

Child Welfare (Commonwealth Agreement Ratification) Act 1962 No 28

[1962-28]



New South Wales

Status Information

Currency of version

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Provisions in force

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

Authorisation

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Child Welfare (Commonwealth Agreement Ratification) Act 1962 No 28



New South Wales

An Act to ratify an agreement relating to child welfare 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 1962*.
- (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 (hereinafter referred to as the agreement), a copy of which is set out in the Schedule to this Act, is hereby approved, ratified and confirmed, and the doing or performance of all such acts, matters or things as are to be or may be done or performed under or in pursuance of the agreement, or the principal agreement (as defined in clause 2 (1) of the agreement) as amended by the agreement, is hereby authorised, and the agreement may be carried into effect notwithstanding the provisions of any other Act.
- (2) Without prejudice to the generality of subsection one of this section all acts, matters and things which, by the agreement or the said principal agreement as amended 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 for or with respect to which provision is made in the agreement or the said principal agreement as amended by the agreement made, done or executed before the commencement of this Act or 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

A SUPPLEMENTAL AGREEMENT made the twenty sixth day of July One thousand nine hundred and sixty-two Between THE STATE OF NEW SOUTH WALES (in this agreement called “the State”) of the one part and THE COMMONWEALTH OF AUSTRALIA (in this agreement called “the Commonwealth”) of the other part:

WHEREAS by the agreement referred to in this agreement as the principal agreement provision was made, inter alia, for the reception, detention and maintenance in institutions in the State of New South Wales of children committed to those institutions by Courts of the Australian Capital Territory:

AND WHEREAS by the *Child Welfare (Commonwealth Agreement Ratification) Act, 1941* of the State and the *Child Welfare Ordinance 1941* of the Territory the principal agreement was ratified and approved and provision was made for it to be carried into effect:

AND WHEREAS it is desirable to make provision for children admitted to government control under the *Child Welfare Ordinance 1957* of the Territory to be removed to and accepted into depots or homes in the State and to be dealt with as if they were wards admitted to State control under the *Child Welfare Act, 1939* of the State:

AND WHEREAS it is also desirable to vary in certain respects the provisions of the principal agreement in its application in relation to the Territory:

NOW IT IS HEREBY AGREED as follows—

1.

This agreement shall have no force or effect and shall not be binding on either party until it is approved by the Parliament of the State and by a law of the Territory, so as to validate its execution and so as to authorise the doing or performance of such acts, matters or things as are to be, or may be, done or performed under or in pursuance of this agreement or of the principal agreement as varied by this agreement.

2.—

(1.)

In this agreement, unless the context otherwise requires—

“depot” means a depot for the temporary accommodation and maintenance of children established or deemed to have been established under section 21 of the State Act;

“home” means a home for the reception and maintenance of children established or deemed to have been established under section 21 of the State Act;

“the Ordinance” means the *Child Welfare Ordinance 1957* of the Territory, as amended from time to time, and includes any Ordinance of the Territory substituted for that Ordinance;

“the principal agreement” means the agreement made the ninth day of January, 1941, between

the State and the Commonwealth and set out in the Schedule to the *Child Welfare (Commonwealth Agreement Ratification) Act, 1941* of the State and the Schedule to the *Child Welfare Agreement Ordinance 1941* of the Territory; and

“the Territory” means the Australian Capital Territory as defined in the principal agreement.

(2.)

In the principal agreement, notwithstanding anything contained therein, and in this agreement—

“child” in relation to a person of or from the Territory means a person to or in respect of whom the Ordinance or the State Act, as the case may require, applies by reason of the person being or having been a child or young person as therein defined;

“Court” in relation to the Territory means Court of Petty Sessions of the Territory when known by virtue of section 13 of the Ordinance as the Children’s Court and includes the Supreme Court of the Territory in its jurisdiction under the Ordinance; and

“the Commonwealth Minister” in relation to the Territory or a child of or from the Territory means the Minister of State for the Commonwealth for the time being administering the Ordinance or the relevant provisions thereof and includes a member of the Federal Executive Council for the time being acting for or on behalf of that Minister.

(3.)

A reference in the principal agreement or in this agreement to an act, matter or thing done or to be done or performed or to be performed by the State Minister or by the Commonwealth Minister shall be read so as to include an act, matter or thing done or to be done or performed or to be performed by a delegate of, or a person authorised by, the State Minister or the Commonwealth Minister in that behalf under the laws for the time being in force in the State or in the Territory, as the case may be.

(4.)

Subject to the preceding sub-clauses of this clause, words and expressions used in this agreement which are the same as words and expressions to which a meaning is attributed in the principal agreement shall, unless the contrary intention appears, have the respective meanings attributed to them by the principal agreement.

3.—

(1.)

The provisions of this clause shall apply to and in respect of a child who has been admitted to government control under the Ordinance.

(2.)

