

## CHILD WELFARE ACT.

### Act No. 17, 1939.

**George VI.**  
**No. 17, 1939.**

An Act to consolidate and amend the law relating to children and young persons; to repeal the Child Welfare Act, 1923, and the Child Welfare (Amendment) Act, 1924; to amend the Interstate Destitute Persons Relief Act, 1919, and certain other Acts; to validate certain matters; and for purposes connected therewith. [Assented to, 23rd October, 1939.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

#### PART I.

##### PRELIMINARY.

Short  
title and  
commence-  
ment.

**1.** (1) This Act may be cited as the "Child Welfare Act, 1939."

(2) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

Parts  
of Act.

**2.** This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—*ss.* 1-4.

PART II.—AUTHORITIES CHARGED WITH ADMINISTRATION OF ACT—*ss.* 5-10.

PART III.—CHILDREN'S COURTS—*ss.* 11-20.

PART IV.—ESTABLISHMENT OF DEPOTS, HOMES AND HOSTELS—*ss.* 21, 22.

PART V.—BOARDING-OUT OF CHILDREN AND YOUNG PERSONS—*ss.* 23-26.

PART

PART VI.—ALLOWANCES IN RESPECT OF DESTITUTE CHILDREN AND YOUNG PERSONS LIVING WITH PARENTS—s. 27.

PART VII.—LICENSING OF PLACES ESTABLISHED OR USED FOR THE RECEPTION OF CHILDREN APART FROM THEIR PARENTS AND OF DAY NURSERIES AND KINDERGARTENS—ss. 28-38.

PART VIII.—LYING-IN HOMES—ss. 39-42.

PART IX.—MENTALLY DEFECTIVE CHILDREN—ss. 43-48.

PART X.—INSTITUTIONS—ss. 49-55.

PART XI.—PUNISHMENT OF INMATES IN INSTITUTIONS—ss. 56, 57.

PART XII.—MAINTENANCE OF CHILDREN BY THEIR RELATIVES—ss. 58-64.

PART XIII.—EMPLOYMENT OF CHILDREN—ss. 65-71.

PART XIV.—COMMITTAL OF NEGLECTED OR UNCONTROLLABLE CHILDREN OR YOUNG PERSONS OR OF JUVENILE OFFENDERS—ss. 72-93.

PART XV.—TRANSFER OF PERSONS FROM A PRISON TO AN INSTITUTION—s. 94.

PART XVI.—AFFILIATION PROCEEDINGS—ss. 95-124.

PART XVII.—PROCEDURE, PENALTIES AND GENERAL PROVISIONS—ss. 125-160.

PART XVIII.—REGULATIONS—s. 161.

PART XIX.—ADOPTION OF CHILDREN—ss. 162-173.

PART XX.—AMENDMENT OF VARIOUS ACTS—ss. 174-181.

DIVISION 1.—*Amendment of Interstate Destitute Persons Relief Act, 1919*—s. 174.

DIVISION 2.—*Amendment of Deserted Wives and Children Act, 1901-1931*—s. 175.

DIVISION 3.—*Amendment of the Criminal Appeal Act of 1912*—s. 176.

DIVISION 4.—*Amendment of Public Instruction (Amendment) Act, 1916*—s. 177.

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DIVISION 5.—*Amendment of Venereal Diseases Act, 1918—s. 178.*

DIVISION 6.—*Amendment of Pawnbrokers Act, 1902—s. 179.*

DIVISION 7.—*Amendment of Second-hand Dealers and Collectors Act, 1906—s. 180.*

DIVISION 8.—*Amendment of Crimes Act, 1900—s. 181.*

## SCHEDULES.

Repeal and savings.

**3.** (1) The Acts mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All persons appointed under any Act hereby repealed and holding office at the commencement of this Act shall be deemed to have been appointed hereunder.

(3) All institutions and shelters constituted or established under any Act hereby repealed and in existence at the commencement of this Act shall be deemed to have been constituted or established under this Act.

(4) This Act shall apply to all children apprenticed, boarded-out, placed-out or placed as adopted boarders under any Act hereby repealed as if such children had been apprenticed, boarded-out, placed-out or placed as adopted boarders under this Act.

(5) All proclamations, regulations, rules, licenses, orders, directions and instruments issued, made or executed under any Act hereby repealed, or having force or effect thereunder shall, if not inconsistent with this Act, remain in force and be deemed to have been issued, made or executed under this Act.

(6) A reference in any regulation made under any Act hereby repealed to the provisions of the Act repealed shall be construed as a reference to the corresponding provisions of this Act.

(7) All children's courts established, and all limits of jurisdiction defined under the authority of any Act repealed by this Act, and existing immediately before the commencement of this Act, shall be deemed to have been established and defined respectively under this Act.

(8)

(8) All orders made under the Infant Protection Act, 1904, as amended by subsequent Acts, and in force immediately before the commencement of this Act, shall, if not inconsistent with the Child Welfare Act, 1923, as amended by subsequent Acts, or with this Act, remain in force, and shall be deemed to have been made under this Act.

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4. In this Act unless the context otherwise requires:— Interpretation.

“Admitted to State control” means admitted to the control of the Minister for the purpose of being apprenticed, boarded-out, placed-out or placed as an adopted boarder.

“Adopted boarder” means a child or young person who, if under the maximum age up to which he is compelled by law to attend school, is allowed by authority of the Minister to remain with a foster parent without payment of an allowance by the Child Welfare Department or, if over the maximum age up to which he is compelled by law to attend school, is allowed by authority of the Minister to remain with the foster parent on terms and conditions which do not require that the whole or any part of any wages earned by the child or young person be paid to the Minister on behalf of such child or young person.

“Adopting parent” means an adopting parent as defined in section one hundred and sixty-two of this Act, and, except in Part XIX, includes a person who has adopted a child under a deed of adoption.

“Age” means, in the absence of positive evidence as to age, the apparent age.

“Boarded-out” means placed in the care of some foster parent for the purpose of being nursed, maintained, trained or educated by such person or in such person’s home.

“Care” includes custody and control.

“Child” means person under sixteen years of age.

“Court” means children’s court, and includes a magistrate or justices exercising the jurisdiction of a children’s court.

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- “ Director ” means the Director of the Child Welfare Department.
- “ Foster parent ” means any person with whom any child or young person is boarded-out or placed as an adopted boarder.
- “ Institution ” means institution established under this Act, and includes any special school for truants established under the Public Instruction (Amendment) Act, 1916.
- “ Justice ” means justice of the peace.
- “ Juvenile offender ” means child or young person who has committed an offence.
- “ Lying-in home ” means house in which more than one woman is received for confinement with or without payment of money.
- “ Magistrate ” means stipendiary or police magistrate.
- “ Maintenance ” includes clothing, support, training and education.
- “ Medical practitioner ” means legally qualified medical practitioner.
- “ Offence ” means offence punishable summarily or on indictment under this or any other Act or at common law.
- “ Officer ” means an officer of the Child Welfare Department, and includes any person acting under the instruction of the Minister but does not include any special or other magistrate.
- “ Parent ” when used in relation to a child or young person includes step-parent, adopting parent, guardian, and any person who is by law liable to maintain the child or young person.
- “ Place of safety ” means home, police station, hospital or any other place the occupier of which is willing temporarily to receive a child or young person.
- “ Placed-out ” means placed in employment without being apprenticed.

“ Preliminary

- “ Preliminary expenses ” means the expenses of the maintenance of the mother during a period of one month immediately preceding the birth of her child, reasonable medical and nursing expenses attendant upon the confinement of the mother, and the expenses of the maintenance of the mother and child for three months immediately succeeding its birth.
- “ Prescribed ” means prescribed by this Act or by the regulations.
- “ Proclamation ” means proclamation published in the Gazette.
- “ Public place ” includes a vessel, vehicle, room or any field or other place whatsoever to which the public for the time being have or are permitted to have access, whether on payment or otherwise.
- “ Regulations ” means regulations made under this Act.
- “ Shelter ” includes a place of safety.
- “ Street ” includes any highway or other public place whether a thoroughfare or not.
- “ Superintendent ” includes the person for the time being in charge of an institution.
- “ Uncontrollable ” where used in reference to a child or young person means child or young person who is not being or cannot be controlled by his parent or by any person having his care.
- “ Ward ” means any child or young person who has been—
- (a) admitted to State control;
  - (b) committed to an institution;
  - (c) admitted into a hostel for expectant and nursing mothers;
  - (d) admitted into a home for mentally defective children.
- “ Young person ” means a person who has attained the age of sixteen years and is under the age of eighteen years.

## PART II.

## AUTHORITIES CHARGED WITH ADMINISTRATION OF ACT.

Director  
and officers.

**5.** (1) The Governor may, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint a Director of the Child Welfare Department, and such other officers and employees as are necessary for the administration of this Act.

(2) The Director and other officers and employees shall be subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, during their tenure of office.

Appointment  
of visitors.

**6.** The Minister may appoint persons not being officers or employees of the Child Welfare Department, to be visitors to any of the institutions, homes, depots, hostels, and shelters constituted or established under this Act.

Appointment  
of honorary  
welfare  
officers and  
lady visitors.

**7.** The Minister may appoint honorary welfare officers and honorary lady visitors to carry out such duties as may be prescribed.

The Director shall issue to such welfare officers and lady visitors an authority card indicating the nature of their appointment.

Advisory  
council.  
Act No. 21,  
1923, s. 8.

**8.** (1) The Governor may, from time to time, appoint such persons as he thinks fit to form an advisory council.

(2) The functions of the council shall be—

- (a) to report upon such matters connected with child welfare as may be referred to it by the Minister;
- (b) to advise the Minister on matters connected with child welfare in New South Wales.

(3) The secretary of the council shall be an officer of the Child Welfare Department nominated by the Director.

(4) The council shall, subject to this Act and to the regulations made thereunder, frame rules for the conduct of its business. Such rules shall not be operative until they have been approved by the Minister.

(5) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment by the Governor of any member of the council, and any member so appointed shall not be subject to the provisions of any such Act during his term of office.

**9.** (1) Notwithstanding any other law relating to the guardianship or custody of children the Minister shall be and become the guardian of every child or young person who becomes a ward to the exclusion of the parent or other guardian and shall continue to be such guardian until the child or young person ceases to be a ward.

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Minister to be guardian of wards.

(2) Where any ward of whom the Minister is guardian attains the age of eighteen years, the Minister may terminate the guardianship.

Guardian of ex-wards.

Where such guardianship is not terminated, the Minister shall remain guardian until the ex-ward attains the age of twenty-one years, and the ex-ward shall during such period be subject to the supervision of the Minister.

**10.** Subject to this Act the Minister shall have the care of the person of all wards, except during the period when they are inmates of an institution or of a home for mentally defective children or are boarded out or placed as adopted boarders with foster parents or placed-out or apprenticed with any other persons.

Care of the person of wards.  
cf. 2 Geo. V, No. 11, s. 10 (Qld.).

### PART III.

#### CHILDREN'S COURTS.

**11.** (1) The Governor shall by proclamation establish special courts to be called children's courts.

Governor may establish special courts.

Every such court shall consist of a special magistrate and shall have jurisdiction within the area named in the proclamation.

cf. Act No. 21, 1923, s. 3f.

(2) In places not within any such area the jurisdiction of a court shall be exercised by a special magistrate, or any two justices.

(3) Such special magistrate shall possess the qualifications required for the office of police or stipendiary magistrate under the Public Service Act, 1902.

**12.** (1) A children's court and the magistrate or justices constituting such court—

Powers of court.

(a) shall exercise the powers and authorities which are possessed by magistrates, courts of petty sessions or justices in respect of children and young persons and of offences committed by or against children and young persons;

(b)



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- (b) may, where a child or young person is charged with an indictable offence (other than homicide, rape or other offence punishable by death), hear and determine the said charge in a summary manner in accordance with the provisions of this Act;
- (c) shall exercise the powers and authorities of a justice or justices to hear and determine complaints, informations, applications and proceedings under the Deserted Wives and Children Act, 1901-1939;
- (d) shall hear and determine complaints, informations, applications and proceedings under this Act;
- (e) shall exercise the powers and authorities of justices to hear and determine applications or complaints under sections one hundred and forty-two to one hundred and forty-six, both inclusive, of the Lunacy Act of 1898.

(2) A children's court consisting of a special magistrate shall exercise the powers and authorities which are conferred upon courts of petty sessions by the Infants' Custody and Settlements Act, 1899-1934.

Any order for the payment of a weekly or other periodical sum made by a court in the exercise of the powers and authorities conferred by this subsection shall have and take effect as an order for the payment at the weekly or other periods stated in the order, of successive amounts of money equal to the sum stated in the order. If default is made in the payment of any one or more of such sums, the order may be enforced, as to the total of the sums then in default for any period not exceeding six months, as if it were an order under the Small Debts Recovery Act, 1912-1933, for the payment of a sum of money equal to such total, made by the court of petty sessions named in the order.

Change of  
venue.

**13.** (1) If it appears to a court that any complaint, information, application or proceeding before the court under the Deserted Wives and Children Act, 1901-1939, or under this Act, or in respect of children and young persons, and of offences committed by or against children  
and

and young persons can be more conveniently, economically or fairly heard and determined by a court sitting at some other place the court may adjourn the hearing of such complaint, information, application or proceeding whether the defendant or respondent appears or not and may remand any person charged before it to a court sitting at some other place specified and appoint a day for the hearing.

(2) The clerk of the first-mentioned court shall thereupon transmit to the clerk of the court to which the hearing has been adjourned all documents and depositions in his possession relating to the complaint, information, application, or proceeding.

(3) Where a child or young person has been brought before a court as a neglected or uncontrollable child or young person or a juvenile offender, and the court has adjourned the hearing and remanded the child or young person to a court sitting at some other place, any evidence committed to writing at the first-mentioned court may be accepted as evidence by the court to which the child or young person has been remanded if, on the deposition taken by the said first-mentioned court, there appears a certificate by such court that the said deposition was read over at the hearing in the presence of the said child or young person, and that he was afforded an opportunity to cross-examine the witness or witnesses.

**14.** (1) On and after the establishment of a court, the jurisdiction of every court of petty sessions in respect of the matters as to which the court has jurisdiction, except those matters in which a justice or justices has or have jurisdiction under the Deserted Wives and Children Act, 1901-1939, shall cease to be exercised.

Jurisdiction  
of other  
courts to  
cease.  
cf. Act No.  
21, 1923, s.  
98.

(2) Nothing in this section shall abridge or prejudice the ministerial powers of magistrates or justices in cases of committal for trial or their powers to take any information or issue any summons, or grant, issue, or endorse any warrant, or admit to bail.

(3) No conviction, order, judgment, or proceeding made or given by or had before a court of petty sessions in contravention of this section shall be invalidated or affected by reason only of such contravention.

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Children's  
courts not held  
in ordinary  
courts.cf. Act No. 21,  
1923, s. 99.**15.** A court shall be held—

- (a) where practicable, in the proximity of a shelter;  
or
- (b) in some building or room approved in that behalf  
by the Minister.

If a court-room is so approved, the hearing shall not take place at an hour when the ordinary court business is being transacted.

Exclusion of  
persons from  
hearing  
generally.  
cf. *Ibid.* s. 100.

**16.** (1) At any hearing or trial by a court any persons not directly interested in the case shall be excluded from the court-room or place of hearing or trial unless the court otherwise directs.

(2) The court may, if it is of opinion that in the interest of the child or young person such a direction should be given, direct a child or young person to leave the court at any time during such hearing or trial or may direct any person to leave the court during the examination of any witness.

Exclusion of  
persons  
from  
hearing  
under  
Part XVI.  
*Ibid.*

(3) During the hearing of any complaint under Part XVI of this Act, no person shall be or be permitted to be present in court except the following—

- (a) the adjudicating magistrate, or justices, any officer, the officers of the court, and a member of the police force;
- (b) the complainant and the defendant, and their respective barristers and solicitors;
- (c) the mother, sister or other relative or friend of the complainant, if desired by such complainant;
- (d) any person whilst being examined as a witness;  
and
- (e) the mother, sister or female friend of any female witness, if desired by such witness whilst being examined,

unless the court shall permit any other person to be present.

Exclusion of  
persons from  
hearing of  
appeal.  
cf. *Ibid.* s. 100  
(3).

**17.** The provisions of section sixteen of this Act shall apply, mutatis mutandis, to the hearing of an appeal to a court of quarter sessions against any decision of a court.

**18.** (1) An appeal shall lie from any determination, finding of guilt or order of a court (not being a committal for trial or a determination, conviction or order under Part XII or Part XVI of this Act) by the persons and in the manner provided by Part V of the Justices Act, 1902.

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Right of appeal.

(2) Where an appellant is a child or young person the appeal may be taken by him or by his parent on his behalf and in his name.

(3) Where an appellant is a child or young person in place of the release of the appellant from custody upon entering into recognizances or depositing any money with the court, he may be committed by the court from which the appeal is made to a shelter pending the determination of the appeal.

**19.** The Justices Act, 1902, so far as it is not inconsistent with this Act, shall apply to a court and to proceedings before a court, other than proceedings under Part XVI of this Act.

Application of Justices Act, 1902.

cf. Act No. 21, 1923, s. 102.

**20.** (1) Where a charge is made jointly against a child or young person and a person who has attained the age of eighteen years the hearing of the charge against the child or young person may be adjourned until the charge against the person who has attained the age of eighteen years has been heard and determined.

Child or young person charged jointly with adult.

(2) A court may exercise jurisdiction in cases where the person charged is over the age of eighteen years but under the age of twenty-one years if, at the time of the commission of the offence, the person charged had not attained the age of eighteen years, and such person shall, for the purposes of this Act, be deemed to be a young person.

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#### PART IV.

##### ESTABLISHMENT OF DEPOTS, HOMES AND HOSTELS.

**21.** (1) The Governor may, by proclamation, establish—

Establishment of depots, homes and hostels.

cf. *Ibid.* s. 16.

(a) depots for the temporary accommodation and maintenance of children and young persons;

(b)

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- (b) homes for the reception and maintenance of—
- (i) physically defective children or young persons;
  - (ii) invalid and sick children or young persons;
  - (iii) babies;
  - (iv) children or young persons admitted to State control;
- (c) hostels for the accommodation and maintenance of—
- (i) expectant and nursing mothers;
  - (ii) wards and ex-wards;

(2) The establishment before the commencement of this Act of any depot, home or hostel, which could lawfully have been established if subsection one of this section had been in operation at the date the same was established, is hereby validated.

Any depot, home or hostel, the establishment of which is validated by this subsection, and which is in existence immediately before the commencement of this Act, shall for all purposes of this Act be deemed to have been established under this Act.

Inspection.  
cf. Act No.  
21, 1923,  
s. 17.

**22.** All depots, homes and hostels established or deemed to have been established under this Part shall be controlled by the Minister and shall be inspected once at least in every three months by an officer appointed for that purpose by the Minister. Such officer shall, after such inspection, submit to the Minister a report dealing with the matters prescribed.

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## PART V.

### BOARDING-OUT OF CHILDREN AND YOUNG PERSONS.

Authority of  
Minister.  
*Ibid.* s. 9.

- 23.** (1) The Minister shall be the authority to—
- (a) admit a child or young person to State control;
  - (b) provide for the accommodation and maintenance of any child or young person admitted to State control until he is apprenticed, boarded-out, placed-out or placed as an adopted boarder;
  - (c)

- (c) pay foster parents such rates as may be prescribed;
- (d) direct the removal or transfer of any ward (other than a ward who has been committed to an institution for a specified term);
- (e) apprentice, board-out, place-out, or place as an adopted boarder any ward (other than a ward who has been committed to an institution for a specified term);
- (f) approve of persons applying for the custody of wards and of the homes of such persons;
- (g) arrange the terms and conditions of the custody of any ward;
- (h) direct the restoration of any ward (other than a ward who has been committed to an institution for a specified term) to the care of his parent or of any other person;
- (i) direct the absolute discharge of any ward (other than a ward who has been committed to an institution for a specified term) from supervision and control.

(2) (a) The Minister may, under and in accordance with subsection one of this section, board out any child or young person to the person for the time being in charge of any charitable depot, home or hostel and may make to the person in charge of such charitable depot, home or hostel payments in respect of such child or young person at the rates prescribed for payments under paragraph (c) of that subsection.

(b) Where the total weekly earnings of a child or young person are not sufficient to cover the weekly inclusive cost of his maintenance and a reasonable amount to cover pocket money and travelling expenses the Minister may place such child or young person in the care of the person for the time being in charge of any charitable hostel and may subsidise the weekly earnings of such child or young person so as to provide for the difference between such weekly inclusive cost and the total weekly earnings of such child or young person.

