

*Community Welfare*

41. STATEMENT OF CHILD TOO ILL TO ATTEND COURT

(1) Where a Court is satisfied by the evidence of a medical practitioner that the attendance before the Court of a child in relation to whom an application under this Part is made would be injurious or dangerous to the health of the child -

(a) the magistrate may take in writing the deposition or statement of the child without requiring his attendance before the Court; and

(b) the deposition or statement may be received in evidence, and shall have effect, as if it were proved that -

(i) the child was so ill as not to be able to travel; and

(ii) there was no reasonable probability that the child would ever be able to travel or give evidence.

(2) Notwithstanding sub-section (1), a deposition or statement of a child shall not be received in evidence unless the Court is of the opinion that the child is possessed of sufficient intelligence to justify the reception of the deposition or statement and understands the duty of speaking the truth.

(3) Where in proceedings under this Part the Court is satisfied by the evidence of a medical practitioner that -

(a) the attendance before the Court of a child in relation to whom an application under this Part is made for the purpose of that child giving evidence would be injurious or dangerous to the health of the child; and

(b) the evidence of the child is not essential to the hearing and determining of the application,

the Court may proceed with and determine the application in the absence of the child.

42. PROOF OF NEED OF CARE

The burden of proving that a child is in need of care in an application under this Part lies on the Minister and the standard of proof is on the balance of probabilities.

43. FINDINGS OF COURT

(1) In proceedings in relation to a child in relation to whom an application under this Part is made, the Court shall consider -

*Community Welfare*

- (a) the need to safeguard the welfare and development of the child;
- (b) having regard to the age and comprehension of the child, the reactions of the child to the proceedings and the child's wishes in relation to the outcome of the proceedings;
- (c) the importance of maintaining and promoting the relationship between the parents, guardians or persons having the custody of the child (and, where appropriate, the extended family of the child) and the child;
- (d) the desirability of maintaining the continuity of living in the child's usual ethnic and social environment; and
- (e) where the child is an Aboriginal - the person or persons to whom, in its opinion, custody of the child should be given should the child be found to be in need of care, having regard to the criteria imposed on the Minister by section 69.

(2) Subject to sub-sections (1) and (3), the Court shall only declare a child to be in need of care where it is satisfied that an order declaring the child to be in need of care would ensure that the standard of care of the child as a result of that order would be significantly higher than the standard presently maintained in respect of the child.

(3) For the purpose of sub-section (2), the Court shall, in assessing the standard of care of the child, consider the social and cultural standards of the community in which the parents, guardians or persons having the custody of the child (and, where appropriate, the extended family of the child) reside or with which they maintain social and cultural ties.

(4) Subject to this section, the Court may, on the hearing of an application under this Part, make an order -

- (a) declaring the child in relation to whom the application is made to be in need of care; or
- (b) dismissing the application.

(5) Where the Court makes a declaration under sub-section (4)(a), the order may include -

- (a) a direction to the parents, guardians or persons having the custody of the child to take the necessary steps to secure the proper care and welfare of the child (including a direction that they comply with the direction, if any, of the Minister in relation to the child's care and

## *Community Welfare*

welfare), as it thinks fit, subject to review by the Court at the end of a period not exceeding 12 months after the date of the making of the order;

- (b) a direction that the child reside with a person whom it considers suitable, for such period, subject to sub-section (6), not exceeding 12 months, as it thinks fit;
- (c) a direction that the child be under the guardianship of the Minister and the parents, guardians or persons having the custody of the child (including a direction relating to the custody of and access to the child while under that guardianship) for such period, subject to sub-section (6), not exceeding 12 months, as it thinks fit; or
- (d) subject to sub-section (7), a direction to transfer the sole rights in relation to the guardianship of the child to the Minister or such other person, for such period, not extending beyond the eighteenth birthday of the child, as it thinks fit (including a direction relating to access of the parents, and such other persons as the court thinks fit, to the child).

(6) A period specified in an order under sub-section (5)(b) or (c) may be extended from time to time, as the Court thinks fit, for further periods, each not exceeding 12 months, and not extending beyond the eighteenth birthday of the child.