The Commonwealth Minister or a person authorised in that behalf by the Commonwealth Minister may direct that the child be transferred to a depot or home in the State.

(3.)

The child may be taken by an officer of the Territory to the depot or home in the State and there

handed over to the person for the time being in charge of the depot or home or may be handed by an officer of the Territory to an officer of the State and taken by the officer of the State to the depot or home in the State and there handed over to the person for the time being in charge of the depot or home.

(4.)

The officer of the Territory shall at the same time hand to the person for the time being in charge of the depot or home, or to the officer of the State, as the case may be, a copy of the direction of the Commonwealth Minister or the person authorised by the Commonwealth Minister and copies of the documents giving effect to the admission of the child to government control and also, if required, will furnish to that person or officer 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 documents.

(5.)

Upon the child being received into the care of the person for the time being in charge of the depot or home—

- (a) the child shall become and remain subject to the terms and provisions of the State Act; and
- (b) the State Minister, the Director, other officers of the State and other persons may exercise any powers, discretions, duties and authorities vested in them by or under the State Act to and with respect to any other person in relation to or in connexion with the child or to and with respect to the child and otherwise howsoever,

in all respects as if the child were a ward admitted to state control under the State Act.

(6.)

The provisions, as varied by this agreement, of clauses 3, 4, 7, 8, 9, 11, 12 and 15, and sub-clause (1.) of clause 6, of the principal agreement shall apply to and with respect to the child as if this agreement were incorporated in and formed part of the principal agreement and references in those provisions to a State Institution were references to a depot or home in the State, provided that clause 12 shall have effect in relation to children handed over by an officer or authority of the Territory to the superintendent of a State Institution or person for the time being in charge of a depot or home in the State and who have been received into the care of the superintendent or any such person in pursuance of the principal agreement or of this agreement as if the reference to clause 5 in the said clause 12 were a reference to the provisions of clause 4 of this agreement.

(7.)

The Commonwealth shall be responsible for the cost of conveying the child from the Territory to the depot or home in accordance with this clause.

4.—

(1.)

The provisions of clause 5 of the principal agreement shall not apply and the provisions of this clause shall apply with respect to the maintenance and the conveyance, on and from the date upon which this agreement comes into force, of a child who has been or is handed over to the

superintendent of a State Institution or the person for the time being in charge of a depot or home in the State and who has been or is received into the care of the superintendent or any such person in pursuance of the principal agreement or of this agreement.

(2.)

The Commonwealth shall pay to the State:

- (a) the cost to the State of maintaining the child in a State Institution or a depot or home in the State;
- (b) the expenses incurred by the State on behalf of the child when the child is apprenticed, boarded out, placed out or placed as an adopted boarder in accordance with the State Act; and
- (c) the costs and expenses reasonably incurred by or on behalf of the State in or in connexion with the conveyance of the child from one place to another.

(3.)

For the purposes of this clause the cost to the State of maintaining the child in a State institution or a depot of home for any period shall be ascertained by means of the formula—

$$\frac{A \times B}{C} = D$$

in which formula—

A represents the number of days in the period during which the child was maintained;

B represents the amount determined by the Director as being the average cost per week of maintaining a child in the State Institution or the depot or home; and

C represents the cost of maintaining the child in the State Institution or the depot or home for the period.

(4.)

A certificate under the hand of the Director stating the amount which was the average cost per week of maintaining a child in a State Institution or a depot or home during a period shall, as between the parties to this agreement, be conclusive evidence of the matter stated.

(5.)

The expenses referred to in paragraph (b) of sub-clause (2.) of this clause shall include 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 expenses of, or incidental to, education.

(6.)

A certificate under the hand of the Director stating the amount of costs or expenses referred to in

paragraph (b) or (c) of sub-clause (2.) of this clause which have been incurred by the State in respect of a child shall be prima facie evidence of the amount due and payable by the Commonwealth in respect of these expenses.

5.

Except in so far as it is varied by this agreement, the principal agreement is confirmed, and clauses 10, 13 and 14 of the principal agreement shall apply with respect to this agreement as if this agreement were incorporated in and formed part of the principal agreement.

6.

This agreement shall not in any way affect the force and operation of the provisions of the principal agreement in relation to the Territory of Norfolk Island and children of or from that Territory.

IN WITNESS whereof this agreement has been executed the day and year first above written.

SIGNED by the Honourable FRANCIS HAROLD HAWKINS, Minister of State for Child Welfare and Social Welfare of the State of New South Wales, for and on behalf of the State in the presence of—

L. E. HUNT, J.P.

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F. H. HAWKINS.

SIGNED by the Honourable GORDON FREETH, Minister of State for the Interior of the Commonwealth of Australia, for and on behalf of the Commonwealth in the presence of—

DAVID I. SMITH,
Private Secretary,
Canberra, A.C.T.

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GORDON FREETH.