Such

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Such subsidy may be continued until such time as the total weekly earnings of the child or young person render this subsidy unnecessary.

(c) The following provisions shall apply with respect to each charitable depot, home or hostel (which was in existence immediately before the commencement of this Act) to the person for the time being in charge of which any child or young person is boarded out pursuant to paragraph (a) of this subsection:—

- (i) A committee convened by the Minister shall, in respect of each such charitable depot, home or hostel ascertain the average number of children and young persons who were inmates thereof during the period of two years immediately before the commencement of this Act.

Such committee shall consist of the Government Statistician or an officer of the Public Service nominated by him, the Director or an officer of the Child Welfare Department nominated by him and a person selected by the Minister from persons whose names are on a panel of names of persons appointed in the manner prescribed to represent the charitable organisations by which such charitable depots, homes or hostels are conducted and maintained.

For the purpose of exercising or performing its functions under this subparagraph the committee or any officer of the Public Service nominated by it for the purpose, may inspect the books, accounts and records of any charitable depot, home or hostel and make extracts thereof or copies therefrom.

- (ii) No payment shall be made pursuant to paragraph (a) of this subsection unless the total number of children and young persons who are for the time being inmates of the charitable depot, home or hostel exceeds the average number so ascertained in respect of that charitable depot, home or hostel.

(iii)

(iii) No payment shall be made pursuant to paragraph (a) of this subsection in respect of a number of children or young persons greater than the number which represents the difference between such total number and such average number.

(d) Where payments are, in accordance with paragraph (a) or paragraph (b) of this subsection, made to the person for the time being in charge of any charitable depot, home or hostel an officer appointed for the purpose by the Minister, may, at any time inspect such charitable depot, home or hostel and make such examinations into the state and management thereof and the conditions and treatment of the children and young persons (being inmates thereof) in respect of whom the payments are so made, as he thinks requisite, and the person for the time being in charge of the charitable depot, home or hostel shall afford all reasonable facilities for such inspection and examination.

(e) In this subsection "charitable depot, home or hostel" means a depot, home or hostel established or maintained by a charitable organisation and used wholly or in part for purposes analogous to the purposes referred to in subsection one of section twenty-one of this Act.

(3) The Minister may from time to time by writing under his hand, delegate to any specified officer, all or any of the powers conferred by subsection one of this section, and may at any time revoke any such delegation.

No person shall be concerned to see or inquire whether any act, matter or thing done or performed by any officer when purporting to act as delegate of the Minister is or is not authorised by any such delegation:

Provided that no delegation of any of the powers referred to in paragraphs (d) (e) (h) and (i) of subsection one of this section shall be construed as authorising the officer to discharge any ward from an institution.

(4) The Minister may, upon such terms and conditions as may be prescribed or as he may, in any special case, approve, place a ward as an adopted boarder in the care of a foster parent.

When



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When such ward is over the maximum age up to which he is compelled by law to attend school and is to be employed by the foster parent, but the foster parent is unable to pay the prescribed rate of wages the consent of the Minister and of the ward shall be obtained before he is so placed in the care of a foster parent.

Limitation  
of payment  
for wards.

(5) Payment to a foster parent for any ward shall not extend beyond the time when the ward shall have attained the maximum age up to which he is compelled by law to attend school unless—

- (a) the ward is an invalid or is otherwise incapacitated; or
- (b) the case possesses unusual features which call for special consideration,

and the Minister authorises such payment.

Appren-  
ticeship or  
placing-out.

(6) On attaining the maximum age up to which he is compelled by law to attend school a ward shall, except in the circumstances referred to in subsections three and four of this section, or except in such other circumstances as may be prescribed, be placed-out or apprenticed.

Boarding-out  
from charitable  
institutions  
or homes.  
cf. Act No. 21,  
1923, s. 10.

**24.** The Minister may remove any child from any charitable institution, depot, home or hostel supported wholly or in part by grants from the Consolidated Revenue Fund and cause him to be apprenticed, boarded-out, placed-out, or placed as an adopted boarder.

Extension of  
period of  
supervision.  
*Ibid.* s. 12.

**25.** The Minister may cause to be visited and inspected any child or young person who has been a ward, for any period not exceeding two years after the date upon which such child or young person attains the age of eighteen years.

Deduction from  
payments to  
foster parent.  
*Ibid.* s. 13.

**26.** The Minister may deduct from the payments due to any foster parent such amount as may be deemed equivalent to the loss occasioned by the neglect of such foster parent to keep outfits up to the standard prescribed.

## PART VI.

ALLOWANCES IN RESPECT OF DESTITUTE CHILDREN AND  
YOUNG PERSONS LIVING WITH PARENTS.

**27.** (1) The Minister, out of moneys provided by Parliament, may in such circumstances and subject to such conditions as may be prescribed grant an allowance for the support of a destitute child or young person to—

Persons eligible to receive aid. cf. Act No. 21, 1923, s. 14.

- (a) the mother when such child or young person is living with her and when such mother is—
  - (i) a widow, or
  - (ii) a deserted wife, or
  - (iii) a wife whose husband is—
    - (a) incapacitated from following his usual or any occupation, or
    - (b) in gaol, or
    - (c) an old-age pensioner, or
  - (iv) a single woman, or
  - (v) a woman living apart from her husband—
    - (a) under any decree of judicial separation, or
    - (b) under any deed of separation, or
    - (c) where a decree nisi in divorce has been made, or
  - (vi) a woman whose marriage has been dissolved by a decree absolute in divorce, or
  - (vii) a woman whose marriage is void or has been annulled by any decree or order of the Supreme Court in its matrimonial causes jurisdiction;
- (b) a single woman who has adopted such child or young person when such child or young person is living with her;
- (c) the father, where such child or young person is living with him and where such father is incapacitated from following his usual or any occupation, and is—
  - (i) a widower, or
  - (ii) a deserted husband, or
  - (iii)

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(iii) a husband whose wife is—

- (a) incapacitated through mental or bodily infirmity, or
- (b) in gaol, or
- (c) an old-age pensioner.

Relation to widows' pensions.

(2) This section shall not extend to authorise the granting of an allowance to any widow who is in receipt of a pension under the Widows' Pensions Act, 1925-1937, where any part of the pension is paid to her in respect of the child or young person for whom an allowance is sought under this section.

Limitation of payment.

(3) Payment of an allowance under this Part shall not extend beyond the time when the person in respect of whom the allowance is granted shall have attained the maximum age up to which he is compelled by law to attend school unless—

- (a) the child or young person is an invalid or is otherwise incapacitated; or
- (b) the case possesses unusual features which call for special consideration,

and the Minister authorises such payment, and in any such case such payment may be continued until the person in respect of whom the allowance is granted attains the age of eighteen years.

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## PART VII.

### LICENSING OF PLACES ESTABLISHED OR USED FOR THE RECEPTION OF CHILDREN APART FROM THEIR PARENTS AND OF DAY NURSERIES AND KINDERGARTENS.

Licensing of place.  
cf. Act No. 21, 1923, s. 29.

**28.** (1) The person in charge of any place established or used—

- (a) for the reception and care of one or more children under the age of seven years, apart from their mother or other parent, or
- (b) for the purpose of conducting a day nursery or kindergarten

shall

shall make application to the Minister in the prescribed form and manner for a license in respect of such place.

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(2) The Minister shall thereupon cause inquiry to be made respecting such application and a report to be furnished by an officer.

Inquiry to be made.

(3) The Minister upon receiving such report may grant or refuse a license in respect of such place; and such license when granted shall remain in force until cancelled by order of a court, but any provision of the license relating to the maximum number of children who will be received and cared for, or, as the case may be, will attend the day nursery or kindergarten, may be varied from time to time by the Minister. Particulars of any such variation may be endorsed on the license.

Licenses.

(4) Every license shall be subject to such conditions and requirements as may be prescribed.

**29.** (1) In every place licensed under this Part the person in charge shall keep a register in a form prescribed in which shall be entered forthwith by such person the names, sex and age of each child received into the care or charge of such person and the date when such child was so received, and such other particulars as may be prescribed.

Register to be kept.  
cf. Act No. 3,654 (1928), s. 98 (Vic.).

(2) Every such register shall be produced by the person in charge at all reasonable times when the production of the same is demanded by the Minister or any officer authorised by the Minister in that behalf, and may be examined and (if the Minister or such officer thinks fit) copies of any entries therein may be made.

Register to be produced.

(3) Forthwith after the removal of any child from a place licensed as aforesaid whether before or on attaining the age of seven years, the person in charge shall enter in such register the time of such removal and the names, addresses and calling or occupation of the person or persons to whom the child is delivered, and if any such person is a married woman the address and calling of her husband; and shall forthwith forward notice of such removal to the Minister.

Removal of child.

(4) Any person in charge who fails to comply with the provisions of this section shall be guilty of an offence against this Act.

Penalty.

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Officer may inspect.  
cf. Act No. 21, 1923, s. 30.

**30.** (1) For the purpose of making any inquiry and report under section twenty-eight of this Act respecting any place, or for the purpose of ensuring that the prescribed conditions and requirements are complied with, any officer may, at any time, enter the place and inspect it and the children who are inmates thereof; and the person in charge of the place shall afford all reasonable facilities for such inspection.

(2) In making any inspection the officer may, if he thinks fit, be accompanied by a medical practitioner or a police constable, or by both.

Exemption by Minister.

(3) The Minister at any time, by writing under his hand, may order that the provisions of this section shall not apply in any case where he is satisfied that its application is unnecessary.

Where conditions of license not observed.  
*Ibid.* s. 31.

**31.** (1) Where, on any inspection of a licensed place, it appears that any of the prescribed conditions or requirements are not complied with, the Director may give directions in writing to the person in charge to ensure a compliance with such conditions or requirements, failing which the license of such place may be cancelled by a court.

(2) The person in charge of any such licensed place who fails to comply with such directions shall be guilty of an offence against this Act and upon conviction the license may be cancelled by a court.

Disposal of children.

(3) The Court, on cancellation of the license of any place of the nature referred to in paragraph (a) of subsection one of section twenty-eight of this Act, may direct that any child who is an inmate of such place, be—

- (a) restored to the custody of a parent; or
- (b) released to the care of the Minister to be dealt with as a ward admitted to State control; or
- (c) released to the care of any other person.

Penalties on person in charge of unlicensed place.  
cf. *Ibid.* s. 32.

**32.** The person in charge of any place which is required to be licensed under this Part and is not licensed shall be liable to a penalty not exceeding twenty-five pounds, and, where the place is a place of the nature referred to in paragraph (a) of subsection one of section twenty-eight of this Act, any child who is an inmate of such place may be removed therefrom and taken to a shelter,

shelter, there to remain until a court orders him to be restored to the custody of his parent or released to the care of the Minister to be dealt with as a ward admitted to State control, or released to the care of any other person. No. 17, 1939.

**33.** (1) No person shall, without a written order of a court specifying the terms on which the child may be received, receive into his care any child under the age of seven years to rear, nurse, or otherwise maintain, apart from his mother or other parent, in consideration of the payment to such person of any sum of money or other valuable consideration otherwise than by way of periodical instalments. No such instalment shall be paid for more than four weeks in advance, nor exceed the sum of fifty shillings per week. Any person receiving or agreeing to receive payment contrary to this section shall be guilty of an offence against this Act. Regulating  
reception of  
children under  
seven years.  
cf. Act No. 21,  
1923, s. 33.

A court having made an order under this section shall forthwith forward a copy of the order to the Director.

(2) This section shall not apply to the manager or officers of any institution supported wholly or in part by public subscription, or by private charity where such institution is open to State inspection, or controlled by the State; nor to any person exempted for the time being from the operation of this section by the Minister.

(3) The Director shall, if required, receive from anyone wishing to place a child under the age of seven years in the care of the person in charge of any place licensed under section twenty-eight of this Act, a sum of money from which he shall make to such person such payments as may be agreed upon but not exceeding the instalments specified in subsection one of this section.

**34.** (1) Every person who receives into his care in any place licensed under this Part, any child under the age of seven years to rear, nurse, or otherwise maintain for payment shall within seven days register or cause to be registered with the Director in the prescribed form the particulars prescribed. Registration  
of reception  
of children.  
*Ibid.* s. 34.

(2) Any person who fails to comply with the provisions of this section shall be guilty of an offence against this Act.

**35.**

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Change of  
address to be  
registered.  
cf. Act No. 21,  
1923, s. 35.

**35.** (1) If the person in charge of any place licensed under this Part changes his place of abode, or relinquishes the care of any child in such place, he shall forthwith forward a notice of such change or relinquishment to the Director in the form prescribed.

(2) Any person who fails to comply with this section shall be guilty of an offence against this Act.

Notice to be  
given of  
death of  
child.  
cf. *Ibid.* s. 36.

**36.** (1) The person in charge of any place licensed under this Part shall, immediately after the death in such place of any child required to be registered in accordance with this Part, give notice of such death to the officer in charge at the nearest police station and to the Director.

(2) Such officer in charge of police shall make inquiry and report to the coroner for the district, or if the exigencies of the case so require to a justice, whether an inquest or magisterial inquiry respecting the cause of death is necessary.

Notices may be  
forwarded by  
post.  
cf. Act No.  
3,654 (1928),  
s. 98 (Vic.).

**37.** Where by the provisions of this Part any person is required to forward a notice to, or to effect a registration of particulars with, the Director, such notice or particulars of registration shall be in writing, and, unless delivered personally by such person, shall be forwarded by registered post.

**Exemption.**

**38.** (1) The provisions of this Part shall not apply to an incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929-1937, or to a private hospital licensed under the Private Hospitals Act, 1908, or in a case where the person having the care of a child is a relation by blood of the child or is a person to whom the custody of the child has been given by any competent court or by deed or will or is a person in whose care the child has been placed by the Minister or by the Director or an officer pursuant to Part V of this Act.

(2) The provisions of section twenty-nine and of sections thirty-three to thirty-seven both inclusive shall not apply to or in respect of any place of the nature referred to in paragraph (b) of subsection one of section twenty-eight of this Act.

PART VIII.

No. 17, 1939.

LYING-IN HOMES.

**39.** (1) The person in charge of a lying-in home shall keep a register in which shall be entered forthwith the particulars prescribed and shall forward to the Director within twenty-four hours after each birth in such home the particulars prescribed.

Register to be kept.  
cf. Act No. 21, 1923, s. 37.  
Act No. 3,654 (1928), s. 93 (Vic.).

(2) Any person who fails to comply with the provisions of this section shall be guilty of an offence against this Act.

Penalty.

**40.** The Minister, at any time in writing, may order that any person in charge of a lying-in home shall not be required to forward the particulars prescribed.

Exemption.  
cf. Act No. 47, 1902, s. 4.

**41.** Any officer authorised by the Minister in that behalf may at all reasonable times enter a lying-in home for the purposes of inspecting the register required to be kept, and, where necessary, interviewing a mother and examining a child.

Right to inspect register.

**42.** (1) The person in charge of a lying-in home shall not permit any child to be taken from such home unless in the charge of the mother of such child, without first obtaining the written consent of the Director.

Removal of child from lying-in home.  
cf. Act No. 21, 1923, s. 33.

(2) Any person who fails to comply with the provisions of this section shall be guilty of an offence against this Act.

PART IX.

MENTALLY DEFECTIVE CHILDREN.

**43.** In this Part, unless the context otherwise requires,---

Interpretation.

“Home” means a home established under this Part.

“Mental defectiveness” means a condition of arrested or incomplete development or degeneration of mind from whatsoever cause arising.

“Mentally defective child” includes a child or young person (not being an insane person within the meaning of the Lunacy Act of 1898) who has been admitted to State control or committed to the

the



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the care of the Minister or committed to an institution, in whom there exists mental defectiveness so pronounced that he requires supervision and control for his own protection, or for the protection of others.

Establishment of homes.

**44.** (1) The Governor, by proclamation, may establish and constitute homes for the reception, detention, maintenance, education and training of mentally defective children, whose cases call for segregation and special treatment, and may by such proclamation assign any name to such home.

(2) Every such home shall be inspected once at least in every three months by an officer appointed for that purpose by the Minister. Such officer shall, after such inspection, submit to the Minister a report dealing with the matters prescribed.

Medical certificates.

**45.** Where the Minister is satisfied by the certificates of two medical practitioners, one of whom shall be the principal medical officer of the Department of Public Instruction or a medical officer of that Department authorised by such principal medical officer and one of whom shall be a qualified psychiatrist, after separate examination, apart from each other, that any child or young person is a mentally defective child, the Minister may order that such child or young person be admitted to a home.

Superintendent to have custody and control of inmates.

**46.** Any mentally defective child admitted to a home shall be in the care of the superintendent; and such mentally defective child, notwithstanding that he has attained the age of eighteen years, may be detained at such home until he is discharged in pursuance of the provisions of section forty-seven of this Act.

Discharge by Minister.

**47.** (1) The Minister, on being satisfied, on medical evidence or on such other evidence (if any) as he may deem necessary, that it is no longer necessary that any person who has been admitted to a home as a mentally defective child should be further detained in any home, may, by order under his hand, in the prescribed form, direct that he be discharged.

Release on license.

(2) Where the Minister is satisfied on medical evidence and on such other evidence (if any) as he may deem necessary, that any person who has been admitted to

to

to a home as a mentally defective child, might, in the interest of such person, be released on license, he may release such person on license subject to such conditions as may be prescribed or as he may, in any special case, think fit.

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(3) Where the Minister is satisfied that any person released on license pursuant to subsection two of this section has failed to comply with any of the conditions specified in the license, the license may be revoked by the Minister, and the Minister may, by order under his hand in the prescribed form, direct that such person shall be detained in a home for a further period, and thereupon and without further warrant any officer or employee of the Child Welfare Department or any member of the police force may arrest such person and convey him to the home specified in the order to be there received and detained until the Minister otherwise directs.

Re-admission for breach of conditions of license.

48. The superintendent of a home, and every officer or other employee of such home authorised in writing by the superintendent, for the purpose of conveying any person who has been ordered to be admitted to a home as a mentally defective child, to or from the home, or of apprehending him and bringing him back to the home in case of his escape and refusal to return, shall, for that purpose and while engaged in that duty, have all the powers, immunities, and privileges of a police constable.

Powers of superintendent and officers of home.

## PART X.

### INSTITUTIONS.

49. The Governor may, by proclamation, establish and constitute, as institutions under this Act,—

- (a) shelters for the reception and temporary detention and maintenance of children or young persons;
- (b) schools for the reception, detention, maintenance, discipline, education and training of children and young persons committed to such institutions,

and may assign a name to such institutions.

Governor may establish institutions. cf. Act No. 21, 1923, s. 16.

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Minister to  
have control.  
cf. Act No.  
21, 1923,  
s. 17.

Order to be  
forwarded  
to superin-  
tendent.  
*Ibid.* s. 18.

Certain  
orders and  
copies to be  
evidence.

**50.** Every such institution shall be controlled by the Minister and shall be inspected once at least in every three months by an officer appointed for that purpose by the Minister. Such officer shall, after such inspection, submit to the Minister a report dealing with the matters prescribed.

**51.** (1) An order committing a child or young person to an institution, duly endorsed as provided in section ninety-three of this Act, or an order made under subsection one of section ninety-four of this Act, duly endorsed as provided in that subsection, or a direction in writing signed by the Minister for the transfer of a child, young person or person from one institution to another, shall be forwarded to the superintendent and shall be sufficient warrant in respect of the child, young person or person named therein—

- (a) to convey him to the institution specified in the endorsement on the order; or
- (b) to transfer him from one institution to another in accordance with the direction of the Minister; or
- (c) to detain him in the institution specified in the endorsement on the order or specified in the direction of the Minister, as the case may be.

(2) The production of—

- (a) any such order so endorsed; or
- (b) a copy of such order so endorsed with a memorandum purporting to be signed by the superintendent of any such institution, stating that the child, young person or person named in such order was duly received into, and is at the time of signing thereof detained in such institution, or has been otherwise disposed of according to law; or
- (c) any order made under this Act, or a copy thereof purporting to be signed by the clerk of the court at which the same was made and certified by him to be a correct copy; or
- (d) a copy of any such direction of the Minister purporting to be signed by the superintendent and certified by him to be a correct copy,

shall,

shall, without proof of signature of the person purporting to have signed the same, be evidence in all courts and proceedings— No. 17, 1939.

- (i) of the due making and signing of any such order, memorandum, or certificate; and
- (ii) of the committal, detention, and identity of the child, young person or person named in any such order, memorandum, or certificate; and
- (iii) of any other matters stated in such order.

**52.** All children, young persons or persons committed to, or inmates of, an institution shall be in the custody and under the control of the superintendent of the institution until they attain the age of eighteen years, or are discharged, transferred from the institution, apprenticed or placed-out: Children, young persons and persons to be under control of superintendent. cf. Act No. 21, 1923, s. 19.

