



NORTHERN TERRITORY OF AUSTRALIA

No. 76 of 1983

AN ACT

To provide for the protection and care of children
and the promotion of family welfare,
and for other purposes

[Assented to 28 November 1983]
BE it enacted by the Legislative Assembly of the Northern Territory of
Australia, with the assent as provided by the *Northern Territory*
(*Self-Government*) Act 1978 of the Commonwealth, as follows:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Community Welfare Act 1983*.

2. COMMENCEMENT

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

3. REPEAL

The Acts listed in the Schedule are repealed.

4. INTERPRETATION

(1) In this Act, unless the contrary intention appears -

"access" means the contact of a child with a person, by way of a visit by or to that person, including attendance for a period at a place other than the child's habitual residence, or by way of a letter, telephone or other means;

"authorized person" means a person authorized in writing by the Minister to exercise powers and perform functions under this Act;

Community Welfare

"child" means a person who has not attained the age of 18 years;

"Court" means the Family Matters Court established by section 24;

"custody", in relation to a child, means the responsibility for the daily care and control of the child, including decisions concerning accommodation, attendance at school, clothing, feeding, transportation, behaviour and urgent or routine health needs of the child;

"guardianship", in relation to a child, means the custody of the child and the responsibility for the long-term welfare of the child, including decisions concerning the education, changes in place of residence, religion, employment and the general health of the child and other rights, powers and duties before the commencement of this Act vested by law or custom in the guardian of a child;

"hospital" means a hospital within the meaning of the *Hospitals and Medical Services Act* or a private hospital within the meaning of the *Private Hospitals and Nursing Homes Act*;

"Juvenile Court" means the Court established by section 14 of the *Juvenile Justice Act*;

"place of safety" means an institution, hospital or other place the occupier of which is willing to receive and have temporary custody of a child;

(2) For the purposes of this Act, a child is in need of care, where -

- (a) the parents, guardians or the person having the custody of the child have abandoned him and cannot, after reasonable inquiry, be found;
- (b) the parents, guardians or the person having the custody of the child are or is unwilling or unable to maintain the child;
- (c) he has suffered maltreatment;
- (d) he is not subject to effective control and is engaging in conduct which constitutes a serious danger to his health or safety; or
- (e) being excused from criminal responsibility under section 38 of the *Criminal Code* he has persistently engaged in conduct which is so harmful or potentially harmful to the general welfare of the community measured by commonly

Community Welfare

accepted community standards as to warrant appropriate action under this Act for the maintenance of those standards.

(3) For the purposes of this Act, a child shall be taken to have suffered maltreatment where -

- (a) he has suffered a physical injury causing temporary or permanent disfigurement or serious pain or has suffered impairment of a bodily function or the normal reserve or flexibility of a bodily function, inflicted or allowed to be inflicted by a parent, guardian or person having the custody of him or where there is substantial risk of his suffering such an injury or impairment;
- (b) he has suffered serious emotional or intellectual impairment evidenced by severe psychological or social malfunctioning measured by the commonly accepted standards of the community to which he belongs, because of his physical surroundings, nutritional or other deprivation, or the emotional or social environment in which he is living or where there is a substantial risk that such surroundings, deprivation or environment will cause such emotional or intellectual impairment;
- (c) he has suffered serious physical impairment evidenced by severe bodily malfunctioning, because of his physical surroundings, nutritional or other deprivation, or the emotional or social environment in which he is living or where there is substantial risk that such surroundings, deprivation or environment will cause such impairment; or
- (d) he has been sexually abused or exploited, or where there is substantial risk of such abuse or exploitation occurring, and his parents, guardians or persons having the custody of him are unable or unwilling to protect him from such abuse or exploitation.

5. JURISDICTION OF SUPREME COURT PRESERVED

Nothing in this Act limits the jurisdiction of the Supreme Court in relation to the custody or guardianship of children.

PART II - ADMINISTRATION

6. DELEGATION

(1) The Minister may, by instrument in writing, delegate to a person any of his powers and functions under this Act, other than this power of delegation.

Community Welfare

(2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister.

7. REPORTS

The Minister shall, as soon as practicable after 31 December in each year, cause a report on the administration of this Act and on the operation of community welfare services in the Territory during the year ending on that date to be prepared and cause a copy of the report to be laid before the Legislative Assembly within 3 sitting days of the Legislative Assembly after the preparation of the report.

