

# Child Welfare (Commonwealth Agreement Ratification) Act 1941 No 11

[1941-11]



New South Wales

## Status Information

### Currency of version

Current version for 29 March 1941 to date (accessed 5 January 2025 at 10:00)

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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File last modified 29 May 1995

# Child Welfare (Commonwealth Agreement Ratification) Act 1941 No 11



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## Contents

<b>Long title</b> .....	3
1 Name of Act and commencement .....	3
2 Ratification of agreement .....	3
3 Validation .....	3
<b>Schedule</b> .....	3

# Child Welfare (Commonwealth Agreement Ratification) Act 1941 No 11



New South Wales

An Act to ratify an agreement made between The State of New South Wales of the one part and The Commonwealth of Australia of the other part; to provide for the carrying into effect of the said agreement; to validate certain matters; and for purposes connected therewith.

## 1 Name of Act and commencement

- (1) This Act may be cited as the *Child Welfare (Commonwealth Agreement Ratification) Act 1941*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

## 2 Ratification of agreement

- (1) The agreement, a copy of which is set out in the Schedule to this Act, is hereby ratified and may be carried into effect notwithstanding the provisions of any other Act.
- (2) All acts, matters and things for or with respect to which provision is made in the agreement, or which, by the agreement, are agreed, directed, authorised or permitted to be made, done or executed by or on behalf of the Governor, the Minister, or the Director or any other officer or employee are hereby sanctioned, authorised and confirmed.

## 3 Validation

Any act, matter or thing made, done or executed by the Governor, the Minister, or the Director or any other officer or employee which would have been lawful if this Act had been in force at the time such act, matter or thing was made, done or executed is hereby validated.

## Schedule

(Section 2)

AGREEMENT made the ninth day of January, in the year One thousand nine hundred and forty one BETWEEN THE STATE OF NEW SOUTH WALES (hereinafter called the "State") of the one part AND THE

COMMONWEALTH OF AUSTRALIA (hereinafter called the “Commonwealth”) of the other part WHEREAS it is desirable that provision should be made for the Courts of the Australian Capital Territory or of the Territory of Norfolk Island to order children to be committed and removed to and detained in an Institution in the State and for such children and other children from the said Territories to be dealt with under and subject to the *Child Welfare Act 1939* of the State and any Act of the State hereafter passed in amendment of or substitution for such Act NOW IT IS AGREED AS FOLLOWS:

**1.**

IN this Agreement unless the contrary intention appears the singular shall include the plural and the plural the singular and the masculine the feminine and the following expressions shall have the meanings respectively set opposite to them—

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

**“Australian Capital Territory”** includes the Territory accepted by the Commonwealth in pursuance of the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth and described in the Agreement set out in the Schedule to that Act

**“Child”** means boy or girl under eighteen years of age

**“Commonwealth Minister”**—

- (a) in relation to the Australian Capital Territory and the children thereof or therefrom means the Attorney-General of the Commonwealth or other the Minister of State of the Commonwealth for the time being administering the statutes and ordinances of that Territory relating to neglected or uncontrollable children or juvenile offenders and includes any Minister of State of the Commonwealth or member of the Federal Executive Council for the time being acting for or on behalf of the said Attorney-General or Minister; and
- (b) in relation to the Territory of Norfolk Island and children thereof or therefrom means the Minister of State of the Commonwealth for the time being administering the *Norfolk Island Act 1913-1935* and includes any Minister of State of the Commonwealth or member of the Federal Executive Council for the time being acting for or on behalf of the said Minister

**“Court”**

- (a) in relation to the Australian Capital Territory means the Supreme Court of the Australian Capital Territory or the Court of Petty Sessions of the Australian Capital Territory constituted by a Police Magistrate of the State or the Court of Petty Sessions of the Australian Capital Territory constituted by two or more Special Magistrates of the Territory and includes any Court of the State having jurisdiction in the Australian Capital Territory; and
- (b) in relation to the Territory of Norfolk Island means the Court of Norfolk Island sitting in its Full Jurisdiction