(7) An order shall not be made under sub-section (5) (d) unless the Court is satisfied that -

- (a) no other order that it may make will adequately provide for the welfare of the child; or
- (b) the parents of the child have, without reasonable excuse, failed to maintain substantial contact with the child during the period of 12 months before the application as a result of which the order is made.

(8) Where the Court makes a declaration under sub-section (4)(a), the Minister shall, as soon as practicable after the order containing the declaration is made, take out the order and serve a copy, together with a statement drawing attention to the rights of persons referred to in section 48 to seek under that section a variation of the order, on each party to the application and such other person, if any, as the Court directs.

44. ADJOURNMENT OF PROCEEDINGS, &c.

(1) The Court may adjourn the hearing of an application under this Part for such periods, not exceeding 14 days, as it thinks fit.

(2) During a period of adjournment under sub-section (1), the Court shall, having received the recommendation of the Minister, direct that the child in relation to whom the application is made -

- (a) live, or continue to live at home;
- (b) be placed, or remain in, the custody of a person specified in the direction;
- (c) live, or continue to live, in a place of safety specified in the direction; or
- (d) be detained in a hospital specified in the direction.

(3) The person in charge of the place of safety or hospital specified in a direction under sub-section (2) shall accept the child into his custody for the period of the adjournment.

(4) The Court may make such order as to costs of the care and maintenance of a child in relation to whom a direction under sub-section (2) is made as it thinks fit.

45. POWERS OF COURT IN RESPECT OF REPORTS

(1) The Court hearing an application under this Part may require a person to furnish to it a report on the child in relation to whom the application is made and that person shall comply with the requirement accordingly.

Penalty: \$500.

(2) Notwithstanding anything in this Act, for the purpose of giving effect to a requirement under sub-section (1), the person referred to in that sub-section may -

- (a) make such inquiries as he is required to make or as he thinks fit; and
- (b) request the child to submit to being interviewed and medically examined by a medical practitioner or interviewed or examined by another specified person.

(3) Without limiting the generality of sub-section (2), a requirement under sub-section (1) to furnish a report may include an order that the child to whom it relates be interviewed and medically examined by a medical practitioner or interviewed or examined by another

## Community Welfare

specified person and, when it so orders, the report shall contain details of the results of that interview or examination.

(4) Where a report required under sub-section (1) to be furnished is furnished in good faith to the Court -

(a) the report shall not, in relation to information obtained as a result of an interview or examination conducted in pursuance of the order referred to in sub-section (3), be held to constitute a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct; and

(b) liability for defamation is not incurred by any person as a result of the furnishing of the report.

(5) Sub-section (4) has effect both within and outside the Territory.

### 46. REPORTS TO BE MADE AVAILABLE

(1) Unless the Court otherwise directs, a copy of a report furnished under section 45 shall, as soon as practicable after it is prepared, be made available to the Minister, the child to whom it relates and the parents, guardians or persons having the custody of him and the legal practitioners, if any, representing them.

(2) The Court may, if it thinks fit, direct that a copy of a report furnished under section 45 or a specified part of it shall not be made available to the child to whom it relates if in its opinion the report or that part would be likely to cause him distress.

(3) A person furnishing a report under section 45 may be called as a witness and examined by way of cross-examination and re-examination by a person entitled under sub-section (1) to receive a copy of it.

(4) A child or a parent, guardian or person having the care and custody of him may give evidence, or call witnesses, to rebut the contents of a report furnished under section 45.

### 47. INTERIM ORDERS

Where the Court thinks fit, it may make an interim order in accordance with this Part which shall include particulars of the date, time and place fixed by the Court for a further hearing of the application to which it relates and it shall remain in force -

(a) subject to paragraph (b), for such period not exceeding 2 months, as the Court thinks fit; or

*Community Welfare*

- (b) where the Court thinks fit, for a further period not exceeding 4 months from the making of the first interim order.

*Division 3 - Review, &c.*

48. APPLICATION FOR VARIATION OF ORDER

(1) The Minister or the parents, or the persons who were, immediately before the order, the guardians or persons having the custody of a child, or any other person who has an interest in the welfare of, or acting on behalf of and at the request of, the child in relation to whom the application under this Part was made, may apply to the Court for the variation or further variation of an order made under section 43.

