

THE NORTHERN TERRITORY OF AUSTRALIA.

No. 20 of 1958.

AN ORDINANCE

Relating to the Welfare of Children.

[Assented to 14th November, 1958.]*

BE it ordained by the Legislative Council for the Northern Territory of Australia, in pursuance of the powers conferred by the *Northern Territory (Administration) Act* 1910-1956, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Child Welfare Ordinance* Short title. 1958.

2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*. Commencement.

3.—(1.) The *State Children Ordinance* 1934 and the *State Children Ordinance* 1952 are repealed. Repeal.

(2.) The Acts of the State of South Australia specified in the Schedule to this Ordinance cease, to the extent specified in that Schedule, to apply to the Northern Territory.

4. This Ordinance is divided into Parts, as follows:— Parts.

Part I.—Preliminary (Sections 1-4).

Part II.—Administration (Sections 5-17).

Part III.—Institutions (Sections 18-20).

Part IV.—Children's Courts (Sections 21-30).

Part V.—Destitute, Neglected, Incurable and Uncontrollable Children (Sections 31-42).

Part VI.—Affiliation Proceedings (Sections 43-56).

Part VII.—State Children (Sections 57-68).

Part VIII.—Offences in Respect of Children (Sections 69-74).

Part IX.—Employment of Children (Sections 75-76).

Part X.—Miscellaneous (Sections 77-98).

5. In this Ordinance, unless the contrary intention appears— Definitions.

“care” includes custody and control;

“child” means—

(a) a boy or girl under the age of eighteen years; or

(b) in the absence of positive proof as to age, a boy or girl apparently under the age of eighteen years;

* Assent notified in the *Government Gazette of the Northern Territory*, dated 26th November, 1958.

- “confinement expenses” means reasonable medical and nursing expenses attendant upon the confinement of the woman claiming the expenses and the cost of clothing necessary for the child born of the confinement during two months after its birth;
- “Court” means a Children’s Court established under this Ordinance or a Court of Summary Jurisdiction exercising under section twenty-seven of this Ordinance the jurisdiction of a Children’s Court established under this Ordinance;
- “destitute child” means a child who has no sufficient means of subsistence apparent to the Court and whose near relatives are, in the opinion of the Court—
- (a) in indigent circumstances and unable to support the child;
 - (b) dead, unknown or unable to be found;
 - (c) out of the jurisdiction; or
 - (d) in the custody of the law;
- “guardian” means either the mother or the father of a child or a person having the immediate custody and control of a child;
- “institution” means a mission station, reformatory, orphanage, school, home or other establishment—
- (a) approved by the Administrator in accordance with this Ordinance; or
 - (b) established by the Commonwealth as an institution for the purposes of this Ordinance;
- “Justice” means a Justice of the Peace for the Northern Territory;
- “maintenance” includes the provision of food, clothing, lodging, nursing, medical treatment, necessaries, training and education;
- “maintenance order” means an order made by a court having jurisdiction to do so under this Ordinance for payment of money by a near relative in respect of a child;
- “medical practitioner” means a person registered as a medical practitioner under the law in force in the Commonwealth or a State or Territory of the Commonwealth;
- “near relative” means—
- (a) in the case of a child other than an illegitimate child—the father, mother, stepfather or step-mother of the child;

- (b) in the case of an illegitimate child—
- (i) a person admitting himself or adjudged by a Court to be the father of the child;
 - (ii) the husband of the mother of the child, if the child was born before the husband's marriage to the mother of the child; or
 - (iii) the mother of the child; or
- (c) in the case of any child—a person, not being a person specified in paragraph (a) or (b) of this definition, who is by law liable to maintain the child, including an adopting parent or a guardian but not including any other person whose liability to maintain the child is occasioned by or under this Ordinance;