Provided that a child or young person committed to an institution or a person transferred to an institution shall, notwithstanding that he has attained the age of eighteen years, be detained therein until the expiration of the period, if any, named in the order of committal, or in the order directing his transfer, as the case may be, or until he is lawfully discharged, transferred from the institution, apprenticed, or placed out.

**53.** (1) The Minister, with respect to any child, young person or person who has been committed or transferred to or is an inmate of any institution— Powers and duties of Minister. cf. *Ibid.* s. 20.

- (a) shall determine the particular institution in which the child, young person or person shall be placed and detained;
- (b) may transfer a child, young person or person from one institution to another;
- (c) may remove a child or young person (other than a child or young person who has been committed to an institution for a specified term) from an institution and apprentice him, board him out, place him out, or place him as an adopted boarder.

(2) No ward who has not been committed to an institution by a court shall be placed in or transferred to an institution set apart for the reception, detention, maintenance, discipline, education and training of juvenile offenders.

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Discharge  
of child  
or young  
person.cf. Act No.  
21, 1923,  
s. 25.

**54.** (1) The Governor may discharge from any institution any child or young person who has been committed to an institution for a specified term and restore him to the custody of his parent or other suitable person absolutely or on such terms and conditions as he may deem desirable.

(2) The Minister may discharge from any institution any child or young person who has been committed thereto but has not been so committed for a specified term and restore him to the custody of his parent or other suitable person absolutely or on such terms and conditions as may be prescribed or as he may, in any special case, deem desirable.

Absconder  
may be  
appre-  
hended.*Ibid.* s. 28.

**55.** If any person transferred to an institution pursuant to section ninety-four of this Act, or any ward, absconds or is absent from an institution without the leave of the superintendent, any officer or employee of the Child Welfare Department or any constable may apprehend and convey him to such institution to be delivered into the custody of the superintendent thereof.

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## PART XI.

### PUNISHMENT OF INMATES IN INSTITUTIONS.

Interpreta-  
tion.

**56.** (1) In this Part, unless the context otherwise requires—

“Inmate” means a child or young person committed to an institution by a court, or placed in an institution by direction of the Minister in pursuance of the provisions of section twenty-one of the Child Welfare Act, 1923, and any person committed or transferred to an institution in pursuance of this Act.

Discipline.

(2) The superintendent of any institution shall investigate complaints touching any of the following acts of misconduct by any inmate:—

- (a) disobedience of the rules of the institution;
- (b) assaults by one inmate upon another where no dangerous wound or bruise is given;

(c)

- (c) insulting, obscene, indecent, or profane words;
- (d) threatening words to an officer, instructor, or inmate;
- (e) indecent behaviour, not amounting to an indictable offence;
- (f) irreverent behaviour at or during divine service or prayer;
- (g) idleness or negligence in work or wilful mismanagement of work;
- (h) lying or petty thieving;
- (i) conduct to the prejudice of good order and discipline.

(3) Where any inmate is found guilty of any of the acts of misconduct referred to in subsection two of this section, the superintendent may order one or more of the following methods of punishment:—

Superintendents' powers of punishment.

- (i) forfeiture of rewards or privileges, forfeiture or reduction of status or temporary loss of recreation;
- (ii) alteration of meals for a period not exceeding two days—provided that any such alteration shall be within the limits of a special dietary scale approved by the Director;
- (iii) isolated detention from other inmates in a room constructed for the purpose—
  - (a) in the case of an inmate over the age of fourteen years and under the age of sixteen years—for any period not exceeding twenty-four hours;
  - (b) in the case of an inmate of or over the age of sixteen years—for any period not exceeding forty-eight hours;
- (iv) fatigue duty for any period not exceeding seven days;
- (v) physical exercises, with proper rests, under the supervision of an officer or instructor for a period not exceeding thirty minutes on any one day, and not extending beyond a total period of seven days;
- (vi) corporal punishment, not exceeding a maximum of three strokes on each hand.

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(4) Every effort shall be made to enforce discipline without the use of corporal punishment.

(5) Punishment by way of isolated detention shall be used only in exceptional cases, and subject to the following conditions:—

- (a) no inmate under fourteen years of age shall be placed in isolated detention;
- (b) the room used for the purpose shall be light and airy and kept dimly lighted after nightfall;
- (c) some form of useful occupation shall be provided;
- (d) some means of communication with a member of the staff shall be provided;
- (e) if the isolated detention is to be continued for more than twenty-four hours the circumstances shall immediately be reported to the Director;
- (f) no inmate shall be placed in isolated detention for two or more consecutive periods in any one fortnight.

Conditions governing corporal punishment.

(6) Corporal punishment shall be subject to the following conditions:—

- (a) it shall be inflicted only with a cane of a form and kind approved by the Minister;
- (b) it shall be inflicted by an officer or instructor appointed by the superintendent and in his presence;
- (c) it shall not be inflicted in the presence of other inmates.
- (d) it shall not be inflicted on any inmate who is of or above the age of sixteen years.

Serious misconduct of inmate under sixteen years of age.

(7) Where any male inmate is charged with any of the offences enumerated in subsection one of section fifty-seven of this Act, the superintendent—

- (a) shall inquire into and decide whether the inmate is or is not guilty;
- (b) may, in the case of any inmate, order any one or more of the methods of punishment enumerated in paragraphs (i) to (v) inclusive of subsection three of this section; and

(c)

- (c) may, in the case of an inmate under the age of sixteen years, in addition to, or in lieu of any other method of punishment, direct that the inmate be subjected to corporal punishment, not exceeding a maximum of three strokes on each hand. No. 17, 1939.

The powers conferred by this subsection may be exercised in respect of—

- (i) an inmate under the age of sixteen years;
- (ii) an inmate of or over the age of sixteen years where the Director has notified the superintendent that it is not advisable that such inmate should be taken before a court, but no such inmate shall be subjected to corporal punishment.

(8) Where any punishment (other than forfeiture of rewards or privileges, forfeiture or reduction of status, temporary loss of recreation and punishments imposed by a school teacher in respect of minor disciplinary misconduct in school) is ordered the superintendent shall record particulars thereof in the punishment book. Punishment book.

The punishment book shall be in or to the effect of the form prescribed.

(9) Striking, cuffing, shaking, or any other form of physical violence, other than that permitted by this Act, or under the general rules of law, is prohibited. Limitations.

A school teacher for minor disciplinary misconduct in school may administer, with a cane, not more than two strokes on each hand.

No inmate shall be punished by being dosed with medicine or any other substance.

No inmate shall be punished by being compelled to hold himself in a constrained or fatiguing position.

No inmate, without legal justification or excuse, shall be handcuffed or otherwise forcibly restrained.

No inmate shall be allowed to administer any form of punishment to any other inmate.

(10) In the case of an inmate with any physical or mental disability, corporal punishment shall not be ordered



No. 17, 1939. ordered or inflicted unless a medical officer has sanctioned the infliction of corporal punishment on such inmate either generally or in any particular case, but the superintendent of the institution may order any one or more of the methods of punishment enumerated in paragraphs (i) to (v) inclusive of subsection three of this section.

Females.

(11) The following provisions shall have effect with respect to the punishment of female inmates—

- (a) in the case of any female inmate, any one or more of the methods of punishment enumerated in paragraphs (i) to (v) inclusive of subsection three of this section may be ordered;
- (b) in the case of any female inmate under the age of fifteen years, any one or more of the methods of punishment enumerated in paragraphs (i) to (vi) inclusive of subsection three of this section may be ordered.

Serious misconduct by inmates.

(12) Except as authorised in this Part, the superintendent of an institution shall not impose or inflict or allow any officer or instructor to impose or inflict any punishment for acts which constitute an offence punishable summarily or on indictment.

Serious misconduct.

**57.** (1) Where any inmate of or over the age of sixteen years is charged with—

- (a) gross insubordination; or
- (b) attempted absconding; or
- (c) wanton destruction, damage or disfigurement of any government property; or
- (d) assaulting an officer or instructor or a member of the domestic staff; or
- (e) cruelly maiming, wounding, or injuring any animal; or
- (f) persistent neglect or refusal to conform to the rules or routine of the institution; or
- (g) inciting other inmates to neglect or refuse to conform to such rules or routine,

he shall, subject to subsection four of this section, as soon as practicable, be taken before a magistrate sitting as and constituting a children's court, who shall hear and determine the matter.

(2) If the magistrate finds that the charge is proved, he may—

- (a) order the offender to be punished by any one or more of the methods of punishment enumerated in paragraphs (i) to (v) inclusive of subsection three of section fifty-six of this Act; or
- (b) order the offender to be punished by isolated detention within the institution for any term not exceeding seventy-two hours; or
- (c) order that the offender be detained for a specified term in a prison and kept to hard labour for any period not exceeding three months and direct that, on the expiration of the period of detention, the offender be returned to his former custody.

(3) If during the hearing any serious irregularity, misconduct or ill-treatment by any officer or instructor be admitted or proved, the magistrate shall forward a report to the Minister setting out the matters admitted or proved.

(4) Where an inmate of or over the age of sixteen years is charged with any of the offences enumerated in subsection one of this section the Director may if he deems it advisable in the interests of such inmate that such inmate should not be taken before a court notify the superintendent accordingly.

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Powers of court.

## PART XII.

### MAINTENANCE OF CHILDREN BY THEIR RELATIVES.

**58.** In this Part, unless the context otherwise requires—

Interpretation.

“Near relative” means—

- (a) in the case of a lawful child—father, mother, step-father, and step-mother;
- (b) in the case of an illegitimate child—
  - (i) a person admitting himself to be or adjudged by a court to be the father;
  - (ii)

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- (ii) the husband of the mother of such child where the child was born before his marriage to such mother; and
- (iii) the mother;
- (c) in the case either of a lawful or an illegitimate child, any person (other than the persons referred to in paragraphs (a) and (b) of this section) who is by law liable to maintain the child, including an adopting parent or a guardian but not including any other person whose liability for such maintenance is occasioned by or under this Act.

Liability of near relatives.  
cf. W.A. No. 31, 1907.  
Imp. Act. 23 Geo. V, ch. 12, s. 86.  
Vic. No. 3,654, s. 45.  
N.S.W. 21, 1923, ss. 26, 119.

**59.** (1) Where any child is a ward or where an order has been made by a court, committing a child—

- (a) to the care of any person; or
- (b) to the care of the Minister,

to be dealt with as a ward admitted to State control the near relatives shall be liable to pay, or contribute towards his maintenance, according to their several abilities, and in the order of priority set out in subsection two of this section.

(2) The order of priority in which near relatives shall be liable under subsection one of this section to pay or contribute shall be as follows, namely:—

- (a) in the case of a lawful child—
  - (i) first, the father of such child;
  - (ii) second, the step-father of such child;
  - (iii) third, the mother of such child;
  - (iv) fourth, the step-mother of such child;
  - (v) fifth, the near relative of such child referred to in paragraph (c) of section fifty-eight of this Act;
- (b) in the case of an illegitimate child—
  - (i) first, the person admitting himself to be or adjudged by a court to be the father of such child;
  - (ii) second, the husband of the mother of such child where the child was born before his marriage to the mother;
  - (iii)

- (iii) third, the mother of such child;
- (iv) fourth, the near relative of such child referred to in paragraph (c) of section fifty-eight of this Act:

Provided that the person referred to in subparagraph (ii) of paragraph (b) of this subsection shall not be liable to pay or contribute towards the maintenance of an illegitimate child of his wife in any case where he satisfies the court that, at the time of his marriage, he was not aware of the child's existence.

(3) The court may at any time while the child remains a ward or during the currency of the order of committal on complaint by the Minister or any officer authorised in that behalf by the Minister, or by the person to whose care the child has been committed, inquire into the ability of any of the near relatives to maintain or contribute to the maintenance of the child, and—

- (a) shall make an order (in this Part referred to as a "contribution order") for the payment by such one or more of the near relatives concerning whose ability to maintain or contribute to the maintenance of the child the inquiry was made as may be specified in the order of a reasonable sum towards the future maintenance of such child; or
- (b) shall certify that none of the near relatives concerning whose ability to maintain or contribute to the maintenance of the child the inquiry was made is able to maintain or contribute to the maintenance of the said child.

The issue of such certificate shall not prejudice the right of the Minister or any officer authorised by the Minister in that behalf or any person to whose care the child has been committed, at any time, to make a further application to a court under this section for a contribution order.

(4) The following provisions shall have effect with respect to every contribution order:—

- (a) The court shall, in making any contribution order, have regard to the order of priority in which the near relatives are liable to maintain or contribute to the maintenance of the child.

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(b) In the fixing of the sum to be paid by any one or more of the near relatives, the court shall have regard to the ability of the near relative or near relatives against whom the order is made to maintain or contribute towards the maintenance of the child.

(c) Where a contribution order is made against two or more near relatives the court may, in and by the contribution order, declare that the sum specified in the contribution order shall be paid by the near relatives specified therein jointly and severally or that specified parts of that sum shall be paid severally by specified near relatives as to the court may seem fit, but so that such persons shall not be liable to pay a greater amount per week in the aggregate in respect of any one child than appears to the court to be reasonable.

Contribution order at time of order of committal.

(5) A contribution order against a near relative may be made, in the case of a child who is a ward, at the time he becomes a ward or at any time thereafter and, in any other case at the time of making the order of committal or at any time thereafter.

Provided that where an order of committal is made no such contribution order shall be made unless the near relative consents, or has been afforded an opportunity to show cause why such an order should not be made.

Where an order of committal is made, if the near relative so desires the hearing so far as the same relates to the making of a contribution order shall be adjourned to a future date to be determined by the court.

Moneys to be applied towards maintenance of child.

(6) Where the child has been committed to the care of any person, contributions under the contribution order shall be paid to that person, to be applied by him in or towards the maintenance or otherwise for the benefit of the child.

Moneys to be paid to Minister.

(7) Where the child is a ward or has been committed to the care of the Minister, or to an institution, the contributions under the contribution order shall be paid to the Minister.

(8)

(8) A contribution order shall, subject to this Part, remain in force in the case of a child—

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Duration of order.

- (a) committed to the care of any person—until the expiration of the period of time for which he is so committed or until he attains the age of sixteen years whichever first happens;
- (b) committed to the care of the Minister—until he attains the age of sixteen years or until his earlier discharge from control;
- (c) committed to an institution—until his discharge from such institution or until he attains the age of sixteen years whichever first happens;
- (d) who is a ward—until he attains the age of sixteen years.

**60.** (1) If it appears to a court, on complaint by the Minister or any officer authorised by the Minister in that behalf, that any near relative is of ability to contribute towards the past maintenance of a ward or of a child committed to the care of the Minister to be dealt with as a ward admitted to State control or of an ex-ward or of a person who was a child so committed but who has been discharged from such care, the court may order such near relative to pay to the Minister a reasonable sum by instalments or otherwise as the court directs as reimbursement of moneys paid for the past maintenance of the ward, child, ex-ward or person whether or not such ward, child, ex-ward or person be alive at the time of the hearing:

Recovery of money expended for past maintenance of wards. cf. Act No. 21, 1953, ss. 26, 119.

Provided that no such order shall be made against a person referred to in subparagraph (ii) of paragraph (b) of section fifty-eight of this Act in respect of the past maintenance of an illegitimate child of his wife in any case where he satisfies the court that, at the time of his marriage, he was not aware of the child's existence.

(2) The provisions of this section shall apply where moneys have been expended in allowances to relatives under section twenty-seven of this Act as if such moneys were moneys paid for the past maintenance of a ward or of a child committed to the care of the Minister to be dealt with as a ward admitted to State control and as if the mother, single woman or father, as the case may be,

to

The like in respect of allowances.

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Near relative  
not to pay  
twice in  
respect of  
same child.

to whom such allowance was paid was the only near relative liable to pay or contribute towards the maintenance of the child or young person.

(3) Where an order under this section is made in respect of any near relative against whom an order has been made for payment of preliminary expenses or expenses of maintenance under Part XVI of this Act, or under the Child Welfare Act, 1923, or under the Infant Protection Act, 1904, or for payment of maintenance under the Deserted Wives and Children Act, 1901-1939, the court may vary, suspend or discharge the last-mentioned order so as to secure that the said near relative shall not pay twice for the maintenance of the same child.

(4) The Minister or any officer authorised by the Minister in that behalf may, in addition to the powers contained in subsections one, two and three of this section, institute legal proceedings—

- (a) against any parents for the recovery of moneys expended in the maintenance of their children; and
  - (b) against the parents of illegitimate children for the recovery of maintenance money,
- and such parents shall be liable jointly and severally.

Order may  
be varied or  
discharged.  
Act No. 21,  
1923, s. 26.

**61.** (1) Any order under this Part may be enforced, appealed from, confirmed, suspended, varied, or discharged in the same manner in all respects as orders made under Part XVI of this Act.

(2) Where a child in respect of whose maintenance a contribution order has been made becomes self-supporting the Minister or any officer authorised by the Minister in that behalf shall make an application under subsection one of this section—

- (a) in any case where contributions under the order are paid to the Minister—as soon as practicable after the child becomes self-supporting;
- (b) in any other case—as soon as practicable after the Director receives the notice referred to in subsection three of this section.

(3) Where contributions under a contribution order are paid to any person other than the Minister such person shall as soon as practicable after the

the

the child in respect of whom the contributions are paid becomes self-supporting give notice in writing of the fact to the Director, and any such person who wilfully neglects to give such notice shall be guilty of an offence against this Act.

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**62.** A magistrate or court may, upon complaint by the Minister or any officer authorised by the Minister in that behalf or by the person to whose care a child has been committed that any person has absconded or is about to abscond from New South Wales to evade the provisions of this Part or compliance with a contribution order, issue a warrant for the arrest of such person.

Person absconding.

**63.** A complaint may allege that a parent or other near relative is able to maintain or contribute towards the maintenance or past maintenance of two or more wards or children. Any order made on such complaint shall specify the amount payable in respect of each ward or child.

Complaint may include two children.

**64.** (1) On complaint in writing on oath being made to a magistrate or court against any parent or other near relative under this Part, such magistrate or court may summon such parent or other near relative to appear before a court to answer such complaint.

Summons.

(2) Any summons under this Part shall be served on the defendant at least fourteen days before the day appointed for the hearing of the complaint.

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### PART XIII.

#### EMPLOYMENT OF CHILDREN.

**65.** (1) A written license authorising a male child to engage, subject to the regulations, in a specified description of street trading may be issued by the Minister—

Issue of street-trading licenses.  
cf. Act No. 21, 1923, s. 48.

- (a) to any male child of or over the age of fifteen years; or
- (b) to a male child under the age of fifteen years but of or over the age of fourteen years, where the Minister is satisfied that, in the case of such child, special circumstances exist which render the issue of the license necessary or desirable.

(2)



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(2) Such license shall be delivered to the child with a badge to be worn by him as prescribed during such trading.

(3) Such license shall not be issued unless it is shown that the moral or material welfare of the child will not suffer by such trading.

(4) Every license shall be granted for a period not exceeding twelve months and shall terminate on the thirtieth day of June in each year, but may be renewed from time to time, and may at any time be cancelled by the Minister.

(5) No charge shall be made for any license or badge issued under this section.

(6) (a) Any license issued under section forty-eight of the Child Welfare Act, 1923, and in force immediately before the commencement of this Act, shall, unless, sooner cancelled, continue in force until the expiration of the term for which it was granted notwithstanding that the child to whom it was issued is under the age of fifteen years.

(b) Any license continued in force by paragraph (a) of this subsection may be renewed from time to time for a term not exceeding six months but no such license shall be renewed for a term which will extend beyond the period of twelve months from the commencement of this Act.

Penalty for  
employing  
child in street  
trading in  
contravention  
of Act.  
cf. Act No.  
21, 1923,  
s. 49.

**66.** Any person who employs a child in street trading—

(a) who is not duly licensed in that behalf; or

(b) who, although so licensed, is employed by him in trading of a description, or during hours not authorised by the license,

shall be liable to a penalty not exceeding five pounds, or in case of a second or subsequent offence to a penalty not exceeding ten pounds.

Entertain-  
ments and  
perform-  
ances.  
*Ibid.* s. 41.

**67.** (1) Any person who causes or allows any child to take part in any public exhibition or performance or in any preparation, training or rehearsal for any such exhibition or performance whereby the life or limbs of such child is or are endangered, and the parent or any  
person

person having the care of such child who aids or abets such firstmentioned person therein, shall be guilty of an offence against this Act.