(2) An application under sub-section (1) shall not be made unless it states that the circumstances that resulted in the making of the order, in some respect specified in the application, have changed significantly since the order sought to be varied was made.

(3) On an application under sub-section (1), the Court may vary or revoke the order, or make any other order it could have made under section 43 on the original application.

49. REVIEW BY COURT

(1) The Court shall review the circumstances of a child in relation to whom an order under section 43(4) is made containing a direction referred to in section 43(5)(d) -

- (a) where the sole rights in relation to the custody of the child are vested in the Minister - at intervals not exceeding 2 years; or
- (b) in any other case - at such times as it thinks fit,

and may make such further orders in relation to the child as it could have made on the original application.

(2) In carrying out a review under sub-section (1), the Court may require such reports under section 45 to be furnished to it as it thinks fit as if the review were the hearing of an application under this Part, and copies of those reports shall be made available under section 46(1) accordingly.

(3) The Court may, at such times as it thinks fit, vary or revoke an order made under this section.

(4) The Court shall not carry out a review under sub-section (1) or vary or revoke an order made as a result of a review unless it has first given to each

## Community Welfare

party to the application resulting in the relevant order, and to such other persons as it thinks fit, not less than 7 days written notice of the proposed action.

(5) Notice under sub-section (4) may be given by posting it to the party or other person at his address for service in the application or last known residential address.

### 50. APPEAL TO SUPREME COURT

(1) The Minister or the parents, or the persons who were, immediately before the order, the guardians or persons having the custody of a child, or any other person who has an interest in the welfare of, or acting on behalf of and at the request of, the child in relation to whom an order under section 43(4) or 49 was made, may appeal to the Supreme Court against the order made or as varied under this Part.

(2) The provisions of the *Justices Act* relating to appeals from a Court of Summary Jurisdiction shall apply, so far as they are applicable, to an appeal under sub-section (1).

## PART VII - CHILD IN CARE OF MINISTER

### 51. DEFINITION

For the purposes of this Part, "a child to whom this Part applies" means a child the sole rights in relation to the guardianship of whom are placed in the Minister pursuant to section 43(5)(d) or in the Minister and another person pursuant to section 43(5)(c).

### 52. CARE OF CHILD BY MINISTER

(1) In relation to a child to whom this Part applies the Minister shall, subject to such limitations on the Minister or the parent as the Court imposes, have the same rights, powers, duties, obligations and liabilities as a parent of the child.

(2) Without limiting the generality of sub-section (1), the rights, powers, duties, obligations and liabilities of the Minister in relation to a child to whom this Part applies include -

- (a) the right to the custody of the child;
- (b) the obligation to provide for the child the necessities of life, including accommodation, maintenance, education and recreation;
- (c) the right to exercise discipline over the child; and
- (d) the obligation to provide medical and dental health care for the child.

*Community Welfare*

(3) The Minister may, in the exercise of his duties under this section in relation to a child to whom this Part applies -

- (a) permit the child to remain in the custody of a parent or guardian;
- (b) place the child, in accordance with this Act, under the foster care of such persons as the Minister thinks fit;
- (c) place the child in a licensed children's home; or
- (d) provide such accommodation or assistance for, and care in respect of, the child as the Minister thinks fit.

53. AUTHORIZED PERSON TO VISIT CHILD

(1) The Minister shall cause an authorized person to visit a child to whom this Part applies at least once in every 2 months.

(2) A person who has the custody of a child to whom this Part applies shall, at all reasonable times, permit an authorized person to enter a place at which the child is located for the purpose of visiting the child.

(3) As soon as practicable after a visit under this section, the authorized person shall furnish to the Minister a report in writing concerning the child and his welfare.

54. AUTHORITY MAY BE REQUIRED

A person who has the custody of a child to whom this Part applies may require the production of an authority in writing by the Minister before permitting the removal of the child out of his custody, or a visit under section 53 by an authorized person.

55. CHANGE OF ADDRESS TO BE NOTIFIED

A person who has the custody of a child to whom this Part applies shall furnish to the Minister, in writing, prior notice of an intended change of his residence, including the address of the proposed residence.

