

*Community Welfare*

- (a) every effort is made to arrange appropriate custody within the child's extended family;
- (b) where such custody cannot be arranged to his satisfaction, every effort is made to arrange appropriate custody of the child by Aboriginal people who have the correct relationship with the child in accordance with Aboriginal customary law; and
- (c) where the custody referred to in paragraph (a) or (b) cannot be arranged without endangering the welfare of the child - after consultation with -
  - (i) the child's parents and other persons with responsibility for the welfare of the child in accordance with Aboriginal customary law; and
  - (ii) such Aboriginal welfare organizations as are appropriate in the case of the particular child,  
  
a placement that is consistent with the best interests and the welfare of the child shall be arranged taking into consideration -
  - (iii) preference for custody of the child by Aboriginal persons who are suitable in the opinion of the Minister;
  - (iv) placement of the child in geographical proximity to the family or other relatives of the child who have an interest in, and responsibility for, the welfare of the child; and
  - (v) undertakings by the persons having the custody of the child to encourage and facilitate the maintenance of contact between the child and its own kin and with its own culture.

70. AGREEMENT WITH COMMUNITY GOVERNMENT COUNCIL, &c.

(1) A community government council constituted under the *Local Government Act* or an association incorporated under the *Associations Incorporation Act* may, subject to agreement with the Minister, undertake functions under this Act in relation to the welfare of children and the provision of facilities and trained staff to provide counselling and assistance to, or in relation to the welfare of, children.

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(2) An agreement under sub-section (1) shall be in accordance with -

- (a) the community government scheme, and shall be effective within the boundaries of the area, of the community government council; or
- (b) the rules of the association,

as the case may be.

### 71. DELEGATION BY COMMUNITY GOVERNMENT COUNCIL, &c.

(1) For the purposes of this Act, a community government council, or the committee of an incorporated association, that enters into an agreement under section 70 may, by instrument in writing, delegate to a person any of its powers and functions under this Act by virtue of that agreement, other than this power of delegation.

(2) A power or function delegated under this section, when exercised by the delegate, shall, for the purposes of this Act and the agreement under section 70, be deemed to have been exercised or performed by the community government council or the committee of the incorporated association, the party to the agreement.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by a community government council or the committee of an incorporated association, as the case may be.

## PART X - LICENSING OF CHILDREN'S HOMES, &c.

### *Division 1 - Children's Homes*

### 72. DEFINITION

In this Part,

"children's home" means premises in respect of which the occupier holds himself out as being willing to conduct a residential children's home and in which more than 4 children who have not attained the age of 15 years, not being children or relatives of adults resident at the premises, are cared for for periods exceeding 24 consecutive hours duration, but does not include -

- (a) a Juvenile Detention Centre established under the *Juvenile Justice Act*;
- (b) the residence of foster parents registered under Part VIII;

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- (c) a residential establishment attached to a school or other educational institution within the meaning of the *Education Act*; or
- (d) a hospital.

73. LICENSED CHILDREN'S HOME

(1) No person shall have the conduct or control of a children's home unless the person is the holder of a current licence granted under this section in respect of the children's home.

(2) A person may apply to the Minister, in a form approved by the Minister, for a licence under this section to be granted to him in respect of premises specified in the licence.

(3) In determining whether or not to grant a licence to an applicant under sub-section (2), the Minister shall have regard to -

- (a) the qualifications and experience of the person or persons who will be conducting or managing, and of the persons who will be employed in, the children's home;
- (b) the system of management proposed;
- (c) the suitability of the premises proposed to be used as the children's home; and
- (d) such other matters as the Minister thinks fit.

(4) The Minister may grant a licence under this section subject to such terms and conditions (which shall include terms and conditions as to the standards to be observed in the management and operation of the children's home) as the Minister thinks fit and specifies in the licence document.

(5) A licence granted under this section shall, subject to this Division, remain in force for 3 years after the day on which it was granted and may be renewed from time to time for successive periods of 3 years.

74. LICENCE TO BE AVAILABLE

A licence document under section 73(4) shall be kept by the licensee at the children's home in relation to which it relates and shall be produced to any person on the request of that person.

Penalty: \$100.

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### 75. FAILURE TO COMPLY WITH LICENCE

(1) A person who contravenes section 73(1), or contravenes or fails to comply with a term or condition to which a licence under section 73 is subject, is guilty of an offence.

Penalty: For a first offence - \$500.

For a subsequent offence - \$1,000 or imprisonment for 12 months.

(2) In a proceeding for an offence against this section, the court hearing the charge may, on the application of the Minister, and in addition to any other penalty it may impose, cancel a licence granted under section 73 to the person against whom the charge is laid.