“ neglected child ” means a child—

- (a) who habitually begs or receives alms, whether under the pretext of sale or otherwise, or frequents a public place for the purpose of so begging or receiving alms;
- (b) who frequents a public place or wanders about and does satisfy a court having jurisdiction in respect of neglected children under this Ordinance that he has a home or settled place of abode;
- (c) who resides in a reputed brothel or associates or dwells with a person known to the police or reputed to be a prostitute, whether that person is the mother of the child or not;
- (d) who associates or dwells with a person who—
 - (i) has been convicted of vagrancy;
 - (ii) is known to the police as of bad repute;
 - or
 - (iii) has been or is reputed to be a thief or habitual drunkard;
- (e) whose home is, by reason of the neglect or cruelty or depravity of his parents or either of them, an unfit place for the child;
- (f) who—
 - (i) is not provided with necessary food, clothing, lodging, medical aid or nursing; or
 - (ii) is neglected, ill-treated or exposed, by his parents or either of them;

- (g) who is of school age and—
 - (i) is an habitual truant from day school; or
 - (ii) whose parents have been convicted at least twice of neglecting to cause him to attend school;
 - (h) who endangers his life or limb by participating in a public exhibition or performance or any preparation, training or rehearsal for a public exhibition or performance;
 - (i) who is engaged in street trading within the meaning of this Ordinance between the hours of ten o'clock in the evening and six o'clock in the morning or at any time on a Sunday;
 - (j) who is living under conditions that indicate that he is lapsing or likely to lapse into a career of vice or crime;
 - (k) who is under incompetent or improper guardianship;
 - (l) who is destitute; or
 - (m) who is falling into bad associations or is exposed to moral danger;
- “ place of safety ” means an institution, police station, dwelling of a police officer, hospital or other place the occupier of which is willing temporarily to receive a child or young person;
- “ police officer ” means a member of the Northern Territory Police Force;
- “ probation officer ” means a person appointed under this Ordinance to be a probation officer;
- “ public place ” includes a vessel, vehicle, room, field or other place to which the public for the time being have, or are permitted to have, access, whether on payment of money or otherwise;
- “ Special Magistrate ” means a person appointed under the *Justices Ordinance* 1928–1957 to be a Special Magistrate for the Territory;
- “ State Act ” means an Act of the State of South Australia in force in the Northern Territory as a law of the Northern Territory;
- “ State child ” means a child—
- (a) committed to the care of the Director or sent to an institution, in accordance with an order of a court having jurisdiction to do so under this Ordinance;
 - (b) declared to be a State child under sub-section (2.) of section thirty-six of this Ordinance; or

(c) committed directly to the control and custody of an authorized body, received into or committed to an institution or apprenticed or placed out under the authority of an Ordinance or State Act in force immediately before the commencement of this Ordinance,

for a period which has not expired;

“street trading” includes the hawking of newspapers, matches, flowers or other articles, the blacking of shoes and any other like occupation carried on in a public place;

“superintendent” means a person appointed to the position of superintendent of an institution;

“the Council” means the Child Welfare Council established under this Ordinance;

“the Director” means the Director of Child Welfare appointed under this Ordinance and includes an Acting Director so appointed;

“ward” means a person in respect of whom a declaration, made under section fourteen of the *Welfare Ordinance* 1953–1957, is in operation;

“welfare officer” means a person appointed under the *Welfare Ordinance* 1953–1957 to be a welfare officer.

PART II.—ADMINISTRATION.

6.—(1.) The Minister shall appoint a Director of Child Welfare who, under the Administrator, is responsible for the administration of this Ordinance. Appointment of Director.

(2.) In the event of—

(a) the illness of the Director;

(b) the temporary inability of the Director to perform the duties of his office; or

(c) the absence of the Director from the Territory,

the Minister may appoint a person to be the Acting Director of Child Welfare during the illness, temporary inability, or absence of the Director.

(3.) An Acting Director has all the powers and may perform all the functions of the Director.

7. The Director—

(a) is the guardian, to the exclusion of the parent or other guardian, of every State child; and

(b) is responsible for the care, management and control of every State child and of the property of every State child.

Director to be guardian of State children, &c.

Delegation by
Director.

8.—(1.) The Director may, by instrument in writing, delegate to a person or authority all or any of his powers, functions and authorities under this Ordinance (except this power of delegation) in relation to a matter or class of matters or to a district or part of the Northern Territory so that the delegated powers, functions and authorities may be exercised by the delegate with respect to the matter or class of matters or the district or part of the Northern Territory specified in the instrument of delegation.