PART III - COMMUNITY WELFARE ASSISTANCE

8. ASSISTANCE IN CERTAIN CIRCUMSTANCES

(1) A person, family or group claiming to be in need of assistance under this Act may apply to the Minister for such assistance.

(2) Where, in the opinion of the Minister, a person, family or group is in need of assistance as a result of problems related to social, personal or economic reasons, he may provide such assistance as he thinks fit to promote the welfare of the person, family or group.

(3) Assistance provided under sub-section (2) may be in the form of financial assistance, the provision of community welfare services or welfare programmes or otherwise as the Minister thinks fit.

(4) Without limiting the generality of sub-sections (2) and (3), the Minister may enter into such arrangements as he thinks fit with charitable or other community organizations or groups for them to act as agents for the Minister for the provision of assistance under this section to persons, families or groups.

(5) The Minister shall prepare guidelines for establishing the criteria and procedures to be followed in relation to the provision of financial assistance under this section.

Community Welfare

PART IV - WELFARE OF CHILDREN

Division 1 - Children in Need of Care

Subdivision A - Preliminary

9. DUTY OF MINISTER

In exercising his powers under this Part, the Minister shall, at all times, have as his main consideration the welfare of the child in relation to whom those powers are exercised and particularly for -

- (a) securing for the child such care and guidance as will promote that welfare; and
- (b) the maintenance and development of those family relationships that are, in his opinion, in the best interests of the child.

Subdivision B - Custody of Children in Need of Care

10. RESPONSIBILITY IN RESPECT OF CHILDREN IN NEED OF CARE

Where the Minister is of the opinion that a child is in need of care, he may -

- (a) give to the child or its parents, guardians or persons having the custody of the child, such assistance and guidance as he thinks fit for ensuring the adequate care of the child within the child's family;
- (b) on the application of a parent, guardian or person having the custody of the child, enter into an agreement under section 59 to receive the child into care and to provide for the child; or
- (c) take such other action under this Act, as he thinks fit, to ensure the adequate care of the child.

11. TAKING CHILD IN NEED OF CARE INTO CUSTODY

(1) The Minister, an authorized person or a member of the Police Force may, where he believes on reasonable grounds that a child is in need of care and that no other action would ensure the adequate care of the child, take the child into custody.

(2) For the purposes of sub-section (1), the Minister, an authorized person or member of the Police Force may, without warrant, enter a place where a child is or is reasonably believed to be located and, unless he is satisfied that adequate steps will be taken to ensure that the child will cease to be in need of care should the child remain at that place, remove the child, and may use such force as is reasonably necessary for those purposes.

Community Welfare

(3) A person taking a child into custody under sub-section (1) -

- (a) may have the child held in a place of safety for a period not exceeding 48 hours; and
- (b) shall, as soon as practicable, but not later than 48 hours after so taking the child into custody, apply to a Justice of the Peace for a holding order under sub-section (4).

(4) On application by the person referred to in sub-section (3) or a person in charge of a hospital acting under section 15, where a Justice of the Peace is satisfied on the oath of the person that there are reasonable grounds for believing that the child to whom the application relates is in need of care, he may make an order authorizing the holding of the child in a place of safety for such period, not exceeding 14 days, as he thinks fit.

(5) A person taking a child into custody under sub-section (1) or in charge of a hospital acting under section 15 shall, within 48 hours after so taking the child into custody or taking action under section 15, in writing, notify the Minister of the action taken.

12. MEDICAL TREATMENT FOR CHILD TAKEN INTO CUSTODY

Where a person taking a child into custody under section 11(1) believes, on reasonable grounds, that the child is urgently in need of medical treatment, he shall take such steps as are reasonably necessary to ensure that the child receives the medical treatment and, for that purpose, may give his consent for the carrying out of a medical procedure on the child, and that consent shall, for all purposes, be sufficient consent for the carrying out of the medical procedure or treatment.