56. REVIEW BY MINISTER

The Minister shall, while an order under section 43(4) placing a child under his guardianship or joint guardianship remains in force, at least once in every 3 months, review the circumstances of the child and the arrangements made for the child's care and welfare for the purpose of -

*Community Welfare*

- (a) ensuring that the continuance of the arrangements is suitable and desirable; or
- (b) considering change to the arrangements.

57. CARE OF CHILDREN FROM ANOTHER STATE, &c.

(1) The Minister may, on request by or on behalf of an authority having the guardianship in any State or other Territory of the Commonwealth of a child who has entered or is about to enter the Territory, by order in writing, place the child under the guardianship of the Minister for so long as he remains in the Territory.

(2) The Minister may make financial or other arrangements with an authority in any State or other Territory of the Commonwealth for the guardianship of a child while in the Territory and may, subject to those arrangements, cause the child, at any time while he remains under the guardianship of the Minister, to be removed from the Territory and returned to the custody of the authority in that State or other Territory.

(3) Where under this section a child has been placed under the guardianship of the Minister, the Minister shall have the custody and be the lawful guardian of the child to the exclusion of any other person or authority.

(4) The child referred to in this section shall not remain under the guardianship of the Minister for a period in excess of that for which he would, if he had not been placed under the guardianship of the Minister, have remained subject to the custody of the authority from which he was received.

58. TRANSFER OF CHILDREN TO CARE IN ANOTHER STATE, &c.

(1) The Minister may make financial or other arrangements with an authority in a State or other Territory of the Commonwealth which, under the law of that State or Territory corresponding to this Act, is competent to accept, or take action equivalent to the undertaking of, guardianship under this Act of children in need of care, for the care in that State or Territory of a child to whom this Part applies.

(2) Where, in the opinion of the Minister, the law of a State or other Territory of the Commonwealth contains a provision corresponding to section 57 and, on the request of the Minister, a child to whom this Part applies is declared under that provision to be placed under the guardianship of that authority for the purposes of the law of that State or other Territory, the functions conferred or imposed by or under this Act on the Minister or other persons shall be deemed to be suspended in relation to that child while he remains under guardianship in consequence of the declaration under that provision, except in so far as they may be exercised in accordance with arrangements made under sub-section (1).

59. AGREEMENT WITH PARENT, &c.

The Minister may, in relation to a child to whom this Part applies, enter into an agreement with a parent or person from whose custody the child is placed under the guardianship of the Minister for the parent or person to make a financial contribution towards the maintenance of the child whilst the child is under the guardianship of the Minister.

60. DIRECTIONS TO MINISTER

(1) The Court may, on its own motion or on an application by a parent, a joint guardian or another person with an interest in the welfare of a child to whom this Part applies or a person acting on behalf of and at the request of the child, direct the Minister in relation to the exercise of the duties of the Minister under an order made under section 43(4).

(2) The Minister shall comply with the directions, if any, under sub-section (1).

61. PROPERTY OF CHILD UNDER GUARDIANSHIP OF MINISTER

(1) Subject to sub-section (3), the Court may, on the application of the Minister, make an order empowering the Public Trustee to manage, control or deal with the property of a child to whom this Part applies.

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

(3) The Court shall not make an order under sub-section (1) in relation to property if there is some other person, not being a child to whom this Part applies, empowered to manage, control or deal with the property.

(4) A copy of an application under this section shall be served on such persons as the Court directs, and the procedure upon the hearing of the application shall be as the Court directs.

(5) An order under sub-section (1) is binding on all persons affected by the order and each such person shall take steps to give effect to the order so far as it is binding on him.

62. TEMPORARY CUSTODY

(1) Subject to sub-section (5), the Minister may, on the application of a person having the custody of a child, enter into an agreement to admit the child into the temporary custody of the Minister for a period, subject to sub-section (3), not exceeding 2 months.

*Community Welfare*

(2) An agreement under sub-section (1) shall set out the rights and responsibilities of the Minister in relation to the child.

(3) A period specified in an agreement under sub-section (1) may be extended from time to time by the parties to the agreement by mutual consent for further periods, each not exceeding 2 months, but not extending beyond 6 months after the date the agreement was first entered into.

(4) The Minister may, as a condition of an agreement under sub-section (1), receive contributions towards the maintenance of the child from the person making the application.

(5) An agreement under sub-section (1) shall not be entered into in relation to a child who has attained the age of 15 years, unless the child has consented in writing to the Minister to be received into the temporary custody of the Minister.