### 76. CANCELLATION OF LICENCE

(1) Subject to sub-section (2), where the Minister is satisfied that proper cause for the cancellation of a licence granted under section 73 exists, he may, by notice in writing served personally or by post on the licensee, cancel the licence.

(2) The Minister shall not under sub-section (1) cancel a licence unless he has given notice in writing to the licensee of his intention to cancel the licence, and his reasons for intending to do so, at least 28 days before he does so, and has given the licensee an opportunity to submit to the Minister reasons why the licence should not be cancelled and he has considered those reasons.

### 77. REGISTER

A licensee of a licensed children's home shall keep a register in which he shall record, in relation to every child received by him into the children's home, so far as those particulars are reasonably ascertainable by him -

- (a) the name, age, place of birth and religion, if any, of the child;
- (b) the names and addresses of the parents, guardians or persons having custody of the child;
- (c) the names and addresses of the person, other than a person referred to in paragraph (b), from whom the child was received and his relationship to the child;
- (d) the date on which the child was received into, and the date on which the child left, the children's home;
- (e) the race or ethnic origin of the child; and

(f) such other particulars as are prescribed.

78. INSPECTION OF CHILDREN'S HOME

(1) The Minister or an authorized person may, at any reasonable time, enter and inspect a licensed children's home.

(2) The licensee of a licensed children's home shall, if so required by the Minister or an authorized person, produce for inspection the register that he is required under section 77 to keep, and shall furnish the Minister or the authorized person with such information in relation to a child in, or who has at any time been in, the children's home as the Minister or authorized person requires.

79. AGREEMENT

(1) The licensee of a licensed children's home shall not receive a child to be cared for in the home unless a parent, guardian or person having the custody of the child has signed an agreement, in the prescribed form, relating to the period for which the child will remain in the home and to the care and control of the child while he remains in the home.

Penalty: \$1,000 or imprisonment for 6 months.

(2) A licensee of a licensed children's home shall, at the request of the Minister or an authorized person, produce an agreement referred to in sub-section (1) for inspection by the Minister or authorized person.

Penalty: \$500.

80. DUTY OF MINISTER TO HEAR COMPLAINTS

A child being cared for in a licensed children's home, or a parent, guardian or person having the custody of that child, may request the Minister to investigate a complaint that the child or the parent, guardian or person, as the case may be, has in relation to the care the child is receiving in the home or the control being imposed on him, and the Minister shall investigate the complaint.

81. NOTIFICATION OF ACCEPTANCE OF CHILD, &c.

(1) The licensee of a licensed children's home shall, within 24 hours after a child is received into the home, by notice in writing, advise the Minister of the licensee's acceptance of the custody of the child.

(2) Where a child has been cared for in a licensed children's home for a period of 12 months or more, and during that period there has been no substantial contact

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between the child and his parents, guardians or persons in whose custody the child was before his admission to the children's home, the child shall be deemed, for the purposes of this Act, to be abandoned.

### *Division 2 - Licensed Child Care Centres*

#### 82. DEFINITION

In this Division, unless the contrary intention appears -

"child care centre" means premises in which more than 4 children who have not attained the age of 6 years, some or all of whom are being cared for apart or away from their parents, guardians, foster parents or other persons having the custody of such children, are cared for -

- (a) for reward or gain, whether monetary or otherwise;
- (b) as a community service; or
- (c) incidental to a community service or commercial enterprise,

but does not include -

- (d) a children's home licensed under Division 1; or
- (e) a pre-school, school or other educational institution within the meaning of the *Education Act*.

#### 83. LICENSING OF CHILD CARE CENTRE

(1) No person shall have the conduct or control of a child care centre unless that person is the holder of a current licence granted under this section in respect of the child care centre.

(2) A person may apply to the Minister, in a form approved by the Minister, for a licence under this section to be granted to him in respect of premises specified in the licence.

(3) The Minister may grant a licence under this section subject to such terms and conditions as are prescribed and additional terms and conditions, if any, as the Minister thinks fit and specifies in the licence document.

(4) A licence granted under this section shall, subject to this Division, remain in force for 3 years after the day on which it was granted and may be renewed from time to time for successive periods of 3 years.



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84. LICENCE TO BE DISPLAYED

A licence document under section 83(3) shall be displayed conspicuously at the child care centre in relation to which the licence was granted.

85. FAILURE TO COMPLY WITH LICENCE, &c.

A person who contravenes section 83(1), or contravenes or fails to comply with a term or condition to which a licence under section 83 is subject, is guilty of an offence.

Penalty: For a first offence - \$500.

For a subsequent offence - \$1,000 or imprisonment for 12 months.

86. CANCELLATION OF LICENCE

Where the Minister is satisfied that prescribed grounds for the cancellation of a licence granted under this Division exist, he may, in the prescribed manner, cancel the licence.