(2) Where in the course of a public exhibition or performance, or in any preparation or training or rehearsal for any such exhibition or performance, which in its nature is dangerous to the life or limb of a child who is employed to take part therein, any accident causing actual bodily harm occurs to such child, the employer of such child, whether his parent or not, shall be guilty of an offence against this Act; and if such employer is not the parent of such child, the court before which such employer is convicted may award as compensation for the bodily harm so occasioned, a sum not exceeding one hundred pounds to be paid by such employer to the child or to some person named by the court on behalf of the child.

The recovery of compensation awarded under this section shall not deprive the child of any other legal remedy, but any sum so awarded shall be taken into account in any other proceedings by or on behalf of the child for or in respect of the same bodily harm.

**68.** (1) Any person who causes or procures, or having the care thereof allows any child—

- (a) unless duly licensed as provided in section sixty-nine of this Act to be employed—
  - (i) in any place whatsoever used for broadcasting purposes; or
  - (ii) in any premises licensed according to law for public entertainments; or
  - (iii) in any circus; or
  - (iv) in any other place used wholly or in part for providing entertainment or amusement; or
  - (v) in any place set apart for spectators at any sports or in or adjacent to any way of access to or egress from any such place; or
  - (vi) in any place whatsoever used for the photographing of scenes to be depicted in a cinematograph film,

Prohibition of employment of children for certain purposes without license.  
Act No. 21, 1929, s. 42.

for

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for the purpose of singing, playing or performing, or of offering anything for sale; or

(b) to be in any place whatsoever for the purpose of—

(i) begging or receiving alms; or

(ii) inducing the giving of alms, whether under the pretence of singing, playing, performing, offering anything for sale or otherwise;

shall be guilty of an offence against this Act:

Provided that paragraph (a) of this subsection shall not apply in the case of any occasional entertainment, the net proceeds of which are wholly applied for the benefit of any school or to any charitable object.

Provided further that paragraph (a) of this subsection shall not apply in any of the following cases, that is to say—

- (i) where a community singing concert is being conducted and the child concerned takes part in such concert only by singing as a member and in common with the other members of the audience present at such concert, and such concert is not being conducted between the hours of ten o'clock at night and six o'clock in the morning;
- (ii) where a community singing concert is being conducted on any Sunday and the child concerned takes part in such concert only by singing as a member and in common with the other members of the church or school choir present at such concert;
- (iii) where a community singing concert is being conducted and the child concerned takes part in such concert only by singing as a member and in common with the other members of the audience present at such concert, and either such concert is not being conducted during school hours on any day upon which schools are open or the child concerned is exempted from attendance at school.

(2)

(2) If a person having the care of a child not licensed as provided in section sixty-nine of this Act is charged with an offence under this section, and it is proved that the child was in any place for any such purpose as is referred to in paragraph (b) of subsection one of this section, and that the person charged allowed the child to be in the place, he shall be presumed to have allowed him to be in the place for that purpose unless the contrary is proved.

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cf. 23 Geo.  
V, c. 12,  
s. 4.

(3) If any person while singing, playing, performing, or offering anything for sale in a street or public place has with him a child not licensed under section sixty-nine of this Act the child shall for the purposes of this section be deemed to be in that street or place for the purpose of inducing the giving of alms.

**69.** (1) Notwithstanding anything contained in this Part the Minister may grant a license authorising any child over the age of seven years to be employed in any place or premises mentioned in paragraph (a) of subsection one of section sixty-eight of this Act for the purposes therein specified.

Licenses  
to take part  
in public  
entertain-  
ments.  
cf. Act No.  
21, 1923, s.  
42.

(2) A license shall not be granted unless the Minister is satisfied that the child is fit to be employed in any such place or premises for the purposes specified, and that proper provision has been made to safeguard the health, welfare and education of the child.

(3) A license shall be granted for such time, during such periods and subject to such conditions as may be prescribed or as the Minister may in any special case approve, and such times, periods and conditions shall be endorsed on the license.

No license shall be granted authorising any child to be employed on any day between the hours of ten o'clock at night and six o'clock in the morning or on any Sunday.

(4) A license may, at any time, be varied or cancelled by the Minister.

**70.** (1) The Minister may appoint any officer to see that the restrictions and conditions of any license under section sixty-nine of this Act are duly observed.

Supervision  
of licenses.

(2) Such officer shall have power to enter and inspect any circus or place or premises mentioned in paragraph (a) of subsection one of section sixty-eight of this

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this Act for the purpose of ascertaining whether any child is employed therein in contravention of the provisions of this Part.

Inter-pretation of Part XIII.

**71.** (1) For the purposes of this Part and of any regulations made in relation to any of the matters referred to in this Part—

A child who assists in any trade or occupation carried on for profit shall be deemed to be employed notwithstanding that he receives no reward for his labour.

Any public performance by a child which is an acrobatic performance or a performance as a contortionist shall be deemed to be a public exhibition or performance whereby the life or limbs of such child is or are endangered or which is in its nature dangerous to the life or limb of such child.

A child taking part as a chorister in any religious, school, or similar service or in any practice for such service shall not, whether he receives any reward or not, be deemed to be employed, but such child shall not take part as a chorister in any such service or practice between the hours of ten o'clock at night and six o'clock in the morning.

(2) In this Part of this Act and in any regulations made in relation to any of the matters referred to in this Part of this Act, the expression "street trading" includes the hawking of newspapers, matches, flowers and other articles, shoe-blackening and any other like occupation carried on in any public place.

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#### PART XIV.

##### COMMITTAL OF NEGLECTED OR UNCONTROLLABLE CHILDREN OR YOUNG PERSONS OR OF JUVENILE OFFENDERS.

Definition of neglected child.

**72.** In this Part of this Act—

"Neglected child" means child or young person—

- (a) who is in a brothel, or lodges, lives, resides or wanders about with reputed thieves

thieves or with persons who have no visible means of support, or with common prostitutes, whether such reputed thieves, persons or prostitutes are the parents of such child or not; or

- (b) who has no visible lawful means of support or has no fixed place of abode; or
- (c) who begs in any public place, or habitually wanders about public places in no ostensible occupation, or habitually sleeps in the open air in any public place; or
- (d) who, without reasonable excuse, is not provided with sufficient and proper food, nursing, clothing, medical aid or lodging, or who is ill-treated or exposed; or
- (e) who takes part in any public exhibition or performance within the meaning of Part XIII of this Act whereby the life or limb of such child is endangered; or
- (f) who, not being duly licensed under this Act for that purpose, is engaged in street trading within the meaning of Part XIII of this Act; or
- (g) whose parents are drunkards, or, if one be dead, insane, unknown, undergoing imprisonment, or not exercising proper care of the child or young person, whose other parent is a drunkard; or
- (h) who is in any place where opium or any preparation thereof is smoked; or
- (i) who is living under such conditions as indicate that the child or young person is lapsing or likely to lapse into a career of vice or crime; or
- (j) who in the opinion of the court is under incompetent or improper guardianship; or
- (k) who is destitute; or
- (l) whose parents are unfit to retain the child or young person in their care, or, if one parent be dead, insane, unknown, undergoing imprisonment, or not exercising proper

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proper care of the child or young person, whose other parent is unfit to retain the child or young person in his care; or

- (m) who is suffering from venereal disease and is not receiving adequate medical treatment; or
- (n) who is falling into bad associations or is exposed to moral danger; or
- (o) who, without lawful excuse, does not attend school regularly.

Warrant for apprehension.

Act No. 21, 1923, s. 50.

**73.** Any justice may, upon oath being made before him by an officer authorised by the Minister in that behalf or by any constable of police, that, having made due inquiry, he believes any child or young person to be a neglected or uncontrollable child or young person—

- (a) issue his summons for the appearance of such child or young person before a court; or
- (b) in the first instance issue his warrant directing such child or young person to be apprehended.

Apprehension.

cf. *Ibid.* s. 51.

**74.** Any officer authorised by the Minister in that behalf or any constable of police may, although the warrant is not at the time in his possession, apprehend any child or young person for whose apprehension a warrant has been issued under section seventy-three of this Act.

Warrant to search in brothel.  
*Ibid.* s. 52.

**75.** (1) If it appears to any justice on information laid before him on oath by any credible person, that there is reasonable cause to suspect that a child or young person is in a place which is a brothel, or where opium or any preparation thereof is smoked, such justice may issue his warrant authorising any constable of police or any other person named therein to search in such place for any child or young person, and to take such child or young person to a place of safety there to be detained until dealt with pursuant to this Act.

(2) Any constable of police or person authorised by warrant under this section to search for a child or young person may enter (if need be by force) into any house, building or other place specified in the warrant, and may remove such child or young person therefrom.

(3)

(3) Such constable of police or person may be accompanied by—

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- (a) a medical practitioner, or
- (b) the person giving the information if he so desires, unless the justice otherwise directs.

(4) It shall not be necessary in the information or warrant to name the child or young person.

**76.** Any officer authorised by the Minister in that behalf or any constable of police may without warrant apprehend any child or young person who is in a place which is a brothel or where opium or any preparation thereof is smoked, or who he has reason to believe is a neglected or uncontrollable child or young person.

Apprehension of child in brothel, etc. Act No. 21, 1923, s. 53.

**77.** Where a child or young person is found in a brothel or in a place where opium or any preparation thereof is smoked, the keeper or person in charge or apparently in charge of such brothel or place shall be guilty of an offence against this Act.

Where child in brothel or opium den. keeper guilty of an offence. *Ibid.* s. 54.

**78.** Any child or young person apprehended as a neglected or uncontrollable child or young person or juvenile offender shall be taken to a shelter and as soon as practicable thereafter shall be brought before a court.

Child placed in shelter and to be brought before court. *cf. Ibid.* s. 55.

**79.** Any child or young person who solicits any person for immoral purposes or otherwise behaves in an indecent manner shall be deemed an uncontrollable child or young person.

Child deemed to be uncontrollable.

**80.** Any person having the care of a child or young person may apply to a court to deal with such child or young person as an uncontrollable child or young person. Such child or young person may be detained at a shelter pending the determination of the application by the court.

Application to deal with child or young person as uncontrollable. *Ibid.* s. 56.

**81.** (1) Where any child or young person is brought before a court as, or is charged with being, a neglected or uncontrollable child or young person or a juvenile offender, the court may thereupon hear and determine the matter or charge.

Procedure of court. *cf. Ibid.* s. 57.

(2) Where a child or young person is brought before a court as, or is charged with being, a neglected or uncontrollable child or young person or a juvenile offender his parent or guardian may, in any case, and shall,

*cf.* 23 Geo. V, ch. 12, s. 34.



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shall, if he can be found and resides within a reasonable distance, be required to attend at the court before which the matter or charge is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

(3) Where a child or young person is arrested or taken to a shelter, the constable by whom he is arrested or the officer of police in charge of the police station to which he is brought, or the person by whom he is taken to the shelter, as the case may be, shall cause the parent or guardian of the child or young person, if he can be found, to be warned to attend at the court before which the child or young person will appear.

(4) If the parent without reasonable excuse refuses to attend, the court may direct a warrant to issue to bring him before the court at the hearing; but the parent may be admitted to bail on entering into a recognizance, with or without sureties, to attend the court at the hearing of the matter or charge.

(5) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child or young person:

Provided that if that person is not the father, the attendance of the father may also be required.

(6) The attendance of the parent of a child or young person shall not be required under this section in any case where the child or young person was before the institution of the proceedings removed from the custody or charge of that parent by an order of any court.

(7) During the period of any adjournment of the hearing of the matter or charge the child or young person may be detained at any shelter, or permitted to go home with a parent or with any other person who is willing to undertake the care of the child or young person during such period, or may be admitted to bail with or without sureties.

(8) If a court before which any child or young person is brought, is not in a position to decide whether any and, if so, what order should be made under this Part, it may make such interim order as it thinks fit for  
his

his detention or continued detention in a shelter or for his committal to the care of a fit person, whether a relative or not, who is willing to undertake the care of him.

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An interim order made under this subsection for detention or continued detention in a shelter shall not remain in force for more than fourteen days and in the case of committal to the care of a fit person for more than twenty-eight days. but if, at the expiration of the period for which any interim order remains in force the court deems it expedient to do so, it may make a further interim order.

82. If a court finds that a child or young person is a neglected or uncontrollable child or young person it may—

Power of court at hearing.  
cf. Act No. 21, 1923, s. 58.

- (a) admonish and discharge the child or young person; or
- (b) release the child or young person on probation upon such terms and conditions as may be prescribed or as the court may, in any special case, think fit, and for such period of time (whether expiring before or after the date upon which the child or young person attains the age of eighteen years) as the court may think fit; or
- (c) commit the child or young person to the care of some person who is willing to undertake such care upon such terms and conditions as may be prescribed or as the court may, in any special case, think fit, and for such period of time (whether expiring before or after the date upon which the child or young person attains the age of eighteen years) as the court may think fit; or
- (d) commit the child or young person to the care of the Minister to be dealt with as a ward admitted to State control; or
- (e) commit the child or young person to an institution, either generally or for some specified term (whether expiring before or after the date upon which the child or young person attains the age of eighteen years) not exceeding three years.

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Powers of  
court.Summary  
offences.cf. Act. No.  
21, 1923,  
s. 59.

**83.** (1) Where a child or young person is charged before a court with a summary offence, the court may, if the child or young person admits the offence, or if the court finds the charge is proved—

- (a) release the child or young person on probation upon such terms and conditions as may be prescribed or as the court may, in any special case, think fit, and for such period of time (whether expiring before or after the date upon which the child or young person attains the age of eighteen years) as the court may think fit; or
- (b) commit the child or young person to the care of some person who is willing to undertake such care upon such terms and conditions as may be prescribed or as the court, in any special case, may think fit and for such period of time (whether expiring before or after the date upon which the child or young person attains the age of eighteen years) as the court may think fit; or
- (c) commit the child or young person to an institution either generally or for some specified term (whether expiring before or after the date upon which the child or young person attains the age of eighteen years) not exceeding three years; or
- (d) commit the child or young person to the care of the Minister to be dealt with as a ward admitted to state control; or
- (e) deal with the child or young person according to law.

Indictable  
offences.

(2) Where a child or young person is charged before a court with an indictable offence (other than homicide, rape or other offence punishable by death), and the charge is heard and determined in a summary manner, the court may if the child or young person admits the offence, or the court finds that the charge is proved—

- (a) release the child or young person on probation upon such terms and conditions as may be prescribed or as the court may, in any special case, think fit, and for such period of time (whether expiring before or after the date upon which the child or young person attains the age of eighteen years) as the court may think fit; or

(b)

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- (b) commit the child or young person to the care of some person who is willing to undertake such care upon such terms and conditions as may be prescribed or as the court may, in any special case, think fit and for such period of time (whether expiring before or after the date upon which the child or young person attains the age of eighteen years) as the court may think fit; or
- (c) commit the child or young person to the care of the Minister to be dealt with as a ward admitted to state control; or
- (d) commit the child or young person to an institution either generally or for some specified term (whether expiring before or after the date upon which the child or young person attains the age of eighteen years) not exceeding three years; or
- (e) in addition to or in substitution for any committal under paragraph (d) of this subsection, require the child or young person to enter into a recognizance with or without a surety or sureties to be of good behaviour and to comply with any conditions the court may specify, for a term which shall not be less than twelve months or more than three years, and in default of entering into such recognizance may direct that the child or young person shall be detained or further detained in a shelter or an institution for a period not exceeding three months unless such recognizance is sooner entered into:

Provided that committal to a shelter shall not exceed thirty days:

Provided, further, that in no case shall the total term of such detention and further detention together exceed three years.

(3) Where a child or young person is brought before a court and charged with an offence (other than homicide, rape or other offence punishable by death), the court, if the child or young person admits the offence, or if it finds that the charge is proved but that, having regard to all the circumstances and to the welfare of the child or young person, it is inexpedient to make any order under

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under subsection one or subsection two of this section, without proceeding to a finding of guilt, may make an order—

- (a) dismissing the charge; or
- (b) admonishing and discharging the child or young person; or
- (c) discharging the child or young person conditionally on his entering into a recognizance with or without sureties to be of good behaviour and to comply with any conditions the court may specify and to appear for a finding of guilt and to be further dealt with in accordance with the provisions of this section if called on at any time during such period not exceeding three years as may be specified in the order.

(4) Where a child or young person is dealt with under paragraph (e) of section eighty-two or paragraph (c) of subsection one or paragraph (d) of subsection two of this section, the court may suspend the order of committal upon the child or young person entering into a recognizance with or without sureties to be of good behaviour and to comply with such terms and conditions as the court may specify.

When such recognizance is entered into the child or young person shall thereupon be discharged from custody.

(5) Where a child or young person is dealt with under paragraph (e) of subsection one of this section and is ordered to be detained for any specified term or for a specified term in default of payment of any penalty, damages, compensation or costs, such child or young person shall be committed to a shelter or to an institution or to prison. But no such child or young person shall be committed to a prison unless the court certifies that he is of so unruly a character that he cannot be detained in a shelter or an institution or that he is of so depraved a character that he is not a fit person to be so detained:

Provided that committal to a shelter shall not exceed thirty days.

(6) Where a child or young person has been discharged under paragraph (c) of subsection three or under subsection four of this section, the court, at any time by notice

notice given in such manner as the court shall direct to the parent of such child or young person, and to the surety or to the child or young person himself, may direct that such child or young person appear before the court, at a time and place named in the notice; and if such child or young person does not so appear, the court may issue a warrant for his apprehension.

**84.** (1) Any child or young person committed to an institution under the provisions of section eighty-two or section eighty-three of this Act by a court other than the Metropolitan Children's Court at Sydney, shall be conveyed to the shelter for boys or girls (as the case may be) at Sydney, or at such other centre as may be prescribed, and there submitted to a medical examination and mental survey.

Transfer to Sydney of children and young persons for mental survey.

(2) Any officer authorised by the Minister in that behalf may bring the child or young person before the Metropolitan Children's Court or before a children's court at such other centre as may be prescribed, together with the order of committal, and the report disclosing the medical, physical and mental condition of the child or young person, and make application to have the order of committal reviewed.

(3) In such cases the court to which such application is made shall admit as evidence the depositions of witnesses at the court by which the child or young person was committed and shall consider all the circumstances, the report disclosing the medical, physical and mental condition of the child or young person and such fresh evidence as may be available, and may—

- (a) confirm the order of committal; or
- (b) revoke the order of committal and make any other order which might have been made under section eighty-two or section eighty-three of this Act.

**85.** (1) Where a child or young person is in a summary manner found guilty by a court of an offence in respect of which a penalty, compensation, damages or costs are imposed, and there is reason to believe that his parent or guardian has contributed to the commission of the offence by wilful default or by habitually neglecting

Court may order parent to pay penalty, damages or costs. cf. Act No. 21, 1923, s. 60.

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neglecting to exercise due care of the child or young person a justice may, on information, issue a summons against such parent or guardian charging him with contributing to the commission of the offence.

(2) If the court is satisfied that the parent or guardian has contributed to the commission by the child or young person of the offence by wilful default or by habitually neglecting to exercise due care of him, the court may order that the penalty, damages, or costs shall be paid by the parent or guardian instead of by the child or young person and may also order the parent or guardian to give security for the good behaviour of the child or young person.

(3) Any sums so imposed and ordered to be paid may be recovered from the parent or guardian in the same manner as sums ordered by justices to be paid may be recovered under the Justices Act, 1902.

(4) The court, on due proof that the conditions of any such recognizance have not been complied with, may forfeit such recognizance, which shall thereupon be dealt with as a forfeited recognizance in the manner provided by the Fines and Forfeited Recognizances Recovery Act, 1902.

(5) The parent or guardian may appeal from any order made in pursuance of subsection two of this section under the provisions of Part V of the Justices Act, 1902.

Power with respect to child or young person charged with certain indictable offences.

cf. Act No. 21, 1923, s. 61.

**86.** (1) Where a child or young person is charged before a court with homicide, rape or other offence punishable by death, the court may commit the child or young person to take his trial according to law.

(2) Where a child or young person is charged before a court with any other indictable offence and is not dealt with under section eighty-three of this Act, the court may commit the child or young person to take his trial according to law.

In any such case the court shall forthwith transmit to the Attorney-General and to the Minister of Public Instruction a statement of the reasons for its decision.

(3) If a child or young person be committed for trial and not admitted to bail he shall be detained in a shelter unless the court certifies that he is of so unruly

a character that he cannot be detained in a shelter, or that the charge is of such a serious nature, or that he is so depraved a character that he is not a fit person to be detained in a shelter.

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**87.** (1) Where a child or young person upon his trial has pleaded guilty to, or has been convicted of an indictable offence, the judge may exercise any of the powers of a children's court enumerated in section eighty-three of this Act, or may sentence him according to law, and in the latter case may direct that the child or young person be detained in an institution for the period specified in the sentence.

Child or young person convicted of indictable offence may be sent to institution.

(2) (a) Any court by or before which a child or young person is found guilty, on indictment or otherwise, of an offence (other than homicide, rape or other offence punishable by death) may, if it thinks fit, remit the case to a children's court consisting of a special magistrate exercising jurisdiction for the place where the offender was committed for trial, or, if he was not committed for trial, to a children's court consisting of a special magistrate exercising jurisdiction either for the same place as the remitting court, or for the place where the offender resides or to the Metropolitan Children's Court accordingly and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court.

cf. 23  
Geo. V,  
ch. 12, s. 36.

(b) No appeal shall lie against an order of remission made under paragraph (a) of this subsection, but nothing in this subsection shall affect any right of appeal against the verdict or finding on which an order is founded, and a person dissatisfied with the order of the children's court to which the case has been remitted may appeal therefrom to Quarter Sessions as if he had been tried and found guilty by the children's court.

(c) Any court by which an order remitting a case to a children's court is made under this subsection may give such directions as appear to be necessary with respect to the custody of the offender or for his release on bail until he can be brought before the children's court and shall cause to be transmitted to the clerk of the children's court a certificate setting out the nature of the offence



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offence and stating that the offender has been found guilty thereof and that the case has been remitted for the purpose of being dealt with under this subsection.

Form of  
committal.  
Act No. 21,  
1923, s. 66.

**88.** A judge or a court in directing that a child or young person be committed to or detained in an institution shall do so in general terms, but may recommend to the Minister that the child or young person be sent to an institution of a particular class.

Court to hear  
evidence on  
behalf of  
child.

*Ibid.* s. 62.  
cf. 23 Geo.  
V, ch. 12,  
s. 35 (2).  
Act No. 61,  
1927, s. 31  
(N.Z.).

**89.** (1) Where a child or young person is charged before a court with any offence, or is brought before a court as a neglected or uncontrollable child or young person the court, if satisfied that a prima facie case has been made out, shall give the child or young person or his parent an opportunity to call evidence, and shall hear any evidence that may be tendered by or on behalf of the child or young person.

(2) The court, if satisfied that the child or young person has committed the offence, or is a neglected or uncontrollable child or young person, shall, before making any order, give consideration to reports, if tendered, setting out the details and results of investigation into the antecedents, home environment, companions, education, school attendance, habits, recreation, character, reputation, disposition, medical history and physical or mental characteristics and defects, if any, of the child or young person.

Probation:  
Who shall  
have  
custody and  
control.  
cf. Act No.  
21, 1923,  
s. 63.

**90.** (1) Where a child or young person has been dealt with under paragraph (c) of section eighty-two or paragraph (b) of subsection one or paragraph (b) of subsection two of section eighty-three of this Act, the following provisions shall apply:—

- (a) the child or young person shall not be committed to the care of a person of a religious faith to which the father or other person having the right to direct in what religion the child or young person shall be educated objects or in which it would not be the duty of the Minister to direct the child or young person to be educated;
- (b) the child or young person shall be in the custody and under the control of the person to whose care he has been committed for the period stated in the order of committal;

(c)

- (c) the child or young person and the premises wherein he resides or whereto he has been committed shall be subject to inspection by officers or other persons appointed by the Minister in that behalf;
- (d) a copy of the order containing the particulars prescribed shall be forwarded to the Director by the court making the order.

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(2) Where a child or young person has been dealt with under paragraph (b) of section eighty-two or paragraph (a) of subsection one or paragraph (a) of subsection two of section eighty-three of this Act the following provisions shall apply—

- (a) the child or young person and the premises wherein he resides shall be subject to inspection by officers or other persons appointed by the Minister in that behalf;
- (b) a copy of the order containing the particulars prescribed shall be forwarded to the Director by the court making the order.

**91.** (1) If a child or young person who has been released upon probation, or committed to the care of any person, breaks or is reasonably suspected of having broken the terms or conditions of his release, he may be apprehended by a police constable or by any officer authorised by the Minister in that behalf and brought before a court.

Breach of terms of probation. cf. Act No. 21, 1923, s. 64.

(2) If it be proved that such breach has occurred, the court may, notwithstanding the fact that the person charged has then attained the age of eighteen years, deal with him in the manner provided in section eighty-two or section eighty-three of this Act.

(3) A period of probation or of committal to the care of any person may be varied or terminated at any time by the judge or court imposing the same.

Power to terminate probation.

(4) The judge or court by whose order a child or young person has been released on probation to a person specified in the order of release may upon the application of any officer authorised by the Minister in that behalf vary such order by substituting some other person for the person so specified.

Power to vary order of release on probation.

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Placement  
in shelter.cf. Act No.  
23, 1923,  
s. 67.

**92.** (1) A child or young person on being committed to an institution shall be placed in a shelter pending the Minister's decision as to his destination:

Provided that no child or young person shall remain in a shelter for more than one month, except by permission of the Minister.

(2) Where an order is made committing a child or young person to an institution the order shall be sufficient warrant for any member of the police force or any officer or employee of the Child Welfare Department to convey such child or young person to a shelter, or to transfer him from one shelter to another or to detain him in a shelter pending the Minister's decision as to his destination.

Name of  
institution to  
to be endorsed  
on order.  
*Ibid.* s. 68.

**93.** The Minister as soon as practicable shall endorse on the order of committal the name of the institution and the place where the child or young person is to be detained.

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## PART XV.

### TRANSFER OF PERSONS FROM A PRISON TO AN INSTITUTION.

Transfers  
from  
prisons to  
institutions.

**94.** (1) The Minister of Justice may, with the consent of the Minister of Public Instruction, by order in writing direct the transfer of any prisoner who is under the age of twenty-one years and undergoing sentence of imprisonment for any term with or without hard labour, from any prison or place of detention, to an institution.

The Minister of Public Instruction shall, as soon as practicable, endorse on such order the name of the institution and the place where the person so transferred is to be detained.

Power to  
detain in  
institutions.

(2) Any person so transferred shall be detained in an institution for the residue of the period mentioned in his sentence, and shall be subject to the discipline and routine of such institution.

Any such order shall be the authority for the detention in an institution of the person to whom it relates until the expiration of the residue of the period mentioned in his sentence.

(3)

(3) If any such person is charged with any of the offences referred to in subsection one of section fifty-seven of this Act he may be taken by the superintendent of the institution before a magistrate sitting as and constituting a children's court, who shall hear and determine the charge, and, if the charge is proved, may direct that the person charged be returned to the prison from which he was transferred, there to serve the unexpired portion of his sentence, and may, where such person is a child or young person, order that he be detained in prison for a further term, or, where such person is of or above the age of eighteen years, impose a sentence of imprisonment for a further term. Such further term shall not exceed three months with hard labour, to commence at and from the termination of the original sentence.

No. 17, 1939.

Penalty for  
misconduct.

(4) Where the Minister of Public Instruction is satisfied that any person transferred to an institution in accordance with the provisions of this Part is not profiting from the discipline and instruction therein, or that for any other reason he is not a suitable person for detention therein, such Minister may, with the consent of the Minister of Justice, order the retransfer of such person to prison, there to serve the unexpired portion of his original sentence, and thereupon such person shall cease to be subject to the provisions of this Act.

(5) Nothing in this section shall affect the operation of sections four hundred and sixty-one to four hundred and sixty-four inclusive of the Crimes Act, 1900.

## PART XVI.

### AFFILIATION PROCEEDINGS.

**95.** Where any single woman is with child by any man who has made no adequate provision for the payment of preliminary expenses, or the expenses of the future maintenance of the child, she, or with her consent any officer authorised by the Minister in that behalf or any reputable person on her behalf, may make complaint in writing on oath to a magistrate or court that she is with

Single woman  
with child may  
take proceed-  
ings against  
father.cf. 35 and 36  
Vic., ch. 65,  
s. 3.Act No. 21,  
1923, s. 69.

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with child by the said man, and that he has made no adequate provision for the payment of the expenses aforesaid.

The magistrate or court may thereupon summon the man to appear before the court to answer such complaint; or, if the circumstances seem to require it, may issue a warrant for his apprehension.

Court may require defendant to pay preliminary expenses.

cf. S.A. Act, No. 702, ss. 3, 4; Vic. Act, No. 1,684, ss. 2, 3; 35 and 36 Vic., chap. 65, s. 4; Act No. 21, 1923, s. 70.

**96.** (1) The court shall hear and determine any complaint under section ninety-five of this Act, and may—

- (a) order the defendant to deposit with the court a sum not exceeding thirty pounds for preliminary expenses and may, in and by such order, direct that the said sum be so deposited in one amount or in instalments over a period to be specified in the order; and
- (b) order that the defendant, unless he deposit with the court in accordance with the order made under paragraph (a) of this subsection the sum awarded for preliminary expenses, be committed to prison for a period of one day for every ten shillings or part of ten shillings included in the sum so awarded or in so much thereof as has not been deposited; and
- (c) order the defendant to pay weekly and every week a sum for the expenses of the maintenance of the child after such child has reached the age of three months.

Every order made under this subsection shall specify a date not later than six months from the date of the order when the order shall lapse if the child has not been born, and when the unexpended portion of any moneys deposited by the defendant for preliminary expenses shall be repaid to him.

(2) If the mother has been delivered of a still-born child (born dead after the commencement of the sixth month of pregnancy) before the date specified in the order, the court may direct that the whole or such portion of the amount deposited, as it thinks fit, be paid out to her.

(3) The court shall not make an order under this section against the defendant unless it be proved by the evidence of some medical practitioner or by the certificate

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certificate of some medical practitioner admitted as such evidence with the consent of the defendant, that the woman is quick with child, and unless her evidence be corroborated in some material particular, or if the court be satisfied that at the time the child was begotten the mother was a common prostitute.

(4) Where an order has been made under this section for the payment of preliminary expenses, the clerk of the court at any time during the currency of the said order may give such direction, in writing, as he thinks necessary, for the disbursement of the said expenses, provided that no more than one-half of the said amount shall be paid out prior to the birth of the child.

**97.** (1) An order made under section ninety-six of this Act, adjudging any sum to be paid for the expenses of the maintenance of a child—

Duration  
of order.  
cf. Act No.  
21, 1923,  
s. 79.

- (a) shall be of full force and validity until the child has attained the age of sixteen years, or until the death of such child if such death occurs before that age;
- (b) shall not be enforceable unless and until a certified copy of the registration of the birth of such child has been lodged with the clerk of the court at which the order was made;
- (c) shall, for the purpose of recovering money due thereunder, always remain of full force and validity.

(2) Such certified copy of registration of birth shall be filed with the record of the proceedings.

(3) The first payment under any such order shall be due and payable on the first Monday after the day on which such child attains the age of three months.

**98.** Where an order has been made under section ninety-six of this Act adjudging any sum to be paid for the expenses of the maintenance of a child, and two or more living children are born, an application to vary the order may be made under section one hundred and sixteen of this Act to provide for the expenses of the maintenance of any such additional child.

Plural births:  
variation  
of order.

**99.**

## No. 17, 1939.

Complaint may be made against father of illegitimate child for leaving it without means of support.

cf. Act No. 17, 1901, s. 4.

Act No. 21, 1923, s. 73.

**99.** (1) In any case where the father of an illegitimate child has left such child without means of support, the mother of the child, or any officer authorised by the Minister in that behalf, or any reputable person on behalf of the child, may make complaint on oath to a magistrate or court; and upon such complaint being made, the magistrate or court may summon the father of the child to appear before the court to answer such complaint, or if the circumstances seem to require it, may issue a warrant for his apprehension.

(2) In any case where the mother of an illegitimate child has left such child without means of support any officer authorised by the Minister in that behalf or any reputable person on behalf of the child may make complaint in writing on oath to a magistrate or court, and upon such complaint being made the magistrate or court may summon the mother of the child to appear before the court to answer such complaint, or, if the circumstances seem to require it, may issue a warrant for her apprehension.

Complaint may include two or more children.

**100.** A complaint under section ninety-nine of this Act may allege that a man or a woman has left without means of support two or more children, and the court may make an order in respect of all or any of them and shall therein specify the amount payable in respect of each child.

Claim for preliminary expenses to be indicated.

**101.** (1) In any proceedings under subsection one of section ninety-nine of this Act, the complaint shall indicate whether preliminary expenses are to be claimed at the hearing.

(2) Failure to do so shall not prevent such claim being made at the hearing, subject to the right of the defendant to apply for an adjournment.

Court shall hear and determine complaint and may make order.

cf. *Ibid.* s. 74.

**102.** The court shall hear and determine any complaint under section ninety-nine of this Act, and may—

(a) make an order for the payment by the defendant—

(i) weekly and every week of a sum for the expenses of the maintenance of the child; and

(i)

- (ii) of a sum for preliminary expenses to an amount not exceeding thirty pounds in respect of each child, and may in and by such order direct that the said sum be so paid in one amount or in instalments over a period to be specified in the order:

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Provided that, in the case of plural births, the amount ordered for preliminary expenses shall not exceed thirty pounds;

- (b) order that the defendant, in default of payment in accordance with the order made under paragraph (a) of this section of the sum so awarded for preliminary expenses be committed to prison for a period of one day for every ten shillings or part of ten shillings included in the sum so awarded or in so much thereof as has not been paid.

**103.** For the purposes of subsection one of section ninety-nine of this Act any defendant who has failed to pay an adequate sum for preliminary expenses shall be deemed to have left the child without means of support.

Effect of non-payment of preliminary expenses.  
cf. Act No. 21, 1923, s. 74.

**104.** On any complaint made under section ninety-five, section ninety-nine, or section one hundred and five of this Act an order may be made notwithstanding the death of the mother of the child or of the complainant prior to the hearing.

Order where complainant dies.

**105.** (1) Where any illegitimate child has been still-born after the commencement of the sixth month of pregnancy, or having been born alive has died before attaining the age of sixteen years, and the father of such child has not paid an adequate sum—

Funeral expenses of child.  
cf. *Ibid.* s. 76.

- (a) for preliminary expenses;
- (b) for the funeral expenses of such child,

the mother of such child, or any officer authorised by the Minister in that behalf or any reputable person, on behalf of the mother, may make complaint in writing on oath to any magistrate or court that the father of such child has failed to make any such payments.

(2)



No. 17, 1939.

Funeral  
expenses of  
mother.

(2) Where the mother of any illegitimate child (including a child which has been still-born after the commencement of the sixth month of pregnancy) has died during parturition, or in consequence of parturition, and the father of such child has not paid an adequate sum for the funeral expenses of the mother, any officer authorised by the Minister in that behalf or any reputable person may make complaint in writing on oath to any magistrate or court that the father has failed to pay an adequate sum for the funeral expenses of the mother of the child.

(3) Such magistrate or court may thereupon summon the father of the child to appear before a court to answer such complaint; or if the circumstances seem to require it, may issue a warrant for his apprehension.

(4) The court shall hear and determine any complaint under this section and may make an order for payment by the father of such child of—

- (a) a sum not exceeding thirty pounds for preliminary expenses;
- (b) a reasonable sum for the funeral expenses of such child or his mother.

The court may in and by any such order direct that any such sum be paid in one amount or in instalments over a period to be specified in the order.

(5) No order for preliminary expenses shall be made under this section unless the complaint be made within twelve months of the birth of such child.

(6) No order for funeral expenses shall be made unless complaint be made within twelve months of the death of such child or his mother.

(7) A complaint under this section may include all or any of the expenses mentioned herein.

(8) The court may order that the defendant, in default of payment, in accordance with the order made under subsection four of this section, of any sum so ordered, be committed to prison for a period of one day for every ten shillings or part of ten shillings included in the sum so ordered or in so much thereof as has not been paid.

(9) No order for preliminary expenses or for funeral expenses shall be made under this section unless evidence is produced in corroboration in some material particular

particular of the allegation as to the paternity of the child, or if the court be satisfied that at the time the child was begotten the mother was a common prostitute.

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(10) Where the defendant has been adjudged by any court to be the father of any such child no further proof of paternity shall be required under this section.

**106.** If it appears to the court that both the father and the mother of an illegitimate child are able to contribute to any of the expenses referred to in this Part, the court, in making any order, may direct the payment of such expenses by both the father and mother in such proportions and in such manner as it thinks fit; and if it appears to the court that the mother only is able so to contribute, it may direct payment by her alone.

Mother also to contribute to expenses.  
cf. Act No. 17, 1901, s. 7; Act 58 Vic. No. 22, s. 10 (N.Z.); Act No. 21, 1923, s. 78.

**107.** (1) An order under section one hundred and two of this Act adjudging any sum to be paid for the expenses of the maintenance of a child may be made to take effect from a date not earlier than three months immediately preceding the date of the order, or, if a previous order has been made, from the date when the last preceding order ceased to have effect, and shall be of full force and validity until the child has attained the age of sixteen years, or until the death of such child if such death occurs before that age.

Period for which orders for maintenance may be made.

cf. 35 and 36 Vic., ch. 65, s. 5; Act 58 Vic. No. 22, s. 9 (N.Z.); Act No. 21, 1923, s. 79.

(2) For the purpose of recovering money due under an order it shall always remain of full force and validity.

**108.** (1) When an order is made or deemed to have been made under this Part for payment of the expenses of maintenance the court may, at any time during the currency of the order, upon application, and upon notice of such application, given in such manner as the court shall direct, to the defendant, require the defendant to enter into a recognizance with or without sureties for the due performance for a period not exceeding twelve months of such order, and in default of the defendant's immediately entering into such recognizance with the required sureties, if any, the court may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognizance has been entered into or the said order complied with for the period required by the court.

Security for payment may be ordered.

cf. Act No. 17, 1901, s. 8; Act No. 21, 1923, s. 80.

Any

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Any such application may in the case of an order made under this Part, be made immediately or at any time after the court has pronounced its decision.

Forfeiture of recognizances.

(2) The court, on due proof that the conditions of such recognizance have not been complied with by the defendant, may ex parte forfeit such recognizance, which shall thereupon be dealt with as a forfeited recognizance in the manner provided by the Fines and Forfeited Recognizances Recovery Act, 1902.

(3) The money so secured shall be applied for the benefit of the mother or child in accordance with the order for payment of the expenses of maintenance.

Seizure of defendant's goods.  
cf. Act No. 21, 1923, s. 82; Act No. 17, 1901, ss. 8A and 9.

**109.** The court may in any order made under this Part or at any time during the currency of any order made or deemed to have been made under this Part, upon application and upon notice of such application, given in such manner and to such persons as the court shall direct, authorise and direct some person forthwith to seize and sell the defendant's goods and to demand and to receive his rents or any annuity or other income payable to him, or any money received or receivable or held by any person in trust to be paid periodically or by instalments to or for such defendant or any moneys to which he is entitled or about to become entitled, or such portion of the goods, rent, annuity, income or moneys as the court thinks fit, and to appropriate the proceeds towards the payment of the moneys ordered in such manner as it from time to time directs.

Further orders as to payment and disbursement of maintenance or expenses.  
cf. Act No. 17, 1901, s. 10; Act No. 21, 1923, s. 81.

**110.** Where an order has been made or is deemed to have been made under this Part for payment of any of the expenses referred to in this Part or of moneys secured under any recognizance the court may, by the order made under this Part, or at any time during the currency of the order made or deemed to have been made under this Part, upon application, and upon notice of such application, given in such manner and to such persons as the court shall direct, make such orders as it thinks necessary for better securing the payment and regulating the receipt and disbursement of the expenses or moneys or for investing and applying the proceeds of the goods or rents ordered to be sold or collected or any annuity or money payable to the defendant

or

or for ensuring the due appropriation of such expenses or moneys or for causing the child in respect of whom the order was made to be properly brought up and educated. No. 17, 1939.

**111.** (1) A copy of any order made under section one hundred and nine or section one hundred and ten of this Act, certified by the clerk of the court, shall be served on any person affected thereby: Provided that if the defendant has removed from the State of New South Wales, it shall not be necessary to serve a copy of the said order on him. Service of orders.

(2) Any person who neglects or refuses to comply with any such order served on him shall be guilty of an offence against this Act.

(3) If it appears that the defendant has theretofore usually resided in New South Wales and has left the said State, orders may be made and authority given under the provisions of section one hundred and nine or of section one hundred and ten of this Act, although notice of such application has not been given to the defendant. Authority when defendant has left State.

**112.** Where any proceedings are taken under this Part, in respect of any of the expenses referred to in this Part payable in relation to an illegitimate child, of which the defendant is alleged to be the father, no order shall be made— Evidence necessary for order for maintenance. cf. Act No. 21, 1923, s. 93.

- (a) upon the evidence of the mother, unless her evidence be corroborated in some material particular; or
- (b) if the court is satisfied that at the time the child was begotten the mother was a common prostitute.

**113.** (1) Where a complaint for preliminary expenses or for the expenses of maintenance under this Part has been dismissed by a court or where an order of a court made on any such complaint has been quashed or an order of dismissal of any such complaint has been confirmed by a court of quarter sessions on appeal, a further complaint may be made in respect of the same child, provided that such complaint contains an allegation that fresh evidence material to the question of the paternity of the said Evidence necessary for orders for preliminary expenses or maintenance.

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said child is available, which was not available upon the hearing of the previous complaint, or upon the hearing of the appeal.

(2) The court shall receive and consider the evidence recorded at the original hearing or on appeal as well as the fresh evidence submitted.

(3) If at the conclusion of the evidence submitted by the complainant no fresh evidence material to the question of paternity has been produced, the complaint shall be dismissed.

Disobedience  
of order  
may be  
punished.

Act No. 21,  
1923, s. 83.

cf. Act No.  
17, 1901,  
s. 11.

**114.** (1) On complaint in writing on oath being made to a magistrate or court that any person has disobeyed or has not complied with any order made or deemed to have been made under this Part (other than an order for the deposit or payment of preliminary expenses), such magistrate or court may summon such person to answer the complaint, or if the circumstances seem to require may issue his warrant for the apprehension of such person.

(2) A court upon the hearing of the complaint may enforce compliance with the order by the committal of the offender to prison for a period of one day for every ten shillings or part of ten shillings found to be due, including the costs incidental to the hearing of the complaint, unless the said order be complied with; but no defendant shall be detained for a longer period than twelve months, and the period of detention shall in every case be subject to the provisions of section ninety-four of the Justices Act, 1902.

Costs.

(3) Where it appears that the arrears have been paid since the issue of a summons or of a warrant the court may order the person summoned or apprehended to pay the costs of and incidental to the proceedings, and such costs may be recovered in a summary way under the provisions of the Justices Act, 1902.

Discretion  
of court  
with respect  
to arrears.

(4) The court may refuse to enforce an order or may enforce it to such extent as the court thinks fit having regard to all the circumstances of the case, particularly with reference to the inability of the offender to obtain employment, or to comply with the order owing to continued ill health.

(5)

(5) The court may direct that the warrant of committal shall lie in the office for such time as the court thinks proper, or may order the amount found to be due, and any costs awarded, to be paid, by such instalments and upon such conditions as the court thinks fit to the person to whom the amount due under the order is payable.

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Warrant may lie in office.

(6) Upon the production of a certificate by such person that any instalment has not been paid, or that any condition of the direction has not been complied with, and of the amount then due on the order, any justice may direct that the warrant committing the offender to prison be executed, or issue a warrant in accordance with the terms of the order.

Warrant to issue on failure to pay or comply with conditions.

(7) Any justice to whom an application is made for a direction that the warrant be issued or executed may postpone the issue or execution of the warrant upon such terms and conditions as he thinks fit, and if the offender breaks any term or condition upon which such postponement is made, the justice may then direct the issue or execution of the warrant.

Execution of warrant may be postponed.

**115.** (1) Subject to the provisions of section 16A of the Prisons Act, 1899, the period of imprisonment served by a defendant under any order of committal made under this Part of this Act, shall not discharge the defendant from payment of any preliminary expenses or expenses of maintenance for the non-payment of which he has been committed, but during such period the order in so far as it relates to the payment of expenses of maintenance shall be suspended.

Effect of imprisonment on non-payment.

(2) No defendant shall be liable to be imprisoned a second time for non-payment of preliminary expenses or expenses of maintenance for which he shall have actually suffered imprisonment, but such moneys shall thereafter be a civil debt only, recoverable in any court of competent jurisdiction by the person to whom they are due.

(3) A committal to prison or conviction of any person for an offence under this Part shall not prevent the making or, except where otherwise expressly provided, affect the operation of any order for the payment of money or for the doing of any act by such person.

Committal to prison not to prevent making of orders. cf. Act No. 21, 1923, s. 89.

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Court may vary order.

cf. Act No. 21, 1923, s. 84.

**116.** (1) The court from time to time may, upon application made by or on behalf of the mother or child, or father, and upon notice given in such manner to the Director and to such other persons as the court shall direct, vary, suspend, or discharge any order made or deemed to have been made under this Part.

(2) The question of the paternity of the child shall not be raised upon an application to vary, suspend or discharge an order.

Place of hearing.

cf. Act No. 17, 1901, s. 21.

(3) An application under this section may be heard and determined by a court sitting at a place agreed upon by the parties or at the place where the order, the subject of the application, was made.

Date of variation, suspension or discharge.

(4) An order may be varied, suspended, or discharged as from a date prior to the application, and may be varied or suspended from time to time.

Default not a bar in certain cases.

(5) The court may entertain an application to vary, suspend, or discharge an order notwithstanding that the applicant is in default in complying therewith if it is satisfied that there are good and sufficient reasons for such default.

Service of summons or notice.

cf. Act No. 21, 1923, s. 85.

**117.** (1) Every summons and every notice to the respondent shall be served by a constable or other person upon the person to whom it is directed personally or if he cannot conveniently be met with, then by leaving it for him at his last or most usual place of abode with some person apparently of or above the age of sixteen years and apparently residing at such place of abode.

(2) Service of a summons or notice in manner aforesaid may be proved by the oath of the person who served it or by affidavit or otherwise.

Court may proceed ex parte.  
*Ibid.* s. 86.

**118.** (1) If a defendant against whom a summons has been issued under this Part does not appear in accordance therewith the court upon proof of the service of the summons may issue a warrant for his apprehension, or may proceed in the case ex parte.

(2) In every case where a warrant has been issued, and the defendant cannot, after strict inquiry and search, be found to be taken thereon, the court may in like manner proceed in the case ex parte.

The

The inquiry and search made for the defendant may be proved orally or by the affidavit of the person who made such inquiry and search. No. 17, 1939.

**119.** (1) Any magistrate or court on being satisfied by complaint on oath that the whereabouts of any defendant who is not complying with any order made or deemed to have been made under this Part is not known, or that any defendant has removed or is about to remove out of New South Wales or to remote parts thereof to defeat any of the provisions of this Part or any order made or deemed to have been made thereunder may issue a warrant for the apprehension of such defendant to be dealt with according to law. Warrant may issue in certain cases.  
cf. Act No. 21, 1923, s. 87.

(2) In lieu of issuing such warrant the magistrate or court may issue a summons requiring such defendant to appear before the court to answer such complaint. Upon the appearance of such defendant he may be ordered to enter into a recognizance with or without sureties for the due performance for a period not exceeding twelve months of such order; and in default of the defendant immediately entering into such recognizance the court may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognizance has been entered into or the said order so complied with.

(3) The court on due proof that the conditions of such recognizance have not been complied with by the defendant may ex parte forfeit such recognizance, which shall thereupon be dealt with as a forfeited recognizance in the manner provided by the Fines and Forfeited Recognizances Recovery Act, 1902. Forfeiture of recognizance.

(4) The moneys so secured shall be applied for the benefit of the mother or child in accordance with the order made or deemed to have been made under this Part.

**120.** (1) This section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. Blood tests.

(2) In this section "blood test" means a test made for the purpose of ascertaining the inheritable characteristics of blood.

(3)



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(3) (a) A children's court consisting of a special magistrate shall, at the request of any person against whom an order for the expenses of maintenance which has been made or is deemed to have been made under this Part is in force or of the parties to any proceedings or contemplated proceedings under this Part direct that the child in respect of whose maintenance the order was made or the proceedings are taken or contemplated, the mother of the child and the man adjudged or alleged to be the father of the child submit to blood tests. No such direction shall be given unless the child has been born and the child, its mother and the man concerned are all living.

(b) When any such direction is given the magistrate shall in and by the direction nominate a medical practitioner to take such blood samples as may be necessary for the purpose of making the blood tests and a pathologist to make the blood tests and shall also fix a period within which the child, the mother and the man concerned shall attend such medical practitioner for the purpose of the taking of such samples.

Any period so fixed may be extended from time to time as the magistrate may think fit.

The pathologist so nominated shall be a medical practitioner whose name is on a panel of names of medical practitioners authorised to carry out blood tests under this Part, which panel shall be prepared by the Minister on the recommendation of the Director-General of Public Health.

(4) When a direction has been given by a magistrate under subsection three of this section the following provisions shall have effect:—

(a) When the hearing of a complaint under subsection one of section ninety-nine of this Act is pending—

(i) proceedings in such hearing shall be stayed until the expiration of the period or extended period fixed under subsection three of this section;

(ii) if the mother and the child referred to in the direction or either of them does not within such period or extended period

- period attend the medical practitioner nominated in the direction and permit him to take blood samples, the complaint shall be dismissed and a further complaint shall not be allowed under section one hundred and thirteen of this Act unless the mother gives an undertaking to submit herself and the child to blood tests;
- (iii) if the defendant to such complaint does not within such period or extended period attend the medical practitioner nominated in the direction and permit him to take blood samples the complaint shall be set down for hearing.
- (b) Where an order for expenses of maintenance made or deemed to have been made under this Part is in force—
- (i) if the mother and the child referred to in the direction or either of them do not, within such period or extended period, attend the medical practitioner nominated in the direction and permit him to take blood samples, the order shall, as from the expiration of such period or extended period, be suspended until the direction is complied with by the mother and the child; and if the direction is not so complied with within a reasonable time, the order may be discharged;
- (ii) if the person liable under the terms of the order to pay the expenses of maintenance does not, within such period or extended period, attend the medical practitioner nominated in the direction and permit him to take blood samples the direction under subsection three of this section shall lapse.
- (c) The special magistrate may adjourn the proceedings from time to time as such special magistrate may think fit.

(d)

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(d) The fee of the medical practitioner nominated in the direction and the costs and expenses payable in connection with the making of the blood test shall be paid by the person at whose request the direction was given.

(5) The medical practitioner nominated in a direction given under subsection three of this section shall in the manner and within the time prescribed forward all blood samples taken by him pursuant to the direction to the pathologist nominated in the direction.

The blood tests shall be made by the pathologist nominated in the direction, and the results of such test shall be embodied in a certificate in the prescribed form.

(6) The certificate given under subsection five of this section shall be forwarded—

(a) in any case where the direction was given by the Metropolitan Children's Court or by a magistrate exercising jurisdiction within the area named in the proclamation establishing the Metropolitan Children's Court—to the Clerk of the Metropolitan Children's Court;

(b) in any other case—to the Clerk of Petty Sessions for the district within which the magistrate giving the direction exercises jurisdiction.

The Clerk of the Metropolitan Children's Court or the Clerk of Petty Sessions, as the case may be, shall, within seven days of the receipt by him of the certificate, send a copy of the certificate to the parties concerned.

(7) A certificate given under subsection five of this section shall be admissible as evidence in any proceedings under this Part, and shall be evidence of the facts and conclusions stated therein.

(8) The regulations may prescribe all matters necessary or convenient to be prescribed for carrying out or giving effect to this section.

Without prejudice to the generality of the foregoing provision the regulations may prescribe—

(a) the duties of medical practitioners nominated to take blood samples, in relation to such samples:

(b) the scale of fees to be paid to medical practitioners so nominated;

(c)

- (c) the scale of costs and expenses payable in connection with the making of the blood test. No. 17, 1939.

**121.** (1) A man adjudged to be the father of a child may make an ex parte application to a magistrate to annul an order for preliminary expenses or expenses of maintenance made or deemed to have been made under this Part. Annulment  
of order.

(2) If the applicant produces to the magistrate evidence by witnesses on oath, given either orally or on affidavit—

- (a) showing that evidence material to the question of the paternity of the child is available which was not produced at the time the order was made, and
- (b) disclosing the nature of such evidence and the names and addresses of the witnesses who are to be called to give such evidence,

the magistrate shall, upon such terms as he thinks fit, issue a notice directed to all persons to be affected thereby, calling upon them to show cause why the order should not be annulled.

(3) Where the person to whom such notice is directed is living elsewhere than in New South Wales the magistrate shall state a time for the hearing which will allow the person to whom the notice is directed to attend, regard being had to the distance of the place of residence from the place fixed for the hearing.

(4) An application under this section shall be heard and determined by a magistrate sitting as and constituting a children's court at a place agreed upon by the parties or at the place where the order, the subject of the application was made.

(5) The court shall entertain an application to annul an order notwithstanding that the applicant is in default in complying therewith.

(6) The court shall receive and consider the evidence recorded at the original hearing or on appeal as well as the fresh evidence submitted.

(7) If at the conclusion of the evidence in chief submitted by the applicant, no fresh evidence material to the question of paternity has been produced, the application shall be dismissed.

(8)

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(8) At the hearing the onus shall be upon the applicant to prove that he is not the father of the child.

(9) If the court finds that the applicant is not the father of the child such court shall so declare and annul the said order; otherwise the application shall be dismissed.

(10) If the order be annulled the defendant shall be released from payment of any amount due and unpaid under the order, but shall not be entitled to recover from any person any amount paid under and by virtue of the order.

(11) If the order be annulled the annulment shall not otherwise affect the previous operation of the order or anything duly suffered or done thereunder.

Appeals.  
Act No. 21,  
1923, s. 91.

**122.** (1) Any person affected by any order or varied order of a court or by the annulment of any order or by the dismissal of a complaint or the grant, dismissal or refusal by a court of any application under this Part may appeal in the manner provided by Part V of the Justices Act, 1902, and the provisions of that Part, so far as not inconsistent with this Act, shall mutatis mutandis apply to and in respect of such appeal.

(2) Where an order is made by the court at any place, and a district court is held nearer to that place than a court of quarter sessions and an appeal is made to a court of quarter sessions the appellant may include in the notice of appeal a request that the appeal be heard and determined at the place appointed for the holding of such district court, and in such case the appeal—

(a) shall be heard and determined by the judge of the district court sitting as a chairman of quarter sessions;

(b) shall be set down for hearing at the place appointed for the holding of the district court as soon as practicable after the expiration of fourteen days after the day upon which the notice of appeal was given.

(3) Where an order is made before birth respecting the paternity of a child, and the party affected by the order gives notice of intention to appeal to a court of quarter sessions, and desires that the appeal shall not be

be heard before the birth of the child, such party shall state his desire in the notice, and in such case the appeal shall be heard at the first court of quarter sessions held after a period of one month from the birth has elapsed, or at any court of quarter sessions succeeding such first held court and to which the hearing is postponed, but no appeal shall in such case be heard earlier than such first held court.

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(4) At the request of either party the child shall be produced in court.

(5) Where any order has been made ex parte under section one hundred and eighteen of this Act the defendant may appeal as in this section provided, at any time within twenty-one days—

- (a) of the time when the fact of such order having been made first came to his knowledge;
- (b) after his return to New South Wales, if he were absent from that State when the fact of such order having been made first came to his knowledge.

The onus of proving such times shall lie upon the defendant.

**123.** (1) Sections sixty-one, sixty-two, sixty-four, sixty-five, sixty-six, sixty-eight, sixty-nine, seventy, seventy-one, seventy-four, seventy-five, seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-seven, eighty-nine, ninety, ninety-two, ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred and thirty-four, one hundred and thirty-five, one hundred and thirty-six, one hundred and thirty-seven, one hundred and thirty-eight, one hundred and thirty-nine, one hundred and forty, one hundred and forty-one, one hundred and forty-two, one hundred and forty-three, one hundred and forty-four, one hundred and forty-five, and one hundred and fifty-three of the Justices Act, 1902, shall mutatis mutandis apply to proceedings under this Part of this Act, so far as such sections are not inconsistent with such Part or the Deserted Wives and Children Act, 1901-1939:

Application  
of Justices  
Act, No. 27,  
1902.  
cf. Act No.  
21, 1923,  
s. 94.

Provided that subsection two of section eighty-two of the Justices Act, 1902, shall not affect the provisions relating

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relating to periodical payments under such Part, or to amounts ordered to be paid under sections ninety-six, one hundred and two, and one hundred and five of this Act.

(2) A magistrate or court for the purpose of dealing with proceedings under sections ninety-five, ninety-nine and one hundred and five of this Act, and for the purpose of procuring the evidence of any person able to give evidence in corroboration in some material particular of the allegation in a complaint as to the paternity of any child, shall have all the powers of a justice or justices under sections sixty-one, sixty-six, and seventy-one of the Justices Act, 1902, and the provisions of sections sixty-two and sixty-four of that Act shall, *mutatis mutandis*, apply to the forms of any summons or warrant issued by the magistrate or court under this Part.

Costs.  
cf. Act No.  
17, 1901,  
s. 25.

**124.** In any order under this Part the court may order the payment of such costs by such persons, being parties to the proceedings, as it thinks fit.

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## PART XVII.

### PROCEDURE, PENALTIES AND GENERAL PROVISIONS.

Authority of  
Minister  
presumed.

**125.** (1) In the absence of proof to the contrary, the authority of the Minister or any officer to do any act or to take any proceedings shall be presumed.

Right to  
appear.  
2 Geo. V,  
No. 11, s. 65,  
(Qld.).

(2) At the hearing of any complaint, application, proceeding or information against any child or young person or of any appeal in respect thereof, the Minister or any officer authorised in that behalf by the Minister shall be entitled to appear and to be heard.

Averments.

(3) An averment in any complaint or information made or laid under this Act—

- (a) that any proclamation or regulation has been published in the Gazette; or
- (b) that any officer has been appointed, authorised or directed by the Minister as stated in the averment; or

(c)

- (c) that any child or young person is or was a ward or has been committed to or is an inmate of any institution, shelter, depot, home or hostel; or  
 (d) that any person is a foster parent; or  
 (e) that any person is an officer;
- shall be prima facie evidence of the facts alleged.

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**126.** It shall be conclusively presumed that no child under the age of eight years can be guilty of any offence.

Age of criminal responsibility. cf. 23 Geo. V, c. 12, s. 50.

**127.** (1) Sentence of death shall not be pronounced on or recorded against a person under the age of eighteen years, but in lieu thereof the court shall sentence him to imprisonment for life with hard or light labour.

Punishment of capital offences—children and young persons.

Notwithstanding anything contained in the Crimes Act, 1900, the provisions of section four hundred and forty-two of that Act shall not be in force with respect to the sentence referred to in this subsection.

cf. *Ibid.* s. 53.

(2) The provisions of this section shall apply where the person charged is over the age of eighteen years if, at the time of the commission of the offence, the person charged had not attained the age of eighteen years.

**128.** The words “conviction,” “sentence” and “imprisonment” shall cease to be used in relation to children and young persons dealt with summarily, and any reference in any enactment to a person convicted, a conviction, a sentence or imprisonment shall, in the case of a child or young person, be construed as a reference to a person found guilty of an offence, a finding of guilt, an order made upon such a finding or a detention as the case may be.

Use of certain expressions to cease. cf. *Ibid.* s. 59 (1).

**129.** (1) Where an order to pay maintenance for the support of a child or for the use of a wife and the support of a child has been made under the Deserted Wives and Children Act, 1901-1939, or where an order to pay preliminary expenses or maintenance for the support of an illegitimate child or maintenance for the support of a child has been or is deemed to have been made under this Act, and—

Power to divert payment under existing orders to Director.

- (a) monetary assistance is being or has been given under this Act or any Act repealed by this Act in respect of any such child; or

(b)



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(b) accommodation and maintenance has been or is being provided for any such child or for its mother in a hostel for expectant and nursing mothers; or

(c) any such child has been committed to an institution or provided with accommodation and maintenance at any home, hostel, shelter or depot,

any officer authorised by the Minister in that behalf may apply to the court to vary the order.

(2) Upon notice of this application being given to such persons and in such manner as the court shall direct, the court may make such order as it thinks fit for variation of the order in so far as it relates to the receipt or disbursement of moneys payable under the order.

(3) In any case in which an order may be varied under subsection one of this section, the person who, under the terms of the order, is entitled to any moneys received thereunder may give to the Director an authority in or to the effect of the form in the Second Schedule to this Act, directed to the person who by the order is appointed to receive moneys paid thereunder, to pay to the Director on behalf of the Minister all moneys then held or thereafter received in pursuance of the order.

(4) The Director shall lodge the authority or cause the same to be lodged with the officer to whom it is directed.

(5) The officer to whom the authority is directed shall register the same with his records relating to the order.

(6) From the date of such lodgment of the authority and until the authority is cancelled by written notice from the Minister or any officer authorised by the Minister in that behalf, any payment made in accordance with such authority by the officer to whom the authority is directed, shall be a sufficient discharge for such officer.

(7) In any case where an authority has been lodged in pursuance of subsection four of this section, the person who signed such authority shall not be entitled, except with the consent of the Minister or any officer authorised by the Minister in that behalf to waive payment of or allow credit for, any amount due and unpaid under the order.

(8)

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(8) Any authority to pay money to the Secretary, Child Welfare Department, given before the commencement of this Act, and still in force at such commencement, which could validly have been given if this section had been in operation at the time such authority was given, is hereby validated, and shall have effect according to its tenor as if given under this section notwithstanding that it is not in or to the effect of the form in the Second Schedule.

As from such commencement the authority shall be deemed to be an authority to pay money to the Director, on behalf of the Minister.

**130.** Where a person is charged before a court with an offence against this Act in respect of a child or young person who is alleged in the charge to be under any specified age and the child or young person appears to the court to be under that age, such child or young person shall be deemed to be under that age unless the contrary is proved.

Presumption  
of age.

**131.** (1) Where in any proceeding against any person for an offence against this Act the child in respect of whom the offence is alleged to have been committed, or any other child of tender years who is tendered as a witness, does not in the opinion of the court understand the nature of an oath, the evidence of such child may be received though not given upon oath if in the opinion of the court such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

Evidence of  
children of  
tender years.  
cf. Act No.  
21, 1923, s.  
110.

(2) The evidence of such child, though not given on oath, but otherwise taken and reduced into writing as a deposition, shall be deemed to be a deposition to all intents and purposes.

(3) No person shall be convicted of the offence charged unless the testimony admitted by virtue of this section, and given on behalf of the prosecution, is corroborated by some other material evidence in support thereof implicating the accused.

(4) Any child whose evidence is received as aforesaid, and who gives false evidence, shall be liable, if found guilty in a summary manner by a court, to be dealt with in accordance with section eighty-three of this

Act,

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Act, but no prosecution shall be instituted under this section without the leave of the court before which such evidence was given.

(5) Where a justice is satisfied by the evidence of a medical practitioner that the attendance before a court of any child in respect of whom an offence against this Act is alleged to have been committed would be injurious or dangerous to its health, the justice may take in writing the statement of such child in pursuance of section four hundred and six of the Crimes Act, 1900, as if the child were dangerously ill, whereby his evidence would probably be lost if not forthwith taken.

(6) Where in any proceedings with relation to an offence against this Act the court is satisfied by the evidence of a medical practitioner that the attendance before the court of any child in respect of whom the offence is alleged to have been committed would be injurious or dangerous to its health, any deposition taken under section four hundred and six of the Crimes Act, 1900, or any statement of the child taken under this section, may be read in evidence, and shall have effect in like manner as if it were proved that the child were so ill as not to be able to travel, or (in the case of any such statement) that there was no reasonable probability that the child would ever be able to travel or give evidence; but the same conditions shall apply as in the case of the reception of evidence under subsections one, two, three and four of this section.

(7) Where in any proceedings with relation to an offence against this Act the court is satisfied by the evidence of a medical practitioner that the attendance for the purpose of giving evidence before the court of any child in respect of whom the offence is alleged to have been committed would be injurious or dangerous to its health, and it is further satisfied that the evidence of the child is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

Offences.

Act No. 21,  
1923, s. 104.

**132.** (1) Any person guilty of an offence against this Act shall be liable, upon summary conviction before a court, unless some other penalty or punishment is expressly provided, to a penalty not exceeding one hundred pounds or to imprisonment for twelve months or to both penalty and imprisonment.

(2)

(2) Penalties imposed by this Act or by any regulation made thereunder may be recovered in a summary manner before a court.

(3) Where any person is charged with an offence against this Act it shall be a sufficient defence if the person charged satisfies the court that he had a reasonable excuse for the act or omission which constitutes the offence charged.

**133.** (1) If a court has reason to believe that a child or young person is, or may be, suffering from venereal disease, the court may at any time order an examination to be made of such child or young person by a medical practitioner, either male or female.

Child believed to be suffering from venereal disease.  
cf. Act No. 21, 1923, s. 107.

(2) In the event of the medical practitioner reporting that any child or young person is so suffering, the court shall forthwith notify the commissioner appointed under the provisions of the Venereal Diseases Act, 1918, in writing, and the provisions of the said Act shall apply to such child or young person.

(3) If any child or young person suffering from venereal disease has been sentenced according to law and the judge has directed that such child or young person be detained in an institution, or, if any child or young person suffering from venereal disease be committed to an institution such child or young person shall not be released therefrom unless the child or young person has been examined by a medical practitioner and certified by such practitioner to be free from venereal disease or no longer liable to convey infection.

Detention until certified free from disease.

(4) Such certificate shall be obtained at the expense of the Child Welfare Department and retained by the Director.

(5) Any such child or young person who has been sentenced and directed to be detained in an institution, or who has been committed to an institution may be detained in the custody and under the control of the superintendent of the institution after he has reached the age of eighteen years and until certified in accordance with the provisions of this section.

Detention beyond age of eighteen years.

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Medical  
examina-  
tion:  
Venereal  
disease.

cf. Act No.  
21, 1923,  
s. 108.

**134.** (1) No ward shall be apprenticed, boarded-out, or placed-out, unless he has been—

- (a) examined by a medical practitioner; and
- (b) certified by such medical practitioner as being free from venereal disease, or no longer liable to convey infection.

(2) Such certificate shall be obtained at the expense of the Child Welfare Department, and retained by the Director.

(3) Any person who contravenes the provisions of this section shall be liable to a penalty not exceeding twenty pounds.

Removal of  
child to a  
place of  
safety.

cf. *Ibid.*  
s. 44.

**135.** Any officer authorised by the Minister in that behalf or any constable of police may take any child or young person, in respect of whom there is reason to believe that an offence has been committed, to a shelter, and such child or young person, and any child or young person who seeks refuge in a shelter, may be there detained until he can be brought before a court.

Care of  
child  
pending  
investiga-  
tion.

*Ibid.* s. 45.

**136.** (1) Where it appears to a court or any justice that an offence has been committed in the case of any child or young person brought before such court or justice, and that the health, welfare or safety of the child or young person is likely to be endangered unless an order is made under this section, the court or justice may, without prejudice to any other power under this Act, make such order as circumstances require for the care of the child or young person until a reasonable time has elapsed for the bringing and disposing of any charge against the person who appears to have committed the offence.

(2) An order under this section may be enforced notwithstanding that any person claims the custody of the child or young person.

Arrests  
without  
warrant.

cf. *Ibid.*  
s. 46.

**137.** (1) Any constable may arrest without warrant any person who commits, or who is reasonably suspected by such constable to have committed, an offence against this Act if the name and residence of such person are unknown to such constable and cannot be ascertained by him.

(2)

(2) Where such an arrest is made, the officer in charge of the police station to which such person is conveyed shall, unless in his belief the release of such person on bail would tend to defeat the ends of justice, or where the offence is alleged to have been committed in respect of a child or young person, would tend to cause injury or danger to that child or young person, release the person arrested upon such person entering into a recognizance, with or without sureties, to attend upon the hearing of the charge.

No. 17, 1935.  
Release on  
recogniz-  
ance.

**138.** Whenever steps have been taken under section one hundred and thirty-five, section one hundred and thirty-six, or section one hundred and thirty-seven of this Act to secure the safety or well-being of a child or young person, and the charge against any person has been heard and determined the court may make an order as to the care of the child or young person.

Disposal of  
child by  
court.  
Act No. 21,  
1923, s. 47.

**139.** (1) Any magistrate or justice may issue a warrant for the arrest of any ward who has absconded or been illegally removed from his proper custody.

Arrest of  
absconding  
ward.

(2) (a) Where any ward who has absconded from his proper custody is arrested on a warrant issued under subsection one of this section he shall, as soon as practicable, be brought before a magistrate sitting as and constituting a children's court.

cf. *Ibid.*  
s. 113.

(b) Any ward who absconds from his proper custody shall be guilty of an offence against this Act, and the court may—

- (i) order the offender to be punished by one or more of the methods of punishment referred to in Part XI of this Act; or
- (ii) make an order pursuant to section eighty-three of this Act; or
- (iii) return the ward to his former custody.

(3) Where any ward who has been illegally removed from his proper custody is arrested on a warrant issued under subsection one of this section, he shall, as soon as practicable, be placed in a shelter.

(4) Nothing contained in this section shall exempt a ward from liability under any other Act for the offence of escaping from lawful custody.

(5)

No. 17, 1939.

(5) Any ward who has been temporarily released from his proper custody and who fails to return to such proper custody in accordance with the conditions of such temporary release shall be deemed to have absconded from his proper custody.

Religious teaching.  
cf. Act No. 21, 1923, s. 22.

**140.** (1) Every ward shall, so far as religious teaching is concerned, be placed under the guidance and control of clergymen of the persuasion to which the parents of such ward belong, or in which he has been brought up.

(2) In the event of such parents or their religious persuasion not being known, or in the event of a dispute between the parents, and of the ward not having been brought up in any religious persuasion, then as far as religious teaching is concerned—

(a) he shall, if of or over the age of twelve years, be placed under the guidance and control of the clergyman of such persuasion as the Minister may direct, unless such ward states some persuasion in which he desires to be educated;

(b) he shall, if under the age of twelve years, be placed under the guidance and control of the clergyman of such persuasion as the Minister may direct, but may, on attaining the age of twelve years, select the persuasion in which he desires to be educated.

(3) If at any time the religious persuasion of such ward or of his parents becomes known to the Minister, he shall at once order the ward to be placed under the guidance and control, as far as religious teaching is concerned, of clergymen of such persuasion.

Ward may be apprenticed or placed-out.  
cf. *Ibid.* s. 23.

**141.** The Minister or person acting under delegation from the Minister may, pursuant to section twenty-three of this Act, by indenture bind or cause to be bound as an apprentice any ward or may place any ward in suitable employment in cases where apprenticeship conditions are not applicable or desirable.

Apprenticeship conditions.  
2 Geo. V, No. 11, ss. 39-44, 65 (Qld.).

**142.** (1) The indentures of apprenticeship and agreements for placing out of wards shall be in the forms prescribed, and shall contain provisions to the satisfaction of the Minister for the maintenance and religious instruction

instruction of such wards, and for the due payment of such wages as are payable thereunder. No. 17, 1939.

Such indentures and agreements shall be exempt from the provisions of the Stamp Duties Act, 1920-1933.

(2) All wages earned by a ward, except such part thereof as the employer is required to pay to the ward personally as pocket money, shall be paid by the employer to the Minister on behalf of the ward, and shall be applied as prescribed. Wages. ;

(3) The wages due by any person on account of any ward may be sued for and recovered in the name of the Minister by the Minister or any officer authorised by the Minister in that behalf in any court of competent jurisdiction for the benefit of such ward.

**143.** (1) If any ward is at the date he becomes a ward or at any time after such date becomes entitled in possession to any land the Public Trustee shall, by virtue of this Act, have the management and control of such land and may apply the whole or any part of the income therefrom or the whole or any part of the proceeds of the realisation thereof for the maintenance and benefit of the ward. Land of wards.

(2) The Public Trustee shall have and may exercise in respect of such land the same rights and powers as if such land formed part of an intestate estate of which he was duly appointed the administrator and as if such land were the share of the ward in such estate.

(3) This section shall, in the case of any ward who becomes a ward at the commencement of this Act, extend to and in respect of any land to which such ward was entitled in possession immediately before or becomes entitled in possession at any time after such commencement.

**144.** (1) Any officer authorised by the Minister in that behalf may, at any time, order that any child or young person admitted to an establishment under the control of the Minister be examined to determine his medical, physical or mental characteristics or defects. Medical examination.

(2) The Minister or any officer specially authorised by the Minister in that behalf notwithstanding the objection of any parent of a ward, may consent to any surgical Consent to operations.



No. 17, 1939.

surgical or other operation which he is advised by a medical practitioner is necessary in the interests of the health or welfare of the ward.

When information on oath warrant may be issued to search premises. cf. Act No. 21, 1923, s. 105.

**145.** (1) If it be made to appear to any magistrate or justice, on information laid before him on oath, that there is reason to believe that any person is offending against the provisions of this Act in any house, building or place, or that any of the provisions of this Act are being infringed in any house, building or place, such magistrate or justice may issue his warrant authorising any officer or constable of police named therein to search if need be by force, any house, building or place therein named, at any hour of the day or night, for the purpose of ascertaining whether there is or has been therein or thereon an infringement of the provisions of this Act.

(2) Such officer or constable may be accompanied by—

- (a) a medical practitioner, or
- (b) the person giving the information if such person so desires, unless the magistrate or justice otherwise directs.

Power of search and arrest, and to place child in safety. cf. *Ibid.* s. 106.

**146.** (1) Whenever it appears to any magistrate or justice, on information made before him on oath by any person who, in the opinion of the magistrate or justice, is bona fide acting in the interest of any child or young person, that there is reasonable cause to suspect that such child or young person is a neglected child within the meaning of Part XIV of this Act, or has been or is being ill-treated or neglected in a manner likely to cause the child or young person unnecessary suffering, or to be injurious to his health or welfare, such magistrate or justice may issue a warrant authorising any constable of police or any officer named therein to search for such child or young person; and to take him to and detain him in a place of safety until he can be brought before a court; and the court before whom the child or young person is brought may commit the child or young person to the care of some person named by the court, or make such other order as to the care of the child or young person as the court may think fit.

(2)

(2) The magistrate or justice issuing such warrant may, by the same warrant, authorise the apprehension of any person accused of any offence in respect of the child or young person. No. 17, 1939.

(3) Any person authorised by warrant under this section to search for any child or young person, and to take him to and detain him in a place of safety, may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove the child or young person therefrom.

(4) Every warrant issued under this section shall be addressed to and executed by any constable of police or any officer named therein; and he may be accompanied by—

- (a) a medical practitioner; or
- (b) the person giving the information if such person so desires, unless the magistrate or justice otherwise directs.

(5) It shall not be necessary in any warrant issued under this section to name any particular child or young person.

**147.** Upon complaint made by any officer authorised by the Minister in that behalf that any person with whom any ward has been placed out is not observing or performing the conditions of the agreement or is unfit to have the further care of such ward, any magistrate or justice may call upon such person to answer such complaint, and on proof thereof a court may order such agreement to be terminated and may direct the ward to be sent to a place of safety or to a depot, home or hostel pending arrangements for further employment. Court may put an end to agreement. cf. Act No. 21, 1923, s. 24.

**148.** (1) Any person, whether or not the parent of the child or young person, who without reasonable excuse neglects to provide adequate and proper food, nursing, clothing, medical aid, or lodging for any child or young person in his care shall be guilty of an offence against this Act. Neglect to provide for children and young persons.

(2) Any person who—

- (a) ill-treats, terrorises, overworks, or injures any ward;
- (b) counsels, or causes or attempts to cause, any ward to be withdrawn or to abscond from any institution

Offences in respect of wards. cf. *Ibid.* s. 27.

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institution or from the charge of any person with whom such ward is boarded-out, placed-out, or apprenticed, or placed as an adopted boarder, or to escape from his proper custody, or to be or to remain absent without leave, from his proper custody;

(c) knowing any ward to have so withdrawn or to have so absconded or escaped or to be so absent harbours or conceals such ward or prevents him from returning to such institution or person;

(d) having the care of any ward—

(i) illegally discharges or dismisses or attempts to discharge or dismiss him from a home established under Part IX of this Act or from an institution;

(ii) illegally detains him in a home established under Part IX of this Act or in an institution;

(iii) neglects him;

(iv) does not well and truly observe, perform, and keep all the covenants, conditions, and agreements contained in any indenture or agreement entered into by him respecting any ward, and which by such indenture or agreement he has bound himself, or agreed, to observe, perform or keep,

shall be guilty of an offence against this Act.

Ill-treatment.  
cf. Act No. 21, 1923, s. 118.

**149.** (1) Any person who assaults, ill-treats, or exposes any child or young person, or causes or procures any child or young person to be assaulted, ill-treated or exposed, if such assault, ill-treatment or exposure has resulted, or appears likely to result, in bodily suffering or permanent or serious injury to the health of such child or young person shall be guilty of an offence against this Act.

cf. 23 Geo. V, ch. 12, s. 14 (2).

(2) The same information or summons may charge any person with the offences of assault, ill-treatment or exposure, together or separately, and may charge him with committing all or any of these offences in such manner that bodily suffering or permanent injury to the health

health or serious injury to the health of such child or young person has resulted or appears likely to result, alternatively or together, but when those offences are charged together the person charged shall not, if he is convicted, be liable to a separate penalty for each.

No. 17, 1939.

**150.** Whosoever, without the authority or permission of the Minister or of the Director or of the superintendent, matron or officer in charge of an institution, shelter, depot, hostel, or home, as the case may be, holds or attempts to hold any communication with any inmate, or enters any institution, shelter, depot, hostel or home, or any premises belonging thereto or used in connection therewith, and does not depart therefrom when required so to do by the superintendent, matron, or officer in charge of such institution, shelter, depot, hostel or home, or, after being forbidden by the Minister or by the Director or superintendent, matron or officer in charge, as the case may be, so to do, holds or attempts to hold any communication directly or indirectly with any inmate shall be guilty of an offence against this Act.

Unauthorised communication with inmates of institutions, depots, etc.  
cf. 2 Geo. V, No. 11, s. 69 (Qld.).

**151.** Any person who, in any application under this Act, makes any wilfully false statement as to his property or income, or as to the income, property, or earnings of any member of his family shall be guilty of an offence against this Act.

False statements in application.

**152.** (1) Any person who imposes or endeavours to impose upon the Minister or any officer or employee of the Child Welfare Department by any false or fraudulent representations with a view to obtaining money or any other advantage shall be guilty of an offence against this Act.

Imposition or attempted imposition.

(2) Any person who, in respect of any child, receives and retains any money purporting to be paid under the provisions of Part V or Part VI of this Act, after he has become disentitled by any cause whatever to receive any such payment, shall be guilty of an offence against this Act.

(3) Any person who hinders or obstructs any officer or employee of the Child Welfare Department in the exercise of his duty under this Act shall be guilty of an offence against this Act.

Obstruction of officer or employee.  
cf. Act No. 21, 1923, s. 112.

**153.**

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Forgery of  
certificate.  
cf. Act No.  
21, 1923,  
s. 111.

**153.** (1) If any person—

- (a) makes any false representation; or
- (b) forges any certificate; or
- (c) makes use of any forged certificate knowing it to be forged,

with intent to obtain the issue of a license, either to such person, or to any other person, under this Act, he shall be guilty of an offence against this Act.

(2) Any person who—

- (a) falsifies any register kept in pursuance of this Act; or
- (b) furnishes false particulars of any matter which is required to be entered in such register,

shall be guilty of an offence against this Act.

Person  
falsely  
representing  
himself as  
an officer.

**154.** Any person, not being an officer or employee of the Child Welfare Department, who, for any fraudulent purpose—

- (a) assumes or uses the designation of officer, or inspector, or falsely represents himself to be officially associated in any capacity with the Child Welfare Department; or
- (b) uses any designation which he previously held in the said Department,

shall be guilty of an offence against this Act.

Contempt of  
court.  
cf. Act No.  
27, 1902, s.  
152.

**155.** If any person shall, during any proceedings before a court, be guilty of contempt, such person may be punished in a summary way by such court by a fine not exceeding five pounds or by imprisonment for a period not exceeding ten days.

Right to  
administer  
punishment:  
Parent or  
teacher.  
cf. Act No. 21,  
1923, s. 116.

**156.** Nothing in this Act contained shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful care of a child or young person, to administer punishment to such child or young person.

A person not  
to be twice  
punished for  
the same  
offence.  
*Ibid.* s. 117.

**157.** Where a person is charged with an offence against this Act for which he is also punishable under any other Act or at common law he may be prosecuted and punished either under this Act or under any other Act, or at common law, but no person shall be punished twice for the same offence.

**158.**

**158.** (1) No suit or action shall lie against the Minister or any officer or employee of the Child Welfare Department for or on account of any act, matter or thing done or commanded to be done by him, and purporting to be done for the purpose of carrying out the provisions of this Act, if the Minister or the officer or employee has acted in good faith and with reasonable care.

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No action to lie against person who has acted in good faith, etc. cf. Act No. 45, 1898, s. 172.

(2) No such suit or action as aforesaid shall be commenced but within six months after the alleged cause of action, or, in the case of a suit or action by a person who has been a ward, but within six months next after the absolute discharge of such ward, or, in the case of a suit or action by a person who has been transferred to an institution pursuant to section ninety-four of this Act, but within six months next after the discharge of such person.

Or where action not commenced within six months.

(3) Proceedings in such suit or action as aforesaid may, on application to the court in which such suit or action was commenced, be stayed upon such terms as to costs or otherwise as the court may think fit, if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the suit or action was commenced after the expiration of the six months aforesaid.

Stay of proceedings.

**159.** The expenses incurred in respect of the administration of this Act shall be defrayed from such moneys as Parliament shall appropriate for that purpose, and if there are no such moneys available, such expenses shall be defrayed out of the Consolidated Revenue Fund by warrant under the hand of the Governor directed to the Colonial Treasurer.

Expenditure of money appropriated by Parliament. cf. Act No. 21, 1923, s. 121.

The said Treasurer shall pay out of the said fund only such charges as are certified to be correct under the hand of the Minister and countersigned by the Director, and all payments in pursuance of such warrants shall be credited to the said Treasurer, and the receipt of the person to whom the same are paid shall be his discharge in respect of the sum therein mentioned in the passing of his accounts. All payments made under any such warrant shall be recouped out of the vote for the purpose of this Act so soon as there are sufficient funds to the credit of such vote.

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Minister to  
report to  
Parliament.Act No. 21,  
1923, s. 122.

**160.** The Minister shall furnish a report to Parliament every year on the working of this Act.

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PART XVIII.

REGULATIONS.

Regulations,  
cf. 2 Geo. V,  
No. 11, s. 81  
(Qld.).

Act No. 21,  
1923, s. 103.

**161.** (1) The Governor may make regulations not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular and without prejudice to the generality of the foregoing provisions may make regulations with respect to—

- (a) the duties, powers, and authorities of officers, employees and other persons engaged in the administration of this Act;
- (b) the management, control, and supervision of institutions, shelters, depots, homes and hostels;
- (c) the custody, maintenance, education, religious instruction, recreation, employment, boarding-out, placing-out, placing as adopted boarders, and apprenticing of wards; the visitation of such wards; the discipline of such wards; wages and rewards of such wards; the management and control of the property of such wards; and the after care of discharged wards;
- (d) records to be kept at and reports to be made from institutions, shelters, homes, depots and hostels;
- (e) the form and contents of agreements, appointments, apprenticeship articles, authorities, complaints, licenses, notices, orders, summonses, and all other instruments and documents, and the mode of executing, serving or delivering the same;
- (f) the fees to be paid in respect of matters arising under this Act;

(g)

- (g) the free transport on all Government railways of wards, inmates of establishments controlled by the Child Welfare Department, together with their attendants (if any), and of ex-wards proceeding from such establishments to their homes or to places of employment;
- (h) medical, dental and nursing attention to any ward;
- (i) the rates of payment to foster parents;
- (j) the rates of allowances which may be granted under Part VI of this Act;
- (k) the inspection of places licensed under Part VII of this Act;
- (l) the conditions subject to which children may engage in street trading or be employed for any of the purposes referred to in Part XIII of this Act;
- (m) the conditions governing the release on probation or release on license or the committal to the care of any person or the discharge of children or young persons and the visitation, inspection, education, religious instruction, recreation, employment and after care of such children or young persons;
- (n) the liabilities of persons in respect of the welfare of children or young persons who are apprenticed, boarded-out, placed-out, placed as adopted boarders, committed, released on probation or released on license or released conditionally to them;
- (o) prescribing the methods of punishment which may be imposed upon persons (other than inmates as defined in section fifty-six of this Act) who are detained in establishments controlled by the Child Welfare Department;
- (p) the time and manner in which any act, matter, or thing required by this Act to be done or performed, but with respect to which this Act does not prescribe such time or manner, is to be done or performed.

(2) The regulations may impose penalties not exceeding thirty pounds for any breach of the regulations.

(3)



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- (3) All regulations shall—
- (a) be published in the Gazette;
  - (b) take effect from the date of publication or from a later date to be specified in the regulations; and
  - (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

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## PART XIX.

### ADOPTION OF CHILDREN.

*Interpreta-  
tion.*

*cf. Act No.  
21, 1923,  
s. 123.*

**162.** In this Part, unless the context otherwise requires—

“Adopted child” means person in respect of whom an order of adoption has been made.

“Adopting parent” means any person who by an order of adoption under the provisions of this Part has adopted a child or other person, and in case of any such order being made in favour of a husband and wife on their joint application, includes both husband and wife.

“Court” means Supreme Court in its equitable jurisdiction.

*Who may  
apply.*

*cf. Ibid.  
ss. 124, 125.*

**163.** (1) Applications under this Part may be made to the court by—

- (a) husband and wife jointly;
- (b) a married woman;
- (c) a married man;
- (d) any other person of or above the age of twenty-one years;

(e)

(e) the Minister on behalf of any person within any of the foregoing classes who has given to him an authority in writing to make the application.

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(2) In the case of an application made by or on behalf of a married woman or a married man, the consent in writing of the spouse of the applicant shall be furnished except where the applicant is living apart from such spouse.

(3) Any applicant may be represented by counsel or attorney at the hearing of the application.

**164.** (1) The court may, in the form prescribed by rules of court make an order for adoption of any child in favour of the person by whom or on whose behalf the application was made.

*Court may make order. Act No. 21, 1923, ss. 124, 125.*

(2) The court may make an order of adoption in favour of the person by whom or on whose behalf the application was made in respect of a person who has reached the age of sixteen years but has not reached the age of twenty-one years if the court is of opinion that good reasons exist to justify such order.

*Adoption of person over sixteen years of age-*

**165.** (1) Applications under this Part of this Act may be heard by the court in open court or in public or private chambers.

*Hearing of applications. cf. *Ibid.* s. 125A.*

(2) At the hearing of any application under this Part of this Act, the court may order that any person other than the parties thereto and the persons representing them upon the application, shall be excluded from the court-room or other place of hearing.

**166.** (1) For all purposes connected with any application under this Part of this Act, the Minister may be represented by an officer of the Child Welfare Department who is authorised in that behalf by an instrument in writing in or to the effect of the form prescribed by rules of court.

*Minister may be represented by officer appointed therefor. cf. *Ibid.* s. 125A.*

(2) The authority may authorise the person so appointed to represent the Minister either generally in applications under this Part of this Act or for the purposes of any particular application.

(3) The instrument shall be lodged in the office of the Master in Equity, and where the authority authorises the officer to represent the Minister generally shall

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shall remain in force until revoked by another instrument under the hand of the Minister lodged in the said office.

(4) The court shall take judicial notice of the signature of the Minister to any such instrument as is mentioned in this section.

Matters to be proved before order made. cf. Act No. 6, 1896, s. 5 (W.A.). Act No. 21, 1923, s. 126.

**167.** An order of adoption shall not be made unless the court is satisfied—

- (a) that the person in whose favour it is proposed that the order should be made is of good repute and a fit and proper person to have the care of the child or person proposed to be adopted and of sufficient ability to maintain, clothe, support, train and educate the child or person proposed to be adopted; and
- (b) that the welfare and interest of the child or person proposed to be adopted will be promoted by the adoption; and
- (c) if the child or person proposed to be adopted is over the age of twelve years, that the child or person consents to the adoption; and
- (d) that the parents of the child or person proposed to be adopted or such one of them as is living consent or consents to the adoption, or if the child or person proposed to be adopted is illegitimate that the mother consents to the adoption, or if the child or person proposed to be adopted has a guardian, that such guardian consents to the adoption:

Provided that the court may dispense with the consent referred to in paragraph (c) or in paragraph (d) of this section where, having regard to the circumstances, the court deems it just and reasonable so to do.

Effect of order. cf. Act No. 6, 1896, ss. 7, 8 (W.A.). Act No. 21, 1923, s. 127.

**168.** When an order of adoption is made, for all purposes civil and criminal, and as regards all legal and equitable rights and liabilities, the adopted child shall be deemed to be a child of the adopting parent, and the adopting parent shall be deemed to be a parent of the adopted child, as if such child had been born to such adopting parent in lawful wedlock, and the order of adoption

adoption shall terminate all rights and liabilities existing between the child and his natural parents other than the right of the child to take property as heir or next of kin of his natural parents or of their lineal or collateral kindred:

Provided always that such adopted child shall not by such adoption—

- (a) acquire any right, title, or interest in any property under any deed, will, or instrument whatsoever made or executed prior to the date of such order of adoption unless it is expressly so stated in such deed, will, or instrument;
- (b) be entitled to take any property limited to the heirs of the body of the adopting parent;
- (c) be entitled to take any property as next of kin to any lineal or collateral kindred of the adopting parent;
- (d) be entitled to take any property as next of kin to any child of the adopting parent.

**169.** When an order for adoption is made the adopted child shall take the surname of the adopting parent in substitution for his own surname.

Child to take surname of adopting parent.  
cf. Act No. 6, 1893, s. 10 (W.A.); Act No. 69, 1924, s. 2f; Act No. 21, 1923, s. 12g.

**170.** The court, on the application of an adopting parent or of a reputable person on behalf of an adopted child, may vary or discharge any order of adoption subject to such terms and conditions as it thinks fit.

Order may be reversed.  
cf. Act No. 86, 1908, s. 22 (N.Z.).

When an order of adoption is discharged, then, subject to the conditions, if any, named in the discharging order, the child or person in respect of whom the order of adoption was made and his natural parents shall be deemed for all purposes to be restored to the same position inter se as existed immediately before the order of adoption was made:

Provided that such restoration shall not affect anything lawfully done whilst the order of adoption was in force.

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Receipt of  
premium  
unlawful.  
cf. Act No. 86,  
1908, s. 20  
(N.Z.).

Registrar-  
General shall  
register orders  
of adoption.  
cf. Act No. 21,  
1923, s. 123A.

Power to  
make rules.  
*Ibid.* s. 129.

**171.** It shall not be lawful for any person adopting a child under this Part to receive any premium or other consideration in respect of such adoption except with the consent of the court.

**172.** The Registrar-General shall register orders of adoption in the manner for the time being prescribed by rules of court.

**173.** The judges of the Supreme Court or any three of them may make rules for carrying into effect the provisions and objects of this Part, and for providing for the registration of orders of adoption and the payment of fees, and for regulating the costs chargeable by solicitors in connection with applications under this Part, and for preventing the publication of the names of the child or person proposed to be adopted and the applicant or either of them in cases in which such publication would be inexpedient:

Provided that all rules made under this section shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the rules; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules have been laid before such House disallowing any rule or part thereof, such rule or part shall thereupon cease to have effect.

PART XX.

No. 17, 1933.

AMENDMENT OF VARIOUS ACTS.

DIVISION 1.—*Amendment of Interstate Destitute Persons Relief Act, 1919.*

**174.** The Interstate Destitute Persons Relief Act, 1919, is amended by inserting next after subsection one of section sixteen the following new subsection:—

Amend-  
ment of  
Act No. 33,  
1919, s. 16.

(1A) Where the order so made enforceable in this State is an order which, if made in this State, might have been made under—

(a) the Deserted Wives and Children Act, 1901-1939; or

(b) the Child Welfare Act, 1939,

the provisions of such Act relating to the enforcement of orders shall, mutatis mutandis, apply to and in respect of the order so made enforceable in this State.

DIVISION 2.—*Amendment of Deserted Wives and Children Act, 1901-1931.*

**175.** (1) The Deserted Wives and Children Act, 1901-1931, as amended by subsequent Acts, is amended—

Amendment of  
Act No. 17,  
1931.

(a) by inserting at the end of subsection two of section six the following new paragraph:—

Sec. 6.  
(Justices  
may proceed  
ex parte.)

The inquiry and search made for the defendant may be proved orally or by the affidavit of the person who made such inquiry and search.

(b) by omitting from subsection two of section eleven the words “four shillings” wherever appearing and by inserting in lieu thereof the words “ten shillings”;

Sec 11.  
(Disobedi-  
ence of  
orders.)

(c) (i) by inserting in subsection one of section twenty-one after the word “direct” the words “to the Director of the Child Welfare Department and”;

Sec. 21.  
(Variation  
of orders.)

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—

(2) An application under this section shall be heard and determined by justices sitting

No. 17, 1939.

sitting at a place agreed upon by the parties or at the place where the order the subject of the application was made:

Provided that the justices may postpone the hearing of the application and direct that it shall be heard and determined by justices sitting at some other place specified by them and appoint a day for the hearing.

(2) The Deserted Wives and Children Act, 1901-1931, as amended by subsequent Acts including this Act, may be cited as the Deserted Wives and Children Act, 1901-1939.

DIVISION 3.—*Amendment of the Criminal Appeal Act of 1912.*

Amendment  
of Act No.  
16, 1912.  
Sec. 5B.  
(Case stated  
from Quarter  
Sessions.)

**176.** The Criminal Appeal Act of 1912 as amended by subsequent Acts is amended by omitting from section 5B the words "A court of quarter sessions may submit any question of law arising on any appeal coming before it" and by inserting in lieu thereof the words "A chairman of quarter sessions may submit any question of law arising on any appeal to a court of quarter sessions coming before him."

DIVISION 4.—*Amendment of Public Instruction (Amendment) Act, 1916.*

Amendment  
of Act No.  
51, 1916.

**177.** The Public Instruction (Amendment) Act, 1916, is amended—

Sec. 2.  
(Interpre-  
tation.)

(a) by omitting from subsection one of section two the definition of "The Court" and by inserting in lieu thereof the following definition:—

"The Court" means a children's court established under the Child Welfare Act, 1939, and includes a stipendiary or police magistrate or justices exercising the jurisdiction of a children's court.

Sec. 4.  
(Compulsory  
attendance  
at school.)

(b) (i) by omitting from subsection one of section four the word "seven" and by inserting in lieu thereof the word "six";

(ii)

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- (ii) by omitting from subsection two of the same section the word "seven" and by inserting in lieu thereof the word "six";
- (iii) by omitting paragraph (a) of subsection four of the same section;
- (iv) by inserting in paragraph (c) of the same subsection after the word "Minister" the words "or any officer authorised by him";
- (c) (i) by inserting in section six after the word "Minister" the words "or any officer authorised by him"; Sec. 6.  
(Exemption certificates.)
- (ii) by inserting at the end of paragraph (c) of the same section the following word and new paragraph:—
- or
- (d) that the child is of the age of thirteen years or more, and has received a certificate in the form of Schedule One, and that the home conditions are such as to warrant exemption.
- (d) (i) by inserting in subsection one of section eight after the words "it may" the words "release the child on probation on such terms and conditions as may be applicable under the Child Welfare Act, 1939, to a neglected or uncontrollable child or young person or juvenile offender released on probation under that Act, or as the court may, in any special case, think fit, and for such period of time as the court may think fit, or may"; Sec. 8.  
(Truants.)
- (ii) by inserting at the end of the same section the following new subsection:—
- (5) If a child, who has been released upon probation, breaks or is reasonably suspected of having broken the terms or conditions of his release, the court at any time by notice given in such manner as the court shall direct, to the parent or guardian of such child, or to the child himself, may direct that such child appear or be brought before



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before such court at a time and place named in the notice; and if such child does not so appear or is not so brought before the court, it may issue a summons for the appearance of such child, or if the circumstances so require issue a warrant for the apprehension of such child.

If it be proved that such breach has occurred, the court may deal with the child in the same manner as if he had not been released upon probation.

Sec. 9.  
(Recovery of cost of maintenance of child in an institution.)

(e) by omitting from subsection two of section nine the words and figures "the Infant Protection Act, 1904," and by inserting in lieu thereof the words and figures "Part XII of the Child Welfare Act, 1939";

Sec. 10.  
(Registration of schools.)

(f) (i) by omitting from subsection one of section ten the word "seven" and by inserting in lieu thereof the word "six";

(ii) by omitting from subsection two of the same section the word "seven" and by inserting in lieu thereof the word "six";

Sec. 14.  
(Form of return to be filled in by parent.)

(g) by omitting from section fourteen the word "seven" and by inserting in lieu thereof the word "six";

Sec. 15.  
(Attendance officer authorised by Minister may accost children.)

(h) by omitting from section fifteen the word "seven" and by inserting in lieu thereof the word "six";

Substituted s. 20.

(i) by omitting section twenty, and by inserting in lieu thereof the following section:—

Proceedings.

20. (1) Any person appointed by the Minister for the purpose may in writing authorise any other person to institute and conduct proceedings or prosecutions under this Act.

(2) An averment in any complaint or information made or laid under the provisions of this Act that any person has been so appointed by the Minister and that the complainant or informant has been so authorised shall be prima facie evidence of the facts alleged.

(j)

- (j) (i) by omitting from Schedule Two the words "scholars between the ages of seven" and by inserting in lieu thereof the words "children between the ages of six";
- (ii) by omitting from the same Schedule the words "other scholars" and by inserting in lieu thereof the words "other children";
- (k) by omitting from Schedule Three the word "seven" and by inserting in lieu thereof the word "six."

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Schedule Two.

Schedule Three.

DIVISION 5.—*Amendment of Venereal Diseases Act, 1918.*

- 178.** The Venereal Diseases Act, 1918, is amended—
- (a) by inserting at the end of section two the following definition:—
- "Young person" means a person who has attained the age of sixteen years and is under the age of eighteen years.
- (b) by inserting, in sections eleven and sixteen, after the word "child" wherever occurring the words "or young person."

Amendment of Act No. 46, 1918, s. 2. (Definitions.)

Secs. 11 and 16.

DIVISION 6.—*Amendment of Pawnbrokers Act, 1902.*

- 179.** The Pawnbrokers Act, 1902, is amended—
- (a) by omitting from section twenty-four the words "fourteen years" and by inserting in lieu thereof the words "sixteen years";
- (b) by omitting from the same section the words "ten pounds" and by inserting in lieu thereof the words "twenty-five pounds."

Amendment of Act No. 66, 1902. Sec. 24. (Pledges not to be taken from children.)

DIVISION 7.—*Amendment of Second-hand Dealers and Collectors Act, 1906.*

- 180.** The Second-hand Dealers and Collectors Act, 1906, as amended by subsequent Acts, is amended—
- (a) by omitting from paragraph five of section nine the words "fourteen years" and by inserting in lieu thereof the words "sixteen years";
- (b)

Amendment of Act No. 30, 1906.

Sec. 9. (Old wares not to be purchased from children.)

## Child Welfare Act.

No. 17, 1939.

Sec. 10.

(Collector's  
license.)Fifth  
Schedule.(Form of ap-  
plication for  
collector's  
license.)

- (b) by omitting from subsection two of section ten the words "fourteen years" and by inserting in lieu thereof the words "sixteen years";
- (c) by omitting from the Fifth Schedule the words "fourteen years" and by inserting in lieu thereof the words "sixteen years."

DIVISION 8.—*Amendment of Crimes Act, 1900.*Amendment  
of Act  
No. 40, 1900.

Sec. 429.

(Sentences.  
Juvenile  
Offenders.)

**181.** The Crimes Act, 1900, as amended by subsequent Acts, is amended—

- (a) by omitting from subsection one of section four hundred and twenty-nine the words "a reformatory school under the provisions of any Act relating to reformatory schools" and by inserting in lieu thereof the words "an institution constituted and established under the Child Welfare Act, 1939."
- (b) by omitting from subsection two of section four hundred and twenty-nine the words and figures "sixty-five, sixty-six, sixty-seven and sixty-eight of the Child Welfare Act, 1923" and by inserting in lieu thereof the words and figures, "eighty-eight, eighty-nine, ninety-three and ninety-four of the Child Welfare Act, 1939."

## SCHEDULES.

## FIRST SCHEDULE.

Sec. 3 (1).

Date of Act.	Name of Act.	Extent of repeal.
Act No. 15, 1901	Infant Convicts Adoption Act, 1901.	The whole.
Act No. 21, 1923	Child Welfare Act, 1923 ...	The whole.
Act No. 69, 1924	Child Welfare (Amendment) Act, 1924.	The whole.
Act No. 23, 1925	Widows' Pensions Act, 1925 ...	Section 4.
Act No. 24, 1930	Government Relief Administration Act, 1930.	Section 7, sub section 2.

SECOND

Conveyancing (Amendment) Act.

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SECOND SCHEDULE.

No. 17, 1939.

CHILD WELFARE ACT, 1939, s. 129.

Sec. 129.

Child Welfare Department,  
Education Building,  
Bridge-street, Sydney.

Case No.....

..... v. ....  
Complainant. Defendant.

To .....

I, .....

of .....

do hereby authorise you to pay to the Director, Child Welfare Department, on behalf of the Minister of Public Instruction, all moneys now held or hereafter received by you in pursuance of the order whereby the abovenamed ..... is liable to contribute towards the maintenance of his .....

I also authorise the Minister, in his discretion, to recoup the funds of the Child Welfare Department from the payments received in pursuance of the order to an amount not exceeding any allowances made or the cost of any services provided by that Department.

This authority is to remain in force until the Minister notifies you that he deems it no longer necessary to operate under this authority.

Signed ..... this ..... day of ....., 19..

Witness.....  
(Signature.)