(6) If at any time during which a child is in the temporary custody of the Minister in pursuance of an agreement under this section the person giving custody of the child to the Minister requests the Minister to return the child to his custody the Minister shall, within 48 hours after the request -

- (a) return the child to the custody of the person;  
or
- (b) where he is of the opinion that it would not be in the best interest of the child to so return him - make an application under Division 2 of Part VI in relation to the child.

(7) The Court may give such directions in relation to an application referred to in sub-section (6), and make such orders for the temporary custody of a child to whom the application relates, as it thinks fit.

PART VIII - FOSTER CARE

63. REGISTRATION OF FOSTER PARENTS

(1) Persons may apply to the Minister for registration as foster parents.

(2) In considering an application for registration under sub-section (1), the Minister shall, as far as practicable, be satisfied that the applicants -

- (a) will have adequate interest in, and affection and respect for, a child placed in their custody;

*Community Welfare*

- (b) will provide a stable environment for the child and will treat the child in a manner consistent with establishing a stable and secure environment;
- (c) are capable of, and will understand the development of, the child, including the provision of opportunities to encourage that development and the abilities of the child;
- (d) will be capable of providing adequate accommodation and material requirements necessary for the welfare of the child;
- (e) will understand the need, and provide opportunities, for the child to maintain or recover his identity as a member of his own family and will allow the child reasonable access to his parents; and
- (f) are qualified to be registered according to such other criteria for registration as the Minister thinks fit.

(3) Registration of persons as foster parents under this section shall be for 12 months, and may be renewed from time to time for such period, not exceeding 12 months, as the Minister thinks fit.

**64. FOSTER CARE**

(1) The Minister may, in relation to a child for whose welfare he is responsible under this Act, place the child in the custody of foster parents for such period as the Minister thinks fit.

(2) The placement of a child under sub-section (1) is subject to review by the Minister at such periods as he thinks fit.

(3) Before the placement of a child under this section, the foster parents shall enter into an agreement with the Minister undertaking to care for the child to be placed in their custody in accordance with the agreement and this Act.

(4) An agreement under sub-section (3) shall include a provision for a foster allowance in respect of the child and shall provide for such other supporting measures to the foster parents and the child as the Minister thinks fit.

**65. AUTHORIZED PERSON MAY VISIT FOSTER PARENTS, &c.**

(1) The Minister may cause an authorized person to visit a child placed under this Part with foster parents in order to ascertain whether this Part is being complied with and to provide advice or guidance concerning the welfare of the child.

## Community Welfare

(2) Foster parents shall, at all reasonable times, permit an authorized person to enter a place at which a foster child is located for the purpose of visiting the child.

(3) As soon as practicable after a visit under this section, the authorized person shall furnish to the Minister a report in writing concerning the child and its welfare.

(4) Where it appears to an authorized person or the Minister that the provisions of an agreement under section 64(3) or this Part are not being complied with or the care of a child by foster parents is not being carried out in the child's best interests, the Minister may cancel the registration of the foster parents.

### 66. SUPPORT FOR PARENTS

Notwithstanding the placement of a child in foster care under section 64, the Minister may provide such support as he thinks fit to the parents of the child to facilitate access of the parents to the child and the child to his parents.

### 67. REMOVAL OF CHILD FROM FOSTER CARE

On -

- (a) the cancellation or expiry of the registration of persons as foster parents;
- (b) the cancellation or expiry of the authority by which the Minister arranged for the care under this Part of a child; or
- (c) the Minister being of the opinion that the interests of the child would be better served by the removal,

the Minister may remove the child from a foster placement and cause the child to be placed elsewhere in accordance with this Act.

## PART IX - ABORIGINAL CHILD WELFARE

### 68. ASSISTANCE TO ABORIGINAL COMMUNITIES, &c.

The Minister shall provide such support and assistance to Aboriginal communities and organizations as he thinks fit in order to develop their efforts in respect of the welfare of Aboriginal families and children, including the promotion of the training and employment of Aboriginal welfare workers.

### 69. ABORIGINAL CHILD IN NEED OF CARE

Where a child in need of care is an Aboriginal, the Minister shall ensure that -