(2.) A delegation under the last preceding sub-section is revocable in writing at will and does not prevent the exercise of a power, function or authority by the Director.

Child Welfare
Council.

9.—(1.) For the purposes of this Ordinance there shall be a Council to be called the Child Welfare Council.

(2.) The Council shall consist of the Director and—

- (a) a welfare officer;
- (b) two persons representing the interests of the Christian Missions in the Northern Territory;
- (c) two persons representing the interests of the Christian Churches in the Northern Territory apart from the interests of those Churches in the Christian Missions in the Northern Territory;
- (d) a Legal Officer of the Public Service of the Commonwealth;
- (e) a representative of the Police Force of the Northern Territory not below the rank of Sergeant; and
- (f) four persons, of whom—
 - (i) at least two are women; and
 - (ii) none is a member specified in any of the last five preceding paragraphs.

Appointment,
&c., of
members.

10.—(1.) The Administrator may, by notice in the *Gazette*, appoint a person to be a member of the Council.

(2.) A member of the Council holds office for a period of two years unless his office is sooner vacated and shall be eligible for re-appointment.

(3.) A member of the Council shall be deemed to have vacated his office if he—

- (a) becomes bankrupt or insolvent or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his creditors or makes an assignment of his salary or remuneration for their benefit;
- (b) fails to attend three consecutive meetings of the Council without having obtained from the Administrator permission in writing for those absences;
- (c) becomes permanently incapable of performing the duties of his office;

- (d) is convicted of any felony or misdemeanour; or
- (e) resigns his office by writing under his hand addressed to the Administrator.

11. The members of the Council, other than the Director and the welfare officer, shall be paid such remuneration and allowances as are prescribed. **Remuneration and allowances.**

12.—(1.) The Administrator shall appoint a member of the Council to be the Chairman of the Council and another member of the Council to be the Vice Chairman of the Council. **Chairman of Council, &c.**

(2.) The Chairman shall preside at all meetings of the Council at which he is present.

(3.) In the absence of the Chairman from a meeting of the Council, the Vice Chairman shall preside and act as Chairman of the Council at that meeting, if he is present.

(4.) In the absence of the Chairman and the Vice Chairman from a meeting of the Council, the welfare officer shall preside and act as Chairman of the Council at that meeting.

13.—(1.) The functions of the Council shall be— **Functions of Council.**

- (a) to advise the Director on child welfare in the Northern Territory;
- (b) to report to the Director on any child welfare matter referred to the Council by the Director;
- (c) where the Council has reason to believe that a child may be in need of assistance or control under the provisions of this Ordinance, to request the Director to investigate whether the child is in need of assistance or control and report to the Council at its next meeting the investigations he has made in respect of the request and the conclusions he has drawn from those investigations;
- (d) where at least eight members of the Council are satisfied that the case of a child apparently in need of assistance or control under the provisions of this Ordinance should be considered by a Children's Court, to recommend to the Director that appropriate proceedings be taken to bring the case before a Children's Court;
- (e) to report to the Administrator—
 - (i) on or before the first day of August in each year, on—
 - (A) the working of this Ordinance; and
 - (B) any other matter relating to child welfare in the Northern Territory; and

(ii) on any occasion on which the Council sees fit, on any matter relating to child welfare in the Northern Territory; and

(f) such other functions as are prescribed.

(2.) The Council may appoint one or more of its members to investigate a matter relating to the discharge of a function of the Council and to report on that matter to the Council.

(3.) Where, in the opinion of a member of the Council, a child may be in need of assistance or control under the provisions of this Ordinance and it is desirable that an investigation concerning the child be commenced without delay, the member may request the Director to investigate whether the child is in need of such assistance or control.

(4.) A member who has made such a request to the Director shall report to the Council at its next meeting the fact that he has done so.

Meetings of Council.

14.—(1.) The Council shall hold meetings at such times and places as the Director determines.

(2.) The Administrator may at any time convene a meeting of the Council.

(3.) The presence of—

(a) the Director and six other members of the Council; or

(b) the welfare officer and six other members of the Council, is necessary to constitute a meeting of the Council for the exercise of its powers and functions.

