

STATE CHILDREN.

10° GEO. V., No. IX.

No. 21 of 1919.

AN ACT to amend the State Children Act, 1907.

[Assented to 15th November, 1919.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited as the *State Children Act Amendment Act, 1919.*

Repeal of State Children Act Amendment Act, 1915. 2. The State Children Act Amendment Act of 1915 is hereby repealed.

Amendment of section 4 of principal Act. 3. Section four of the State Children Act, 1907 (hereinafter called the principal Act) is hereby amended as follows:—

(i) By the insertion in the definition of the expression "State child" after the words "neglected child" of the words "or an incorrigible or uncontrollable child, or who has been convicted as such."

(ii) By the substitution of the word "six" for the word "three" in the definition of "Foster-mother."

Addition of section to Part III. 4. The following section is hereby added to Part III. of the principal Act:—

Special magistrates may visit institutions.

17a. A special magistrate or any member of the Children's Court authorised in that behalf by the Governor shall have the right at any time to enter, visit, and inspect any institution.

Substitution of new section for section 18. 5. Section eighteen of the principal Act is hereby repealed and the following section substituted therefor:—

18. (1.) The Governor may by Order in Council establish special Courts to be called Children's Courts, and may appoint a special magistrate for any particular court or courts, and may by Order in Council from time to time determine the area in and for which each court shall exercise jurisdiction.

Children's
Courts.

(2.) The Governor may also appoint such persons, male or female, as he may think fit, to be members of any particular Children's Court, and may determine the respective seniorities of members heretofore or hereafter appointed.

(3.) No Children's Court shall be competent to exercise its jurisdiction unless there be present the special magistrate or at least two members: provided that in cases under the Bastardy Laws Act, 1875, the special magistrate shall be one of the members of the court hearing such cases.

(4.) If for any reason it is not convenient for the special magistrate of any court to attend any particular sitting of the court, the special magistrate of any other court may attend and act in his place.

(5.) When the persons sitting as a Children's Court are divided in opinion as to the decision to be given on any question, the question shall be decided according to the opinion of the majority, if there is a majority, but if the court is equally divided in opinion, the opinion of the special magistrate, or if there is no special magistrate present, the opinion of the senior member present shall prevail.

(6.) Subject to this Act, all the provisions of the Justices Act, 1902, shall apply to the proceedings, orders, and convictions of Children's Courts, and for the purposes of this Act the special magistrate of a court shall have the powers of a police magistrate throughout the State, and every member of the court shall have the powers of a justice of the peace in and for the area of the court, and every such court shall be deemed to be a court of summary jurisdiction.

6. Section nineteen of the principal Act is hereby amended by the addition of the following provision:—

Amendment of
section 19.

“and (c) shall hear and determine all complaints and applications under the Bastardy Laws Act, 1875.”

No summons to be issued in certain cases.

7. Where the offence charged against a child does not amount to an indictable offence, or where the alleged offence consists of the breach or non-observance of some by-law, rule, or regulation promulgated by virtue of a statute, no summons shall be issued or served upon such child unless a notice has been first posted to or served upon such child at its usual place of residence, and such child has failed to appear in response to such notice.

In committing to an institution, court to have regard to the future of the child.

8. The court in committing any child to an institution shall have regard to the future welfare of such child, and may direct such child to be detained in one of the institutions scheduled in the State Children Act, 1907, or in some other institution, as the Governor may approve at which such special training and supervision can be provided as may best meet the needs of any special case.

Court may refrain from imposing punishment or fine.

9. Notwithstanding the provisions of any Act, by-law, rule, or regulation, the court in awarding punishment or penalty upon any child may have regard to the antecedents, character, age, health or mental condition of the child convicted, and may take into account the nature of the offence or any special circumstances of the case, and such court may, notwithstanding the nature of the evidence adduced, refrain from imposing any punishment, penalty, or fine, or without proceeding to conviction dismiss the complaint.

Amendment of section 24.

10. The following paragraph is hereby added to section twenty-four of the principal Act:—

or (c) Released on probation on such conditions (if any) as the court may order, and in such case the child shall be subject to the supervision of the Department until such child attains the age of eighteen years, or during such shorter period as the court may think sufficient.

Amendment of section 24.

Section twenty-four of the principal Act is hereby amended by inserting in subsection (b), in last line, after "eighteen years of age," the following words: "or during such shorter period as the court may think sufficient."

Court may rehear case.

11. The court, on application made by the Department or by the parent or guardian of any child against whom an order may be made under this Act, may rehear the case and may make such recommendation to the Minister thereon as may in its opinion meet the circumstances.

12. Section twenty-six of the principal Act is hereby amended by inserting in subsection (a), after "eighteen years," the words: "or during such shorter period as the court may think sufficient"; subsection (c), after the words "eighteen years," the words: "or during such shorter period as the court may think sufficient."

Amendment of
section 26.

13. Section twenty-eight of the principal Act is hereby amended by inserting in subsection (a), after the words "eighteen years," the words: "or during such shorter period as the court may think sufficient"; subsection (d), after "eighteen years," the words: "or during such shorter period as the court may think sufficient."

Amendment of
section 28.

14. The following sections are hereby inserted in the principal Act, after section twenty-eight:—

Insertion of new
section after
section 28.

28a. No child shall be liable to imprisonment for failure to pay any penalty, compensation, or sum of money or costs adjudged to be paid by a conviction or order of any court of summary jurisdiction, but shall be liable to be sent to and detained in an institution for such period as he might have been imprisoned but for the provisions of this section, and the provisions of the Justices Act, 1902, shall apply, *mutatis mutandis*, in respect of such child as if detention in an institution were substituted therein for imprisonment.

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

28b. Any child may be committed to an institution during the period for which he has been remanded by a court or any justice or justices, or during the period of his detention on committal for trial in the Supreme Court.

Committal of a
child to an
institution
pending trial.
S.A., 1909, No.
996, s. 15.

15. Section twenty-nine of the principal Act is hereby amended by the insertion of the words "twenty-four," between the words "section" and "twenty-six," and also between the words "sections" and "twenty-six."

Amendment of
section 29.

16. Section forty-six of the principal Act is amended by the addition of a proviso, as follows:—

Amendment of
Section 46 of
the principal
Act.

Provided further that all accounts under this section shall be audited at prescribed periods by the Auditor General.

17. Section fifty-eight of the principal Act is hereby amended by striking out the words, in the third line, "until he shall attain the age of fourteen years."

Amendment of
section 58.

18. Section sixty-two of the principal Act is amended by adding the following subclauses to stand as subclauses (2), (3), and (4):—

Amendment of
section 62.

**Enforcement of
maintenance
orders.**

(2.) A maintenance order made under this Act shall direct that on default being made in payment of any sum of money or costs thereby ordered to be paid, the same shall be recoverable by execution against the goods and chattels of the person liable, and that in default of payment and of sufficient goods and chattels he shall be imprisoned for a period determined by the court in accordance with the provisions of section one hundred and sixty-seven of the Justices Act, 1902, and subject to the provisions of that section: provided that the court may, in lieu of directing that such sum of money or costs shall be recoverable by execution, direct that in default of payment the person in default shall be imprisoned as aforesaid: And the maintenance order shall direct, with regard to any periodical payments thereby ordered, that whenever and as often as default is made in any such periodical payment, the person in default shall be liable to such process of execution and imprisonment, or to such imprisonment only, as aforesaid.

(3.) Every such maintenance order shall have effect according to its tenor.

(4.) The provisions of this section shall be without prejudice to any other provision of this Act.

**Insertion of
new section
after section 61.**

19. The following section is hereby inserted after section sixty-one of the principal Act:—

Order may be
made in pro-
ceedings under
sections 24, 26,
and 28.

Cf. Vic., 1915,
No. 2703, s. 45.

61a. An order may be made under section sixty-one in any proceedings under section twenty-four, twenty-six, or twenty-eight without any complaint having been made against or summons served on the near relative, provided that he is either present in court when the order is applied for or that he has received the prescribed notice of the intention to make the application.

**Amendment of
section 83.**

20. Section eighty-three of the principal Act is hereby amended by inserting the following words: in line five, after the words "eighteen years," the words: "or during such shorter period as the court may think sufficient."

**Amendment of
Part VII.**

21. Part VII. of the principal Act is hereby amended as follows:—

(i.) By the addition to the title of the words "and Restrictions on Employment of Children";

(ii.) By the substitution of the word "twelve" for the word "ten" in section ninety-four;

(iii.) By the insertion after paragraph (b) of section ninety-five of a paragraph as follows:—"or (c) who is under the age of twelve years;"

(iv.) By the addition of the following section:—

95A. No person shall—

(a) cause, procure, suffer, or allow any child under the age of sixteen years to be in any place whatever for the purpose of begging or receiving alms or inducing the giving of alms, whether under the pretence of singing, playing, performing, offering anything for sale, or otherwise; or

(b) cause, procure, suffer, or allow any child under fourteen years of age to be employed or engaged in any work in or about any racing stable, or in connection with the training of horses for racing; or

(c) except with the license in writing of the Minister, and subject to such restrictions and conditions as may be therein expressed, cause, procure, suffer, or allow any child under the age of sixteen years to be in or on any premises or place used or intended to be used for the purpose of any public entertainment for the purpose of singing, playing, or performing for profit or reward to the child or to any other person, or offering anything for sale: provided that this provision shall not apply in the case of an occasional entertainment, the proceeds of which are intended to be applied for the benefit of any school or charitable or patriotic object.

Penalty: Twenty pounds.

22. The title of Part VIII. of the principal Act is hereby altered by the addition of the words "and the care and adoption of children."

Alteration of title of Part VIII.

23. Sections ninety-seven, ninety-eight, ninety-nine, and one hundred and five of the principal Act are hereby repealed.

Repeal of sections 97, 98, 99, and 105.

24. Sections one hundred, one hundred and one, and one hundred and two of the principal Act are hereby amended by the substitution of the word "six" for the word "three," wherever such latter word occurs therein.

Amendment of sections 100, 101, and 102.

Begging or performing by children under sixteen forbidden. Cf. N.S.W. 1902, No. 47, s. 23.

Work connected with racehorses by children under fourteen forbidden.

Insertion of new
section to stand
as 105.

25. The following section is hereby inserted in the principal Act, and shall stand as section one hundred and five:—

Places for re-
ception of child-
ren under six
to be licensed.

Of. N.S.W.
1904, No. 27, s.
27.

105. (1.) No person shall keep, use, or manage any house, room or place for the purpose of receiving or keeping in his care, charge, or custody two or more children under the age of six years in order to rear, nurse, or otherwise maintain such children apart from their respective parents, except pursuant to a license granted for the purpose by the Secretary.

Penalty: Twenty pounds, or for a second offence imprisonment with hard labour for three months.

(2.) Subject to this Act, the Secretary may on application grant a license without fee authorising the person named in the license to so receive and keep children as aforesaid, and to keep, use or manage for that purpose such house, room or place as is named in the license.

(3.) Every application for such a license shall be made during the currency of the calendar year in which the license is to have effect, or in the month of December preceding that year, and every such license which shall be granted shall, subject to this Act, have effect for and during that year or the unexpired portion thereof, and no longer.

(4.) The Governor may by regulations provide for the supervision and inspection of places licensed under this section, and prescribe what requisites must be complied with as regards the structure, maintenance, and management thereof, and may by any regulation direct that a license shall be refused in respect of any place regarding which the regulations are not complied with, or that a license shall be refused to any person, or in respect of any premises for any prescribed reason, and the Governor may prescribe a penalty of not more than Ten pounds for the breach of any regulation made hereunder.

(5.) If it shall appear that any person has been guilty of neglect to provide or is incapable of providing the children in his charge with proper food or attention, 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 license granted to such person shall continue, the Secretary may cancel such license, and

remove the children to an institution, and recover the cost of and incidental to such removal from the licensee by action in any court of competent jurisdiction; but such licensee may appeal to the Minister against such cancellation in the prescribed manner, and the Minister may reverse or confirm the cancellation and restore the license, and make such other order (including the restoration of the children) as may be just.

(6.) This section shall not apply to any person who merely receives into his care or keeps in his charge children of whom he is a near relative, or to any person who, being licensed as a foster-mother under this Act, merely takes the care, charge or custody of children pursuant to her license, or to any person merely receiving into his care or keeping in his charge any children as lodgers, boarders, or scholars in the establishment of any school recognised by the Minister for Education as giving efficient instruction for the purposes of the compulsory section of the Public Education Act, 1899, or to the keeping, use, or management of a house, room, or place for any of the purposes mentioned in this subsection.

26. The following sections are hereby added to Part VIII. of the principal Act:—

Addition of sections to Part VIII.

107a. (1.) No person shall, without the permission in writing of the Secretary, publish or cause to be published any advertisement containing any direct or indirect invitation to adopt or offering directly or indirectly to adopt any child under the age of fifteen years, whether a particular child or not.

No advertisement for adoption or taking charge of child to be published unless approved by Secretary, and no premium to be paid.

Penalty: Thirty pounds.

(2.) No person shall, without the permission in writing of the Secretary, publish or cause to be published any advertisement containing any direct or indirect invitation to take care of, or offering directly or indirectly to take care of, any child under the age of six years, whether a particular child or not.

Penalty: Thirty pounds.

(3.) No premium or reward shall be paid or offered to any person for maintaining or taking care of, or undertaking to maintain or take care of, any child under the age of six years, and no person shall offer or agree

to maintain or take care of such a child for a premium or reward: provided that nothing herein shall prevent the payment of a reasonable weekly or other sum approved by the Secretary to any person for taking the entire charge of any such child.

Penalty: Fifty pounds.

(4.) No premium or reward shall be paid or offered to any person for adopting or undertaking to adopt any child, and no person shall offer or agree to adopt any child for a premium or reward.

Penalty: Fifty pounds.

Person adopting child to give notice to Secretary.

107b. If any person other than a near relative of any child under six years of age or other than a person obtaining an order of adoption under the Adoption of Children Act, 1896, and amendments, adopts or assumes the entire charge of such a child such person shall, within seven days of his so doing, give notice of the fact to the Secretary, and shall in such notice state his name and place of residence and his occupation, together with the name, age, religion, and place of birth of such child.

Penalty: Ten pounds.

Insertion of new section after section 114.

27. The following section is hereby inserted in the principal Act, after section one hundred and fourteen thereof:—

Managers of Institutions and persons with whom female State children are placed out to be deemed to be guardians for the purposes of Criminal Code.

114a. When a female State child is detained or resides in an institution, or has been placed out or apprenticed with or to any person, then the manager or person having the chief control of the institution (being a male) or such person as aforesaid (if a male) or the husband of such person (if a female) shall be deemed to be the guardian of such child within the meaning of the provisions of the Criminal Code relating to sexual offences by guardians.

Insertion of new sections after section 117.

28. The following sections are hereby inserted in the principal Act, after section one hundred and seventeen:—

Homes of illegitimate children under six years liable to inspection.

117a. The home or place of residence, and every part thereof, of any illegitimate child under the age of six years, shall at all times be open to entry and inspection by any female officer of the Department, on the written authority of the Secretary, and any person who refuses to allow such entry or inspection to be made, or hinders or resists any such officer in the making of, or attempt to make, such entry or inspection, or who refuses or neglects to produce such child to any such officer

Cf. S.A., 1909, No. 996, s. 18.

for inspection by her, upon such production being demanded by such officer, shall be liable to a penalty not exceeding Twenty pounds.

117b. The occupier of any house or place in which an illegitimate child is born shall, within three days after the birth, give notice of the fact with the prescribed particulars to the District Registrar of Births, Deaths, and Marriages:

Occupier of house in which an illegitimate child is born to give notice of birth.

Cf. Vic. 1915, No. 2690, s. 22.

Provided that if the place of birth is not within a registry district, the notice may be given within one week to the Registrar General of Births, Deaths, and Marriages or the officer in charge of the nearest police station, and provided also that if the mother is the occupier of the house or place, the notice may in any case be given within three weeks.

Penalty: Ten pounds.

117c. The occupier of any house or place in which an illegitimate child dies or into which the dead body of an illegitimate child is brought shall, within twenty-four hours after the death or the bringing into the house or place of such dead body, give notice of the fact with the prescribed particulars to the officer in charge of the nearest police station.

Notice of death of illegitimate child to be given.

Penalty: Twenty pounds.

117d. The last three preceding sections do not apply to or in respect of any illegitimate child that has been adopted or legitimated, or where the illegitimate child is living with and cared for by its mother.

Exemption.

29. The following section is hereby inserted after section one hundred and eighteen of the principal Act:—

Insertion of new section after section 118.

118a. (1.) Any person who has, either by wilful misconduct or habitual neglect, or by any wrongful or immoral act or omission encouraged or contributed to the commission of any offence by any child, or caused or suffered the child to become a neglected child, or contributed to such child becoming a neglected child, shall be guilty of an offence.

Parent or Guardian punishable for misconduct or neglect leading to delinquency of child.

Penalty: Thirty pounds or imprisonment with hard labour for three months.

(2.) A charge of an offence under this section may be prosecuted, heard, and determined before a Children's Court.

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

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

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

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

Citation and
reprint of
principal Acts
and amend-
ments.

30. All copies of the principal Act hereafter printed by the Government Printer shall be printed as altered by the existing amendments (including this Act) under the supervision of the Clerk of Parliaments, and all necessary reference to the amending Acts shall be made in the margin. In any such reprint the short title shall be altered to "State Children Act, 1907-1919," by which title the principal Act and the said amendments may be cited together.
