

CHILD WELFARE ACT.

Act No. 17, 1939.

George VI.
No. 17, 1939.

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

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:—

PART I.

PRELIMINARY.

Short
title and
commence-
ment.

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

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

Parts
of Act.

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

PART I.—PRELIMINARY—*ss.* 1-4.

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

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

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

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

PART

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

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

PART VIII.—LYING-IN HOMES—ss. 39-42.

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

PART X.—INSTITUTIONS—ss. 49-55.

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

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

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

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

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

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

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

PART XVIII.—REGULATIONS—s. 161.

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

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

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

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

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

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

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

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

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

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

SCHEDULES.

Repeal and
savings.

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

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

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

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

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

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

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

(8)

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

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4. In this Act unless the context otherwise requires:— Interpreta-
tion.

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

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

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

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

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

“Care” includes custody and control.

“Child” means person under sixteen years of age.

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

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“Director”

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

“ Preliminary

“ Preliminary expenses ” means the expenses of the maintenance of the mother during a period of one month immediately preceding the birth of her child, reasonable medical and nursing expenses attendant upon the confinement of the mother, and the expenses of the maintenance of the mother and child for three months immediately succeeding its birth.

“ Prescribed ” means prescribed by this Act or by the regulations.

“ Proclamation ” means proclamation published in the Gazette.

“ Public place ” includes a vessel, vehicle, room or any field or other place whatsoever to which the public for the time being have or are permitted to have access, whether on payment or otherwise.

“ Regulations ” means regulations made under this Act.

“ Shelter ” includes a place of safety.

“ Street ” includes any highway or other public place whether a thoroughfare or not.

“ Superintendent ” includes the person for the time being in charge of an institution.

“ Uncontrollable ” where used in reference to a child or young person means child or young person who is not being or cannot be controlled by his parent or by any person having his care.

“ Ward ” means any child or young person who has been—

- (a) admitted to State control;
- (b) committed to an institution;
- (c) admitted into a hostel for expectant and nursing mothers;
- (d) admitted into a home for mentally defective children.

“ Young person ” means a person who has attained the age of sixteen years and is under the age of eighteen years.

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PART II.

AUTHORITIES CHARGED WITH ADMINISTRATION OF ACT.

Director
and officers.

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

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

Appointment
of visitors.

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

Appointment
of honorary
welfare
officers and
lady visitors.

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

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

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

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

(2) The functions of the council shall be—

(a) to report upon such matters connected with child welfare as may be referred to it by the Minister;

(b) to advise the Minister on matters connected with child welfare in New South Wales.

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

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

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

9.

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

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Minister to be guardian of wards.

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

Guardian of ex-wards.

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

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

Care of the person of wards.

cf. 2 Geo. V, No. 11, s. 10 (Qld.).

PART III.

CHILDREN'S COURTS.

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

Governor may establish special courts.

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

cf. Act No. 21, 1923, s. 6.

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

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

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

Powers of court.

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

(b)

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

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

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

Change of
venue.

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

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

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

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

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

Jurisdiction of other courts to cease.

cf. Act No. 21, 1923, s. 98.

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

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

15.

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Children's
courts not held
in ordinary
courts.

cf. Act No. 21,
1923, s. 99.

15. A court shall be held—

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

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

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

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

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

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

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

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

18.

Exclusion of
persons from
hearing
under
Part XVI.
Ibid.

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

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

Right of appeal.

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

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

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

Application of Justices Act, 1902.

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

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

Child or young person charged jointly with adult.

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

PART IV.

ESTABLISHMENT OF DEPOTS, HOMES AND HOSTELS.

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

Establishment of depots, homes and hostels.

cf. *Ibid.* s. 16.

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

(b)