Voting in Council.

15.—(1.) A question arising at a meeting of the Council, not being a question under paragraph (d) of section thirteen of this Ordinance, shall be determined by a majority of the votes of the members present at the meeting.

(2.) The person presiding at a meeting of the Council has a deliberative vote and in the event of an equality of votes, has also a casting vote.

Rules for conduct of meetings.

16.—(1.) The Council may make rules, not inconsistent with this Ordinance, with respect to the order and conduct of its business and proceedings.

(2.) A rule made under the last preceding sub-section has no force or effect until it has been approved by the Administrator.

Probation officers.

17.—(1.) The Administrator may appoint such persons as he thinks fit to be probation officers for the purposes of this Ordinance.

(2.) Where by reason of an order made by a Court under this Ordinance a child is under the supervision of the Director, a

probation officer shall, subject to any direction of the Director, exercise a general supervision over the child and, in particular, shall—

- (a) at such times or intervals as are ordered by the Court or, where no times or intervals are so ordered, at such times or intervals as he thinks fit—
 - (i) visit the child;
 - (ii) obtain reports concerning the child; and
 - (iii) report to the Court as to the behaviour of the child;
- (b) advise, assist and befriend the child; and
- (c) where necessary, endeavour to find suitable employment for the child.

PART III.—INSTITUTIONS.

18. The Administrator may, subject to such conditions as are prescribed and to such further conditions as he thinks fit, approve a mission station, reformatory, orphanage, school, home or other establishment, whether within the Northern Territory or not, as an institution for the purposes of this Ordinance.

Administrator may approve institutions.

19. The Administrator, the Director, a welfare officer or the superintendent of the institution may—

Administrator, &c., may enter, &c., on land used or reserved for purposes of institution.

- (a) enter or remain on land used for the purposes of an institution in the Northern Territory;
- (b) enter or remain on land reserved for the purposes of an institution established by the Commonwealth in the Northern Territory; or
- (c) authorize a person to enter or remain on land specified in paragraph (a) or (b) of this section.

20.—(1.) A person shall not enter or remain on land used for the purposes of an institution in the Northern Territory or reserved for the purposes of an institution established by the Commonwealth in the Northern Territory unless—

Persons not to enter, &c., without authority, on land used or reserved for purposes of institution.

- (a) he is a child who has been directed to be kept in that institution;
- (b) he is an officer or employee of the Department of Health of the Commonwealth or an agent or employee of an agent of that Department and is acting in the course and for the purposes of his duty;
- (c) he is authorized to enter or remain on that land under the last preceding section;
- (d) his action is necessary for the protection of life or property; or
- (e) he is a member of the Council.

Penalty:

For a first offence—One hundred pounds or imprisonment for six months, or both;

For a second offence—not more than Two hundred pounds or imprisonment for twelve months, or both, and not less than Fifty pounds or imprisonment for three months;

In other cases—not more than Five hundred pounds or imprisonment for two years, or both, and not less than One hundred pounds or imprisonment for six months.

(2.) An offence under this section is punishable on summary conviction.

PART IV.—CHILDREN'S COURTS.

**Children's
Courts.**

21. The Administrator may, by notice in the *Gazette*, establish special courts, to be called Children's Courts.

**Powers of
Administrator
in relation
to Children's
Courts.**

22. The Administrator may, by notice in the *Gazette*—

(a) determine the area in and for which a Children's Court may exercise its jurisdiction and the name by which that Children's Court may be referred to;

(b) appoint a Special Magistrate to be the magistrate of a Children's Court;

(c) appoint such members of the Council as he thinks fit to be members of a Children's Court;

(d) determine the respective seniorities of the members of a Children's Court who are appointed under the last preceding paragraph; and

(e) appoint a person to be the clerk of a Children's Court.

**Composition of
Children's
Courts.**

23.—(1.) Subject to the next succeeding sub-section, a Children's Court is not competent to exercise its jurisdiction unless the magistrate of that Children's Court is present.

(2.) If it is not possible or convenient for the magistrate of a Children's Court to attend a sitting of that Children's Court, the magistrate of any other Children's Court may attend and act in his place.