**“Director”** means the Director of the Child Welfare Department of the State or the person acting as such for the time being

**“Governor of the State”** includes the officer for the time being administering the Government of the State

**“Officer of the State”** in relation to any act matter or thing includes member of the police force of the State and any person thereto authorised by the State Minister

**“Officer of the Territory”** in relation to any act matter or thing includes member of the police force of the Territory and any person thereto authorised by the Commonwealth Minister

**“State Act”** means the *Child Welfare Act 1939* of the State and includes any Act hereafter passed in amendment of or in substitution for such Act and includes the Regulations for the time being in force under any such Act

**“State Minister”** means the Minister of the State for the time being administering the State Act and includes any Minister of the State for the time being acting for or on behalf of the said Minister

**“State Institution”** means an institution in the State of New South Wales and established and constituted under the State Act or deemed by the State Act to have been constituted or established under it or any place or premises of such State in which any child under eighteen years of age may be or may have been held detained or placed under any of the provisions of the State Act or the *Child Welfare Act 1923* of the State as amended prior to its repeal

**“Superintendent”** includes the person for the time being in charge

**“Territory”** means the Australian Capital Territory or the Territory of Norfolk Island and—

- (a) in relation to the Australian Capital Territory and children thereof or therefrom means that Territory; and
- (b) in relation to the Territory of Norfolk Island and children thereof or therefrom means that Territory

**2.**

**(a)**

WHEN a Court of the Territory commits or has committed any child to or orders or has ordered any child to be committed removed to or detained in any State Institution such child may be taken by an officer of the Territory to a Metropolitan Shelter of the Child Welfare Department of the State at Sydney and there handed over to the care of the Superintendent of such Metropolitan Shelter notwithstanding that such Institution is not the State Institution named in the Committal or other Order of the Court

**(b)**

THE officer of the Territory shall at the same time hand over to the said Superintendent an office copy of the Committal or other Order of the Court together with a Record of the Case and also if required shall furnish to such Superintendent evidence to show that he is an officer of the Territory and that the child to be handed over is identical with the child referred to in the Order of the Court

**(c)**

UPON the child being received into the care of the Superintendent of the said Metropolitan Shelter as aforesaid the child shall become and remain subject to the terms and provisions of the State Act in all respects as if such child had been a person under eighteen years of age lawfully

committed to a State Institution by a Children's Court of the said State by an order duly made and in force under the State Act and the Governor of the State the State Minister the Director and other officers and employees of the State may exercise any powers discretions duties and authorities vested in any of them by or under the State Act to and with respect to any other person in relation to or in connection with the said child and to and with respect to the child and otherwise howsoever

**(d)**

WHERE any child is handed over by an Officer of the Territory to the care of the Superintendent of a Metropolitan Shelter of the Child Welfare Department of the State at Sydney in purported or intended execution of the provisions of Sub-Clause (a) of this Clause no action suit or proceeding shall lie against the State or any officer or employee or authority of the State for or by reason only of the apprehension conveyance or removal of such child or his detention in the said Metropolitan Shelter or any State Institution or of the exercise in respect of such child of any power discretion duty or authority vested in any person or authority by or under the State Act

