

Provided also that 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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99. A court shall be held—

- (a) where practicable, in the proximity of a shelter;
- (b) in some building or room approved of in that behalf by the Minister: Provided that if a court room or police office is so approved of, the hearing shall not take place at an hour when the ordinary court business is being transacted.

Children's
courts not
held in
ordinary
courts.

100. (1) At any hearing or trial by a court under this Act, the court may order that any persons not directly interested in the case shall be excluded from the court-room or place of hearing or trial.

Exclusion of
persons from
hearing.

(2) Upon and during the hearing of any complaint made under Part X of this Act, no person shall be or be permitted to be present in court except the following—

- (a) the adjudicating magistrate, the secretary, or an officer deputed by him, 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 or 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 or sister or female friend of any female witness, if desired by such witness whilst being examined,

unless the court shall, in the interests of justice, permit any other person to be present.

(3) The provisions of the last preceding subsection shall apply, *mutatis mutandis*, to the hearing of an appeal under section ninety-one of this Act.

101.

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Appeal from
children's
court.

101. Proceedings in the nature of appeal to the Supreme Court or a judge thereof, or to a Court of Quarter Sessions or a District Court, from any determination, conviction, or order of a court may be taken by a child or by a parent on behalf and in the name of his child under Part V of the Justices Act, 1902. The provisions of the said Part applicable to justices in the exercise of their summary jurisdiction shall apply to a court :

Provided that 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 :

Provided also that this section shall not apply to an order committing a child to take his trial.

The judge hearing the appeal may order that any person not directly interested in the case shall be excluded from the court-room.

Application
of Justices
Act.

102. The Justices Act, 1902, so far as it is not inconsistent with this Act shall apply to this Act with the exception of Part X.

PART XII.

REGULATIONS.

Governor
may make
regulations.

103. (1) The Governor may make regulations for carrying out the objects and purposes of this Act.

(2) Such regulations may provide for the payment of fees and may impose a penalty not exceeding thirty pounds for any breach thereof. Any such penalty may be enforced by and recovered before a court.

(3) Such regulations shall—

- (i) be published in the Gazette ;
- (ii) take effect from the date of publication or from a later date to be specified in such regulations ; and

(iii)

- (iii) be laid before both Houses of Parliament within fourteen days after publication if Parliament is in session, and if not, then within fourteen 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 XIII.

GENERAL AND SUPPLEMENTAL.

104. (1) Every person charged with committing an offence against the provisions of this Act may be prosecuted before a court.

(2) Every person guilty of an offence against the provisions of this Act shall be liable, upon 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 a period not exceeding twelve months, or to both penalty and imprisonment.

105. If it be made to appear to any magistrate, 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 or place, or that any of the provisions of this Act are being infringed in any house or place, such magistrate may issue his warrant authorising an officer to search any house or place therein named, at any hour of the day, or at any hour of the night not later than ten o'clock, for the purpose of ascertaining whether there is or has been therein or thereon an infringement of the provisions of this Act.

When information on oath, warrant may be issued to search premises.

Such

George V, Such officer may, if he thinks it necessary, be
No. 21. accompanied by a medical practitioner, or by a police officer, or by both.

Power of search and arrest, and to place child in safety.

106. (1) Whenever it appears to any magistrate, or to any 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, that there is reasonable cause to suspect that such child, being a child under the age of eighteen years, has been or is being ill-treated or neglected in a manner likely to cause the child unnecessary suffering, or to be injurious to its health, such magistrate or justice may issue a warrant authorising any officer or constable of police named therein to search for such child; and if it is found to have been or is then being ill-treated or neglected in manner aforesaid, to take it to and detain it in a place of safety until it can be brought before a court; and the court before whom the child is brought may commit the child to the custody of some person named by the court, or make such other order as to the custody of the child as the court may think fit.

(2) The magistrate or justice issuing such warrant may, by the same warrant, cause any person accused of any offence in respect of the child to be apprehended, and proceedings to be taken for punishing such person according to law.

(3) Any person authorised by warrant under this section to search for any child, and to take it to and detain it 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 therefrom.