(3.) Subject to the next succeeding sub-section, a member of the Council appointed to be a member of a Children's Court may sit and adjudicate with the magistrate of that Children's Court or a magistrate acting under the last preceding sub-section.

(4.) A person may not sit or adjudicate with a magistrate under the last preceding sub-section unless there is no other person sitting or adjudicating with the magistrate under that sub-section.

(5.) Where two or more members of the Council are appointed to be members of a Children's Court, the exercise of the right, under sub-section (3.) of this section, to sit and adjudicate with a magistrate shall be determined according to agreement of those members of the Children's Court or, failing agreement, according to seniority.

24. Where the persons sitting as a Children's Court are divided in opinion as to the decision to be given on a question, the question shall be decided according to the opinion of the magistrate. Decisions of Children's Courts.

25. Subject to this Ordinance—

(a) the provisions of the *Justice Ordinance* 1928–1957 apply to the proceedings, orders and convictions of a Children's Court as if the Children's Court were a Court of Summary Jurisdiction; and Application of Justices Ordinance 1928–1957.

(b) for the purpose of this Ordinance—

(i) every Children's Court is deemed to be a Court of Summary Jurisdiction; and

(ii) the magistrate of a Children's Court has throughout the Northern Territory the powers of a Justice, a Special Magistrate or a Stipendiary Magistrate under the *Justices Ordinance* 1928–1957.

26.—(1.) Subject to this Ordinance, a Children's Court— Powers of Children's Courts.

(a) has in respect of all offences committed by children, the jurisdiction which a Court of Summary Jurisdiction would have if the Administrator had not established that Children's Court; and

(b) shall hear and determine all complaints and applications under this Ordinance.

(2.) Where a Children's Court deals summarily with an offence, other than homicide, committed by a child, the Court may—

(a) inflict as a punishment—

(i) a fine not exceeding Fifty pounds; or

(ii) a sentence of imprisonment for not more than six months; and

(b) in addition to or in lieu of any punishment inflicted under the last preceding paragraph, make an order in respect of the child as if the child had been declared under this Ordinance to be an incorrigible or uncontrollable child.

(3.) An order under paragraph (b) of the last preceding subsection shall take effect—

(a) where a sentence of imprisonment is awarded, immediately after the imprisonment is served; or

(b) where no sentence of imprisonment is awarded, on the making of the order,

as if the order had been made under section thirty-six of this Ordinance.

(4.) Where a court, other than a Children's Court, deals with an offence, other than homicide, committed by a child, that court

may exercise the powers of a Children's Court under sub-section (2.) of this section, and an order made in the exercise of those powers shall have effect as if it were an order of a Children's Court.

Jurisdiction
of Courts
of Summary
Jurisdiction
to cease.

27.—(1.) Subject to this section, on and after the establishment of a Children's Court the jurisdiction of every Court of Summary Jurisdiction under the *Justices Ordinance* 1928–1957 in respect of matters as to which a Children's Court has jurisdiction shall cease to be exercised within the area determined to be the area in and for which that Children's Court may exercise its jurisdiction.

(2.) Nothing in the last preceding sub-section shall abridge or prejudice—

(a) the ministerial powers of Justices in cases of committal for trial; or

(b) the powers of Justices to—

- (i) take an information or complaint;
- (ii) issue a summons;
- (iii) grant, issue or endorse a warrant; or
- (iv) admit to bail.

(3.) Notwithstanding sub-section (1.) of this section, where a Court of Summary Jurisdiction constituted by a Special Magistrate is satisfied that—

(a) circumstances exist which prevent a Children's Court from exercising its jurisdiction under this Ordinance; and

(b) in the interests of justice the Court of Summary Jurisdiction should exercise the jurisdiction of a Children's Court under this Ordinance,

the Court of Summary Jurisdiction may exercise that jurisdiction as if it were a Children's Court under this Ordinance.

(4.) Where no Children's Court has been established to exercise jurisdiction under this Ordinance over a particular area, a Court of Summary Jurisdiction constituted by a Special Magistrate may exercise in that area the jurisdiction of a Children's Court under this Ordinance as if it were a Children's Court under this Ordinance.