87. REGISTER

A licensee of a licensed child care centre shall keep a register containing the prescribed particulars in relation to every child received by him into the centre.

88. INSPECTION OF CHILD CARE CENTRE

(1) The Minister or an authorized person may, at any reasonable time, enter and inspect a licensed child care centre.

(2) The licensee of a licensed child care centre shall, if so required by the Minister or an authorized person, produce for inspection the register that he is required under section 87 to keep, and shall furnish the Minister or the authorized person with such information in relation to a child in, or who has at any time been in, the child care centre as the Minister or authorized person requires.

89. MAXIMUM PERIOD IN CHILD CARE CENTRE

(1) No person shall permit a child in his custody to remain in a child care centre for a period in excess of the prescribed period.

Penalty: \$100.

(2) Where a child remains in a child care centre for a period in excess of the prescribed period, the licensee of the child care centre shall notify the Minister.

Penalty: \$250.

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90. DRUGS NOT TO BE ADMINISTERED

(1) Subject to the Regulations and to sub-section (2), no licensee of a licensed child care centre shall cause or permit medicines or drugs of any description to be administered to a child who is cared for at the child care centre.

Penalty: \$100.

(2) A parent, guardian or person having the custody of a child may authorize the licensee of a licensed child care centre to administer drugs to the child at that centre.

91. INSPECTION OF OTHER PREMISES

The Minister or an authorized person may, where he believes on reasonable grounds that premises in respect of which a licence under this Part is not in force are being conducted as a child care centre, enter those premises for the purpose of ascertaining the state of the welfare of the children in those premises.

PART XI - EMPLOYMENT OF CHILDREN

92. EMPLOYMENT OF CHILDREN

No person shall, except with and in accordance with the consent in writing of the Minister, employ or cause or permit to be employed between the hours of 10 o'clock at night and 6 o'clock in the following morning a child who has not attained the age of 15 years.

Penalty: \$500 or imprisonment for 3 months.

93. DANGEROUS EMPLOYMENT

No person shall, except with and in accordance with the consent in writing of the Minister, employ or cause or permit to be employed, a child where the employment involves the child engaging in activity dangerous to the health or safety of the child.

Penalty: \$1,000 or imprisonment for 6 months.

PART XII - MISCELLANEOUS

94. OBSTRUCTION, &c.

No person shall -

- (a) fail to comply with a requirement of; or
- (b) hinder, obstruct, assault or threaten violence to,



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the Minister or an authorized person in the exercise of his powers or performance of his functions under this Act.

Penalty: \$500 or imprisonment for 3 months.

95. PERSONATION

A person who falsely represents himself to be an authorized person is guilty of an offence.

Penalty: \$500 or imprisonment for 3 months.

96. OFFENCE TO REMOVE CHILD

(1) A person who, without lawful excuse, removes or causes to be removed a child from the custody of a person with whom, or from a place at which, the child has been placed under this Act, is guilty of an offence.

Penalty: \$1,000 or imprisonment for 6 months.

(2) For the purposes of sub-section (1), a person shall not be taken to have had a lawful excuse for removing or causing to be removed a child to whom Part VII applies unless he had the prior permission of the Minister to remove the child or cause it to be removed.

97. SECRECY TO BE OBSERVED

(1) An authorized person shall, if the Minister directs, before assuming his duties, or exercising a power or performing a function under this Act, make a declaration in accordance with the prescribed form.

(2) A person shall not, directly or indirectly, except in the performance of his duties, or in the exercise of his powers or the performance of his functions under this Act, and while he is, or after he ceases to be, an authorized person, make a record of, or disclose or communicate to any person, information, in respect of the affairs of another person, acquired by him in the performance of his duties or in the exercise of his powers or the performance of his functions under this Act.

Penalty: \$500 or imprisonment for 3 months.

(3) A person who is, or has been, an authorized person shall not, except for the purposes of this Act, be required to -

- (a) produce in a court a document that has come into his possession or under his control; or
- (b) disclose or communicate to a court any matter or thing that has come under his notice,

in the performance of his duties or functions under this Act.

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(4) Notwithstanding sub-sections (1), (2) and (3), an authorized person may disclose information or records that have come to his notice or into his possession in the performance of his duties or functions under this Act -

- (a) to the person to whom the information or records relate;
- (b) in connection with the administration of this Act;
- (c) if the Minister certifies that it is necessary in the public interest that information should be disclosed - to such person as the Minister directs;
- (d) to a prescribed authority or person;
- (e) to a person who, in the opinion of the Minister, is expressly or impliedly authorized by the person to whom the information relates to obtain it; or
- (f) subject to the approval of the Minister - to a person engaged in a bona fide research programme where the person has given an undertaking in writing to the Minister to preserve the identity of and confidentiality relating to individual persons to whom the information and records relate.