Division 2 - Children who have suffered Maltreatment

13. INVESTIGATION OF MALTREATMENT

(1) Where a member of the Police Force believes on reasonable grounds that a child has suffered or is suffering maltreatment, he -

- (a) shall, as soon as practicable, notify the Minister of the circumstances and the knowledge that constitutes the reasonable grounds for his so believing; and
- (b) may investigate the circumstances to ascertain if the child has suffered or is suffering maltreatment.

(2) Where a member of the Police Force carries out an investigation under sub-section (1)(b), he shall, within 24 hours after completing the investigation,

Community Welfare

furnish to the Minister a report on his investigations and, if he is satisfied on reasonable grounds that the child has suffered maltreatment, all material facts on which the knowledge that constitutes the reasonable grounds for his belief is based.

14. MALTREATMENT TO BE REPORTED

(1) A person, not being a member of the Police Force, who believes, on reasonable grounds, that a child has suffered or is suffering maltreatment shall, as soon as practicable after obtaining the knowledge that constitutes the reasonable grounds for his so believing, report the fact, and all material facts on which that knowledge is based, to the Minister or a member of the Police Force.

Penalty: \$500.

(2) Where a person, acting in good faith, makes a report under or in purported compliance with subsection (1) -

- (a) the report shall not be held to be a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct; and
- (b) no civil or criminal liability is incurred by reason only of the making of the report.

15. CHILD IN HOSPITAL

A person in charge of a hospital who believes, on reasonable grounds, that a child has suffered or is suffering maltreatment -

- (a) may detain the child in hospital, for the purposes of securing medical examination or treatment for the child, for such period, not exceeding 48 hours, as is reasonably necessary to enable the examination or treatment to be carried out; and
- (b) if after the medical examination referred to in paragraph (a) he is still of that belief shall, as soon as practicable, but not later than 48 hours after the detention of the child, apply to a Justice of the Peace for a holding order under section 11(4).

16. INVESTIGATION WHERE CHILD HAS SUFFERED MALTREATMENT

(1) Where the Minister receives a report under section 13 or 14 that a child has suffered or is suffering maltreatment, he shall, as soon as practicable, cause the circumstances of the child to be further investigated or investigated, as the case may be, and shall take such other action under this Act as he thinks fit.

Community Welfare

(2) For the purposes of carrying out an investigation under sub-section (1), the Minister may cause a child to be medically examined and his request that a child be so examined shall, for all purposes, be sufficient consent for the carrying out of the examination.

Division 3 - Responsibility of Minister

17. RESPONSIBILITY OF MINISTER WHEN NOTIFIED OF ACTION UNDER SECTION 11(5)

Where the Minister is notified under section 11(5) of the removal of a child in need of care or of the detaining of a child in a hospital, he shall -

- (a) assume responsibility for the care, protection and maintenance of the child;
- (b) cause the child -
 - (i) to be taken before the Court within the period of the holding order, if any, under section 11(4) but in any case not later than 14 days after the removal or detention of the child; and
 - (ii) to remain in or be removed to a place of safety approved by the Minister that, in his opinion, is suitable to ensure that the welfare of the child is provided for;
- (c) as soon as practicable, cause the parents, guardians or persons who had the custody of the child at the time of the removal or detention to be notified of the removal or detention of the child and of any subsequent action taken or intended to be taken in respect of the child; and
- (d) take such other action under this Act, including securing medical examination and treatment, if required, for the child, as the Minister thinks fit.

PART V - CHILD PROTECTION TEAMS

18. ESTABLISHMENT OF CHILD PROTECTION TEAMS

For each location where he considers it necessary or desirable, the Minister may establish a Child Protection Team, the members of which shall be -

- (a) the Minister or his nominee, who shall be the Chairman of the Team;

Community Welfare

- (b) the permanent head, within the meaning of the *Public Service Act*, of the department primarily responsible through the relevant minister for the administration of health matters in the Territory, or his nominee;
- (c) the Commissioner of Police or his nominee; and
- (d) such other persons as the Minister thinks fit and, in writing, appoints.

19. RESIGNATION OF MEMBERS

A member appointed under section 18(d) may resign his office by writing signed by him and delivered to the Minister.

20. MEETINGS OF COMMITTEE

(1) The Chairman of a Child Protection Team shall call such meetings of the Team as are necessary for the exercise of its powers and the performance of its functions.

(2) The Minister may, where he is not the Chairman of a Child Protection Team, at any time, direct the Chairman to convene a meeting of the Team and the Chairman shall convene a meeting accordingly.