Where
Children's
Courts may
be held.

28.—(1.) Subject to this section, a Children's Court shall be held in such place as the Administrator directs and in a building approved or appointed by the Administrator for the holding of a Children's Court.

(2.) The Administrator shall not approve or appoint a magistrate's office or a building used for court proceedings other than proceedings of a Children's Court to be a building for the holding of a Children's Court unless in his opinion no other suitable building is available.

(3.) Where a magistrate's office or a building used for court proceedings other than proceedings of a Children's Court is approved or appointed by the Administrator for the holding of a Children's Court, the Children's Court shall not be held in that office or building at a time when the ordinary business of that office or the ordinary court business of that building is being transacted.

29.—(1.) A Children's Court may order a person not directly interested in a hearing or trial by the Children's Court not to remain in or enter a room or place in which the hearing or trial is being held or remain within the hearing of the Court. Restriction of publicity of proceedings.

(2.) A person shall not remain in or enter a room or place or remain within the hearing of the Court in contravention of an order under the last preceding sub-section.

Penalty: Five pounds or imprisonment for ten days, or both.

30. A person shall not publish a report of proceedings or the result of proceedings before a Children's Court unless— Restriction of publication of proceedings.

- (a) the Court expressly authorizes the publishing; or
- (b) the publishing is done by the person in the performance of his official duties under an Act, Ordinance or State Act.

Penalty: Fifty pounds or imprisonment for three months, or both.

PART V.—DESTITUTE, NEGLECTED, INCORRIGIBLE AND UNCONTROLLABLE CHILDREN.

31. A welfare officer, police officer or person authorized in writing by the Administrator to act under this section may, without warrant, take into custody a child appearing or suspected by him to be a destitute, neglected, incorrigible or uncontrollable child. Power to take child into custody.

32.—(1.) A child taken into custody under the last preceding section shall, pending the hearing or during an adjournment of the case, be placed— Placement of child pending hearing, &c.

- (a) in an institution;
- (b) with a respectable person who has made with the Director such arrangement or agreement as the Director thinks necessary or proper for the custody and maintenance of children of the class to which the child belongs;
- (c) in the dwelling of a police officer at prescribed rates of payment; or
- (d) subject to the next succeeding sub-section, in a police prison or lock-up.

(2.) A child shall not be placed in a police prison or lock-up unless there is pending against him a charge of so serious a nature that his safe custody is of paramount importance.

(3.) A person who takes a child into custody under the last preceding section shall immediately inform the Director that he has done so.

Child taken into custody to be brought before Children's Court or released.

33. Where the Director is informed that a child has been taken into custody under section thirty-one of this Ordinance, the Director shall ensure that—

- (a) the child is, as soon as is practicable and not later than fourteen days after the time when the Director is so informed, brought before a Children's Court under an application made by a welfare officer or police officer that the child be declared a destitute, neglected, incorrigible or uncontrollable child; or
- (b) if the child has not been so brought before a Children's Court fourteen days after the time when the Director is so informed, the child is then forthwith released from custody.

Application by person having care, &c., of child.

34.—(1.) A person having the actual care and custody of a child may make application to a Children's Court that the child be declared to be an incorrigible or uncontrollable child.

(2.) A Children's Court to which application is made under the last preceding sub-section may appoint a time for the hearing of the application and order that the child be brought before the Court at the time appointed for the hearing.

Attendance of parents at Children's Court.

35.—(1.) The parent of a child who is brought before a Children's Court under an application that the child be declared a destitute, neglected, incorrigible or uncontrollable child or who is charged with having committed an offence shall attend the Court during the proceedings, unless the Court is satisfied that it would be unreasonable to require his attendance.

(2.) Where a child is taken into custody under this Ordinance or is arrested, the person by whom he was arrested or the police officer in charge of the police station to which he was brought, as the case may be, shall cause the parent of the child, if he can be found, to be warned to attend the Court at the hearing of the application or charge.

(3.) The parent whose attendance is required under this section is the parent having the actual care of the child.

(4.) If that parent is not the father of the child, the Court may direct the father to attend at the hearing or further hearing of the application or charge.