(5) An authority or person to whom information is disclosed under sub-section (4), and any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under sub-sections (2) and (3) as if it or he were an authorized person and had acquired the information and records in the performance of his duties as such.

### 98. OFFENCES AND PENALTIES

(1) A person shall not contravene or fail to comply with this Act or the Regulations or an order under this Act or the Regulations.

(2) A person who contravenes or fails to comply with this Act or the Regulations or an order under this Act or the Regulations for which a penalty is not provided by this Act or the Regulations other than by this section, is punishable on conviction by a fine of \$1,000 or imprisonment for 6 months.

99. REGULATIONS

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular in relation to -

- (a) the licensing of child care centres and the cancellation of such licences;
- (b) the standard of construction, facilities (including provision for the storage and preparation of food), cleanliness, sanitation, lighting, heating, ventilation and safety of child care centres;
- (c) the maintenance of child care centres in a proper state of repair;
- (d) the play space in and around child care centres and the facilities and equipment for play to be provided;
- (e) the maximum number of children who may be received into a child care centre or into a child care centre of a particular class, having regard to the available facilities, space and staff of the centre;
- (f) the operation of child care centres;
- (g) the suitability of persons operating child care centres and of the staff employed in such centres and the numbers of such staff;
- (h) the proper management of child care centres and the health and safety of the children therein;
- (j) the display of the name of proprietors, and details of the registration, of child care centres;
- (k) the form of licences and other documents; and
- (m) penalties, not exceeding \$1,000 or imprisonment for 6 months, for offences against the Regulations.

100. SAVINGS

(1) Where, immediately before the commencement of this Act, a child was a State child within the meaning of the repealed Act, he shall, on and from that commencement, for the remainder of the period during which he would have remained a State child had this Act not commenced, be deemed to be a child declared under section 43(4)(a) to be in need of care and ordered under section 43(5)(d) to be placed under the sole guardianship of the Minister.

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(2) Where, immediately before the commencement of this Act, a State child referred to in sub-section (1) was in the custody of a person, in an institution or released on probation, he shall, on the commencement of this Act, be deemed to be in the custody of that person, in that institution or at large, as the case may be, subject to the same terms and conditions as applied to and in relation to him under the repealed Act, as a child to whom Part VII of this Act applies and with the agreement or approval of the Minister, until the Minister makes other arrangements under that Part for his custody.

(3) Where, immediately before the commencement of this Act, a person had, under the repealed Act, the permission of the Director to operate a child minding centre at a house or place and that house or place was registered under the repealed Act as a child minding centre, that person shall, on the commencement of this Act, be deemed to be licensed under section 83 of this Act in respect of that house or place and this Act shall apply subject to the same terms and conditions, not inconsistent with this Act, as then applied to and in relation to that permission and registration as if the licence were issued on that commencement and those terms and conditions were specified under section 83(3) in the licence.

(4) For the purposes of this section, "repealed Act" means the Acts repealed by section 3 as in force immediately before the commencement of this Act.

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SCHEDULE  
REPEALED ACTS

Section 3

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Short title	Number and year
<i>Child Welfare Ordinance</i> 1958	No. 20, 1958
<i>Child Welfare Ordinance</i> 1960	No. 21, 1960
<i>Child Welfare Ordinance</i> 1964	No. 53, 1964
<i>Child Welfare Ordinance</i> 1965	No. 27, 1965
<i>Child Welfare Ordinance</i> 1967	No. 16, 1967
<i>Child Welfare Ordinance</i> (No. 2) 1967	No. 53, 1967
<i>Child Welfare Ordinance</i> 1969	No. 5, 1969
<i>Child Welfare Ordinance</i> 1971	No. 5, 1971
<i>Child Welfare Ordinance</i> (No. 2) 1971	No. 15, 1971
<i>Child Welfare Ordinance</i> 1973 as amended	No. 72, 1973 No. 87, 1973
<i>Child Welfare Amendment Act</i> 1980	No. 16, 1981
<i>Statute Law Revision Act</i> 1981	No. 29, 1981
<i>Child Welfare Amendment Act</i> 1982	No. 38, 1982
<i>Child Welfare Amendment Act</i> (No. 2) 1982	No. 58, 1982
<i>Social Welfare Ordinance</i> 1964	No. 31, 1964
<i>Social Welfare Ordinance</i> 1967	No. 31, 1967
<i>Social Welfare Ordinance</i> 1969	No. 51, 1969
<i>Social Welfare Ordinance</i> 1971	No. 12, 1971
<i>Social Welfare Ordinance</i> 1972	No. 20, 1972
<i>Social Welfare Ordinance</i> 1974	No. 70, 1974
<i>Social Welfare Ordinance</i> 1978	No. 110, 1978
<i>Social Welfare Act</i> 1979	No. 105, 1979

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