(3) The Chairman shall preside at all meetings of his Team at which he is present and, in his absence, the members present shall elect one of their number to act as the Chairman.

(4) At a meeting of a Child Protection Team -

- (a) 3 members constitute a quorum; and
- (b) subject to this Act, the Team shall determine the procedure to be followed at or in connection with the meeting.

(5) The Team shall take and keep records of its meetings.

21. FUNCTIONS OF CHILD PROTECTION TEAMS

The functions of a Child Protection Team are, subject to the directions of the Minister, to -

- (a) co-operate and consult with departments and agencies required by law, or which have the resources, to take action in relation to the maltreatment of children;
- (b) examine every notification under this Act concerning the known or suspected maltreatment of children in the location for which the Team

Community Welfare

is established and, as soon as practicable, recommend the action, if any, that should be taken in relation to that maltreatment;

- (c) review the action taken as a result of recommendations referred to in paragraph (b);
- (d) obtain from the departments responsible for the action referred to in paragraph (b) undertakings in respect of any additional action to be taken; and
- (e) maintain a regular review of all cases related to children in its location who have suffered maltreatment.

22. POWERS OF CHILD PROTECTION TEAMS

(1) A Child Protection Team has such powers as are necessary to carry out its functions.

(2) Where a person, acting in good faith, furnishes information to a Child Protection Team at its request -

- (a) the furnishing of information shall not be held to be a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct; and
- (b) no civil or criminal liability is incurred by him by reason only of the furnishing of the information.

23. MINISTER TO CONSULT WITH CHILD PROTECTION TEAM

(1) In determining a course of action, including the taking of proceedings in the Court, relating to a child who has suffered maltreatment, the Minister shall consult with the relevant Child Protection Team and seek its recommendation in connection with the matter.

(2) No action by the Minister under this Act shall be invalid or illegal by reason only of the Minister failing to consult with, or act on the recommendation of, a Child Protection Team.

PART VI - FAMILY MATTERS COURT

Division 1 - Family Matters Court

24. FAMILY MATTERS COURT

(1) There is hereby established a court to be known as the **Family Matters Court**.

(2) Each magistrate is a magistrate of the Court.

Community Welfare

25. EXERCISE OF JURISDICTION

The jurisdiction of the Court shall be exercised by a magistrate sitting alone.

26. CLERK OF FAMILY MATTERS COURT

A Clerk of the Local Court is a Clerk of the Family Matters Court.

27. ASSISTANT CLERKS

(1) Each person appointed an Assistant Clerk of a Local Court is an Assistant Clerk of the Family Matters Court.

(2) An Assistant Clerk of the Family Matters Court may, subject to the directions of the Clerk of the Family Matters Court in respect of which that person is the Assistant Clerk, exercise any powers and perform any function of the Clerk of the Family Matters Court under this Act.

28. APPLICATION OF *JUSTICES ACT*

Subject to this Act, the *Justices Act* applies to the proceedings and orders of the Court as if the Court were the Court of Summary Jurisdiction established by that Act.

29. POWERS OF COURT

Subject to this Act, the Court shall hear and determine all applications under this Act.

30. JURISDICTION OF COURT OF SUMMARY JURISDICTION TO CEASE

(1) Subject to sub-section (2), the jurisdiction of the Court of Summary Jurisdiction under the *Justices Act* ceases to exist in relation to a matter in which the Court has jurisdiction.

(2) Nothing in sub-section (1) derogates from the powers of a Justice of the Peace to -

- (a) take an information or complaint;
- (b) issue a summons;
- (c) grant, issue or endorse a warrant; or
- (d) grant bail.

31. WHERE COURTS MAY SIT

(1) Subject to this section, the Court shall sit in such places as the Minister directs and in a building approved or appointed by the Minister for the holding of the Court.

Community Welfare

(2) In making a direction under sub-section (1) the Minister shall ensure as far as practicable that the facilities available to, and the proceedings in, the Court can and will be adequately separated from the facilities of a magistrate's office or the facilities of, and proceedings in, other courts operating at the place or in the building approved by him for the holding of the Court.

