

- (2) In particular, the Director—
- (a) is entitled to the custody of the ward;
 - (b) is responsible for providing or arranging for the provision of the necessities and amenities of life of the ward, including the maintenance and accommodation of the ward and recreation and entertainment for the ward; and
 - (c) is responsible for the well-being generally of the ward.

Placement in homes, &c.

110. (1) The Director may place a ward in the care of—

- (a) a parent or relative of the child or with some other suitable person (whether in the Territory or elsewhere);
- (b) the person in charge of an approved home;
- (c) the person in charge of a hospital (whether in the Territory or elsewhere);
- (d) the person in charge of a home (whether in the Territory or elsewhere) for the accommodation of children; or
- (e) the person in charge of some other appropriate place (whether in the Territory or elsewhere).

(2) A person who has the care of a child so placed in his or her care is entitled to the custody and control of the child and has the responsibilities specified in paragraphs 109 (2) (b) and (c).

Religion

111. (1) The Director may make such decisions as he or she considers to be in the interests of a ward with respect to religious matters concerning the ward.

(2) In making such a decision, the Director shall take into account, so far as they can be ascertained after reasonable enquiry—

- (a) any wishes of the ward;
- (b) any religious upbringing of the child before the child became a ward; and
- (c) any wishes of a parent of the ward or of a former guardian of the ward.

Visits to wards

112. (1) The Director or an officer may, at reasonable times, visit a ward.

(2) A person who has the care of a ward shall permit the Director or officer visiting the ward in pursuance of sub-section (1) to interview the ward in private and to make such inspections and examinations as the Director or officer considers necessary.

(3) An officer shall, before interviewing a ward or making an inspection or examination as mentioned in sub-section (2), produce to the person who has the care of the ward the instrument of his or her appointment as an officer.

(4) Where a person who has the care of a ward does not comply with the requirements of sub-section (2), the Director may remove the ward from the person's care.

Wards running away

113. (1) In this section, "authorised officer" means an officer for the time being authorised by the Director to act under this section.

(2) An authorised officer may, with such force as is necessary for the purpose, apprehend a ward who has run away, or has been unlawfully removed, from his or her proper custody and shall return the ward to his or her former custody.

(3) A police officer may, if the authorised officer so requests, with such force as is necessary for the purpose, assist an authorised officer in the apprehension of a ward under sub-section (2).

Property of wards

114. (1) The Court may, upon application by the Director, make an order--

- (a) empowering the Director to manage, control or deal with the property of a ward; or
- (b) appointing the Public Trustee as manager of the property of a ward.

(2) An order under sub-section (1) may include such incidental or supplementary provisions as are necessary to give effect to the order.

(3) The Court shall not make an order under sub-section (1) with respect to property if there is some other person, not being the ward, empowered to manage, control or deal with the property.

(4) The Director shall cause a copy of an application under this section to be served on such persons as the Court directs and the procedure upon the hearing of the application shall be as the Court directs.

Payments to ex-wards

115. Where the Director considers it proper to do so, he or she may arrange for the provision of financial or other assistance, on such terms and conditions as he or she thinks fit, to a person who was at any time a ward.

Wards from outside the Territory

116. (1) The Director may, on request by or on behalf of the authority having the custody or control in a State or in another Territory of a child who, under a law in force in the State or Territory, is a ward and has entered or is about to enter the Australian Capital Territory, in writing declare the child to be a ward of the Director.

(2) Where the Director makes a declaration under sub-section (1), the child, while in the Australian Capital Territory, shall be deemed to be a

ward of the Director by virtue of an order under section 80 and this Ordinance applies to and in relation to the child accordingly.

(3) A declaration under sub-section (1) ceases to have effect if the child ceases to be under the custody and control of the authority previously having custody and control of the child.

(4) Where, in the opinion of the Director, the law of a State or another Territory contains a provision corresponding to sub-section (1), the Director may request the authority having the custody and control of wards in that State or Territory to declare to be a ward under that law a child who has been declared a ward under this Ordinance.

(5) Where a declaration is in force in respect of a child in pursuance of a request under sub-section (4), the functions and duties conferred or imposed on the Director by this Ordinance in relation to the child shall be deemed to have been suspended.

(6) Sub-section (5) does not apply to the exercise by the Director of a function or duty in respect of a child in pursuance of an arrangement made under sub-section (7) with respect to the child.

(7) The Director may, on behalf of the Commonwealth, make financial or other arrangements with an authority referred to in sub-section (1) or (4) with respect to a child while the child is a ward of that authority or of the Director, as the case requires.

(8) The Director may make arrangements for the return of a child who has become a ward of the Director under this section to his or her former custody.

PART VII—CHILDREN'S DAY CARE SERVICES

Interpretation

117. (1) In this Part, unless the contrary intention appears—

“licence” means a licence under this Part;

“licensee” means the holder of a licence;

“service to the community” includes service to a section of the community.

(2) Subject to sub-section (3), for the purposes of this Part a person is providing child care if the person provides care for a child or a number of children—

(a) where—

(i) the care is provided on a business basis or on a community service basis; and

(ii) the care is provided at a place which is not the place of living for the time being of any of the children being cared for on that basis; and

- (b) of all the children for whom care is being provided at that place at any one time (including those not being cared for on a business basis or on a community service basis)—
 - (i) the number of children who have not attained the age of 6 years exceeds 4; or
 - (ii) the number of children who have not attained the age of 12 years exceeds 8.
- (3) This Part does not apply to or in relation to—
 - (a) foster care;
 - (b) care provided in a place under the control of the Department;
 - (c) care provided, whether during school hours or not, by the Australian Capital Territory Schools Authority;
 - (d) care provided by a person in the course of conducting a school that is registered under the *Education Ordinance 1937*; or
 - (e) care provided for children as patients in a hospital.
- (4) For the purposes of sub-section (2)—
 - (a) care is provided for children on a business basis if it is provided in the course of carrying on a business of caring for children or it is provided incidentally to the carrying on of some other business;
 - (b) care is provided for children on a community service basis if it is provided as a service to the community or it is provided incidentally to providing some other service to the community;
 - (c) a child who is received at a place in an emergency or in unexpected circumstances shall not be taken into account unless and until the child has been cared for at the premises for 2 consecutive days; and
 - (d) a child is being cared for at a place notwithstanding that the child is temporarily absent from that place.

Licensing of child care

118. (1) Subject to section 119, a person shall not provide child care, whether for reward or otherwise, at any premises unless a licence is in force in respect of those premises.

- Penalty: (a) in the case of a body corporate—\$10,000; and
(b) in the case of a natural person—\$2,000.

(2) Subject to section 119, a person who provides child care at premises in respect of which a licence is in force shall not fail to comply with a condition to which the licence is subject.

- Penalty: (a) in the case of a body corporate—\$5,000; and
(b) in the case of a natural person—\$1,000.

Exemptions

119. (1) The Minister may, by instrument in writing, exempt specified child care or child care of a specified class from the application of this Part where the Minister considers it desirable to do so, having regard to any one or more of the following:

- (a) the circumstances in which the child care is being or is to be provided;
- (b) the number of children cared for or likely to be cared for;
- (c) the nature of the premises at which the child care is being or is to be provided;
- (d) the days on which and the times at which the child care is being or is to be provided.

(2) An exemption under sub-section (1) shall, unless sooner revoked, remain in force for the period specified in the instrument.

(3) The Minister may, by instrument in writing, revoke or vary an exemption.

(4) The Minister shall not revoke or vary an exemption which relates to specified child care unless the Minister has, at least 28 days before doing so, given to the person providing the child care an opportunity of stating reasons why the exemption should not be revoked.

(5) A copy of an instrument under this section shall be published in the *Gazette* within 21 days after the date the instrument is made.

(6) The Minister shall cause a copy of an instrument published under sub-section (5) to be laid before each House of the Parliament within 15 sitting days of that House after the instrument was published.

(7) If either House of the Parliament, within 15 sitting days of that House after a copy of an instrument has been laid before that House in pursuance of sub-section (5), passes a resolution disapproving the exemption, or the revocation or variation of exemption, contained in the instrument the exemption, revocation or variation shall not have any force or effect on or after the day on which the resolution was passed.

Licences

120. (1) The Minister may, upon application by a person for a licence in respect of premises—

- (a) grant the licence; or
- (b) by notice in writing served on the applicant, refuse to grant the licence.

(2) An application under this section shall—

- (a) be in writing;
- (b) contain the prescribed particulars; and
- (c) be accompanied by the determined fee.

(3) The Minister shall determine the period, being a period not exceeding 2 years, for which a licence under this section is to be granted.

(4) A licence shall—

(a) specify the period for which the licence is to remain in force; and

(b) include conditions as to—

(i) the maximum number of children for whom care may be provided under the licence; and

(ii) the ages of the children for whom care may be provided under the licence.

(5) A licence is subject to such other conditions as the Minister thinks fit and specifies in the licence, including but not limited to conditions as to:

(a) the number of the persons under whose control the children for whom care is provided will be placed;

(b) the qualifications of the persons mentioned in paragraph (a);

(c) the measures to be taken for the health and safety of the children;

(d) the buildings and facilities to be used at the premises at which the care is provided;

(e) the insurance of the licensee in respect of any liability of the licensee arising out of or relating to the provision of the care at those premises;

(f) the activities to be provided for the benefit of the children; and

(g) the management of those premises.

(6) Subject to this Ordinance, a licence remains in force for the period specified in the licence as the period for which the licence is granted.

Emergency suspension of licences

121. Where the Minister is satisfied that there exists an emergency by reason of which it is desirable to suspend a licence immediately, the Minister may, by notice in writing served on the licensee, suspend the licence for such period, being a period that does not exceed 14 days, as is specified in the notice.

Direction to comply with conditions

122. (1) Where the Minister is satisfied that a condition to which a licence is subject has not been complied with, the Minister may, by notice in writing served on the licensee, inform the licensee that the Minister is so satisfied and that, if the licensee does not forthwith comply with the condition, steps may be taken for the revocation or suspension of the licence.

(2) The Minister may, having regard to an explanation so furnished, vary or revoke a condition to which the licence is subject.

Cancellation, &c., of licences

123. (1) The Minister may, upon application by a licensee—

- (a) cancel the licence;
- (b) suspend the licence for the period specified in the application;
- (c) vary, in the manner specified in the application, a condition to which the licence is subject; or
- (d) revoke a condition to which the licence is subject, being a condition specified in the application.

(2) Where a licensee is convicted of an offence under sub-section 118 (2), the Minister may by notice in writing cancel the licence.

(3) The Minister may, by notice in writing served on a licensee, require the licensee to show cause why—

- (a) the licence should not be—
 - (i) cancelled; or
 - (ii) suspended for the period specified in the notice;
- (b) a condition to which the licence is subject should not be varied in the manner specified in the notice;
- (c) the licence should not be made subject to a condition specified in the notice; or
- (d) a condition specified in the notice and to which the licence is subject should not be revoked.

(4) The Minister may, not less than 28 days after the date of service of a notice under sub-section (3), by notice in writing served on the licensee—

- (a) cancel the licence;
- (b) suspend the licence for the period specified in the first-mentioned notice or for some other period to which the licensee consents;
- (c) vary a condition of the licence in the manner specified in the first-mentioned notice or in some other manner to which the licensee consents;
- (d) include in the licence the condition specified in the first-mentioned notice or some other condition to the inclusion of which the licensee consents; or
- (e) revoke the condition specified in the first-mentioned notice or some other condition to the revocation of which the licensee consents.

(5) A notice under sub-section (4) has effect from and including the date on which it is served or such later date as is specified in the notice.

Removal of child from unlicensed care

124. (1) If a person is providing child care for a child at premises in respect of which a licence is not, for the time being, in force, the Director or an officer may—

- (a) request a parent of the child to remove the child from the premises;
- or

- (b) remove the child from the premises and—
 - (i) place the child in the custody of a parent or of a relative of the child; or
 - (ii) if the Director or officer considers it more appropriate to do so, deliver the child to a suitable person who is prepared to care for the child.

(2) A direction under paragraph (1) (a) may be given by any appropriate means of communication, including by telephone.

(3) Where, in pursuance of paragraph (1) (b), a child is placed in the custody of a person other than a parent of the child, the Director or an officer shall notify a parent of the child forthwith of the child's whereabouts.

Inspection of licensed premises

125. (1) The Director or an officer may, at any reasonable time, enter and inspect premises specified in a licence.

(2) The Director or an officer is not entitled to remain in or on premises referred to in sub-section (1) unless the Director or officer, on request by the occupier of the premises, produces evidence of his or her appointment as Director or officer, as the case requires.

PART VIII—EMPLOYMENT OF CHILDREN

Interpretation

126. (1) In this Part, "young child" means a person who has not attained the school-leaving age.

- (2) For the purposes of this Part—
 - (a) if a person causes or permits a child to participate or assist in a business, trade, calling or occupation carried on for private profit, the person shall be deemed to employ the child and shall be so deemed whether or not the child receives payment or other reward for his or her participation or assistance; and
 - (b) "employer" and "employment" have corresponding meanings.

Employment of children in certain businesses, &c.

127. A person shall not employ a child in a prescribed business, trade, calling or occupation if the child has not attained the age prescribed in respect of that business, trade, calling or occupation.

- Penalty: (a) in the case of a body corporate—\$10,000; and
- (b) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both.

Employment of young children

128. (1) Except as provided by this Part, a person shall not employ a young child.

- Penalty: (a) in the case of a body corporate - \$5,000; and
 (b) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both.

(2) Sub-section (1) does not apply with respect to the employment of a young child in or in connection with a school, provided that any applicable law or any applicable industrial award, order, determination or agreement is complied with.

Light work excepted

129. (1) Subject to this Part, sub-section 128 (1) does not apply with respect to the employment of a young child—

- (a) on baby-sitting;
- (b) on going on errands;
- (c) on casual work in or around a private home;
- (d) on golf-caddying;
- (e) on clerical work;
- (f) on gardening;
- (g) on selling, delivering or distributing newspapers or advertising matter;
- (h) for the purposes of or in relation to entertainment at a place used for providing entertainment or amusement;
- (i) for the purpose of entertainment at a place used for sporting activities;
- (j) for the purpose of singing, dancing, playing a musical instrument or for some similar purpose;
- (k) as a performer in a radio, television or film program or production, or a like program or production, not being in the nature of a news item;
- (l) as a model;
- (m) as the subject of photography, whether still or moving;
- (n) in or in connection with a circus; or
- (o) on any other prescribed work.

(2) Sub-section (1) does not have effect with respect to the employment of a young child for more than 10 hours in any one week unless the proposed employer has, not less than 7 days before the employment commences, given to the Director a notice setting out—

- (a) the name and address, and the date of birth, of the young child;
- (b) the nature and place of the proposed employment;
- (c) the name and address of a parent of the young child;
- (d) the name and address of the proposed employer;
- (e) the proposed hours and days of work;
- (f) the proposed duration of the employment;
- (g) the name of the school, if any, attended by the young child; and
- (h) the reasons for proposing to employ the young child.

Family businesses excepted

130. Subject to this Part, sub-section 128 (1) does not apply with respect to the employment of a young child in or in connection with a business, trade, occupation or calling carried on by a parent of the young child or by a company of which a parent of the young child is a director.

Employment not to interfere with schooling, &c.

131. Sections 129 and 130 do not have effect with respect to the employment of a young child if the employment—

- (a) constitutes a breach of the *Education Ordinance 1937* by or with respect to the young child; or
- (b) is likely to prejudice the health, safety or personal or social development of the young child or the ability of the young child to benefit from his or her education or training.

Copies of notices to be given

132. The Director shall, forthwith after receiving a notice under sub-section 129 (2), furnish a copy of the notice to the Secretary within the meaning of the *Education Ordinance 1937*.

Dangerous employment

133. (1) The Director may, on the application of a person who proposes to employ a young child where the employment involves the child engaging in activities dangerous to the health or safety of the child, consent to the employment of the child.

(2) The Director may refuse to grant consent under sub-section (1) where the Director has reasonable grounds for believing that the proposed employment would be likely to prejudice the health or safety of the young child.

(3) The consent of the Director under sub-section (1) may be expressed to be subject to such conditions as the Director thinks fit, being conditions relating to the preservation of the health and safety of the child.

(4) A person shall not, except with the consent of the Director, employ a young child where the employment involves the child engaging in activities dangerous to the health or safety of the child.

Penalty: (a) in the case of a body corporate—\$25,000; and

(b) in the case of a natural person—\$5,000 or imprisonment for 2 years, or both.

(5) A person to whom consent under sub-section (1) has been given shall not fail to comply with any conditions subject to which the consent was given.

- Penalty: (a) in the case of a body corporate—\$10,000; and
 (b) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both.

(6) Where the Director gives consent under sub-section (1), the Director shall furnish a copy of the consent to the Secretary within the meaning of the *Education Ordinance 1937*.

Regulation of employment of children

134. (1) The Director may, by notice in writing served on an employer—

- (a) prohibit the employer from employing or continuing to employ a child specified in the notice if the Director believes, on reasonable grounds, that the employment is, or is likely to be, prejudicial to the health, safety or personal or social development of the child or the ability of the child to benefit from his or her education or training; or
 (b) specify conditions to be complied with by the employer with respect to the employment of a child specified in the notice, being conditions designed to preserve the health, safety or personal or social development of the child or the ability of the child to benefit from his or her education or training.

(2) A person shall not employ a child in contravention of a notice under paragraph (1) (a).

- Penalty: (a) in the case of a body corporate—\$5,000; and
 (b) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both.

(3) Where the Director has specified conditions to be complied with by the employer of a child with respect to the employment of the child, a person employing the child shall not fail to comply with a condition so specified.

- Penalty: (a) in the case of a body corporate—\$5,000; and
 (b) in the case of a natural person—\$1,000.

Duty of employers of children

135. An employer of a child shall do all things necessary and reasonable to ensure the health and safety of the child.

- Penalty: (a) in the case of a body corporate—\$10,000; and
 (b) in the case of a natural person—\$2,000.

Child not to render certain measures ineffective

136. A child shall not do a thing, or fail to do a thing, that renders less effective anything done by the child's employer for the purpose of complying with section 135 or for the purpose of securing compliance with a condition to which the employment is subject.

Part subject to certain provisions of Education Ordinance

137. This Part has effect subject to sections 9 and 16 of the *Education Ordinance 1937*.

PART IX—OFFENCES

Presumption of age

138. Where a person is charged with an offence against this Ordinance or the regulations with respect to a person who is alleged in the charge not to have attained a specified age and the second-mentioned person appears to the Court not to have attained that age, there is a rebuttable presumption that the second-mentioned person has not attained that age.

Neglect, &c., of children

139. (1) A person shall not—

- (a) ill-treat a child who is in the person's custody or under the person's control; or
- (b) fail, otherwise than for financial reasons, to provide adequate and proper lodging, food or clothing, or nursing, medical or dental care and attention, for a child who is in the person's custody.

Penalty: \$5,000, or imprisonment for 2 years, or both.

(2) A person shall not, knowingly or recklessly, leave a child unattended in such circumstances and for such a time that the child could suffer injury or sickness or otherwise be in danger.

Penalty: \$2,000, or imprisonment for 12 months, or both.

(3) A police officer, a medical practitioner or an officer may take such steps as appear to him or her to be necessary (including entering any building, place or vehicle, with such force as is necessary) for the immediate safeguarding of a child who has been ill-treated or neglected as mentioned in sub-section (1) or has been left unattended as mentioned in sub-section (2).

(4) An action does not lie against a person by reason of the person having acted pursuant to sub-section (3) in good faith and with reasonable care in the circumstances.

(5) Sub-section (3) does not affect the operation of Part V.

Unauthorised removal of children

140. A person shall not, without lawful authority, remove or cause or procure to be removed a child from the care of a person into whose care or custody the child has been placed under this Ordinance.