**(e)**

WHERE any child of or from the Australian Capital Territory or any child of or from the Territory of Norfolk Island has at any time been handed over by an authority or officer of the Territory to the care of the Superintendent of a Metropolitan Shelter of the Child Welfare Department of the State at Sydney or to the care of the Superintendent of a State Institution with a view to such child being committed to and/or detained in a State Institution, the child, on and after such handing over, shall be deemed to have become and to have been and remain subject to the terms and provisions of the State Act (and of the *Child Welfare Act 1923* of the State as amended until repealed) in all respects as if such child had been a person under eighteen years of age lawfully committed to a State Institution by a Children's Court of the said State by an order duly made and in force under the State Act or the said *Child Welfare Act 1923* of the State as amended prior to its repeal and the Governor of the State the State Minister the Director and other officers and employees of the State shall on and after such handing over of the said child, be deemed to have been entitled to exercise and shall be entitled to exercise any powers discretions duties and authorities vested in any of them by or under the State Act (or the said *Child Welfare Act 1923* of the State as amended prior to its repeal) to and with respect to any other person in relation to or in connection with such child and to and with respect to the child and otherwise howsoever

**3.**

WHERE after consideration of the circumstances the Commonwealth Minister determines that it is in the interest of a child detained in a State Institution or apprenticed boarded out placed out or placed as an adopted boarder under the State Act in pursuance of this Agreement or of a child to whom Sub-Clause (e) of Clause 2 hereof applies that the child should be removed to the Territory and expresses the determination in writing under his hand the State Minister shall, upon service upon the Director of the determination, forthwith cause to be delivered at a centre to be agreed upon such child into the custody of the person named in the determination as authorised to receive the child and such person shall thereupon remove (at the cost and expense of the Commonwealth) such child to the Territory PROVIDED ALWAYS that nothing in this Clause shall authorise or require the State Minister to commit any breach of any agreement entered into prior to the commencement of the Agreement for boarding out placing out or apprenticing the child or for placing the child as an adopted boarder

**4.**

ANY child who in pursuance of this Agreement (including Sub-Clause (e) of Clause 2 thereof) has become subject to the terms and provisions of the State Act may at any time be discharged by the State Minister from any State Institution or from the operation of the State Act and in any such case the child, or any child who in pursuance of this Agreement (including Sub-Clause (e) of Clause 2 thereof) has become subject to the terms and provisions of the State Act and who has attained the age of eighteen years or for any reason has ceased to be subject to the operation of the State Act, shall unless otherwise determined by the Commonwealth Minister and the State Minister forthwith be conveyed and removed by the State Minister to the Territory and the cost and expense of such conveyance and removal shall be paid by the Commonwealth to the State and Certificates by the Director from time to time shall be prima facie evidence of the amount due and payable by the Commonwealth to the State in respect of such costs and expenses PROVIDED ALWAYS that nothing in this Clause shall authorise or require the State Minister to commit any breach of any agreement entered into prior to the commencement of this Agreement for boarding out placing out or apprenticing the child or for placing the child as an adopted boarder

**5.**

IN respect of each and every child who has been or is handed over by an officer or authority of the Australian Capital Territory or of the Territory of Norfolk Island to the Superintendent of a Metropolitan Shelter or of a State Institution as aforesaid (including under Sub-Clause (e) of Clause 2 hereof) and who has been or is received into the care of such Superintendent the Commonwealth shall pay to the State the cost to the State of maintaining such child and (without affecting the liability of the Commonwealth to pay costs and expenses under any other provision of this Agreement) any expense reasonably incurred by or on behalf of the State in conveying such child from one place to another and certificates by the Director from time to time shall be prima facie evidence of the amount due and payable by the Commonwealth in respect of such expenses. For the purpose of this Clause the cost to the State of maintaining a child shall during the continuance and operation of this Agreement be deemed to be one pound ten shillings per week and proportionately for part of a week: PROVIDED that if in exercise of the powers conferred by or under the State Act a child is apprenticed boarded out placed out or placed as an adopted boarder the said weekly payments of one pound ten shillings for the cost of the maintenanc of such child shall not be payable in respect of the period for which such child shall be actually in the custody and charge of the person or master to whom or with whom he is actually boarded out, placed out, placed as an adopted boarder or apprenticed and in lieu thereof the Commonwealth shall pay to the State the expenses incurred by the State on behalf of the child (including boarding out or maintenance payments and any other payments made to cover the cost of clothing travelling expenses pocket money medical and dental attention and for conveyance of the child to any place at which he is apprenticed boarded out placed out or placed as an adopted boarder and his return from such place to a State Institution)