(4) Every warrant issued under this section shall be addressed to and executed by an officer of police, who shall be accompanied by the person giving the information, if such person so desire, unless the magistrate or justice otherwise directs; and the person to whom the warrant is addressed may be accompanied by a medical practitioner.

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

107.

107. (1) If a Children's Court has reason to believe that a child, male or female, is suffering from venereal disease, the court may at any time, either before or after committal of such child, order an examination to be made of such child by a medical practitioner, either male or female.

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Child
believed to be
suffering from
venereal
disease.

(2) In the event of the medical practitioner reporting that any child is so suffering, the court shall forthwith notify the Commissioner in writing, who may thereupon deal with such child as provided in Act No. 46, 1918.

108. (1) No child shall be apprenticed, boarded-out, or placed out under the provisions of this Act, unless the child has been—

Application
of Act No. 46,
1918, to State
wards.

- (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 it.

(3) Any person contravening this section shall be liable to a penalty not exceeding twenty pounds.

109. (1) Where a person is charged with committing an offence under this Act in respect of two or more children the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not be liable to a separate penalty in respect of each child unless upon separate informations or summonses.

Information
or summons.

(2) The same information or summons may also charge the offences of assault, ill-treatment, neglect, abandonment or exposure, together or separately, but when charged together the person charged shall not be liable to separate penalties.

(3) Where an offence charged is a continuous offence, it shall not be necessary to specify in the information or summons the date of the acts constituting the offence.

110. (1) Where in any proceeding against any person for an offence under this Act the child in respect of

Evidence in
certain cases.

of

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of whom the offence is charged 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. And 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.

A person shall not 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.

Any child whose evidence is received as aforesaid, and who wilfully gives false evidence, shall be guilty of a misdemeanour, but no prosecution shall be instituted under this section without the leave of the court before which such evidence was given.

(2) 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 under 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, and in the opinion of the medical practitioner, not likely to recover.

(3) Where in any proceedings with relation to an offence under 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 an 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 to be unable to travel, or (in the case of any

any such statement) that there was no reasonable probability that the child would ever be able to travel or give evidence; but the same proviso shall apply as in the case of the reception of evidence under the first subsection.

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(4) Where in any proceedings with relation to an offence under 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 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.

111. If any person makes any false representation, or forges any certificate, or makes use of any forged certificate knowing it to be forged, with intent to obtain the registration either of such person or of any other person under this Act, or falsifies any register kept in pursuance of this Act, or furnishes false particulars of any matter which is required to be entered in such register, such person shall be guilty of an offence and on conviction thereof shall be liable to a penalty not exceeding twenty-five pounds or to imprisonment for a period not exceeding six months.

Forgery of
certificate,
&c.

112. Any person who hinders or obstructs any person in the exercise of his duty under this Act, shall be guilty of an offence.

Obstruction of
person carrying
out provisions
of Act.

113. Any justice may issue a warrant for the arrest of any child boarded-out, placed-out, apprenticed, or adopted who has absconded or been illegally removed.

Arrest of
absconding
child.

114. Any person who ill-uses or neglects to perform his duty towards any child boarded-out, placed-out, apprenticed or adopted, or violates any regulation concerning such child, shall be guilty of an offence.

Penalty for
ill-usage of
child.

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

Presumption
of age of
child.

116.

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Saving
parental
right of
punishment.

116. 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 control or charge of a child to administer punishment to such child.

A person not
to be twice
punished
for the same
offence.

117. Where a person is charged with an offence under 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.

Neglect or
ill-treatment
of child.

118. Any person, whether the parent of the child or not, who, without reasonable excuse, neglects to provide adequate and proper food, nursing, clothing, medical aid, or lodging for any child in his care or custody, or assaults, ill-treats, or exposes any child, or causes or procures any child to be neglected, assaulted, ill-treated, or exposed, if such neglect, 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, shall be guilty of an offence.

Minister
may take
proceedings
for
maintenance.

119. The Minister may institute legal proceedings—

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

Money of
ward to be
placed to
separate
fund.