Penalty: \$1,000, or imprisonment for 6 months, or both.

False statements

141. A person shall not, for the purposes of, or for a purpose connected with, this Ordinance, knowingly make a statement that is false or misleading in a material particular.

Penalty: \$1,000, or imprisonment for 6 months, or both.

Tattooing of children

142. A person shall not in any manner tattoo any part of the body of a child unless the person has first obtained the written permission of a parent of the child to tattoo the child in that manner on that part of the child's body.

Penalty: \$1,000.

PART X—APPEALS**Interpretation**

143. In this Part, "order" includes declaration and decision.

Jurisdiction of Supreme Court

144. (1) The appellate jurisdiction of the Supreme Court with respect to orders of the Magistrates Court under this Ordinance extends to the hearing and determination of the following appeals and no others, namely:

- (a) an appeal, by the child against whom the order was made, from an order made under Part IV, other than an order made under section 44 or section 68;
- (b) an appeal, by the child charged, from a decision of the Court under section 48 that the charge against the child was proved;
- (c) an appeal, by a party to the proceedings in which the order was made, from an order of the Court made under Part V or under section 68, 114 or 166;
- (d) an appeal, by way of order to review, by the informant from an order of the Court dismissing an information under Part IV;
- (e) an appeal, by way of order to review, by the child against whom the order was made, from an order made under Part IV;
- (f) an appeal, by way of order to review, by the informant from a decision of the Court to dispose of a case summarily under section 41;
- (g) an appeal, by way of order to review, by the informant from a decision of the Court not to commit a child to the Supreme Court for sentence under section 44.

(2) Nothing in this Part limits the operation of Part XI of the Magistrates Court Ordinance or any other Ordinance that makes provision with respect to the appellate jurisdiction of the Supreme Court.

Application of Magistrates Court Ordinance

145. (1) The provisions of Division 2 of Part XI of the Magistrates Court Ordinance, other than section 219, apply to and in relation to an appeal of the kind referred to in paragraph 144 (1) (a) or (b) as if—

- (a) the appeal were an appeal to which that Division applied;
- (b) the appeal were an appeal to which section 214 of that Ordinance applied; and
- (c) a reference in that Division to the Magistrates Court were a reference to the Childrens Court.

(2) Part XIXA of the *Magistrates Court (Civil Jurisdiction) Ordinance 1982* applies to and in relation to an appeal of the kind referred to in paragraph 144 (1) (c) as if it were an appeal from a judgment or order of a kind specified in sub-section 282C (2) of that Ordinance.

(3) The provisions of Division 3 of Part XI of the Magistrates Court Ordinance apply to and in relation to an appeal of the kind referred to in paragraph 144 (1) (d), (e), (f) or (g) as if it were an appeal from—

- (a) in the case of an appeal of the kind referred to in paragraph 144 (1) (d)—an order of the kind specified in paragraph 219B (a) of that Ordinance;
- (b) in the case of an appeal of the kind referred to in paragraph 144 (1) (e)—an order of the kind specified in paragraph 219B (c) of that Ordinance;
- (c) in the case of an appeal of the kind referred to in paragraph 144 (1) (f)—a decision of the kind specified in paragraph 219B (f) of that Ordinance; and
- (d) in the case of an appeal of the kind referred to in paragraph 144 (1) (g)—a decision of the kind specified in section 219B (e) of that Ordinance.

Barring of appeal if order to review granted

146. Where an order *nisi* to review a decision of the kind referred to in paragraph 144 (1) (d) or (e) has been granted under Division 3 of Part XI of the Magistrates Court Ordinance in its application under this Part—

- (a) the person obtaining the order *nisi* is not entitled to make any other appeal to the Supreme Court under this Part against that decision; and
- (b) if the person has served on the Clerk of the Magistrates Court notice of appeal to the Supreme Court against that decision, the notice of appeal shall be deemed to have been withdrawn.

Orders that Supreme Court may make

147. (1) On an appeal of the kind referred to in paragraph 144 (1) (a), (b) or (c), the Supreme Court shall not make an order other than an order that could have been made by the Childrens Court in the proceedings appealed from.