**6.**

**(1)**

IN the month of July in each year during the continuance or operation of this Agreement the Director shall furnish to the Commonwealth Minister particulars of—

- (a) the names of all children in respect of whom the Commonwealth may be liable who before or in the period ending on the thirtieth day of June then last past and commencing in the first

case with the date of execution of this Agreement and in subsequent cases the first day of July of the preceding year were received from the Australian Capital Territory or the Territory of Norfolk Island (as the case may be) and in such period were held detained placed cared for maintained or otherwise dealt with by the State or its Officers employees or authorities under or in pursuance of this Agreement; and

- (b) the State Institutions in which such children respectively were held or maintained and the period of such holding or maintenance in each Institution

**(2)**

IN the month following the ratification of this Agreement as mentioned in Clause 17 thereof the Director shall furnish to the Commonwealth Minister particulars of the names of all children in respect of whom the Commonwealth may be liable under this Agreement and who before the execution of this Agreement were received from the Australian Capital Territory or from the Territory of Norfolk Island as the case may be and were held detained placed cared for or maintained in State Institutions or otherwise dealt with by the State or its officers employees or authorities and the names of the State Institutions in which such children respectively were held or maintained before the execution of this Agreement and the period of such holding or maintenance in each institution

**7.**

IN the calendar month after the termination of this Agreement the Director shall furnish to the Commonwealth Minister the particulars mentioned and referred to in Sub-Clause 1 of Clause 6 hereof in regard to all children in respect of whom the Commonwealth may be liable who before or in the period commencing on the first day of July last past and ending on the termination of this Agreement were received from the Australian Capital Territory or the Territory of Norfolk Island (as the case may be) and in such period were held detained placed cared for maintained or otherwise dealt with as mentioned in Sub-Clause (1) of Clause 6 hereof

**8.**

ANY moneys payable by the Commonwealth to the State pursuant to this Agreement shall be paid to the Director at Sydney

**9.**

WITHIN a period of one calendar month after the particulars referred to in Sub-Clause (1) of Clause 6 hereof have been furnished to the Commonwealth Minister in respect of any period ending on the thirtieth day of June in any year as mentioned in such Sub-Clause and after the particulars referred to in Sub-Clause (2) of that Clause have been furnished to the Commonwealth Minister in respect of the period before the execution of this Agreement and after the particulars referred to in Clause 7 hereof have been furnished to the Commonwealth Minister in respect of the period ending on the termination of this Agreement the Commonwealth will pay to the State as herein provided the moneys payable hereunder in regard to all children in respect of whom the Commonwealth may be liable for or in relation to the period ending on the thirtieth day of June or the date of execution of this Agreement or the termination of this Agreement as the case may be to which the particulars relate

**10.**



**(a)**

THE State or the Commonwealth may terminate this Agreement at any time by giving to the other of them six calendar months' previous notice in writing of such termination

**(b)**

ANY such termination may be limited so as to relate to the Australian Capital Territory or the Territory of Norfolk Island only and the children thereof and therefrom in which case the Agreement shall otherwise continue in force unless and until terminated under this Clause or otherwise determined

**(c)**

ANY termination under this Clause by the State of this Agreement or any part thereof as aforesaid may be made by the State Minister and any termination under this Clause by the Commonwealth of this Agreement or any part thereof as aforesaid may be made by the Commonwealth Ministers or the Commonwealth Minister as the case may be

**11.**

UPON and after any such termination the Commonwealth Minister may make an order directing the removal from the State to the Territory of any child who was of or from the Territory and to whom this Agreement (including Sub-Clause (e) of Clause 2 hereof) applies and who is at such termination held or detained in a State Institution under this Agreement or apprenticed boarded out placed out or placed as an adopted boarder under the State Act or the *Child Welfare Act 1923* of the State as amended while it was in force (but subject in every such case to the arrangements for such apprenticeship or boarding out or placing out or placing as an adopted boarder) and may cause such order to be served upon the Director and the State Minister shall forthwith at the State Institution or other place in which such child is cause to be delivered such child into the custody of the person respectively named in the order as authorised to receive such child and such person shall immediately convey to the Territory at the cost and expense of the Commonwealth the child so delivered to him

**12.**

NOTWITHSTANDING any such termination of this Agreement the provisions of this Agreement (including the provisions of Clauses 4, 5 and 15) shall continue to apply to and with respect to the children at the said termination held or detained hereunder (including Sub-Clause (e) of Clause 2) in State Institutions or apprenticed boarded out placed out or placed as adopted boarders under the State Act (or the *Child Welfare Act 1923* of the State as amended while it was in force) until delivered to a person authorised by the Commonwealth Minister to receive them in pursuance of this Agreement or until removed to the Territory in pursuance of this Agreement

**13.**

UNLESS the context otherwise requires any notice demand request or communication that may or is to be given or made by the Commonwealth Minister or the Commonwealth to the State or the State Minister or the Director or any other authority of the State in pursuance of or under this Agreement shall be deemed to have been duly given or made if signed by or on behalf of the Commonwealth Minister and delivered to or left at the office of the Director or sent in a prepaid letter addressed to the Director at his usual official address

**14.**

UNLESS the context otherwise requires any notice demand request communication certificate statement or particulars that may or are to be given or made or furnished by the State or the State Minister or the Director or any other authority of the State to the Commonwealth or to the Commonwealth Minister in pursuance of or under this Agreement shall be deemed to have been duly given made or furnished if signed by or on behalf of the State Minister or the Director or other authority and delivered to or left at the Office at Canberra of the Commonwealth Minister (or of either of the Commonwealth Ministers in case it is to be given made or furnished to the Commonwealth) or sent in a prepaid letter addressed to the Secretary of the Department of State administered by the Commonwealth Minister at Canberra or to the Secretary of the Department of State administered by either of the Commonwealth Ministers at Canberra in case it is to be given made or furnished to the Commonwealth

**15.**

IF any child to whom this Agreement (including Sub-Clause (e) of Clause 2 thereof) applies shall die while he is held or detained in a State Institution or while otherwise in the custody of the State under the provisions of this Agreement (including Sub-Clause (e) of Clause 2 thereof) or while apprenticed boarded out placed out or placed as an adopted boarder under the State Act or the [Child Welfare Act 1923](#) of the State as amended while it was in force the State shall do all things necessary for such child's burial and the Commonwealth shall pay to the State all reasonable expenses to which the State may have been put in connection with the burial of such child and certificates by the Director from time to time shall be prima facie evidence of the amount so due and payable by the Commonwealth

**16.**

THE Commonwealth shall also be responsible for the cost of the conveyance of all children from the Territory to a Metropolitan Shelter at Sydney.

**17.**

THIS Agreement is subject to ratification by the Parliament of the said State and by laws of both of the Territories and shall not be of any force or effect until so ratified

IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first above written.

SIGNED by THE HONOURABLE DAVID HENRY DRUMMOND Minister of Public Instruction of the State of New South Wales for and on behalf of the said State in the presence of:

D.H. DRUMMOND.

E. BENNETTS, J.P.

SIGNED by THE RIGHT HONOURABLE WILLIAM MORRIS HUGHES the Attorney-General of the Commonwealth of Australia and by THE HONOURABLE THOMAS JOSEPH COLLINS a Member of the Federal Executive Council acting for and on behalf of the Prime Minister of the Commonwealth of Australia for and on behalf of the said Commonwealth in the presence of:

W. M. HUGHES.

T. J. COLLINS.

GEO. S. KNOWLES.