120. All money and other property to which any ward shall be entitled shall be placed to a separate fund and shall be under the control of the Minister for the benefit and maintenance of such ward.

Expenditure
of money
appropriated
by Parlia-
ment.

121. 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.

The

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 secretary, 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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122. The Minister shall furnish a report to Parliament every year on the working of this Act.

Report to be
furnished to
Parliament.

PART XIV.

ADOPTION OF CHILDREN.

123. In this Part, unless the context otherwise requires,—

Interpre-
tation.

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

“Adopting parent” means any person who by an order of adoption is authorised to adopt a child, 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 the Supreme Court in its equitable jurisdiction.

124. Upon application made to the court by—

- (a) husband and wife jointly ; or
- (b) a married woman, with the written consent of her husband ; or
- (c) a woman, whether married or unmarried, who, in the opinion of the court, is at least eighteen years older than the child ; or

By whom
female child
may be
adopted.
See W. A.
Act, 1896,
No. 6, s. 3.

(d)

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(d) a married man who, in the opinion of the court, is at least thirty years older than the child, an order of adoption of a female child may be made in favour of the applicant in the form prescribed.

By whom
male child
may be
adopted.
See W.A.
Act, 1896,
No. 6, s. 4.

125. Upon application made to the court by—

- (a) husband and wife jointly ; or
- (b) a married man alone, but with the written consent of his wife ; or
- (c) a man, whether married or unmarried, who, in the opinion of the court, is at least eighteen years older than the child ; or
- (d) a woman, whether married or unmarried, who, in the opinion of the court, is at least thirty years older than the child,

an order of adoption of a male child may be made in favour of the applicant in the form prescribed.

Matters to be
proved before
order made.
Ibid., s. 5.

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

- (a) that the person applying for the order is of good repute and a fit and proper person to have the care and custody of the child, and of sufficient ability to bring up, maintain, and educate the child ; and
- (b) that the welfare and interest of the child will be promoted by the adoption ; and
- (c) if the child is over the age of twelve years, that the child consents to the adoption ; and
- (d) that the parents of the child or such one of them as is living consent or consents to the adoption, or if the child is illegitimate that the mother consents to the adoption, or if the child has a guardian, that such guardian consents to the adoption :

Provided that the consent of any person whose consent is required to be given by this paragraph may be dispensed with if the court is of opinion that such person has deserted or abandoned the child.

Effect of
order.

Ibid. ss. 7, 8.

127. 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

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 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 :

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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; nor
- (b) be entitled to take any property limited to the heirs of the body of the adopting parent; nor
- (c) be entitled to take any property as next of kin to any lineal or collateral kindred of the adopting parent; nor
- (d) be entitled to take any property as next of kin to any child of the adopting parent.

128. When an order of adoption is made the adopted child shall take the surname of the adopting parent in addition to his proper name.

Child to take
surname of
adopting parent.
See W. A. Act
1896, No. 6, s. 10.

129. (1) 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.

Power to
make rules.

(2) Until such rules are made any application under this Part shall be by motion, and the practice of the Equity Court shall apply thereto.

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THE SCHEDULE.

Date of Act.	Name of Act.	Extent of repeal.
Act No. 40, 1900	Crimes Act, 1900	So much of s. 429 as is inconsistent with this Act.
Act No. 17, 1901	Deserted Wives and Children Act, 1901.	So much of the Act as relates to complaints in respect of illegitimate children, and to proceedings consequent upon or incidental to such complaints.
Act No. 61, 1901	State Children Relief Act, 1901.	The whole.
Act No. 47, 1902		
Act No. 27, 1904		
Act No. 16, 1905		

LOAN ACT.

Act No. 22, 1923.

George V, An Act to authorise the raising of a Loan for Public
No. 22. Works and Services; and for other purposes.
[Assented to, 5th December, 1923.]

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

Short title.

1. This Act may be cited as the "Loan Act, 1923."

2.

The statutes of New South Wales (public and private) passed during the session of... [electronic resource]

Corporate Author: New South Wales

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