>	70 of 1988	15 December 1988	1 February 1989 (see <i>Gazette</i> 20 January 1989 p.110)	
<i>Acts Amendment (Detention of Drunken Persons) Act 1989, section 9</i>	35 of 1989	21 December 1989	27 April 1990 (see <i>Gazette</i> 27 April 1990 p.2089)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Child Welfare Amendment Act 1990</i> ⁵	82 of 1990	20 December 1990	Section 5: deemed operative 1 December 1989 (see section 2 (2)); section 9: to be proclaimed; balance: 20 December 1990	
<i>Child Welfare Amendment Act (No. 2) 1990</i>	83 of 1990	22 December 1990	1 August 1991 (see <i>Gazette</i> 1 August 1991 p.3983)	
<i>Criminal Law Amendment Act 1990, Part 6</i>	101 of 1990	20 December 1990	56 days after Royal Assent ie. 14 February 1991 (see section 2 (1))	
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991, section 21</i>	15 of 1991	21 June 1991	9 August 1991 (see <i>Gazette</i> 9 August 1991 p.4101)	
<i>Acts Amendment (Sexual Offences) Act 1992, sections 4 (3) and 6 (8)</i>	14 of 1992	17 June 1992	1 August 1992 (see <i>Gazette</i> 28 July 1992 p.3671)	
<i>Acts Amendment (Evidence of Children and Others) Act 1992, section 12</i>	36 of 1992	22 September 1992	16 November 1992 (see <i>Gazette</i> 6 November 1992 p.5415)	Section 13 transitional ⁶
<i>Criminal Law Amendment Act (No. 2) 1992, section 16 (1)</i>	51 of 1992	9 December 1992	6 January 1993	
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2 (1))	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Ministry of Justice) Act 1993, Part 4</i>	31 of 1993	15 December 1993	Deemed operative 1 July 1993 (see section 2)	Part 19 savings and transitional ⁷
<i>Criminal Procedure Amendment Act 1993, Part 3</i>	45 of 1993	20 December 1993	17 January 1994 (see section 2 (1))	
<i>Adoption Act 1994, section 145</i>	9 of 1994	15 April 1994	1 January 1995 (see <i>Gazette</i> 25 November 1994 p.5905)	
<i>Criminal Law Amendment Act 1994, section 13 (3)</i>	82 of 1994	23 December 1994	20 January 1995 (see section 2)	
<i>Young Offenders Act 1994, Part 11</i>	104 of 1994	11 January 1995	13 March 1995 (see <i>Gazette</i> 10 March 1995 p.895)	Division 3 of Part 11 transitional ⁸

² 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.

³ At the date of this reprint —

- (1) Part I of the *Acts Amendment (Mental Health) Act 1981* (Act No. 52 of 1981) was not in operation;
- (2) the *Child Welfare Amendment Act 1984* (Act No. 31 of 1984) was repealed by Act No. 82 of 1990.

⁴ Section 11 of the *Child Welfare Amendment Act (No. 2) 1987* (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.

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(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. "

⁵ At the date of this reprint section 9 of the *Child Welfare Amendment Act 1990* (Act No. 82 of 1990) was not in operation.

⁶ Section 13 of the *Acts Amendment (Evidence of Children and Others) Act 1992* (Act No. 36 of 1992) reads as follows:

" **Transitional provisions**

13. (1) The following proceedings are to be determined as if this Act had not come into operation —

- (a) a proceeding on an existing complaint and an indictment arising therefrom and any appeal in respect of any such proceeding;
- (b) a proceeding on an existing indictment under section 579 of *The Criminal Code* and any appeal in respect of any such proceeding;
- (c) any other proceeding within the meaning in section 106A of the principal Act that is an existing proceeding.

(2) In subsection (1) "**existing**" in relation to a complaint or indictment means made or presented before the day on which this Act comes into operation, and in relation to any other proceeding means commenced before that day. "

⁷ Part 19 of the *Acts Amendment (Ministry of Justice) Act 1993* (Act No. 31 of 1993) reads as follows: —

" **PART 19 — SAVINGS AND TRANSITIONAL**

Savings

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

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Transitional

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

⁸ Division 3 of Part 11 of the *Young Offenders Act 1994* (Act No. 104 of 1994) reads as follows: —

“ ***Division 3 — Transitional provisions***

***Interpretation Act 1984* applies**

231. (1) This Division does not limit the operation of the *Interpretation Act 1984*.

(2) Unless the context otherwise requires, a reference in a written law to an enactment repealed by this Act includes a reference to the corresponding provision, if any, of this Act.

(3) A reference in a written law to a facility under the *Child Welfare Act 1947* may, where the context so requires, be read as including or being a reference to a facility of a corresponding kind, if any, under this Act.

Orders for past matters

232. (1) An order can be made under this Act by the court in dealing with an offence even though —

- (a) the offence for which the person is before the court may have been committed;
- (b) the default in payment may have occurred; or
- (c) the sentence to which the order relates may have been imposed,

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

Orders under former provisions

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

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Detention centres under *Child Welfare Act 1947*

234. (1) In this section —

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

(2) The declaration of a detention centre under the former provisions is to be taken to have been made under this Act.

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

Proceedings pending before children’s panels

235. (1) In this section —

“**former provisions**” means the provisions of the *Child Welfare Act 1947* as in force immediately before the commencement of section 32.

(2) If proceedings for a matter are pending before a children’s panel under the former provisions when section 32 commences, the matter is to be taken to have been referred under this Act to a juvenile justice team. ”.