(3) Where in a place or building appointed under sub-section (1) for the holding of the Court it is not practicable to ensure the adequate separation referred to in sub-section (2), the Court shall not sit while any other proceeding in or in the vicinity of the office, place or building is being conducted.

32. RESTRICTION ON ATTENDANCE

(1) The Court shall, unless the person gives a sufficient reason why he should attend, order a person not directly interested in proceedings before the Court not to remain in or enter a room or place in which they are taking place or remain within the hearing of the Court.

(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 sub-section (1).

Penalty: \$100 or imprisonment for 10 days.

33. RESTRICTION OF PUBLICATION OF PROCEEDINGS

Except with the leave of the Court, a person shall not publish a report of proceedings or the result of proceedings before the Court, unless the publishing is done by the person in the performance of his official duties under an Act.

Penalty: \$200 or imprisonment for 3 months.

Division 2 - Application to Court

34. APPLICATION OF DIVISION

This Division has effect in relation to an application made by the Minister or in pursuance of leave granted under section 35(3) and, where such leave is granted, a reference to the Minister shall be read as a reference to the person to whom it was granted.

35. MINISTER TO MAKE APPLICATION

(1) Subject to sub-section (2), the Minister has the sole authority to make an application to the Court that a child be found to be in need of care.

Community Welfare

(2) Where the Minister has not made an application under this Part in relation to a child, a person may, after consultation with the Minister, seek the leave of the Court to make such an application.

(3) The Court shall hear the person referred to in sub-section (2) and the Minister and may make an order granting leave to the person to make the application.

36. APPLICATIONS, &c.

(1) Before making an application under this Part in relation to a child, the Minister shall satisfy himself that the welfare of the child would not be adequately provided for by some other means.

(2) Where the Minister intends to make an application under this Part, he shall give notice in writing -

- (a) to the parents, guardians or persons having the custody of the child in relation to whom the application is intended to be made; and
- (b) where the child has attained the age of 10 years, to the child,

which shall include -

- (c) a copy of the application endorsed with particulars of the time, date and place of the hearing of the application; and
- (d) a statement of the requirements of this Act, including requirements as to the attendance of the parents, guardians or persons having the custody of the child at the hearing of the application.

(3) Where, for the purposes of sub-section (2), the parents, guardians or persons having the custody of the child in relation to whom an application is intended to be made cannot, after reasonable enquiry, be found, the Minister shall state to the Court the means by which their whereabouts was investigated.

(4) In an application under this Part in relation to a child, the Minister, the child and the parents, guardians or persons having the custody of the child are, or shall be deemed to be, parties to the application.

37. ATTENDANCE OF PARENTS, &c.

(1) The parents, guardians or persons having the custody of a child in relation to whom an application is made under this Part shall attend the Court, and remain in attendance, during the hearing of the application, unless the Court is satisfied that it would be unreasonable to require that attendance or continued attendance.

Community Welfare

(2) Where the parents, guardians or persons having the custody of a child referred to in sub-section (1) fail, without reasonable excuse, to attend the hearing of the application under this Part or remain in attendance, the Court may direct that a warrant be issued to bring them before the Court at the hearing or a further hearing.

(3) The Court may proceed with the hearing of an application referred to in this section notwithstanding that the parents, guardians or persons having the custody of the child are absent.

38. OFFENCE TO REMOVE CHILD

A person who has knowledge that proceedings under this Part are pending and who removes the child in relation to whom the proceedings are being taken from the jurisdiction of the Court is guilty of an offence.

Penalty: \$500.

39. POWERS OF COURT AT HEARING OF APPLICATION

(1) At the hearing of an application under this Part, the Court may, in addition to any other powers it has -

- (a) require the person having the custody of the child at the time to account for the cause of an injury which is a ground for the application; and
- (b) admit as evidence the finding that any other child in the care of the person having the custody of the child in relation to whom the application is made has suffered maltreatment.

(2) In hearing an application under this Part the Court is not bound by the rules of evidence but may inform itself on any matters it thinks fit.

(3) At the hearing of an application under this Part, where the Court is of the opinion that the child the subject of the proceedings needs legal representation and that such representation has not been arranged by or on behalf of the child, it may, by order, make such provision for the legal representation of the child as it thinks fit.

40. PROCEDURE

In proceedings under this Part, the Court shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted.