

Queensland



# CHILDREN'S SERVICES ACT 1965

**Reprinted as in force on 21 December 1998  
(includes amendments up to Act No. 41 of 1998)**

**Reprint No. 1C**

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# Information about this reprint

This Act is reprinted as at 21 December 1998. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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# CHILDREN'S SERVICES ACT 1965

[as amended by all amendments that commenced on or before 21 December 1998]

**An Act to promote, safeguard and protect the wellbeing of the children and youth of the State through a comprehensive and coordinated program of child and family welfare**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Children's Services Act 1965*.

### Continuation of appointments

7. Every person who at the commencement of this Act holds an office or position to which the person was appointed under or for the purposes of 1 or more of the Acts repealed by this Act shall continue to hold that office or position or the corresponding office or position under and for the purposes of this Act until the person vacates or is lawfully removed from that office or position and when such office or position has been held, immediately prior to the commencement of this Act, under, subject to and in accordance with the *Public Service Act 1922*, the same or the corresponding office or position shall be and continue to be held under, subject to and in accordance with such lastmentioned Act.

### Meaning of terms

8. In this Act—  
“**aggrieved person**”, for a reviewable decision, means a person stated opposite the decision in the schedule.

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**“chief executive (health)”** means the chief executive of the department in which the *Health Services Act 1991* is administered.

**“child”** means a person under or apparently under the age of 17 years, and includes where necessary a person who though not under or apparently under the age of 17 years may lawfully be dealt with by a court or has been dealt with by a court on the basis that the person is a child.

**“child in care”** means a person (whether a child or not) who is for the time being in the care and protection or the care and control of the director.

**“director”** means the chief executive for the purposes of the *Family Services Act 1987*.

**“family”** means the unit constituted by persons standing in the relationship of parent and child.

**“father”**, in relation to an adopted child, means the adoptive father and, in relation to a child whose parents were not married to each other at the time of its conception and have not since married each other, includes a person who, by his acts or words, recognises the child as his or who has been found by a court to be the putative father of the child.

**“infant”** means a person who has not attained the age of 18 years.

**“institution”** includes any place wherein a child is cared for apart from the child's parent or guardian.

**“licensed premises”** means premises in relation to which a licence to sell liquor issued pursuant to the *Liquor Act 1992* subsists.

**“maintenance”** includes adequate food, clothing, nursing, medical treatment, training, discipline, education, lodging and care.

**“medical examinations”** includes physical, mental or psychological examinations.

**“mother”**, in relation to an adopted infant, means the adoptive mother.

**“parent”** includes a person in loco parentis to a child.

**“person”** includes a body corporate and any association of persons.

**“premises”** means any land, building, vehicle or vessel.

**“registry district”** means a registry district proclaimed pursuant to the *Registration of Births, Deaths, and Marriages Act 1962* or deemed by

that Act so to have been.

**“relative”** means a grandfather, grandmother, brother or sister of the child concerned, a brother or sister of the father or mother of the child concerned, and any child, grandchild or spouse (including a surviving spouse) of such lastmentioned brother or, as the case may be, sister whether the relationship is, in any case, of the whole blood or half blood or by affinity and notwithstanding that the relationship depends upon the adoption of any person, but does not include any person who has not attained the age of 17 years.

**“reviewable decision”** means a decision stated in the schedule.

**“sell”** includes to offer or expose for sale.

**“street-trading”** includes canvassing for orders for the supply of goods whether ascertained or to be ascertained and whether such canvassing occurs in a public place or premises adjacent to a public place or in any other place.

## **PART 4—INSTITUTIONS**

### **Establishment of institutions**

**30.(1)** The Governor in Council may, by order in council, establish admission centres, homes, assessment, remand and treatment centres, training centres, hostels, attendance centres and other types of institutions to provide for the care, protection, education, treatment, training, control and welfare (including religious, moral and material aspects of the same) of children in care and may, in like manner, abolish any of the same.

**(2)** All institutions under the operation and control of the State Children Department at the commencement of this Act shall be deemed to have been established under this section for their respective purposes for the purposes of this Act.

**(3)** The Governor in Council may by order in council vary the purposes for which any institution established under this Act exists and may, in like manner change any type of such institution to another type of institution.

**Licensing of institutions**

**31.(1)** The Minister may, by signed writing, approve, for the purposes of this Act, of any institution conducted or to be conducted by any person or organisation for the care, protection, education, treatment, training, control or welfare of children.

**(1A)** In every such approval there shall be named the governing authority of the institution so approved and, in addition, some person as the person in charge of the institution concerned who shall thereupon be deemed to be the person in charge of such institution until the appointment of another person as such has been notified to the director in accordance with this Act.

**(2)** Upon approval given under this section the director shall issue in respect of the institution concerned a licence in or to the effect of the prescribed form and such institution shall be a licensed institution until—

- (a) the governing authority of that institution surrenders such licence; or
- (b) the Minister, by signed writing, revokes such approval; or
- (c) the purpose for which such institution is or is to be established at the time of the issue of such licence is varied.

**(3)** Every institution which at the commencement of this Act is a licensed institution under and for the purposes of the *State Children Act 1911* shall be deemed to have been so licensed under this section and for the purposes of this Act.

**Notification of changes affecting licensed institutions**

**32.(1)** Whenever, in relation to a licensed institution, there is a change in—

- (a) the person in charge; or
- (b) the persons constituting the governing authority; or
- (c) the name of the institution;

the governing authority of the institution shall cause notification in writing of such change to be given forthwith to the director.

**(2)** Where the director receives notification of any change in a particular that is shown in the form of licence of a licensed institution the director shall

inform the Minister who may authorise the making of an appropriate alteration in that particular in the form of licence.

### **Control of licensed institutions**

**33.(1)** The governing authority of a licensed institution shall, subject to the director, have the sole management and supervision of such institution and control of the appointment of all persons employed at such institution.

**(2)** In all respects not otherwise expressly provided for in this Act such institution and those within it or employed thereat shall be subject to the provisions of this Act applicable to institutions conducted and controlled by the department.

### **Supervision of standard of care by director**

**34.** The director shall supervise the standard attained by each licensed institution in achieving the purposes for which it exists and for this purpose shall have the right to enter (personally or by agents) upon the premises of such institution at all reasonable hours and to inspect the same and the activities carried on therein.

### **Records of licensed institution**

**35.(1)** The governing authority of each licensed institution shall cause to be kept at such institution a register of all children from time to time within such institution and to be entered therein—

- (a) the name of each such child; and
- (b) the age of each such child upon admission to the institution; and
- (c) the date of admission of each such child to the institution; and
- (d) the names and addresses of each child's parents or, as the case may require, guardian if the same be known; and
- (e) the dates and times of visits by any person to each such child; and
- (f) such other particulars as are prescribed.

**(2)** The person in charge of a licensed institution shall—

- (a) enter in the register required to be kept under subsection (1) all

particulars required by this Act to be entered therein; and

- (b) make such register available for inspection by the director, deputy director or any person authorised in writing by the director.

### **Director to be notified of reception of certain children**

**36.(1)** The governing authority and the person in charge of a licensed institution shall forthwith notify the director of the identity and reception into such institution of a child who, being other than a child in care—

- (a) is placed in such institution for a period to extend beyond 3 months; or
- (b) is in such institution for a period exceeding 3 months.

**(2)** A person shall not be convicted in respect of a noncompliance with the provisions of subsection (1) in relation to a particular child if notification in relation to such child has been given to the director by the governing authority of a licensed institution or by a person acting on its behalf or by the person in charge of such institution in accordance with that subsection.

### **Aid to licensed institutions**

**37.(1)** From moneys appropriated by Parliament for the purpose the director shall pay to the governing authority of each licensed institution in respect of each child in care maintained within such institution a sum calculated at such rate as is prescribed.

**(2)** The Minister may direct by signed writing that such sum be paid in respect of a particular child beyond the time when such child attains the age of 17 years and the director shall pay such sum in accordance with such direction.

### **Audit of licensed institution accounts**

**38.** Upon request of the Minister the auditor-general shall audit the accounts of any licensed institution and shall have with respect to such audit and accounts all the powers and authorities conferred on the auditor-general by the *Financial Administration and Audit Act 1977* and shall report thereon to the Minister.

**Revocation of approval**

**39.(1)** If the director is dissatisfied with the management, maintenance or condition of any licensed institution the director shall give written notice of that fact to the governing authority of the institution concerned and shall thereby call upon such governing authority to show cause why such institution should not cease to be a licensed institution.

**(2)** If within 2 months after such notice has been given the governing authority does not show cause as aforesaid sufficient to satisfy the director the director may recommend to the Minister that such institution should cease to be a licensed institution.

**(3)** Upon such a recommendation the Minister may by signed writing revoke the approval in relation to such licensed institution and thereupon such institution shall cease to be a licensed institution.

**Duties of persons in charge of institutions**

**40.** The governing authority and person in charge of an institution (whether or not established or licensed under this Act) having in its, his or her custody a child shall—

- (a) provide such child with adequate food, clothing, lodging and care;
- (b) maintain every part of such institution at all times in a fit and proper state for the care of a child;
- (c) secure for such child adequate education and religious training of such a type and form as is approved by the director or, in the absence of such an approval as is in the best interests of such child;
- (d) ensure that such child receives adequate medical and dental treatment;
- (e) do, observe and carry out all acts, requirements and directions prescribed by this Act or by any order of the director in relation to the institution and the care of such child.

## **PART 5—CHILDREN IN NEED OF ASSISTANCE**

### **Assistance to families**

**41.(1)** When it appears to the director that the income or resources of a family is or are inadequate to maintain or properly care for the child or children of that family or that from any other cause such child or children is or are in need of assistance the director may in the director's discretion give assistance to such family in such form and for such period as the director may determine.

**(2)** For the purpose of securing to any person education or vocational training on a full-time basis the Minister may, in relation to a person who or whose family is receiving or would, were the person a child, receive assistance under this part, direct that such assistance may be given to such person or to the person's family notwithstanding that the person has attained the age of 17 years and the director may give such assistance to such person or to the person's family accordingly.

**(3)** When such assistance involves the expenditure of money by the director the power conferred by this section shall be subject to appropriation by Parliament of moneys for the purpose.

### **Guardianship of children assisted**

**42.** The giving of assistance to a family or to any person under this part shall not in any way affect the guardianship or custody of any person concerned at the time such assistance is given.

### **Assistance may be conditional on supervision**

**43.** The director may, in any case where the director considers the circumstances warrant it, make the giving of assistance under this part conditional upon the family or person concerned accepting such supervision over any member of such family or over such person as the director may, from time to time, consider necessary or desirable and upon such other conditions as the director may, from time to time, in writing, specify.



**Director's power in respect of assistance**

**44.(1)** In relation to assistance given under this part the director may—

- (a) cause such assistance to be applied to such purposes, or to be paid or given to such persons (whether or not they be members of the assisted family), in such proportions as the director, from time to time, determines;
- (b) from time to time, vary the form of such assistance as the director considers the circumstances of the case require;
- (c) cease all such assistance if—
  - (i) the family concerned or the person being assisted is not complying with any condition to which the giving of such assistance is subject; or
  - (ii) the family concerned does not bona fide cooperate with the director in securing the maintenance and proper care of any child of that family; or
  - (iii) for any other reason the director considers that such assistance should no longer be given.

**(2)** In determining whether or not such assistance should cease the director shall consider, as the paramount consideration, the wellbeing and proper care of the child or children of the family concerned or, as the case may be, of the person for whom such assistance is given.

**(3)** Where assistance is being or has been given under this part to a family and it appears to the director that a person who should care for the family is in such circumstances that the person may reasonably be expected to contribute to the cost of such assistance and that it is just that the person should be called upon to so contribute, the director, upon proof to the court that it is just that the defendant be called upon to so contribute, may recover from the person by proceedings in a court of competent jurisdiction, as for a debt due and owing by the person to the director and unpaid, the amount that, as at the date the order of the court is pronounced, has been paid by way of the assistance for which the person is (by this subsection and subsection (4)) made liable or, as the case may require, the value of such assistance given as at that date, or any part of that amount or value.

**(3A)** In a proceeding for the recovery of money under subsection (3), a certificate purporting to be by the director that it appears to the director that

the matters specified in subsection (3) as a condition precedent to the director's right of recovery are established shall be conclusive evidence of the existence of the condition precedent.

(4) For the purposes of subsections (3) and (3A) a person who should care for the family in question—

- (a) in respect of assistance given in relation to the mother of the family—is her husband at the time the assistance is given, or any person who, within 6 months prior to the time the giving of assistance is commenced, had lived in a connubial relationship with her;
- (b) in respect of assistance given in relation to a child of the family or other person in relation to whom assistance may be given under this part were the person a child—is the mother or father of the child or other person, or is a person who, at the time the assistance is given, is a step-parent of the child or other person, or a person who, within 6 months prior to the time the giving of assistance is commenced, had lived in a connubial relationship with the mother or father of the child or other person.

(5) Where pursuant to subsections (3) and (4) 2 or more persons are liable in respect of the same assistance given, those persons shall be jointly and severally so liable.

### **Assistance to be given as prescribed**

45. When the amount or quantity of assistance to be given under this part or any other matter in relation to such assistance is prescribed the director shall give such assistance as so prescribed.

## **PART 6—CHILDREN IN NEED OF CARE AND PROTECTION**

### **Children in need of care and protection**

46.(1) For the purposes of this Act a child shall be deemed to be in need

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of care and protection if—

- (a) not having a parent or guardian who exercises proper care of and guardianship over him or her, the child is—
  - (i) neglected; or
  - (ii) exposed to physical or moral danger; or
  - (iii) falling in with bad associates; or
  - (iv) likely to fall into a life of vice or crime;
- (b) the child is in the custody of a person who is unfit by reason of the person's conduct and habits to have custody of the child;
- (c) the child is a person in relation to whom any of the offences mentioned in part 8 has been committed;
- (d) the child is a member of the same household as—
  - (i) a child in relation to whom an offence mentioned in part 8 has been committed; or
  - (ii) a person who has been convicted of such an offence in relation to a child;and appears to be in danger of the commission upon or in relation to the child of a similar offence;
- (e) the child is a member of a household a member of which has been convicted of an offence under the Criminal Code, section 222 or 223;
- (f) the child begs or gathers alms, whether or not accompanied with the pretext of a sale or otherwise, or the child is in or adjacent to a public place for the purpose of so begging or gathering alms;
- (g) the child is found apparently abandoned, or loitering or sleeping in a public place and has no visible lawful means of support or no settled place of abode;
- (h) the child carries on street trading that is not authorised by section 113;
- (i) the child takes part in any public exhibition or performance of a type referred to in this Act without a permit under part 11 so to do;

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- (j) not being a child or ward of the licensee—the child is, without lawful excuse, in a betting shop or billiard room, or the bar-room, billiard room or beer garden of any licensed premises;
- (k) the child is served with intoxicating liquor in any of the premises mentioned in paragraph (j);
- (l) being in the care of a person other than a parent, relative or guardian of such child—the child is apparently deserted by his or her parent or guardian;
- (m) being under the school leaving age as provided for from time to time by law—the child is regularly absent from school without reasonable and adequate excuse;
- (n) being under such an age that the child is not criminally responsible for any act notwithstanding that, at the time of doing the act, the child had the capacity to know that the child ought not to do the act—the child does an act which would of itself or with other elements constitute an offence on the child's part if the child were of or over that age and had the aforesaid capacity;
- (o) the child is for any other reason in need of care and such care cannot be adequately provided by the giving of assistance under part 5.

(2) The provisions of subsection (1)(f) do not apply to a child who is seeking aid by lawful means for any purpose of a religious, charitable, educational or sporting organisation or is in or adjacent to a public place for that purpose.

**Voluntary admission to care and protection**

**47.(1)** An application may be made to the director in or to the effect of the prescribed form to admit any child to the director's care and protection by any of the following persons—

- (a) a parent of such child;
- (b) a guardian of such child;
- (c) a relative of such child;
- (d) a person of good repute.

(1A) Upon receipt of such an application the director shall make such inquiry and investigation as the director considers necessary and shall hear all objections made to the director concerning such application.

(2) If the director is satisfied that the child in respect of whom such an application is made is in need of care and protection and that such care and protection cannot be secured to such child by the giving of assistance under part 5 the director shall by signed writing declare such child to be admitted to the director's care and protection.

(2A) Such declaration shall be sufficient authority for any person acting on behalf of the director at any time while such declaration continues in force to take the child in care into the director's custody and to deliver such child in care to such place as the director, from time to time directs, and for the person in charge of any such place to receive and keep the child in care until such child in care is otherwise lawfully dealt with.

(3) No provision of this section shall be construed to render it mandatory upon the director to take any child into the director's custody.

### **Duration of care and protection**

**48.** A declaration made pursuant to section 47 shall continue in force until—

- (a) the director revokes such declaration; or
- (b) the expiration of 1 month after the date on which a parent of the child in care in respect of whom the declaration was made or a person who prior to the making of such declaration was a guardian of such child in care applies to the director to undertake the care and protection of such child; or
- (c) the Childrens Court makes an order, pursuant to this part, in relation to the child in care in respect of whom such declaration was made; or
- (d) the child in care in respect of whom the declaration was made attains the age of 18 years.

### **Admission to care and protection by court order**

**49.(1)** An officer of the department authorised in that behalf by the

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director or a police officer may apply to the Childrens Court for an order that a child be admitted to the care and protection of the director.

**(2)** An officer of the department authorised in that behalf by the director or any police officer may, without further authority than this Act, take into custody on behalf of the director any child who appears or who such officer suspects on reasonable grounds to be in need of care and protection.

**(2A)** The person so taking a child into custody shall—

- (a) forthwith upon such taking notify the director of that fact; and
- (b) as soon as practicable after such taking apply to the Childrens Court for an order that such child be admitted to the care and protection of the director.

**(2B)** Pending determination by the Childrens Court of such an application the child shall be cared for in a manner consistent with the child's best interests—

- (a) by a person chosen by the court; or
- (b) in the absence of such a choice, by the person who took the child into custody or by a person chosen by the person;

and for this purpose the person entrusted with the child's care may retain custody of the child.

**(2C)** If under subsection (2) the court chooses the director to care for a child it shall remand the child into the temporary custody of the director.

**(3)** Upon an application made to it under this section the Childrens Court shall—

- (a) order to be made in relation to the child concerned such investigations and medical examinations as to the court appear necessary or desirable and, if it does so, the court—
  - (i) shall remand the child into the temporary custody of the director; and
  - (ii) shall be furnished with reports of such investigations and examinations;
- (b) hear any objection to such application;
- (c) if it appears to such court that the best interests of such child

require it, adjourn such application to another Childrens Court whereupon it shall be deemed that such application was made in the first instance to such other Childrens Court.

**(4)** The Childrens Court—

- (a) if it is satisfied that such child is in need of care and protection, may—
  - (i) order a parent or guardian (other than the director) of such child to enter into a recognisance in such amount as the court fixes without a surety or with such surety or sureties as the court orders conditioned that such parent or guardian exercise proper care, protection and guardianship in respect of such child;
  - (ii) order that the director shall have protective supervision over and in relation to such child;
  - (iii) subject to section 52, order that such child be admitted to the care and protection of the director;
  - (iv) make such order as to the costs of the application and of any investigation or assessment made in respect of such child pursuant to the court's order as the court thinks just;
- (b) if it is not so satisfied, shall refuse to make any order.

**Application for court order in respect of child in care by declaration of director**

**50.(1)** The director may at any time during the continuance in force of a declaration made pursuant to section 47 apply to the Childrens Court for an order that the child in care in respect of whom such declaration was made, be admitted to the director's care and protection.

**(2)** Upon such an application the court shall—

- (a) order such investigations and medical examinations to be made in relation to such child in care as to the court appear necessary or desirable and, if it does so order, be furnished with reports of such investigations and examinations;
- (b) hear any objection to such application;

and may—

- (c) make the order sought; or
- (d) make any other order or orders it could make upon an application made under section 49; or
- (e) refuse to make any order.

(3) If upon such an application the court does not make the order sought the court may and, if the director has custody of the child in care in respect of whom such application is made, shall name the person or persons into whose custody such child in care shall be given and until the right to custody of such child in care passes elsewhere according to law the same shall pass to and vest in such named person or persons accordingly.

(4) If the guardianship of such child thereafter vests in the director according to law the right to custody of such child shall likewise pass to and vest in the director.

### **Application to revoke or substitute court order**

**51.(1)** An application may be made to the Childrens Court which has made an order referred to in section 49(4)(a)(i), (ii) or (iii) upon an application made pursuant to that section or pursuant to section 50 to revoke such order or to make another order in substitution for it.

(1A) Such an application may be made by—

- (a) the director; or
- (b) a parent or guardian of the child or child in care concerned; or
- (c) a person who was guardian of the child or child in care concerned immediately before such order was made.

(2) Upon such an application the court shall—

- (a) order such investigations and medical examinations to be made in relation to the child or child in care as to the court appear necessary or desirable and if it does so order, shall be furnished with reports of such investigations and examinations;
- (b) hear any objection to such application;

and may—



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- (c) make an order that the order the subject of the application be revoked; or
- (d) make any order in substitution for such order as the court may make upon an application made pursuant to section 49; or
- (e) refuse to make any order.

(3) The court shall not entertain any such application in respect of any child or child in care within 6 months of the date of the hearing of a previous such application in respect of the same person except when such subsequent application is made by the director who is exercising supervision over such person.

(4) If upon such an application the court revokes an order that a child be admitted to the care and protection of the director or in substitution for such an order makes any other order the court may and, if the director has custody of the child in care in respect of whom such application is made, shall name the person or persons into whose custody such child in care shall be given and until the right to custody of such child in care passes elsewhere according to law the same shall pass to and vest in such named person or persons accordingly.

(5) If the guardianship of such child thereafter vests in the director according to law the right to custody of such child shall likewise pass to and vest in the director.

**Limitation on court's admitting to care and protection**

**52.(1)** The Childrens Court shall not order that a child be admitted to the care and protection of the director unless such court—

- (a) is satisfied that such child is in need of care and protection; and
- (b) is not satisfied that such care and protection can be secured to such child by any other order it may make.

(2) Upon every application made to the Childrens Court under this part the court shall determine the matter in the manner which appears to the court to be in the best interests of the child or child in care concerned.

## **Appeals**

**52A.** A person aggrieved by an order of the Childrens Court under this part may appeal against the order under the *Childrens Court Act 1992*, part 4A.

## **Duration and effect of certain orders**

**53.(1)** An order made by the Childrens Court that a child be admitted to the care and protection of the director or that the director shall have protective supervision over and in relation to any child shall continue in force until—

- (a) the child in relation to whom such order is made attains the age of 18 years; or
- (b) the Childrens Court otherwise orders; or
- (c) the director releases the child or child in care from the operation of such order.

**(2)** An order that a child be admitted to the care and protection of the director shall be sufficient authority for any person acting on behalf of the director, at any time while such order continues in force, to take the child in care into the director's custody and to deliver such child in care to such place as the director, from time to time, directs and for the person in charge of any such place to receive and keep such child in care until such child in care is otherwise lawfully dealt with.

## **Director may release child**

**54.** The director may, by signed writing, release any child or child in care from the operation of an order made by the Childrens Court that the child concerned be admitted to the care and protection of the director or that the director have protective supervision over and in relation to the child concerned.

## **Guardianship of child admitted to care and protection**

**55.(1)** When the director has declared a child to be admitted to the director's care and protection or the Childrens Court has ordered that a child

be admitted to the care and protection of the director the guardianship of such child in care shall pass to and, for so long as the declaration or, as the case may be, order continues in force, vest in the director.

(2) When a declaration made by the director that a child be admitted to the director's care and protection ceases to be in force the guardianship of such child in care shall—

- (a) where such declaration has ceased to be in force by reason of the order of the Childrens Court that the child in care in respect of whom such declaration was made be admitted to the care and protection of the director—remain vested in the director for so long as such order continues in force;
- (b) in any other case—pass to and vest in the person or persons who, but for such declaration, would in law be guardian of such child in care.

(3) When an order of the Childrens Court that a child be admitted to the care and protection of the director ceases to be in force, the guardianship of such child in care shall pass to and vest in the person or persons who, but for such order would in law be guardian of such child in care.

### **Protective supervision order**

**56.(1)** When the Childrens Court orders that the director shall have protective supervision over and in relation to any child—

- (a) such court shall, in its order, specify the matters and objects in relation to which the director is to exercise the director's supervision;
- (b) the director may, pursuant to such order, order the child concerned, a parent or guardian of such child, a person in whose custody such child is, or any 2 or more of such persons to do or refrain from doing any act or thing which, in the directors' opinion, pertains to a matter or object specified in such court order and to this end may order attendance at attendance centres maintained for the purposes of this Act whether or not a court has so ordered.

(2) Every order issued pursuant to subsection (1)(b) shall be in writing under the hand of the director or some person authorised by the director in

that behalf.

(3) Any person who contravenes or fails to comply with an order issued pursuant to subsection (1)(b) commits an offence against this Act.

### **Duty of director to child admitted to care and protection**

**58.(1)** When a child is admitted to the care and protection of the director either by declaration of the director or by order of the Childrens Court it shall be the duty of the director to utilise the director's powers and the resources of the department so as to further the best interests of such child in care and, in the performance of that duty and without limiting the director's discretion in that regard, the director may, from time to time, make use of such facilities and services as may be available or be made available by—

- (a) any parent of such child in care;
- (b) a relative or friend of such child in care;
- (c) any person approved by the director;
- (d) placing such child in care in an institution established or licensed pursuant to part 4;
- (e) placing such child in care in a boarding school, hostel or any other place considered by the director to be in the best interests of such child in care.

**(1A)** The director may impose such conditions upon the use the director makes or proposes to make of any of such facilities and services as the director considers to be in the best interests of the child in care concerned.

**(2)** A child admitted to the care and protection of the director shall not be placed, while so admitted, in a child training centre except with the approval of the Minister first had and obtained.

### **Preservation of rights of guardians**

**59.** Except as is expressly provided in this part the provisions of this part or the making of an order pursuant to this part or the fact that such an order has ceased to be in force shall not be construed or taken to avoid, or

prejudice the rights of any person who, except for the provisions of this part would be, in law, guardian of any person.

## **PART 7—CHILDREN IN NEED OF CARE AND CONTROL**

### **Child in need of care and control**

**60.** For the purposes of this Act a child shall be deemed to be in need of care and control if—

- (a) the child is falling or is likely to fall into a life of vice or crime or addiction to drugs;
- (b) the child is exposed to moral danger;
- (c) the child is or appears to be uncontrollable.

### **Committal to care and control**

**61.(1)** An officer of the department authorised in that behalf by the director, a police officer or a parent or guardian of the child concerned may apply to the Childrens Court for an order that a child be committed to the care and control of the director.

**(2)** An officer of the department authorised in that behalf by the director or any police officer may, without further authority than this Act, take into custody on behalf of the director any child who appears or who such officer suspects on reasonable grounds to be in need of care and control.

**(2A)** The person so taking a child into custody shall—

- (a) forthwith upon such taking notify the director of that fact; and
- (b) as soon as practicable after such taking apply to the Childrens Court for an order that such child be committed to the care and control of the director.

**(2B)** Pending determination by the Childrens Court of such an application the child shall be cared for in a manner consistent with the

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child's best interests—

- (c) by a person chosen by the court; or
- (d) in the absence of such a choice, by the person who took the child into custody or by a person chosen by the person;

and for this purpose the person entrusted with the child's care may retain custody of the child.

**(2C)** If under subsection (2B) the court chooses the director to care for a child it shall remand the child into the temporary custody of the director.

**(3)** Upon an application made to it under this section the Childrens Court shall—

- (a) order to be made in relation to the child concerned such investigations and medical examinations as to the court appear necessary or desirable and, if it does so, the court—
  - (i) shall remand the child into the temporary custody of the director; and
  - (ii) shall be furnished with reports of such investigations and examinations;
- (b) hear any objection to such application;
- (c) if it appears to such court that the best interests of such child require it, adjourn such application to another Childrens Court whereupon it shall be deemed that such application was made in the first instance to such other Childrens Court.

**(4)** The Childrens Court—

- (a) if it is satisfied that such child is in need of care and control, may—
  - (i) order a parent or guardian (other than the director) of such child to enter into a recognisance in such amount as the court fixes without a surety or with such surety or sureties as the court orders conditioned that such parent or guardian exercise proper care, protection and guardianship in respect of such child;
  - (ii) order that the director exercise supervision over and in relation to such child; or

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- (iii) subject to subsection (5), order that such child be committed to the care and control of the director;
  - (b) if it is not so satisfied but is satisfied that such child is in need of care and protection, may make any order which pursuant to section 49(4)(a)(i), (ii) or (iii) the court may make were the application before the court an application made under section 49 and were the court satisfied that the child concerned is in need of care and protection;
  - (c) if it is not satisfied that such child is in need of care and control or care and protection, shall refuse to make any order;
  - (d) in any case may make such order as to the costs of the application and of any investigation or assessment made in relation to such child pursuant to the court's order as the court thinks fit.
- (5) The Childrens Court shall not order that a child be committed to the care and control of the director unless such court—
- (a) is satisfied that such child is in need of care and control; and
  - (b) is not satisfied that such care and control can be secured to such child by any other order it may make.
- (6) An order made pursuant to subsection (4)(a) shall continue in force until—
- (a) the child in respect of whom the order is made attains the age of 18 years; or
  - (b) the Minister orders the discharge of such child from the care and control of the director.
- (7) An order made pursuant to subsection (4)(b) shall be deemed to be an order made upon an application made pursuant to part 6 and shall be subject to the provisions of that part accordingly.

**Guardianship of person committed to care and control**

**64.(1)** When a court orders that a person be committed to the care and control of the director the guardianship of such person shall thereupon pass to and, for so long as such order continues in force, vest in the director.

**(1A)** When such an order ceases to be in force the guardianship of the

child in care shall pass to and vest in the person or persons who, but for such order, would in law be guardian of such child in care.

(2) An order committing a child to the care and control of the director is sufficient authority—

- (a) for a person acting on behalf of the director, to take the child into custody and to deliver the child to a place the director determines; and
- (b) for the person in charge of the place to receive and keep the child in care until the child is otherwise lawfully dealt with.

### **Duty of director to child committed to care and control**

**65.(1)** When a person is committed to the care and control of the director it shall be the duty of the director to utilise the director's powers and the resources of the department so as to further the best interests of such child in care and, in the performance of that duty and without limiting the director's discretion in that regard, the director may from time to time make use of such facilities and services as may be available or be made available by—

- (a) any parent of such child in care;
- (b) a relative or friend of such child in care;
- (c) any person approved by the director;
- (d) placing such child in care in an institution established or licensed pursuant to part 4;
- (e) placing such child in care in a hostel or any other place considered by the director to be in the best interests of such child.

(2) The director may impose such conditions upon the use the director makes or proposes to make of any of such facilities and services as the director considers to be in the best interests of the child in care concerned.

### **Effect of supervision order**

**67.(1)** When it is ordered under this Act that the director exercise supervision over and in relation to any person—



- (a) matters and objects in relation to which the supervision is to be exercised may be specified in the order and such matters and objects shall be taken to be objects of the order for the purpose of section 68;
- (c) the director may order the person over and in relation to whom the supervision is exercised a parent or guardian of that person, a person in whose custody that person is, or any 2 or more of such persons to do or refrain from doing any act or thing (including attending attendance centres maintained for the purposes of this Act, whether or not a court has so ordered) that, in the opinion of the director pertains to a matter or object specified in the order or, in so far as not so specified, is in the best interests of the person over and in relation to whom the supervision is exercised.

(2) An order made under subsection (1)(c) shall be in writing signed by the director, or a person authorised by the director in that behalf.

(3) A person who contravenes or fails to comply with an order made under subsection (1)(c) commits an offence against this Act.

### **Breach of supervision order**

**68.(2)** If the director—

- (a) is satisfied that a person over and in relation to whom the director is exercising supervision is not cooperating with the director to achieve the objects of the order whereby such person was made subject to the director's supervision or is contravening or failing to comply with any order issued by the director pursuant to section 67(1)(c); or
- (b) is not satisfied that the conditions under which such a person is living are conducive to the welfare of such person;

the director may cause an officer of the department or any police officer without further authority than this Act to take such person into custody on behalf of the director and, as soon as practicable, to bring such person before the Childrens Court notwithstanding that the person is not a child.

(3) The Childrens Court before which a person is brought pursuant to subsection (2) shall—

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- (a) order such investigations and medical examinations to be made in relation to such person as to the court appear necessary or desirable and, if it does so order, be furnished with reports of such investigations and examinations;
- (b) remand such person into the temporary custody of the director until such investigations and examinations are completed;
- (c) hear any objection to the return of such person to the care and control of the director;
- (d) if it appears to such court that the best interests of such person require it, adjourn such proceeding to another Childrens Court whereupon it shall be deemed that such person was brought before such other Childrens Court in the first instance;
- (e) —
  - (i) commit or, as the case may be, recommit such person to the care and control of the director until the person attains the age of 19 years if the person has then attained the age of 16 years but, in any other case, until the person attains the age of 18 years; or
  - (ii) extend the period during which the director is to exercise supervision over and in relation to such person until the person attains the age of 19 years; or
  - (iii) specify matters and objects or, as the case may be, further matters and objects in relation to which the director is to exercise the director's supervision; or
  - (iv) impose upon such person a fine not exceeding \$50;whichever order or orders the court considers warranted in the circumstances.

(4) When a court has, pursuant to this section, varied a supervision order the order as so varied shall be deemed to be the order under which the director is to exercise supervision over and in relation to the person concerned and may be carried into effect under section 67 accordingly.

**Appeals**

**68A.** A person aggrieved by an order of the Childrens Court under this part may appeal against the order under the *Childrens Court Act 1992*, part 4A.

**PART 8—PROTECTION OF CHILDREN***Division 1—Health and welfare of children***Offences in relation to the health of children**

**69.(1)** A person having a child in his or her charge shall not ill-treat, neglect, abandon or expose the child in a manner likely to cause the child unnecessary suffering or to injure the child's physical or mental health nor suffer the child to be so ill-treated, neglected, abandoned or exposed.

Maximum penalty—40 penalty units or 1 year's imprisonment.

**(1AA)** If any person who contravenes any provision of subsection (1) has benefited or would, but for any provision or rule of law preventing the person so doing, benefit or, to the person's knowledge, stands to benefit, directly or indirectly, by reason of any property or any interest therein accruing to the person or to any other person upon the death of the child in question the person shall be liable to a fine of \$1 000 or to 2 years imprisonment.

**(1A)** A person having a child in his or her charge shall not leave the child for a time that is unreasonable having regard to all the circumstances of the case unless the person makes reasonable provision for the supervision and care of the child during that time.

Maximum penalty—20 penalty units or 3 months imprisonment.

**(1B)** Proceedings in respect of a contravention of subsection (1A) shall not be brought against a person who is under the age of 17 years, not being the parent or guardian of the child concerned.

**(2)** A person convicted of an offence against subsection (1) or (1A) may,

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instead of, or in addition to, any punishment to which the person is liable, be ordered to enter into a recognisance, with such surety or sureties or without any surety as the court may determine, in such amount as the court thinks fit conditioned that the person shall keep the peace and be of good behaviour for a period not exceeding 1 year and that the person shall observe such further terms and conditions as are specified by the court or prescribed by the Governor in Council (who is hereby thereunto empowered) and to be imprisoned until such recognisance is or, as the case may require, recognisances are entered into but so that such imprisonment shall not be for a period longer than 3 months.

**(2A)** If during the period of the recognisance such person is again convicted of a contravention of any provision of subsection (1) or (1A) or of an offence of the same or a similar nature or contravenes or fails to obey any condition of the recognisance or any further term or condition which the person is required to obey by order of a court or prescription of the Governor in Council the person is liable to have the recognisance forfeited and, in addition, the person commits an offence against this Act.

**(3)** A person having the charge of a child shall be deemed to have neglected the child in a manner likely to cause the child unnecessary suffering or to injure the child's health physical or mental, as the circumstances may indicate, if—

- (a) being able to so provide from the person's own resources, the person fails to provide adequate food, clothing, medical treatment, lodging or care for such child; or
- (b) being unable to so provide from the person's own resources, the person fails to take all lawful steps within the person's knowledge to procure the provision of adequate food, clothing, medical treatment, lodging and care for such child.

**(4)** A person may be convicted of an offence against this section notwithstanding—

- (a) that suffering or injury to the health of the child in question or the likelihood of suffering or injury to the health of the child in question was avoided by the action of another person; or
- (b) that the child in question has died.

**(5)** No provision of this section shall be construed to prejudice the rights

of a parent, guardian, teacher or other person having lawful charge of a child to administer reasonable punishment to such child.

(6) A person charged with any offence against this section may be convicted of any other offence against this section which is established by the evidence.

(7) When a person appears before a court charged with an offence against subsection (1) or (1A) the court may, in the absence of proof of age, decide upon its own view, without further inquiry or after such inquiry as it considers warranted in the circumstances, whether a person concerned in the charge is a child and if such court decides that such person is a child it shall be so deemed until the contrary is proved.

### **Tattooing of children prohibited**

**69A.** A person shall not tattoo a child or otherwise make upon the skin of a child any permanent mark or design resembling a tattoo.

Maximum penalty—40 penalty units or 6 months imprisonment.

### **Power to arrest offenders**

**70.** Any police officer may arrest without warrant, any person who—

- (a) within the sight of such police officer commits an offence against section 69 when the name and address of such person are unknown to such police officer and the police officer cannot forthwith ascertain the same;
- (b) has committed or whom such police officer believes on reasonable grounds to have committed an offence against section 69 if—
  - (i) the police officer believes on reasonable grounds that such person will abscond; or
  - (ii) the police officer does not know the name and address of such person and cannot forthwith ascertain the same.

**Power to take child into custody**

**71.(1)** Any officer of the department or any police officer may report the facts constituting an offence against section 69 to a justice who may issue written authority to take the child concerned in such offence into custody and to convey the child to and to keep the child in a place of safety until the child can be lawfully dealt with pursuant to this Act.

**(2)** Any officer of the department or any police officer may carry out the authority of a justice issued under this section.

**Power to search**

**72.(1)** When any person makes it appear to a stipendiary magistrate or magistrate of the Childrens Court by information on oath that there is reasonable cause to suspect that an offence against section 69 has been committed or is being committed and that such person is bona fide acting in the interests of the child concerned in such offence such magistrate may issue a warrant authorising all officers of the department and all police officers to search for such child and for that purpose to enter any premises and to take into custody any person whom they believe on reasonable grounds to be a child in respect of whom such an offence has been or is being committed and to convey the child to a place of safety and to there keep the child until the child can be lawfully dealt with pursuant to this Act.

**(2)** For the purpose of executing such a warrant the person executing the same—

- (a) may be accompanied by a legally qualified medical practitioner;
- (b) if the person is other than the person on whose information the warrant is founded—shall be accompanied by that person unless the magistrate who issues the warrant otherwise directs;
- (c) may enter (using such force as is reasonable), together with any person lawfully accompanying him or her, any premises or place wherein the person executing the warrant reasonably suspects such child to be.

***Division 2—Registration to take charge of children*****Application of certain provisions of this division**

**73.(1)** The provisions of sections 74, 75 and 77 shall not apply in respect of the having in charge of any child—

- (a) by any person over the age of 17 years who has charge of such child—
  - (i) with the authority of a parent, relative or guardian of such child; and
  - (ii) in the premises which prior to the commencement of such charge has been the place of residence of such child; and
  - (iii) during the temporary absence from such premises of such parent, relative or guardian;
- (b) by any person over the age of 17 years who has charge of such child—
  - (i) with the authority of a parent, relative or guardian of such child; and
  - (ii) while such child is bona fide paying a visit to or residing with such person either during the temporary absence from such child's place of residence of such parent, relative or guardian or for the purpose of—
    - (a) such child's having a holiday;
    - (b) securing education for such child;
    - (c) obtaining medical treatment for such child from or under a legally qualified medical practitioner;
    - (d) any other like or prescribed object.

**(2)** No provision of this section shall be construed to extend to a temporary absence, visit or residence the purpose of which is to enable a person having charge of a child to have charge of such child permanently.

**Registration of persons having charge of children**

**74.(1)** Any person other than the director, a person acting on the director's behalf, a father, mother, relative, or guardian of the child concerned and other than a person who, were the person charged with an offence under section 77, would, by that section, be provided with a defence to such charge who proposes to take into his or her charge a child under the age of 10 years for a period exceeding 48 hours shall apply to the director in or to the effect of the prescribed form to be registered for such purpose.

**(1A)** Upon receipt of such an application the director shall cause the applicant to be investigated with a view to ascertaining the applicant's suitability for such purpose.

**(2)** If the director determines that such an applicant is suitable for such purpose the director may register the applicant accordingly and, if the director does so, shall give to the applicant a certificate in or to the effect of the prescribed form.

**(3)** A registration effected pursuant to this section shall be sufficient registration, for so long as it subsists, for the purpose of the person so registered taking into his or her charge any further child or children under the age of 10 years.

**Registration of premises for the care of children under 10 years**

**75.(1)** Any person other than the director, a person acting on the director's behalf, a father, mother, relative or guardian of the child concerned, who desires to use any premises other than premises referred to in section 77(2)(a) for the purpose of having in his or her charge a child under the age of 10 years for a period exceeding 48 hours, shall apply to the director in or to the effect of the prescribed form for registration of such premises for such use.

**(2)** Upon receiving such an application the director shall cause the premises concerned to be inspected by an officer of the department who, for this purpose, may be accompanied by a legally qualified medical practitioner.

**(3)** If the director grants such an application the director—

- (a) shall specify as a condition of such registration, the maximum number of children who may at any time be cared for in the



- premises concerned; and
- (b) may, from time to time, impose such other conditions upon such registration as the director thinks fit; and
  - (c) may, from time to time, vary, revoke or re-impose any such condition; and
  - (d) shall issue to the applicant a certificate of registration which shall identify the premises concerned; and
  - (e) shall, from time to time, provide the applicant with a list of the conditions for the time being applicable in respect of such registration.

(4) A registration effected pursuant to this section shall be sufficient registration, for so long as it subsists, for the purpose of the premises so registered being used, subject to and in accordance with conditions imposed by the director, for having in charge any further child or children under the age of 10 years.

### **Cancellation of registration**

**76.(1)** The director may at any time by notice in writing call upon a person—

- (a) who is registered pursuant to section 74; or
- (b) in respect of whose premises a certificate of registration has been issued pursuant to section 75;

to show cause why such registration should not be cancelled and if within 14 days after the giving of such notice such person does not show such cause to the satisfaction of the director, the director may cancel the registration concerned.

(2) Upon such cancellation the director shall in writing notify the person concerned thereof and such person shall within 7 days after receipt of such notice surrender to the director the certificate issued by the director in respect of the registration so cancelled.

### **Offence to have charge of child in contravention of this part**

**77.(1)** A person who, in any premises, has in his or her charge a child

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under the age of 10 years for a period in excess of 48 hours commits an offence against this Act unless—

- (a) such person is the director or a person acting on the director's behalf, a father, mother, relative or guardian of the child concerned; or
- (b) such person is registered under this part and such premises are registered under this part.

**(1A)** In any proceeding in respect of an offence against this section the court may form its own view of the age of any child concerned and, if it is of opinion that such child is under the age of 10 years, may convict the defendant notwithstanding that the age of such child has not been proved.

**(2)** A person shall not be convicted of an offence under subsection (1) if it is shown—

- (a) in relation to a charge which alleges that the premises concerned were not registered under this division—that such premises were, at the relevant time—
  - (i) a health service within the meaning of the *Health Services Act 1991*; or
  - (ii) an institution within the meaning of the *Charitable Institutions Management Act 1885*; or
  - (iii) a private hospital within the meaning of the *Health Act 1937*; or
  - (iv) an institution licensed under part 4; or
  - (v) an institution wholly maintained by the State; or
  - (vi) a school, institution or establishment conducted solely for educational purposes; or
  - (vii) premises wherein, in addition to the child concerned, there was also present, at the relevant time, a father, mother, relative or guardian of such child and such father, mother, relative or guardian was not absent from such premises for a period in excess of 48 consecutive hours during such child's stay in such premises; or
  - (viii) premises exempted by or under this Act from the provisions

of section 75;

- (b) in relation to a charge which alleges that the defendant was not registered under this division, that such defendant was, at the relevant time—
  - (i) a person in charge of any of the premises referred to in paragraph (a)(i) to (vii) and that the child concerned was, at the relevant time, in the person's charge in one of such premises; or
  - (ii) a person exempted by or under this Act from the provisions of section 74.

### **Exemption by director**

(3) In any case where the director is satisfied that the provisions of sections 75 or 74 need not apply the director may, by signed writing, exempt the premises concerned or the person in charge thereof or both from those provisions either generally or for such period as the director therein specifies and may, by notice in writing to the person in charge of premises so exempted or, as the case may be, to the person so exempted, revoke such an exemption.

(4) A person shall not be convicted of an offence under subsection (1) if it is shown that such an exemption subsisted at the time in question in respect of the premises or, as the case may be, person concerned.

### **Director's powers relating to children in unregistered premises**

78. Where the director is satisfied that any child is in the charge of any person contrary to the provisions of this division then whether or not such person is prosecuted for an offence thereby committed the director may—

- (a) transfer such child to the custody of a father, mother, relative or guardian of such child; or
- (b) transfer such child to the care of a person registered under this Act upon a parent, relative or guardian of such child entering into an agreement with such registered person for the care and maintenance of such child; or
- (c) admit such child into the director's care and protection;

and, for the purposes of this section, take the child concerned into the director's custody or cause the child to be taken into the custody of some person on the director's behalf.

### **Duties of persons in charge of premises required to be registered**

**79.(1)** A person in charge of premises required to be registered under this division shall—

- (a) keep upon such premises a register in the prescribed form and shall enter or cause to be entered therein all such particulars as are prescribed;
- (b) comply with every condition for the time being applicable in respect of the registration of such premises;
- (c) produce for the inspection of the director or of any officer of the department the register required by this section to be kept;
- (d) within 7 days after the reception into such premises of a child under the age of 10 years, notify the director in or to the effect of the prescribed form of all such particulars as are prescribed;
- (e) provide every child cared for in such premises with adequate food, clothing, medical treatment, lodging and care;
- (f) at all times keep every part of such premises in a fit and proper state for the care of children;
- (g) secure for every child being cared for in such premises adequate education and religious training of a type and form approved by the director;
- (h) do, observe and carry out all acts, requirements and directions prescribed by this Act or specified by any order of the director in relation to such premises or the care of any child therein;
- (i) upon the removal of a child from such premises, forthwith notify the director of such removal;
- (j) upon the death of a child being cared for in such premises, forthwith notify the director and the police officer in charge of the police station nearest to such premises of such death;
- (k) forthwith notify the director of every change in the abode of such

person.

(2) Where there are 2 or more persons in charge of any such premises and the duty in question may be adequately performed by 1 of such persons it shall be deemed sufficient compliance with this section if 1 of such persons performs or causes to be performed that duty.

### **Responsibility of person in charge of premises required to be registered**

**80.(1)** A person in charge of premises required to be registered under this division shall be responsible not only for the person's own acts or defaults in relation to a child in the person's charge or in relation to such premises but also for any act or default in relation to such child or premises of any person employed by the person in or in connection with such premises.

(2) It is immaterial for the purposes of establishing the liability of such a person in charge that, in respect of any such act or default, the person—

- (a) did not know of such act or default; or
- (b) had instructed the person who has done such act or made such default not to do such act or not to make such default.

### **Power to inspect and to issue orders relating to premises required to be registered**

**81.(1)** The director or any officer of the department authorised in writing by the director may at all reasonable hours enter and inspect every part of—

- (a) premises required to be registered under this division; or
- (b) premises which the director reasonably suspects to be premises required to be registered under this division.

(2) The person who makes such an inspection may issue an order in writing to the person in charge of such premises specifying such matters as, in the opinion of such firstmentioned person, are necessary to comply with the provisions of this division or to comply with the conditions for the time being applicable in respect of the registration of such premises.

(3) The person who makes such inspection may be accompanied by—

- (a) a police officer; and
- (b) a legally qualified medical practitioner.

**(4)** Any person who—

- (a) wilfully obstructs any person making an inspection pursuant to this section or a person lawfully accompanying the person; or
- (b) fails to comply with an order issued pursuant to this section either forthwith or, if a time is specified in such order, within the time specified;

commits an offence against this Act.

### **Restriction on placing child with a view to adoption**

**82.(1)** A person who, for the time being, has a child in his or her charge whether by virtue of being a parent, relative or guardian of such child or otherwise, shall not place such child in the charge of any other person with a view to the adoption of such child by such other person unless—

- (a) the director has first approved thereof; or
- (b) such other person is a father, mother or relative of such child.

### **Restriction on receiving child with a view to adoption**

**(2)** A person shall not receive into his or her charge a child with a view to the adoption of such child unless—

- (a) the director has first approved thereof; or
- (b) such person is a father, mother or relative of such child.

### **Restriction on the removal of newborn children from premises**

**83.** A person in charge of premises in which a woman has given birth to a child shall not permit such child to be taken from such premises, unless such child is in the charge of its mother, without first obtaining the consent in writing of the director.

### **Restriction on payment for child in the charge of another**

**84.(1)** A person shall not receive into his or her charge or agree to receive

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into his or her charge a child under the age of 10 years in consideration of the payment of valuable consideration (in money or in kind) otherwise than by way of periodical instalments unless the person has first obtained the written approval of the director.

(2) A person shall not make or agree to make nor receive or agree to receive a payment of such valuable consideration which—

- (a) is for a longer period than 4 weeks; or
- (b) exceeds the amount prescribed.

(3) The provisions of subsections (1) and (2) do not apply—

- (a) to the director or a person acting on the director's behalf, father, mother or guardian of the child concerned; or
- (b) to a relative of the child concerned who has charge of the child in such circumstances that the director is satisfied that such provisions need not apply and has certified in writing accordingly (the director being hereby thereunto empowered); or
- (c) where, in addition to the child concerned, there is also present a father, mother, relative or guardian of such child and such father, mother, relative or guardian is not absent for a period in excess of 48 consecutive hours.

(4) The evidence of any officer of the department that the director has not certified in the manner referred to in subsection (3)(b) shall be accepted in any proceeding as prima facie evidence of that fact.

**Notification to district registrar of birth or death of child in certain cases**

**85.(1)** This section applies in respect of every child who—

- (a) in a case referred to in subsection (2)—is a child whose parents were not married to each other at the time of its conception and have not since and before the time of its birth married each other;
- (b) in a case referred to in subsection (3)—is a child whose parents were not married to each other at the time of its conception and have not since and before the time of its death married each other.

(2) The occupier of premises in which a child in respect of whom this

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section applies is born shall within 3 days after the birth of such child give notice in writing thereof to the district registrar or assistant district registrar of the registry district in which such birth occurs.

(3) The occupier of premises in which any child under the age of 6 years in respect of whom this section applies dies or to which the body of any such child who has died under that age is brought shall within 24 hours of the death of such child or the reception of the child's body, as the case may be, give notice in writing of such death to the district registrar or assistant district registrar of the registry district in which such death or reception as the case may be, occurred.

(4) Notwithstanding the provisions of subsections (2) and (3)—

- (a) if the premises in question are not situated within the boundaries of a city or town—the occupier thereof—
  - (i) may give the notice required of the occupier by this section to the police officer in charge of the nearest police station; and
  - (ii) may give the notice required of the occupier by this section within 1 week after the birth, death or, as the case may be, reception of a body, has occurred;
- (b) if the occupier of the premises in question is the mother of the child notice of whose birth is required by this section to be given—such occupier may give the notice required of the mother by this section within 3 weeks after such birth has occurred.

(5) In any proceeding in respect of an offence against subsection (2) or (3) it shall be a defence that the defendant had no reason to believe and did not believe the child a notice of whose birth, death, or, as the case may be, the reception of whose body is required by this section to be given is or was a child to whom this section applies.

(6) A district registrar, assistant district registrar or police officer in charge of a police station who receives a notice required by this section to be given shall forthwith notify the director of the receipt of such notice and of the particulars shown therein.

(6A) In the case of the birth of a child to whom this section applies the director, upon learning of such birth, shall take all steps to ensure that the wellbeing of such child and of its mother are adequately provided for.



(7) Every person (other than a district registrar within the meaning of the *Registration of Births, Deaths and Marriages Act 1962*) who knows of the birth, death or, as the case may be, reception in or into any premises of the body of a child in relation to whom or which notice is required by this section to be given shall forthwith inform the occupier of such premises that the child concerned is or was a child to whom this section applies unless the person believes on reasonable grounds that such occupier already is aware of that fact and of the fact of such birth, death or reception.

(8) No provision of this section shall be construed to prejudice or affect—

- (a) the provisions of the *Registration of Births, Deaths, and Marriages Act 1962*;
- (b) the provisions of the *Health Act 1937*, part 3, division 2; or
- (c) the provisions of this Act which impose upon any person the duty to give notice to the director in relation to any child in the director's charge.

## **PART 9—GUARDIANSHIP AND CUSTODY OF INFANTS**

### **Meaning of terms**

**87.** In this part and without prejudice to any provision of section 8—

**“court”** means the Supreme Court and a judge thereof and the Childrens Court constituted by a Childrens Court magistrate or a stipendiary magistrate or an acting stipendiary magistrate.

**“parent”** includes a person who is in law liable to maintain the infant concerned and a person who is entitled to custody of such infant.

### **Principle on which questions relating to custody etc. of infants are to be decided**

**88.(1)** Where in any proceeding before the court or any other court of

competent jurisdiction the custody or upbringing of an infant, or the administration of any property belonging to or held on trust for an infant, or the application of the income thereof is in question the court in deciding that question shall regard the welfare of the infant as the first and paramount consideration, and shall not take into consideration whether from any point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

(2) The mother of an infant has the like powers to apply to the court in respect of any matter affecting the infant as are possessed by the father.

### **Rights of surviving parent as to guardianship**

**89.(1)** On the death of the father of an infant the mother, if she is surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the father.

(2) When no guardian has been appointed by the father (who is deceased) of an infant, or if the guardian or all the guardians appointed by such a father is or are dead or refuses or refuse to act, the court may, if it thinks fit, appoint a guardian to act jointly with the mother of the infant.

(3) On the death of the mother of an infant the father, if he is surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the mother.

(4) When no guardian has been appointed by the mother (who is deceased) of an infant, or if the guardian or all the guardians appointed by such a mother is or are dead or refuses or refuse to act, the court may, if it thinks fit, appoint a guardian to act jointly with the father of the infant.

(5) If, pursuant to this section, a guardian has been appointed by the court to act jointly with a mother or, as the case may be, father of an infant as guardian of such infant such appointed guardian shall, until the court otherwise orders, continue to act as guardian after the death of such surviving mother or, as the case may be, father but if such surviving mother or, as the case may be, father has appointed a guardian or guardians of such infant the guardian appointed by the court shall act jointly with the guardian or guardians appointed by such surviving mother or, as the case may be, father as guardian of such infant.

**Power of father and mother of an infant to appoint guardians**

**90.(1)** The father of an infant may, by deed or (if otherwise competent at law to make a will) by will, appoint any person or persons to be guardian or guardians of the infant after the death of such father.

**(2)** The mother of an infant may, by deed or (if otherwise competent at law to make a will) by will, appoint (and in the case of the mother of an infant to whose father she was not married at the time of its conception and whom she has not since married shall be deemed always to have had the power to so appoint) any person or persons to be guardian or guardians of the infant after the death of such mother.

**(3)** Any guardian so appointed shall act jointly with the surviving mother or, as the case may be, father of the infant for so long as such mother or father lives unless such mother or father objects to his or her so acting.

**(3A)** If such mother or father so objects, or if any guardian so appointed considers that such mother or father is unfit to have the custody of such infant, such guardian may apply to the court to declare as to the guardianship in issue and thereupon the court may—

- (a) refuse to make any order or declaration in which case the mother or, as the case may be, father shall continue as sole guardian of the infant concerned; or
- (b) order that the guardian or guardians so appointed or any of them and, when there are more than 1 guardian so appointed, whether or not any of them is party to such application, shall act jointly with such mother or, as the case may be, father as guardian of the infant concerned; or
- (c) order that the guardian or guardians so appointed or any of them and, when there are more than 1 guardian so appointed, whether or not any of them is party to such application, shall be guardian of the infant concerned in lieu of such mother or, as the case may be, father.

**(3B)** When the court makes an order upon an application made pursuant to this section, it may—

- (a) make such order with respect to the custody of the infant and the right of access to such infant by such mother or father or other guardian as, having regard to the welfare of the infant, the court

thinks fit;

- (b) order that such mother or, as the case may require, father shall pay to the guardian who, from time to time, has lawful custody of the infant concerned towards the maintenance of such infant such weekly or other periodical sum as, having regard to the means of such mother or father, the court thinks reasonable.

(4) When guardians are appointed by both father and mother of an infant, the guardians so appointed shall, after the death of the surviving such parent act jointly as guardian of such infant.

### **Power of court to appoint guardian**

91. When an infant has no parent, no guardian of the person and no other person having parental rights in relation to him or her the court, upon the application of any person, may, if it thinks fit, appoint the applicant to be guardian of the infant.

### **Powers of a guardian**

92.(1) Subject to the provisions of any Act rule of law or order of a court of competent jurisdiction, a guardian in Queensland who is acting as such by virtue of this Act or who has been appointed pursuant to this part may—

- (a) if the guardian is guardian of the person of the infant concerned—
  - (i) institute and maintain proceedings against any person wrongfully detaining or taking away the infant from his or her custody or control and recover damages in respect thereof to the use of the infant;
  - (ii) take into his or her custody and control the infant and the tuition of the infant;
- (b) if the guardian is guardian of the estate of the infant concerned—
  - (i) take into his or her custody and control the profits of all lands, tenements and hereditaments of the infant and the management of the goods, chattels and personal estate of the infant to the use of the infant;
  - (ii) institute and maintain such proceedings in relation to the

property of the infant as may be necessary for effectually carrying out any of the powers conferred by subparagraph (i).

(2) Subject to an order of any court of competent jurisdiction a guardian may exercise a power conferred by subsection (1) from time to time until the infant subject to the guardianship attains the age of 21 years and no longer.

### **Court may make orders as to custody and maintenance of infants**

**93.(1)** Upon application by the mother or the father of an infant (which application may be made without next friend), the court may make such order as it thinks to be in the best interests of the infant concerned regarding the custody of such infant and the right of access to such infant by its father or, as the case may require, its mother.

(1A) In determining such an application the court shall have regard to—

- (a) the welfare of the infant;
- (b) the conduct of the mother and the father of the infant;
- (c) the wishes of both the mother and father of the infant.

(2) Where such an order has been made the court may, upon application by the mother or father of the infant concerned, or, if either the mother or father has died, by any guardian appointed in accordance with the provisions of this Act, vary or discharge such order in such manner as it thinks to be in the best interests of the infant concerned.

(3) Upon an application made pursuant to this section the court—

- (a) may make such order regarding the costs of the mother or, as the case may require, the father or guardian and the liability of any person therefor as the court thinks just;
- (b) may make such order regarding the maintenance of the infant concerned and the liability of the mother or, as the case may be, the father of such infant to make weekly or other periodical payments towards such maintenance as the court, having regard to the means of the person who is to be ordered to pay such maintenance, thinks reasonable.

(4) The court may exercise all or any of the powers conferred by this section notwithstanding that the mother of the infant concerned is, at the time, residing with the father of such infant.

(4A) However, an order made by the court pursuant to this section shall not be enforceable and no liability under such an order shall accrue while such mother resides with such father and if such residence continues for a period of 3 months after such order is made such order shall cease to have any force and effect.

(5) In a proceeding under this section or section 93A in relation to the maintenance of an infant whose parents were not married to each other at the time of its conception and have not since married each other, the court—

- (a) shall not be satisfied that a particular male person is the father of the infant on the uncorroborated evidence of the mother;
- (b) shall not make a maintenance order against a person alleged to be the father of the infant if it is satisfied that at about the time of its conception the mother was a common prostitute or had had sexual intercourse with a man other than such person.

### **Childrens Court may make interim orders for custody and maintenance**

93A.(1) When the Childrens Court to which is made an application under section 93 adjourns the matter of the application (whether or not the proceeding has previously been adjourned) it may, after such inquiry as it thinks necessary, make an interim order regarding the custody and maintenance of the infant concerned and regarding the right of access to the infant by either of the infant's parents.

(2) An order made under subsection (1)—

- (a) shall remain in force until the expiration of 3 months from the date of its making or until the matter of the application again comes before the court, whichever first occurs; and
- (b) shall not be subject to appeal;

but otherwise shall be deemed to be 1 or more of the following orders, according to its tenor—

- (c) in the case of an interim award of custody or of access—an order

that awards custody of an infant or, as the case may be, right of access to an infant;

- (d) in the case of an interim award of maintenance—a maintenance order.

(3) The hearing of an application made under section 93 shall not be taken to have commenced by reason only of the making of an interim order under subsection (1) or of the holding of an inquiry for that purpose, or both, and accordingly the matter of the application may be heard and determined by the Childrens Court to which the application is made whether the court is constituted by the magistrate who made the order or by another magistrate.

### **When maintenance order may be enforced by a clerk of the Magistrates Court**

**94.(1)** The court may by maintenance order (be it a final or an interim order) made pursuant to this part or by a subsequent order made upon the application of the person having custody of the infant in respect of whose maintenance such order has been made direct that such maintenance (including, in the case of a subsequent order, all arrears of maintenance accrued under the maintenance order and unpaid at the date of the making of such subsequent order, the amount of which arrears may be determined by the court) shall be paid to the clerk of the court at a place appointed for holding Magistrates Courts specified by the court.

(1A) However, in the case of a subsequent order, the court shall not direct in manner provided for in subsection (1) unless it is satisfied, having regard to section 93(4A), that the maintenance order is enforceable.

(2) Upon the filing in the registry of the Supreme Court or upon the making by the Childrens Court of an order containing the direction provided for in subsection (1) the registrar or, as the case may require, clerk of the court or other person having custody of the records of the Childrens Court in question shall forward an office copy thereof (and, in the case of an order subsequent to a maintenance order, an office copy of such maintenance order, and any order varying the same) to the clerk of the court at the place appointed for holding Magistrates Courts specified in the direction aforesaid.

(2A) When and as often as a subsequent order varying or discharging the

maintenance order is filed in the registry of the Supreme Court or is made by the Childrens Court the registrar or, as the case may require, clerk of the court or other person having custody of the records of the Childrens Court in question shall forward an office copy of that subsequent order to the appropriate clerk of the court.

**(2B)** Every such office copy shall be made and forwarded as prescribed free of charge and may be so forwarded by prepaid registered post or by delivering the same to the appropriate clerk of the court at his or her office.

**(3)** Upon the receipt of an office copy of a maintenance order forwarded to the clerk of the court pursuant to this section the clerk of the court shall enter the same in a register to be kept by the clerk of the court for the purpose and thereupon the maintenance order shall, subject to any further order varying or discharging the same, be of the same force and effect and may be enforced under the *Maintenance Act 1949*, or any Act passed in substitution therefor and all proceedings and remedies for the enforcement thereof may be taken as if such order were a maintenance order made pursuant to the *Maintenance Act 1949*, or, as the case may require, any Act passed in substitution therefor by a Magistrates Court and containing a direction that the payment of maintenance be made to the clerk of the court and, notwithstanding anything to the contrary in this Act contained, it shall, for the purpose of taking all such proceedings and remedies for the enforcement thereof be deemed to be enforceable and remain in full force and effect until the direction referred to in subsection (1) is suspended, varied or rescinded by the court or the maintenance order which includes such direction is discharged by the court.

**(3A)** A Magistrates Court shall not have or exercise any power to vary, suspend or discharge any such order or, while it subsists, to substitute a new order in its stead.

**(4)** The court may at any time suspend, vary or rescind a direction made pursuant to this section.

**(5)** The provisions of this section shall operate so as not to prejudice the jurisdiction, powers and authority of the court or the enforcement of any maintenance order in any other manner provided by law.

### **Power of court to remove guardian**

**95.** The court may, in its discretion, if it is satisfied that it is in the best



interests of the infant concerned, remove from office any testamentary guardian or any guardian appointed pursuant to this part and, if the court is satisfied that it is in the best interests of the infant concerned, appoint another guardian in place of the guardian so removed.

### **Production of infant**

**96.(1)** When a parent of an infant applies to the court for a writ or order for the production of such infant and the court is of opinion that such parent has abandoned or deserted the infant or that the parent has otherwise so conducted himself or herself that the court should not enforce the parent's right to the custody of the infant, the court may, in its discretion, refuse to issue such writ or make such order.

**(2)** If, upon such an application, it appears to the court that the applicant—

- (a) has abandoned or deserted such infant; or
- (b) has allowed such infant to be brought up by a person or persons other than the applicant at such person's or persons' expense for such a period and under such circumstance that the court is satisfied that the applicant was unmindful of his or her parental duties;

the court shall not order the delivery of such infant to the applicant unless the applicant satisfies the court that, having regard to the welfare of the infant, the applicant is a fit person to have the custody of the infant.

**(3)** If at the date of such an application such infant is being or has been brought up by a person or persons other than the applicant the court may, if it issues the writ or makes the order applied for, further order that the applicant pay to such other person or persons the whole of the costs properly incurred by him or her or them in bringing up such infant (the amount of which costs may be determined by the court) or such portion of such costs as the court thinks just and reasonable having regard to all the circumstances of the case.

### **Power of court as to infant's religious education**

**97.(1)** If, upon an application by a parent of an infant for the production

or custody of such infant it appears to the court that—

- (a) the applicant ought not to have custody of such infant; and
- (b) the infant is being brought up in a religion different to that in which the applicant has a legal right to require that the infant should be brought up, the court may, in its discretion, if the applicant so requires it, make such an order as it thinks fit to secure that such infant be brought up in the religion in which the applicant so requires.

(2) The provisions of this section shall not be construed to prejudice—

- (a) the power of the court to inform itself of and to have regard to the wishes of such infant as to what order (if any) should be made; or
- (b) the right of such infant to make a free choice in relation to the matter.

### **Disputes between joint guardians**

**98.** When 2 or more persons who are joint guardians of an infant do not agree on any matter affecting the welfare of such infant, any of them may apply to the court for its direction and the court may make such order regarding the matter in difference as it thinks proper.

### **Rules of court**

**99.** The power to make rules of court conferred upon the Governor in Council by the *Supreme Court Act 1995*, includes power to make such rules in relation to the exercise by the Supreme Court of its jurisdiction conferred by this Act.

### **Childrens Court not competent in certain applications**

**100.(1)** Notwithstanding any provision of this Act the Childrens Court shall not be competent to hear any application made pursuant to or referred to in this part—

- (a) if the infant in relation to whom such application is made is not a child at the date of the making of such application; or

- (b) the determination of which application—
- (i) involves the administration or application of any property belonging to or held on trust for an infant, or the income thereof; or
  - (ii) would or would be likely to rescind, discharge, vary or otherwise affect an order made by the Supreme Court in respect of the infant concerned.

### **Venue of applications to Childrens Court**

(2) An application to be made to the Childrens Court pursuant to this part shall be made to the Childrens Court in the Magistrates Courts district in which the infant, in respect of whom such application is to be made, is at the date of the making of such application.

(3) If the magistrate constituting the Childrens Court to which an application is made pursuant to this part considers that such application could more properly or conveniently be determined by the Supreme Court the magistrate shall refrain from dealing with such application.

(3A) An appeal shall not lie from such a decision.

### **Enforcement of certain orders of Childrens Court**

(4) Where it is made to appear to the Childrens Court that an order made by it awarding custody of an infant to any person or right of access to an infant has not been complied with within a reasonable time and that all reasonable efforts have been made by the person in whose favour the order was made to secure compliance with the order the magistrate constituting that court may, having regard to the nature of the order—

- (a) issue a warrant directed to such person to take the child into his or her keeping and do all other things necessary to secure compliance with the order;
- (b) issue a warrant directed to all police officers to take into custody the person who has failed to comply with the order and to bring the person before the court as soon as practicable to show cause why the person should not be imprisoned for the failure to comply with the order.

(5) A person to whom such a warrant is directed may, using such force as is reasonable and with such assistance as the person reasonably requires,

enter upon any premises and take into his or her keeping the child named in the order or, as the case requires, take into his or her custody the person named in the warrant, remove the child therefrom for the purpose of securing compliance with the order and do all other things necessary to secure compliance with the order.

(6) A person who fails to comply with an order referred to in subsection (4) within a reasonable time having regard to the nature of the order and who fails to show sufficient cause for such failure to the Childrens Court before which the person appears (either voluntarily or in custody under a warrant) may be imprisoned by order of that court for a period not exceeding 12 months or until the order is sooner complied with.

### **Removal of proceeding into Supreme Court**

**101.(1)** When a proceeding has been commenced pursuant to this part in the Childrens Court any party to or person likely to be affected by any order made in such proceeding may apply by originating summons to a judge of the Supreme Court for an order that such proceeding be removed from the Childrens Court into the Supreme Court and, if a judge so orders, such proceeding shall be thereupon removed from the jurisdiction of the Childrens Court accordingly.

(1A) Upon such an application a judge may make an order sought or may refuse to make any order and in either case make such order as to costs as the judge thinks proper.

### **Appeal from Childrens Court**

(2) Any person who feels aggrieved by a decision or order of the Childrens Court made in a proceeding commenced pursuant to this part may, except as in this part is otherwise provided and notwithstanding any provision of the *Districts Courts Act 1967*, appeal to a judge of the Supreme Court.

(3) Every such appeal shall be by way of rehearing.

(4) In respect of every such appeal and every order made therein the provisions of the *Justices Act 1886*, part 9, division 1, other than the provisions of section 222(1) or (3) and the provisions of section 223 shall apply with all necessary adaptations and, in particular, for the purpose of such application—

- (a) section 222(2) of that Act shall be construed as if paragraphs (d) and (e) were omitted; and
- (b) a reference 'clerk of the court' shall be construed as a reference 'person having custody of the records of the Childrens Court'.

### **Inherent jurisdiction of Supreme Court preserved**

**102.** No provision of this part shall be construed to restrict or prejudice the jurisdiction of the Supreme Court to appoint and remove guardians or otherwise in relation to infants.

## **PART 10—FOSTER PARENTS**

### **Placing of children in care**

**103.(1)** The director may place any child in care in the charge of any person approved by the director as a foster parent under this part if the director is satisfied that it is in the best interests of such child that the child be so placed.

**(1A)** A child so placed shall remain in such charge until—

- (a) the child ceases to be a child in care; or
- (b) the director otherwise determines;

whichever event first occurs.

**(2)** It is expressly permitted, having regard to the *Legislative Assembly Act 1867*, section 7B(3), that a member of the Legislative Assembly may perform the service of foster parent, shall perform the duties incidental thereto as prescribed, and shall be entitled to such sums as are prescribed by this Act to be payable to a foster parent.

### **Approval of foster parents**

**104.(1)** A person who desires to act as a foster parent to a child in care shall make an application in or to the effect of the prescribed form to the

director for the director's approval.

(1A) Every such applicant shall furnish to the director a certificate of a legally qualified medical practitioner in or to the effect of the prescribed form relating to such applicant.

(2) The director may refer such an applicant to the chief executive (health) for the purpose of medical examination.

(2A) The chief executive (health) shall cause an applicant so referred to the chief executive (health) to be examined by a legally qualified medical practitioner and such medical practitioner to furnish a certificate in or to the effect of the prescribed form to the director as to the medical practitioner's findings upon such examination.

(3) The director may, upon being satisfied that such an applicant is a fit and proper person to be a foster parent, approve of such applicant for that purpose.

(4) The director may, at any time, revoke an approval given by the director pursuant to this section.

### **Restriction on male foster parent**

**105.(1)** The director shall not approve of any male to be a foster parent unless such male is residing with and supporting his wife who is also approved by the director as a foster parent.

(2) When foster parents in whose charge is a child in care cease to reside together as man and wife the director may in the director's discretion—

- (a) resume charge of such child; or
- (b) replace such child with other foster parents; or
- (c) permit such child to remain in the charge of such foster mother if she is still living; or
- (d) permit such child to remain in the charge of such foster father if he is still living;

whichever course appears to the director to be in the best interests of such child.

**No person to be foster parent unless approved**

**106.** A person shall not act or represent himself or herself to be prepared to act as a foster parent in relation to a child in care unless such person is approved for that purpose by the director.

**Duties of foster parents**

**107.(1)** Every foster parent having in his or her charge a child in care shall—

- (a) provide such child with adequate food, clothing, medical treatment, lodging and care;
- (b) keep every part of the home at all times in a fit and proper state for the care of such child;
- (c) secure for such child adequate education and religious training of a type and form approved by the director;
- (d) do, observe and carry out all acts, requirements and directions prescribed by this Act or by any order of the director in relation to the home or the upbringing of such child;
- (e) accurately keep such books and records as are prescribed;
- (f) furnish to the director correct returns in relation to all such matters and things and at such time or times as are prescribed.

**(2)** The director may, by signed order, require every foster parent to do all such acts and to observe and carry out all such requirements and directions in relation to a child in care in his or her charge as are specified in such order.

**(3)** Every foster parent shall be responsible not only for his or her own acts or defaults in relation to a child in care in the foster parent's charge or in relation to the home in question but also for any act or default in relation to such child or home of any member of the foster parent's family or of any person employed by the foster parent in or in connection with the home.

**(4)** It is immaterial for the purpose of establishing liability of a foster parent for an offence against this Act that, in respect of any such act or default, such foster parent—

- (a) did not know of such act or default; or

- (b) had instructed the person who has done such act or made such default not to do such act or not to make such default.

### **Payment of maintenance to foster parents**

**108.** Subject to appropriation by Parliament of money for the purpose, the director may pay to a foster parent in whose charge a child in care is, for the care and maintenance of such child, such sum as is prescribed.

### **Home of foster parents need not be registered**

**109.** It shall not be necessary for foster parents who have in their charge a child in care to register under part 8, division 2 either themselves or the premises used by them as their home.

## **PART 11—EMPLOYMENT OF CHILDREN**

### **Employment of children in care**

**110.(1)** The director may arrange the employment or apprenticeship of any child in care and may place such child in employment or apprenticeship in accordance with this Act.

**(1A)** In exercising the power conferred upon the director by subsection (1), the director shall—

- (a) ensure, so far as the director is able, that the child concerned is placed in employment or apprenticeship best suited to the child's capabilities;
- (b) ensure that the employer or master of the child concerned, subject to this Act, pays to or to the use of such child, at the least, such wage as is required by any Act or law, industrial award or industrial agreement applicable in relation to such child and abides by all other requirements of any such Act, law, award or agreement;
- (c) if there be no Act, law, industrial award or industrial agreement



applicable in the circumstances—use his or her best endeavours to secure for the child concerned the best wage and conditions of employment the director can arrange.

(2) An agreement for the employment and an indenture of apprenticeship of a child in care shall be exempt from the provisions of the *Stamp Act 1894*.

(3) The fact that prior to the person's completion of a period of employment or apprenticeship a person ceases to be a child in care shall not affect the validity and effect of any agreement or indenture, entered into or any act done in relation to the arrangement of such employment or apprenticeship while such person was a child in care.

(4) When prior to the child's completion of a period of employment or apprenticeship the guardianship of a child in care passes from the director to any person in accordance with this Act the person who, from time to time, is guardian of such child shall be deemed to be the guardian who is a party to any agreement or indenture entered into by the director with respect to such employment or apprenticeship as guardian of such child in care and to be bound by the covenants and agreements therein made on the part of the director who shall thereupon be discharged from any obligation thereunder in respect of a breach of such covenants or agreements occurring after the date such guardianship passes from the director.

(5) If such guardianship becomes vested in more than 1 person such persons shall be bound, pursuant to this section, jointly and severally.

### **Payment of wage of child in care**

**111.(1)** Except as is otherwise prescribed, or required by any Act or law, a notice issued pursuant to this section or an agreement relating to the employment or apprenticeship of the child in care concerned, the employer or master of a child in care shall pay to such child all wages earned by the child in the child's employment or apprenticeship.

(2) The director or an officer of the department authorised by the director may, by notice in writing to a child in care, require such child to pay the whole or any part of a wage paid to the child to the director.

(2A) The director shall deposit all money received by the director pursuant to such a requisition to a savings account at a financial institution

on trust for such child.

(3) If a child in care to whom a notice has been given pursuant to subsection (2) fails to obey the requisition therein contained the director or officer of the department authorised by the director may, by notice in writing to the employer or master of such child, require such employer or master to pay to the director the wage, or part thereof, which, but for such requisition, would be payable to such child.

(4) The employer or master to whom a notice is given pursuant to subsection (3) shall comply with the requisition therein contained on and from the payday next following the receipt by the employer of such notice until the director or an officer of the department authorised by the director otherwise directs or the child concerned ceases to be a child in care whichever first occurs.

### **Director's power to deal with and dispose of property of child in care**

**112.(1)** The director may, from time to time, apply property held or deposited by the director for or on behalf of a child in care and interest accrued thereon, or any part thereof, for or towards any purpose which, in the director's opinion, is for the benefit of such child in care.

(1A) The director may, from time to time, sell any such property for the best price the director can obtain either by public auction or private treaty and shall deposit the net proceeds of such a sale, or so much thereof as is not immediately required for a purpose in subsection (1) mentioned, to a savings account at a financial institution on trust for the child in care concerned.

(1B) The director may exercise the powers conferred on the director by subsection (1A) notwithstanding that the owner of such property has ceased to be a child in care.

(2) When a child in care—

- (a) attains the age of 18 years; or
- (b) ceases to be in care;

whichever is the later to occur, the director shall pay or deliver to such person all property then held or deposited by the director for or on behalf of such person and interest accrued thereon unless the Minister directs

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pursuant to subsection (4).

(4) If before the director pays or delivers to a person who is or was a child in care property held or deposited by the director for the person or on the person's behalf—

- (a) such person becomes a patient within the *Mental Health Act 1974*, or otherwise during the person's lifetime, by operation of law and without appointment or declaration in that behalf on the person's part the person's property other than that so held or deposited by the director becomes held in trust or managed for the person; or
- (b) such person dies;

the director shall—

- (c) in any case referred to in paragraph (a)—pay or deliver such property and interest accrued thereon to the person who in law is entitled to hold such property for such person and thereupon the director shall be absolved from the management of such property and from any liability for subsequent misapplication or non-application thereof;
- (d) in the case referred to in paragraph (b)—sell for the best price the director can obtain either by public auction or private treaty so much of such property as, in the director's opinion, is saleable (except such articles of a personal nature as the Minister directs, which articles shall be disposed of as the Minister in the particular case directs) and pay the net proceeds of such a sale and all other money the director is then holding or has on deposit for such person into the consolidated fund.

(4A) Upon the recommendation of the Minister the Governor in Council may approve that the whole or any part of such money paid into the consolidated fund be paid to such person or persons being a parent, relative, kinsfolk or beneficiary of the deceased person concerned or any person who would upon intestacy be entitled to the deceased person's estate or any part thereof and in such proportions as the Governor in Council directs or to the director for the benefit of children in care generally and the Treasurer shall cause payment to be made accordingly.

(4B) Neither the estate of such deceased person nor any person claiming

to be entitled to such estate or any part thereof as a beneficiary or upon intestacy shall be entitled to any part of property held or deposited by the director for or on behalf of such deceased person or to any part of money paid into the consolidated fund pursuant to subsection (4) except as prescribed by subsection (4A).

(5) If the director does not know of the whereabouts of a person for whom the director is holding or has on deposit property pursuant to this section when the director is required by this section to pay or deliver such property to such person the director shall continue to retain such property and if, by the expiration of 1 year, no person has established his or her entitlement to such property to the satisfaction of the director the director shall sell for the best price the director can obtain either by public auction or private treaty so much thereof as, in the director's opinion, is saleable and shall pay the net proceeds of such a sale and all other money the director is then retaining for such person and interest accrued thereon to the credit of the trust fund established pursuant to the *Audit Act 1874*, and shall dispose of all other such property as the director thinks fit.

(6) In this section—

“**net proceeds of such a sale**” means the proceeds of a sale of property in question less the expenses incurred by the director in arranging and effecting such sale.

### **Authorisation of street trading by child**

**113.** Street trading by a child is authorised if—

- (a) the child is a male person who has attained the age of 12 years; and
- (b) the street trading by the child is carried on between the hours of 6 a.m. and 10 p.m. and at no other time; and
- (c) in the case of the child concerned being of the age of compulsory attendance within the meaning of the *Education (General Provisions) Act 1989*—the street trading—
  - (i) is not carried on by the child at any time when the child's attendance at school is required by that Act or, as the case may be, at any time when the school that the child attends is open for the child's attendance; and

- (ii) does not involve the child being absent from school at any time referred to in subparagraph (i).

### **Employment of child in unauthorised street trading prohibited**

**114.** A person shall not use a child in street trading unless the street trading by the child is authorised by section 113.

### **Offence to employ children in certain occupations**

**115.(1)** Any person who counsels or procures or, having the custody of the child concerned, allows a child—

- (a) to be in any place for the purpose of begging or receiving alms or inducing the giving of alms whether under the guise or pretence of singing, playing, performing, selling or otherwise; or
- (b) who is under the school leaving age as provided for from time to time by law to be employed or engaged—
  - (i) in any work in or about racing stables;
  - (ii) in connection with the training of any quadruped for racing;
  - (iii) as a jockey in any horse or pony race; or
- (c) to engage in any dangerous or indecent performance; or
- (d) who is not the holder of a permit issued for the purpose pursuant to section 116 to be employed or used—
  - (i) as a performing artist in any place used for a broadcast or television performance or for the photographing of scenes to be depicted in a cinematographic film;
  - (ii) as a model for any advertising purpose or in any display;
  - (iii) in any place for public entertainment;
  - (iv) in any place set apart for spectators at any sporting event or in or near any way of access to or egress from any such place;

commits an offence against this Act.

- (2)** It is a defence to a charge of an offence against subsection (1)(b)(ii)

that the person, club or association under whose management the racing for which the quadruped concerned was being trained would be conducted did not permit betting on such racing and that the defendant believed on reasonable grounds that betting on such racing would not occur.

**(3)** It is a defence to a charge of an offence against subsection (1)(b)(iii) that the person, club or association under whose management the race in which the child concerned was employed or engaged as a jockey was conducted did not permit betting on such race and that the defendant believed on reasonable grounds that betting on such race would not occur.

**(4)** It is a defence to a charge of an offence against subsection (1)(d) that the charge relates to an occasion of entertainment the proceeds of which were, at the time of the occurrence thereof, to be applied or substantially applied to any church, school, charitable or patriotic purpose and have been so applied.

### **Director may issue permits**

**116.(1)** Subject to this section, the director may, upon application made by or on behalf of a child, issue a permit to any child authorising such child to be employed or used in any of the places or premises specified in section 115(1)(d).

**(2)** When the director issues a permit pursuant to subsection (1) the director shall issue the same subject to such conditions as are prescribed in relation to the issue of such permit and subject to such conditions as the director specifies in a particular case.

**(2A)** Without limiting the conditions which may be prescribed or so specified such conditions may include—

- (a) the purpose for which such permit is issued;
- (b) the period for which such permit is to continue in force;
- (c) the hours within which the holder of such permit may be employed or used.

**(2B)** The director shall set forth in each such permit the conditions applicable to such permit.

**(3)** The director shall not issue a permit pursuant to subsection (1)—

- (a) unless the director is satisfied that the child concerned is physically fit to be employed or used for the purpose proposed in the application for such permit and that the physical and spiritual welfare and education of such child will not be prejudiced by such employment or use;
- (b) which permit authorises a child to be employed or used between the hours of 11 p.m. and 6 a.m..

(4) The director may at any time cancel a permit issued pursuant to subsection (1) and may, from time to time, vary the conditions applicable to such a permit.

(4A) The director shall cause written notice of any such cancellation or variation to be given to the holder of the permit in question or to such holder's guardian.

(4B) The holder of a permit which has been cancelled by the director shall, upon notice from the director of such cancellation being given to the holder or the holder's guardian, surrender such permit to the director.

(5) A child to whom a permit under this section is, for the time being, issued shall—

- (a) while the child is employed or used in any place in relation to which the child should, pursuant to this part, hold such a permit, carry such permit upon his or her person;
- (b) upon demand of the director, an officer of the department or a police officer, produce such permit to the person demanding it.

### **Holder of a permit to be employed in accordance therewith**

**117.** Any person who counsels or procures or, having custody of the child concerned, allows a child who is the holder of a permit issued under section 116 to be employed or used otherwise than in accordance with such permit commits an offence against this Act.

### **Power of entry and search**

**118.(1)** The director or an officer of the department authorised by the director or a police officer may at all reasonable hours of the day or night enter any place referred to in section 115 in which a child is employed or

being used or in which the director or such officer or police officer reasonably suspects that a child is employed or being used and may make all such investigations and enquiries in relation to such child as the director thinks desirable.

(1A) The director or such officer of the department may be accompanied by a police officer and a legally qualified medical practitioner and such police officer may be accompanied by a legally qualified medical practitioner.

(2) A person who—

- (a) fails to answer truthfully to the best of the person's knowledge and belief any question asked of the person by the director or an officer of the department authorised by the director or a police officer in the course of an investigation or enquiry being made pursuant to subsection (1); or
- (b) wilfully obstructs the director or such officer or police officer in making an entry, investigation or enquiry pursuant to subsection (1);

commits an offence against this Act.

## **PART 12—MAINTENANCE BY RELATIVES OF CHILDREN IN NEED OF ASSISTANCE AND CHILDREN IN CARE**

### **Definition of “relative” and “child”**

119.(1) In this part—

“**child**” means a person in respect of whom the director is giving assistance pursuant to part 5 and a child in care.

“**relative**” means a person bearing to the child concerned 1 of the relationships referred to in section 120.

### **Application of this part**

(2) The provisions of this part are in addition to and not in substitution



for any other provision of law providing for the securing of maintenance of any person.

### **Priority in liability of relatives**

**120.(1)** The undermentioned relatives of a child shall be liable to pay or contribute to the maintenance of such child according to their respective abilities and in the following order of priority—

- (a) father;
- (b) mother;
- (c) step-parent.

**(2)** However, if both the father and mother of a child are living and are able to contribute towards such maintenance a step-parent of such child shall not be liable under the provisions of this section.

### **Maintenance order**

**121.(1)** Upon complaint that any person is a relative of a child and is able to pay or contribute to the maintenance of such child any justice may issue a summons directed to such person and requiring the person to appear before a Magistrates Court at a time and place to be stated in the summons.

**(2)** In addition to the powers and jurisdiction exercisable by a Magistrates Court under the *Justices Act 1886*, the court by which the matter of such complaint is heard or is to be heard may from time to time cause a summons to be issued and directed to any person alleged to be a relative of the child concerned requiring the person to appear before the court at a time and place to be stated in the summons.

**(3)** If the court is satisfied that the person summoned or, where there are 2 or more persons summoned, any 1 or more of such persons, is a relative of the child concerned and is able to pay or contribute to the past or future maintenance of such child the court may order the person or persons in respect of whom it is so satisfied to pay to the director—

- (a) such sum for the past maintenance of the child as to the court seems sufficient, either by way of a lump sum payment or instalments as the court directs; and

- (b) future maintenance at such rate per week as to the court seems sufficient and at such times and in such manner as the court directs.

(4) When a court proposes to make a maintenance order under this section against 2 or more relatives of a child it shall make a separate order against each of them and shall fix the amounts or proportions payable by each such relative.

(5) A court shall not make a maintenance order for the payment in advance of future maintenance otherwise than by periodical instalments not exceeding 4 weeks in advance unless with the consent of the Minister first had and obtained.

(6) Every maintenance order shall be served upon the relative or relatives against whom it is directed in such manner as is prescribed or as the court which makes such order in any case directs.

(6A) However, every such order shall operate from its pronouncement notwithstanding that a formal order has not been drawn up, signed or served.

(7) A complaint made pursuant to this section may be made—

- (a) in relation to the maintenance of any number of children provided such children, where there are 2 or more, have at least 1 common relative;
- (b) in respect of any number of persons alleged to be relatives of the child or children concerned.

(8) When, pursuant to this section, a court makes a maintenance order in relation to the maintenance of 2 or more children it shall direct separately the rates per week of the respective payments thereunder for the maintenance of each child concerned.

### **Powers of court in proceeding concerning children of parents not married to each other**

**122.** Upon the hearing of a complaint made pursuant to this Act in relation to the maintenance of a child whose parents were not married to each other at the time of its conception and have not since married each other—

- (a) the court shall not be satisfied that a particular male person is the father of the child on the uncorroborated evidence of the mother;
- (b) the court shall not make a maintenance order against any person alleged to be the father of the child if it is satisfied that at about the time the child was conceived the mother was a common prostitute or had had sexual intercourse with a man other than such person.

### **Undertaking to pay maintenance**

**123.(1)** Any person, whether a relative of the person to whose maintenance the undertaking relates or not, may undertake in writing to pay or contribute to the maintenance of the person specified therein while the person is a child.

**(1A)** Every such undertaking shall be signed by the person who gives the same.

**(1B)** Such an undertaking may be accepted—

- (a) if a complaint has been made in relation to the maintenance the subject of such undertaking—by the Magistrates Court in which such complaint is filed; or
- (b) if such a complaint has not been made—by the director or an officer of the department;

and upon acceptance such undertaking shall in relation to the person giving such undertaking be deemed to be a maintenance order made by a Magistrates Court pursuant to this part against the person giving such undertaking.

**(1C)** The acceptance of such an undertaking shall be evidenced by an endorsement made on such undertaking which endorsement shall be signed—

- (a) in the case of an acceptance by a Magistrates Court—by the justice who constitutes or the justices who constitute such court;
- (b) in any other case—by the director or, as the case may be, the officer of the department who has accepted such undertaking.

**(2)** In any proceeding under this part against any person for failure to

comply with an undertaking given pursuant to subsection (1) or for securing the person's compliance with such an undertaking a document purporting to be such an undertaking given by a person of the same name as the person against whom such proceeding is taken and claimed, either in the complaint by which such proceeding is commenced or in evidence adduced in relation to such complaint, to be the undertaking on which the proceeding is founded shall be evidence and, in the absence of evidence in rebuttal thereof, conclusive evidence—

- (a) of the particulars stated in such document; and
- (b) that the signature appearing thereon as the signature of the person who gave such undertaking was affixed thereto by the person against whom such proceeding is taken.

### **Enforcement of liability to pay maintenance**

**124.(3)** A maintenance order made pursuant to this part as varied for the time being and an order for the payment of costs in a proceeding in which the maintenance order was made may be enforced under the *Maintenance Act 1965* as if it were an order made under part 2 of that Act.

**(4)** For the purposes of the enforcement of a maintenance order which consists of an undertaking deemed, pursuant to any provision of this Act, to be a maintenance order made by a Magistrates Court pursuant to this part, the undertaking—

- (a) if accepted as prescribed by section 123(1B)(a)—shall be deemed to be an order made by the court which accepted it;
- (b) if accepted as prescribed by section 123(1B)(b)—shall, upon its registration (which is hereby authorised) in the Magistrates Court for the place where payments thereunder are required to be made, be deemed to be an order made by that court.

### **Variation of maintenance order**

**125.(1)** Upon complaint of any person liable under a maintenance order made pursuant to this part or of the director or of an officer of the department authorised by the director in that behalf a justice may issue a summons directed—

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- (a) in the case of a complaint of a person liable under such an order—to the director or an officer of the department;
- (b) in any other case—to the person or persons liable under the order the subject of the complaint;

requiring the person or persons to whom it is directed to appear before a Magistrates Court at a time to be stated in such summons and at the place where payments under the maintenance order are required to be made to show cause why such order should not be discharged, suspended, varied or, as the case may require, why another order should not be made in substitution therefor.

(2) Upon the hearing of a complaint made pursuant to subsection (1) a Magistrates Court may exercise all or any of the following powers—

- (a) cause a summons to be issued to any person who appears to the court to have an interest in the matter of the complaint requiring the person to appear before the court at a time and place to be stated in the summons;
- (b) inquire into the ability of the complainant, being a person liable under such an order, and of any other person summoned to appear before the court to pay or contribute to the maintenance of the child concerned;
- (c) inquire into the relationships existing between the persons before the court or summoned to appear before the court and the child concerned;
- (d) discharge or suspend for a specified time any order previously made under this part under which any of the persons before the court or summoned to appear before the court is liable to pay or contribute to the maintenance of the child concerned;
- (e) increase or reduce the periodical sum ordered to be paid or contributed by any or all of such persons for or towards the maintenance of the child concerned;
- (f) make a further order or orders against all or any of such persons in relation to the maintenance of the child concerned;
- (g) in the case of an undertaking accepted pursuant to section 123—order that such undertaking cease to operate;

- (h) make an order to pay maintenance in lieu of any such undertaking.

(3) When a Magistrates Court has ordered that an undertaking accepted pursuant to section 123 shall cease to operate the person theretofore liable under such undertaking shall not be liable thereunder for any maintenance of the child concerned accruing after the date the undertaking ceases to operate in accordance with such order.

### **Hearing of complaints in camera**

**126.** Notwithstanding the provisions of any other Act or of any rule of law or practice a Magistrates Court shall, upon the hearing of a complaint made pursuant to this part, exclude from the court all persons except—

- (a) officers of the court;
- (b) parties to the complaint and their respective counsel or solicitors;
- (c) persons summoned pursuant to this part to appear upon the hearing of such complaint and their respective counsel or solicitors;
- (d) the director or, in the director's stead, an officer of the department;
- (e) a child in relation to whose maintenance such complaint is made if such child is present.

### **Husband or wife compellable witnesses**

**127.(1)** In any proceeding commenced pursuant to this part a husband and a wife shall be competent and compellable witnesses both on his or her own behalf and for or against the other of them, but an admission or statement then made by either of them shall not be used on any other occasion except in proceedings for perjury alleged to have been committed in the course of giving evidence in such proceeding.

### **Defaulter under maintenance order and defaulter's employer compellable to adduce evidence**

(2) A court before which a person is charged with failure to comply with a maintenance order made pursuant to this part may—

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- (a) order the defendant to attend before the court at a time specified in the order and to be examined concerning the defendant's means and ability to comply with the maintenance order;
- (b) order the defendant to state to the court or to give to the court within a specified period a statement signed by the defendant specifying—
  - (i) the name and address of his or her employer or, if the defendant has more than 1 employer, of each of the defendant's employers;
  - (ii) particulars as to the defendant's earnings; and
  - (iii) such particulars as are necessary to enable the defendant to be identified by each of the defendant's employers; and
- (c) order any person who appears to the court to be indebted to the defendant or to be an employer of the defendant to give to the court, within a time fixed by the court, a statement signed by the person or on the person's behalf containing such particulars as are specified in the order of the person's indebtedness to the defendant or, as the case may be, of all earnings of the defendant payable by that person during a period specified by the court.

**(2A)** A document purporting to be a statement referred to in subsection (2) shall be received in the proceeding wherein the statement was ordered to be given as evidence of its contents and shall be deemed to be such a statement until the contrary is proved.

**(3)** A person who—

- (a) fails to comply with an order made against the person pursuant to subsection (2); or
- (b) in any statement made or given to a court under an order made pursuant to subsection (2) makes a statement which to the person's knowledge is false or misleading in a material particular or which the person does not believe on reasonable grounds to be true;

commits an offence against this Act.

**Procedure in proceedings to enforce maintenance orders**

**128.** Save where it is otherwise expressly provided by this part, every proceeding instituted pursuant to this part and every step therein shall be instituted, conducted and taken—

- (a) subject to and in accordance with the *Maintenance Act 1965*, so far as the provisions of that Act extend and apply, where the proceeding is to enforce under that Act a maintenance order made pursuant to this part;
- (b) subject to and in accordance with the *Justices Act 1886*, in any other case or, in a proceeding referred to in paragraph (a), in so far as the provisions of the *Maintenance Act 1965* do not extend and apply.

**Complaint and averments**

**129.(1)** Except where it is otherwise provided by this part, every complaint made pursuant to this part shall be made by the director or by an officer of the department authorised by the director in that behalf.

**(2)** In any proceeding under this part it shall not be necessary to prove the authority of the complainant to make the complaint.

**(3)** An averment in a complaint made pursuant to this part that—

- (a) any person is a relative of the child concerned; or
- (b) any person is able to pay or contribute to the maintenance of the child concerned; or
- (c) any sum has been expended upon or is due for or in respect of maintenance of the child concerned;

shall, except in the case of paragraph (a) when it is averred in relation to a child whose parents were not married to each other at the time of its conception and have not since married each other that any person is the father of such child, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the fact averred.

**(4)** In subsection (3)—

**“complaint made pursuant to this part”** includes a complaint made in relation to an offence defined in this part.



## **PART 13—GENERAL PROVISIONS**

### **Parents to be informed of whereabouts of child in care**

**131.** The director shall cause a parent of a child in care to be informed of the whereabouts, from time to time, of such child in care unless the director is of opinion that the giving, of such information is not in the best interests of the child in care concerned.

### **Information about whereabouts of a child in care**

**131A.(1)** A parent of a child in care may ask the director for information about the child's whereabouts.

**(2)** The director must give the parent the information unless, in the director's opinion, it is not in the best interests of the child to provide the information.

### **Visits to children in care**

**132.(1)** Subject to this section, a parent of a child in care may visit such child in care at such times as are prescribed and, in default of such prescription, at all reasonable hours of day.

**(2)** The director may, by order in writing, direct that in a particular case or particular cases a parent or the parents of a child in care—

- (a)** shall not have access to such child in care; or
- (b)** shall be permitted such access only subject to the conditions and at the times specified by the director in such order.

**(2A)** When the director has issued an order pursuant to subsection (2) every person who has charge of the child in care concerned shall, for so long as such order continues in force, deny to the parent or, as the case may require, parents of such child in care access to such child in care except, in the case of such an order issued pursuant to subsection (2)(b), in accordance with the terms of such order.

**(3)** A person who has charge of a child in care shall record in a book to be kept for the purpose every visit made to such child in care by a parent of such child in care.

(3A) Such a record or a writing purporting to be an extract from such a record shall, upon its production in any proceeding, be evidence, and, in the absence of evidence to the contrary, conclusive evidence, of the facts thereby recorded so far as such record relates to the subject matter of that proceeding.

(4) A person other than a parent of a child in care shall not visit or communicate with a child in care except with the approval of the director or of an officer of the department authorised by the director in that behalf first had and obtained and in accordance with such approval.

### **Offence to remove child in care without authority**

**133.** A person who—

- (a) without the authority in writing of the director removes any child in care from any place or from the charge or employment of any person wherein such child in care has been placed in accordance with this Act before the expiration of the period for which such child in care has been so placed; or
- (b) aids, counsels or procures any child in care to escape or abscond from any place or from the charge or employment of any person wherein such child in care has been placed in accordance with this Act or to break the child's indentures of apprenticeship; or
- (c) knowing a child in care to have so escaped or absconded as aforesaid and that the child is a child in care, harbours or conceals such child in care; or
- (d) being an officer of the department or a person employed in an institution wherein a child in care has been placed in accordance with this Act—permits such child in care to escape or by the person's default enables such child in care to escape;

commits an offence against this Act unless in the case of a removal referred to in paragraph (a) the person acts under the authority of this Act.

### **Child in care not to leave State**

**134.(1)** The director may approve, subject to such conditions as the director thinks fit, that a child in care leave the State either temporarily or

permanently.

**(1A)** The director may from time to time vary such conditions and, if the director does so, shall inform the child in care of every such variation.

**(2)** A child in care shall not leave the State temporarily or permanently except with the approval of the director first had and obtained.

**(2A)** A child in care who leaves the State with the approval of the director shall at all times during the child's absence comply with the conditions (if any) to which such approval is for the time being subject.

**(3)** A person shall not take a child in care out of the State temporarily or permanently except with the approval of the director first had and obtained.

**(3A)** A person who, with the approval of the director, takes a child in care out of the State shall at all times during the absence of such child in care from the State cause such child in care to comply with the conditions (if any) to which such approval is for the time being subject.

**(4)** When a child who is under the care, protection, or control of a Minister, statutory authority, or other person, or who is a State child or ward, under the legislation of any other State or of a Territory has entered or is about to enter this State the director may, on request of the Minister, statutory authority or person concerned, by signed writing, declare the child to be admitted to the director's care and protection.

**(4A)** For the purpose of making such a declaration the director need not be satisfied of the matters referred to in section 47(2).

**(5)** Such a declaration shall take effect on and from the date of its making in respect of a child then in this State or on and from the date of the child's entry into this State when it is made in respect of a child then about to enter this State and the same consequences shall ensue as if it were a like declaration made under part 6 the provisions whereof shall apply subject to this section.

**(5A)** Upon the declaration taking effect the guardianship of the child shall pass to the director and shall vest in the director for so long as the declaration continues in force.

**(6)** Such a declaration shall not continue in force beyond the time when the child would have ceased to be under the care, protection, or control of the Minister, statutory authority, or other person, or to be a State child had the child remained in the other State or in the Territory concerned.

(7) The director may enter into and perform financial and other arrangements with a Minister, statutory authority, or other person in another State or in a Territory in respect of the care, protection, or control of a child—

- (a) admitted or to be admitted to the care and protection of the director by declaration under this section; or
- (b) being a child in care—admitted or to be admitted to the care, protection, or control of such Minister, statutory authority, or other person.

(8) Subject to such arrangements, the director may at any time cause a child in care by declaration under this section to be removed from this State and returned to the care, protection, or control of the Minister, statutory authority, or other person who theretofore had charge of the child in the other State or Territory concerned whereupon the declaration shall cease to be in force.

### **Absconding children**

**135.(1)** The director or any officer of the department or any police officer may without further authority than this Act, arrest or cause to be arrested and take or cause to be taken to such institution or place as the director orders—

- (a) any child in care who escapes or absconds from the charge of any person in whose charge the child is, for the time being, placed;
- (b) any person who, being a person over and in relation to whom the director is exercising supervision pursuant to this Act, absconds from the custody of a person in whose custody the person is;
- (c) any child in care who, when ordered so to do by the director, fails to surrender himself or herself to the custody of the director at such place as the director orders.

(2) A person referred to in subsection (1)(a), (b) or (c) who does or, as the case may be, fails to do any of the acts specified in those paragraphs commits an offence against this Act.

**Power to take certain persons into custody**

**136.** When so required by the director, any officer of the department or any police officer, with such assistants as are reasonably required for the purpose, may without other authority than this Act—

- (a) take into custody on behalf of the director any child in care and (save where this Act otherwise prescribes) any other child who the director is empowered by this Act to take into the director's custody;
- (b) bring such child in care or other child to such hospital, institution or other place as the director directs;

and for such purposes may—

- (c) enter upon and into any premises and any part thereof where such child in care or other child is or is supposed or suspected to be; and
- (d) use such force as is reasonably necessary to overcome any resistance to the exercise of any power by this section conferred.

**Order on parent or guardian to attend**

**137.(1)** When a judge or justice considers it desirable and practicable that a parent or guardian of a child concerned in any proceeding before the judge or justice should be present before him or her the judge or justice may adjourn the proceeding to a certain time and place and may order that such parent or guardian appear before the judge or justice at such time and place and may, from time to time, order such parent or guardian to appear before the judge or justice at such other times and places to which the proceeding may, from time to time, be adjourned and may order that such parent or guardian be paid by the director such expenses as would be paid to the parent or guardian if the parent or guardian were a witness in such proceeding.

**(1A)** A judge or justice may so order notwithstanding that any other parent or guardian of the child concerned has appeared before the judge or justice.

**(2)** When an order made pursuant to subsection (1) has been made in the absence of the parent or guardian against whom it is directed a copy of such

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order or, in the case of such an order made by a justice sitting as the Childrens Court or a Magistrates Court or sitting to take an examination of witnesses in relation to an indictable offence, a minute of such order signed by the justice who made the same, shall be served on such parent or guardian and may be so served by—

- (a) delivering the same personally to the person against whom such order is directed; or
- (b) leaving the same with some person for the parent or guardian at the address appearing in the records of the court or tribunal wherein such order was made as his or her place of residence or, if there be no such address, at his or her usual place of residence; or
- (c) serving the same in any manner allowed by the rules of the court wherein such order was made.

**(2A)** A person who serves a copy or minute of such an order may, within 3 days after such service, attend before any justice having jurisdiction in the State or part of the State or the Commonwealth in which such copy or minute was served and depose, on oath and in writing, to the service thereof.

**(2B)** Upon its production in any proceeding such deposition shall be sufficient evidence of the service of such copy or minute upon the parent or guardian against whom such order was directed.

**(3)** If a parent or guardian in respect of whom an order has been made pursuant to subsection (1) fails to comply with such order the judge or justice who made such order or a judge or justice exercising a like jurisdiction to the jurisdiction of the judge or justice who made such order may, if the judge or justice is satisfied that a copy or, as the case may be, minute of such order was duly served upon the parent or guardian against whom such order was directed or that the making and substance of such order was otherwise known to such parent or guardian, issue a warrant for the apprehension of such parent or guardian and his or her production before the court or justice concerned.

**(3A)** A warrant issued under subsection (3) shall be executed according to its tenor by the person to whom it is directed or by any police officer, who may use therein such force as is reasonably necessary.

(4) This section does not apply to a proceeding in relation to a charge of an offence against a child.

### **Restrictions on reporting proceeding concerning child**

**138.(1)** This section does not apply to a proceeding in relation to a charge of an offence against a child.

(2) Where, in a proceeding before any court in relation to an offence, or before a justice taking an examination of witnesses in relation to an indictable offence, a child is concerned as a witness or as the person in respect of whom the offence is alleged to have been committed, then—

- (a) in the case of an offence of a sexual nature—a report of the proceeding or any part of the proceeding shall not reveal any prescribed matter relating to the child unless the court or justice expressly permits the inclusion of that matter in the report; or
- (b) in any other case—the court or justice may order that no report of the proceeding or any part of the proceeding reveal any prescribed matter relating to the child other than any matter the court or justice expressly permits to be included in the report.

(3) A report of a proceeding (or any part of a proceeding) referred to in subsection (2) shall not, without the express permission of the court or justice, reveal the name of any officer of the department.

(4) A person who makes or publishes a report—

- (a) that contravenes subsection (2) or (3); or
- (b) that does not comply in all respects with an order made by the court under subsection (2) permitting any prescribed matter to be revealed;

commits an offence against this Act.

Maximum penalty—

- (a) in the case of a body corporate—40 penalty units;
- (b) in the case of an individual—10 penalty units or 6 months imprisonment.

(5) Subsections (2) and (3) do not apply to—

- (a) a report made for the purposes of a proceeding before a court, or before a justice taking an examination of witnesses in relation to an indictable offence; or
- (b) a report made for the department or the Department of Justice or the Police Department.

(6) In this section—

**“prescribed matter”** means—

- (a) the name, address, school, place of employment or any other particular likely to lead to the identification of the person concerned; or
- (b) any photograph, picture, videotape or other visual representation of the person concerned or of any other person that is likely to lead to the identification of the person concerned.

### **Power to exclude child in certain circumstances**

**138A.(1)** When in any proceeding before any court or justice brought in respect of a child it appears to the court or justice that information is about to be given knowledge of which by the child—

- (a) would not be in the best interest of the child; or
- (b) would be likely to injuriously affect the regard in which the child should hold his or her parent or guardian;

such court or justice may cause the child to be excluded from the room in which the court or justice is then sitting until the information has been given.

(2) However, a court or justice shall not exercise the power conferred by this section so as to exclude the child during the hearing of evidence relating to the commission by the child of an offence which is the subject of the proceeding before the court or justice.

### **Proof of court orders**

**140.** Where in any proceeding it becomes necessary to prove that any court has made in relation to a person concerned in such proceeding an order made pursuant to this Act, a document purporting to be the original,



duplicate or certified copy of such order and, in the case of a certified copy, purporting to be so certified by the person ordinarily having custody of the original thereof, shall, upon its production and upon proof of the identity of the person in relation to whom such order was made with the person concerned in such proceeding, be sufficient evidence of the making of such order.

### **Vacating orders in default of notice to parent or guardian**

**141.** If a parent or guardian of a child in respect of whom a court has made an order pursuant to this Act satisfies the court which made such order that—

- (a) the parent or guardian is a person to whom notice of the proceeding in which such order was made was required by this Act to be given; and
- (b) such notice was not given to the parent or guardian a reasonable time before such order was made; and
- (c) such order was made in the parent's or guardian's absence;

such court may, in its discretion set aside such order and, if it does so, may, at any time thereafter, proceed to hear and determine afresh the matter in relation to which such order was made.

### **Powers of department's representative in relation to court proceedings**

**142.(1)** When a child is being tried or sentenced in respect of an offence or is being otherwise dealt with before any court or before any justice sitting to take an examination of witnesses in relation to an indictable offence the director, an officer of the department or other representative of the department shall be entitled to be present and, if present, may examine and cross-examine witnesses and may be heard with respect to the question of the conviction or acquittal of such child and the manner in which such child should be punished or otherwise dealt with by the court or justice.

**(2)** All cases under this Act heard on the complaint of the director or an officer of the department may be conducted by the director or an officer of the department.

(3) Until the contrary is proved, the authority of the director or an officer of the department to do any act or take any proceeding for the purposes of this Act shall be presumed.

### **Guardianship of director**

**143.(1)** For so long as the director is guardian of an infant the director shall be deemed to be guardian of the person and the estate of such infant.

(2) While a child who, pursuant to the provisions of this Act, has been remanded into the temporary custody of the director remains so remanded the director may do all such acts and give all such consents in relation to such child as the director might lawfully do and give if the director were the guardian of such child.

(3) It shall be lawful to submit an infant who is in the guardianship of the director or who, pursuant to this Act, is in the temporary custody of the director or of any other person (whether by way of remand or otherwise) to medical examinations and to therapeutic, palliative or preventive treatments (physical, psychiatric and psychological) if the consent of the director or, as the case may be, such person is first had and obtained.

### **Recoupment of expenses**

**143A.(1)** Where it appears to the director that a person who should care for a child in care is in such circumstances that the person may reasonably be expected to contribute to the care and maintenance of the child, and that it is just that the person should be called upon to so contribute, the director may recover from the person by proceedings in a court of competent jurisdiction, as for a debt due and owing by the person to the director and unpaid, the amount of expenses incurred by or on behalf of the director on account of the care and maintenance of the child in care as at the date the order of the court is pronounced, or any part of that amount.

(1A) In a proceeding for the recovery of money under subsection (1), a certificate purporting to be by the director that it appears to the director that the matters specified in subsection (1) as a condition precedent to the director's right of recovery are established shall be conclusive evidence of the existence of the condition precedent.

(2) For the purposes of subsection (1) a person who should care for a

child in care is the mother or father of the child in care, or a step-parent of the child in care, or, not being the father or mother of the child in care, is a person who is living or has lived in a connubial relationship with the mother or father of the child in care, but, in the lastmentioned 2 cases, only to the extent of expenses incurred while the person thereby made liable is or was the step-parent or, as the case may be, incurred during continuance of the relationship.

(3) Where pursuant to subsections (1) and (2) 2 or more persons are liable in respect of the same expenses incurred, those persons shall be jointly and severally so liable.

### **Director to give notice of reviewable decision**

**143B.(1)** Within 14 days after making a reviewable decision, the director must give written notice of the making of the decision and the reasons for it to the aggrieved person for the decision.

(2) If the director fails to make a decision about a relevant application within the prescribed period—

- (a) the failure is taken to be a decision by the director to refuse the application; and
- (b) the applicant is taken to have received notice of the refusal on the last day of the prescribed period.

(3) In this section—

**“prescribed period”** means the period prescribed under a regulation for this section.

**“relevant application”** means—

- (a) an application under section 104 for approval to act as a foster parent; or
- (b) a request under section 131A for information about the whereabouts of a child in care; or
- (c) an application under section 134 for approval for a child in care to leave the State.

**Appeal against reviewable decision**

**143C.** An aggrieved person for a reviewable decision may appeal to a tribunal against the decision.

**Secrecy provisions**

**144.(1)** The director and every other person appointed (whether before or after the commencement of this Act) to the department for the purposes of this Act or of any Act repealed by this Act shall take and subscribe and abide by the prescribed oath of fidelity and secrecy which may in any case be administered by any justice.

**(1A)** A person engaged in work for the purposes of this Act is authorised to communicate information, which has come to the person's knowledge in the person's official capacity under this Act and that in the person's opinion is or is likely to be material to detecting, preventing or dealing with cases of child abuse or neglect, to all or any of them, the chief executive (health), any officer of the Department of Health acting in aid of the chief executive (health) in connection with child abuse or neglect and such legally qualified medical practitioner, police officer, person approved by the director, or person acting with the approval of the chief executive (health) in connection with child abuse or neglect as appears to the person in this subsection firstmentioned to have a legitimate interest in possessing that information.

**(1AA)** A person, purporting in good faith to act under subsection (1A), who discloses information referred to therein to any person or persons referred to therein shall incur no liability at law by reason of such disclosure.

**(1B)** Save as is prescribed by subsection (1A), a person engaged in work for the purposes of this Act shall preserve and aid in preserving secrecy with respect to all matters that come to the person's knowledge in the person's official capacity under this Act and shall not communicate any such matter to any person except—

- (a) for the purpose of carrying this Act into effect; or
- (b) to a lawfully constituted court or tribunal.

**(2)** A person appointed for the purposes of this Act or a person assisting such an appointee in carrying this Act into effect who inserts or publishes in

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the records of the department or makes or gives any allegation, comment or opinion in respect of any matter touching or concerned with the history, family background or welfare of any child shall not thereby incur any liability if the person has acted in good faith and without malice and with reasonable care.

**(2A)** In any proceeding taken against any such person on account of such an insertion or publication the burden of proof that such person has acted otherwise than in good faith or with malice or without reasonable care shall lie upon the plaintiff.

**(3)** Save where the person is purporting in good faith to act under authority conferred by subsection (1A), a person shall not publish any information which—

- (a) is of a confidential nature; and
- (b) to the person's knowledge, is contained in the records of the department or which has been given to the person by an officer of the department or other person engaged in carrying this Act into effect or which has been given to the person for the purposes of the department.

Maximum penalty—100 penalty units or 1 year's imprisonment.

**(3A)** A court shall not convict a person of a contravention of subsection (3) if it is satisfied that—

- (a) the publication of such information was made for the purpose of carrying this Act into effect; or
- (b) the welfare of the child concerned in such information demanded such publication.

**(4)** The provisions of subsection (3) shall not apply to a publication of such information—

- (a) made pursuant to an order of the Supreme Court or a Circuit Court;
- (b) made in a proceeding before any court which involves the child concerned in such information; or
- (c) made, with the approval of the Minister, to any person with a view to the social or educational benefit of children in care generally.

(5) For the purposes of this section—

**“records of the department”** includes any report of an investigation or examination made in relation to any person upon an order of a court pursuant to this Act.

### **Examination under Act to be performed notwithstanding lack of consent**

**145.(1)** Where a court has ordered that a medical examination be made in relation to any person it shall be lawful to make such examination notwithstanding that such person or the person's parent or guardian has not consented thereto.

### **Proof of reports made for purposes of Act**

(2) A document appearing to be a report of an investigation or examination made in relation to any person upon the order of a court made pursuant to this Act, shall, upon its production before the court which ordered such investigation or examination, be admitted into evidence as such a report and as evidence of the matters contained therein.

(2A) Where the court which receives such a report or the person in relation to whom the investigation or examination the subject of such report was made requires it the person who made such investigation or examination shall be called as a witness to give evidence of his or her investigation or, as the case may be, examination and of his or her findings thereon and, should the case require it, the person who made such report shall be called as a witness to give evidence of his or her findings in relation to such investigation or examination.

(2B) For the purpose of taking such evidence the judge or magistrate constituting the court may cause to be excluded from the court the following persons—

- (a) any person who is not a party to the proceeding before such court;
- (b) any person (including the person in relation to whom the investigation or examination in question was made except where the person is not represented) who, in the opinion of such judge or magistrate, having regard to—
  - (i) the best interests of the person in relation to whom such

investigation or examination was made; and

- (ii) the preservation of proper relations between such lastmentioned person and any other person;

should not be present during the taking of such evidence.

(2C) The provisions of subsection (2B) shall not be construed to authorise a judge or magistrate to cause to be so excluded any bona fide representative of a party to the proceeding in question or a representative of the department.

### **Publication of reports in evidence**

(3) A report admitted into evidence pursuant to subsection (2) shall not be published in open court or in any other manner save as is prescribed by subsections (4) to (6).

(4) Where the person in relation to whom the investigation or examination was made is represented by counsel or solicitor before the court, the report shall be shown or, at the court's discretion, a copy thereof shall be given to that counsel or solicitor.

(5) Where such person is not represented by counsel or solicitor, neither the report nor a copy thereof shall be shown or given to the person or to his or her parent or guardian save where the person or his or her parent or guardian requests leave of the court to peruse the report in which case the court may, at its discretion, refuse the request, or show the report, or give a copy thereof to such of them, namely such person or his or her parent or guardian, as to the court seems just and in the best interests of such person.

(6) In every case a copy of the report shall be given to the director or to the representative of the department present in the court.

### **Property given for benefit of children in care**

147. All property given, devised or bequeathed to the director or the department for the benefit of children in care or any of them shall be held, invested, applied and dealt with in such manner not inconsistent with this Act or with the terms of any trust declared with respect to such property as the Minister considers to be in the best interests of children in care generally or, as the case may require, of the particular child or children in care intended to be benefited by such property.

**Offence to contravene Act**

**148.(1)** A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

Maximum penalty, if no other penalty prescribed—40 penalty units or 6 months imprisonment.

**(2)** A proceeding in respect of an offence against this Act or in respect of an application under this Act for an order of a court other than the Supreme Court, a Circuit Court or a District Court may, where a procedure is not otherwise provided for by this Act, be taken in a summary way under the *Justices Act 1886*.

**Applications may include several infants**

**149.** An application made pursuant to this Act to any court or to the director may be made in respect of any number of infants who have or had at least 1 parent in common or who, at the date of such application, are members of the one family.

**Assistance to officers of department**

**150.** An officer of the department in the exercise of a power or the performance of a duty or function under this Act may be accompanied by a police officer who may do all acts and things reasonably required to assist such officer in the exercise of the officer's power or the performance of the officer's duty or function.

**Appropriation**

**151.** Except where it is otherwise prescribed, all money received in respect of penalties or fees under this Act shall be paid into consolidated fund.

**Regulations**

**152.** The Governor in Council may from time to time make regulations not inconsistent with this Act providing for, regulating or prohibiting all matters which are necessary or desirable or convenient for carrying this Act



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into effect or for achieving or better achieving the objects and purposes of this Act and, without in any way limiting the generality of the foregoing powers, in respect of all or any of the following matters—

- (a) the duties, powers, functions and privileges of officers of the department and other persons engaged in the administration of this Act;
- (b) the standards in relation to the selection and approval of foster parents and foster homes, the duties and responsibilities of foster parents and the rates of payment to foster parents for the maintenance of children in their charge;
- (c) the registration of premises used or to be used for the care of children apart from their parents, relatives or guardians, the classification of such premises and the maximum number of children to be accommodated in such premises, the standards of such premises and the registration, duties and responsibilities of persons in charge of such premises;
- (d) the standards, duties and responsibilities of persons assisting in the placement of children other than children in care;
- (e) the conditions of employment or apprenticeship of children in care and the form and content of indentures of apprenticeship to be entered into by such children;
- (f) the management, control and supervision of admission centres, homes, assessment, remand and treatment centres training centres, hostels, attendance centres and other types of institutions established by the Governor in Council pursuant to this Act;
- (g) the standards, management, control and supervision of institutions, admission centres, child training centres, attendance centres and other facilities established or to be established otherwise than by the Governor in Council, the approval and licensing of any of the same and the duties and responsibilities of the persons in charge of any of the same towards the children in their care;
- (h) the custody, care, maintenance, health, education, employment, apprenticeship and placement of children in care;
- (i) the visiting and disciplining of children in care and other matters

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- related to the wellbeing of such children;
- (j) the management and control of the property of children in care;
  - (k) the medical, dental and nursing attention of children in care;
  - (l) the rates of payment and assistance to be granted to institutions licensed under part 4 for the care of children and the conditions on which the same shall be granted;
  - (m) the assistance to be given pursuant to part 5;
  - (n) the conditions to be observed by a person over and in relation to whom the director is to exercise supervision by order of a court, the Governor in Council or the Minister;
  - (o) the definition of circumstances, acts and omissions which, for the purposes of this Act, shall be taken to constitute ill-treatment of a child in a manner likely to cause the child unnecessary suffering or to injure the child's physical or mental health;
  - (p) the performing by children in television, broadcasting and public entertainment;
  - (q) the employment of and engaging by children in street-trading;
  - (r) the records required for or accumulated in the administration of this Act, secrecy concerning such records and the manner of dealing with such records;
  - (s) the form and content of agreements, appointments, authorities, reports and documents required by or entered into or prepared pursuant to this Act;
  - (t) the fees to be paid under this Act and the purposes for which such fees are to be paid;
  - (u) all matters required or permitted by this Act to be prescribed.

**Publication of orders in council and regulations**

**153.(1)** Every order in council or regulation made under this Act shall—

- (a) be published in the gazette;
- (b) upon such publication, be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;

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- (c) take effect from the date of such publication unless a later date is specified in such order in council or regulation for its commencement when, in such event, it shall take effect from that later date; and
- (d) be laid before Parliament within 14 sitting days after such publication if Parliament is in session and, if not, then within 14 sitting days after the commencement of the next session of Parliament.

(2) If Parliament passes a resolution of which notice has been given at any time within 14 sitting days after an order in council or regulation has been laid before it disallowing such order in council or regulation or any part thereof, that order in council or regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done or omitted to be done thereunder in the meantime or to the making of a further order in council or, as the case may be, regulation.

(3) In this section—

“**sitting days**” means days on which Parliament sits for the dispatch of business.

**SCHEDULE****REVIEWABLE DECISIONS AND AGGRIEVED PERSONS**

section 8, definitions “**aggrieved person**” and “**reviewable decision**”

<b>Reviewable decisions</b>	<b>Aggrieved person</b>
Revocation of approval in relation to licensed institution (s 39)	The institution's governing authority
Ordering a person to do or refrain from doing any act or thing pertaining to a matter or object specified in a protective supervision order (s 56(1)(b))	The child, the child's parents or guardian or another person having custody of the child
Decision to make use of facilities and services to further the best interests of a child in care (s 58)	The child or a parent or relative of the child
Imposition of conditions on the use of facilities and services (s 58(1A))	The child or a parent or relative of the child
Placing a child in care in the charge of a foster parent (s 103(1))	The child or the child's parents
Removal of a child in care from charge of foster parent (s 103(1A)(b))	The child or the child's parents or foster parents
Refusal to approve person to act as foster parent (s 104(1))	The applicant
Revocation of approval of person to act as foster parent (s 104(4))	The former foster parent
Placing of child in care (s 105(2))	The child or the child's parents or foster parents

## SCHEDULE (continued)

Refusal to give information to the parent of a child in care about the child's whereabouts (s 131A(2))	The parent
Issue of an order that a parent or parents of a child in care should not have access to the child (s 132(2)(a))	The child or the child's parents
Issue of an order about the access of a parent or parents of a child in care to the child subject to conditions (s 132(2)(b))	The child or the child's parents
Refusal to give approval for a person other than a parent of a child in care to visit or communicate with a child (s 132(4))	The child, the child's parents or the person refused approval
Refusal to give approval for a child in care to leave the State (s 134(1))	The child, the child's parents or another person having custody of the child
Imposition of conditions on an approval for a child in care to leave the State (s 134(1))	The child, the child's parents or another person having custody of the child
Variation of conditions on child in care leaving the State (s 134(1A))	The child, the child's parents or another person who has custody of the child
Refusal to declare a child from another State to be admitted to the director's care and protection (s 134(4))	The child, the child's parents or the applicant
Removal of a child in care under a declaration under section 134(4) (s 134(8))	The child, the child's parents or the person to whose charge the child will be returned

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## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 21 December 1998. Future amendments of the Children's Services Act 1965 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 44 of 1992	3 April 1996
1A	to Act No. 51 of 1996	4 March 1997
1B	to Act No. 38 of 1997	1 August 1997

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1
Changed names and titles	1
Corrected minor errors	1
Renumbered provisions	1
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## 6 List of legislation

### **Children's Services Act 1965 No. 42**

date of assent 23 November 1965

commenced 1 August 1966 (proc pubd gaz 2 July 1966 p 1231)

as amended by—

### **Children's Services Act Amendment Act 1970 No. 17**

date of assent 16 April 1970

commenced on date of assent

### **Children's Services Act Amendment Act 1971 No. 72**

date of assent 20 December 1971

commenced on date of assent

### **Children's Services Act Amendment Act 1973 No. 3**

date of assent 11 April 1973

commenced on date of assent

### **Age of Majority Act 1974 No. 57 s 8 sch**

date of assent 27 September 1974

commenced 1 March 1975 (proc pubd gaz 16 November 1974 p 1083)

**Evidence Act 1977 No. 47 s 3(5) sch 1 pt E**

date of assent 3 October 1977

commenced 1 January 1978 (see s 1(2))

**Maintenance Act and Another Act Amendment Act 1978 No. 26 pt 3**

date of assent 2 June 1978

commenced 17 July 1978 (proc pubd gaz 24 June 1978 p 978)

**Status of Children Act 1978 No. 30 s 14 sch**

date of assent 8 June 1978

commenced 1 January 1979 (see s 1(2))

**Children's Services Act Amendment Act 1979 No. 75**

date of assent 21 December 1979

commenced on date of assent

**Bail Act 1980 No. 35 s 4(1) sch 1**

date of assent 14 May 1980

commenced 1 July 1980 (proc pubd gaz 28 June 1980 p 1634)

**Bail Act Amendment Act 1982 No. 56 s 13**

date of assent 3 December 1982

commenced 18 April 1983 (proc pubd gaz 9 April 1983 p 1689)

**Family Services Act 1987 No. 32 s 69 sch (prev Family and Youth Services Act 1987) (as amd 1988 No. 47 s 3 sch 1 (as from 12 May 1988); 1994 No. 87 s 3 sch 3 pt 1 (as from 1 December 1994))**

date of assent 30 April 1987

amds 1(a), 2, 3(b), 4, 9, 10 and 16 commenced 9 June 1987 (proc pubd gaz 30 May 1987 p 846)

remaining amds never proclaimed into force and rep 1994 No. 87 s 3 sch 3 pt 1

**Acts Amendment and Construction Act 1988 No. 47 s 3 sch 1**

date of assent 12 May 1988

commenced on date of assent

**Corrective Services (Consequential Amendments) Act 1988 No. 88 s 3 sch 1 (as amd 1989 No. 103 s 3 sch (as from 25 October 1989))**

date of assent 1 December 1988

commenced 15 December 1988 (see s 2(2) and order pubd gaz 10 December 1988 p 1675)

**Criminal Code, Evidence Act and other Acts Amendment Act 1989 No. 17 pt 8**

date of assent 30 March 1989

commenced 3 July 1989 (proc pubd gaz 24 June 1989 p 1821 (as amd proc pubd gaz 1 July 1989 p 2190))

**Children's Services Act and Another Act Amendment Act 1989 No. 116**

date of assent 31 October 1989

ss 1–2 commenced on date of assent

remaining provisions never proclaimed into force and rep 1992 No. 44 s 236



**Health Services Act 1991 No. 24 s 7.3 sch 3**

date of assent 5 June 1991

commenced 1 July 1991 (proc pubd gaz 22 June 1991 p 974)

**Child Care Act 1991 No. 79 ss 1–2, 86 sch 2**

date of assent 9 December 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 5 June 1992 (1992 SL No. 119)

**Juvenile Justice Act 1992 No. 44 ss 1–2, 235 sch 3**

date of assent 19 August 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 1993 (1993 SL No. 313)

**Children's Commissioner and Children's Services Appeals Tribunals Act 1996  
No. 51 ss 1–2, 84 sch 1**

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 20 December 1996 (1996 SL No. 392)

**Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997  
No. 17 ss 1–2, 74 sch**

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

**Courts Reform Amendment Act 1997 No. 38 ss 1–2 pt 3**

date of assent 18 July 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 August 1997 (1997 SL No. 235)

**Health and Other Legislation Amendment Act 1998 No. 41 ss 1, 3(2), 14(1) sch 1**

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 1998 (1998 SL No. 346)

**7 List of annotations****Title** amd R1 (see RA s 7(1)(k))**Short title****s 1** amd R1 (see RA s 37)**Arrangement of Act****s 2** amd 1987 No. 32 s 69 sch (amds 1(b)–(e) never proclaimed into force  
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om 1987 No. 32 s 69 sch

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def "**Breach of duty**" om 1992 No. 44 s 235 sch 3  
def "**chief executive (health)**" ins 1998 No. 41 s 14(1) sch 1  
def "**day care centre**" sub 1970 No. 17 s 5(a)  
om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1); 1991 No. 79 s 86 sch 2  
def "**department**" sub 1987 No. 32 s 69 sch  
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def "**Deputy Director**" om 1987 No. 32 s 69 sch  
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def "**father**" amd 1978 No. 30 s 14 sch  
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def "**Kindergarten**" om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1); 1991 No. 79 s 86 sch 2  
def "**Local Authority**" om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1); 1991 No. 79 s 86 sch 2  
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**Notification to district registrar of birth or death of child in certain cases**

**prov hdg** sub 1978 No. 30 s 14 sch

**s 85** amd 1978 No. 30 s 14 sch

om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1)

**Control of day care centres**

**s 86** sub 1970 No. 17 s 20; 1971 No. 72 s 13; 1979 No. 75 s 2



om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1); 1991 No. 79 s 86 sch 2

**Meaning of terms**

**s 87** def “**Court**” amd 1971 No. 72 s 14  
def “**father**” om 1978 No. 30 s 14 sch

**Power of father and mother of an infant to appoint guardians**

**s 90** amd 1978 No. 30 s 14 sch

**Court may make orders as to custody and maintenance of infants**

**s 93** amd 1970 No. 17 s 21; 1978 No. 30 s 14 sch

**Childrens Court may make interim orders for custody and maintenance**

**s 93A** ins 1971 No. 72 s 15  
amd 1973 No. 3 s 5

**When maintenance order may be enforced by a clerk of the Magistrates Court**

**s 94** amd 1970 No. 17 s 22; 1973 No. 3 s 6

**Childrens Court not competent in certain applications**

**s 100** amd 1970 No. 17 s 23

**Removal of proceeding into Supreme Court**

**s 101** amd 1970 No. 17 s 24; 1997 No. 38 s 11

**PART 10—FOSTER PARENTS**

**pt hdg** om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1)

**Placing of children in care**

**s 103** amd 1979 No. 75 s 3  
om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1)

**Approval of foster parents**

**s 104** om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1)  
amd 1998 No. 41 s 14(1) sch 1

**Restriction on male foster parent**

**s 105** om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1)

**No person to be foster parent unless approved**

**s 106** om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1)

**Duties of foster parents**

**s 107** om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1)

**Payment of maintenance to foster parents**

**s 108** om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1)

**Home of foster parents need not be registered**

s 109 om 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1)

**Payment of wage of child in care**

s 111 amd 1997 No. 17 s 74 sch

**Director's power to deal with and dispose of property of child in care**

s 112 amd 1974 No. 57 s 8 sch; 1997 No. 17 s 74 sch

**Authorisation of street trading by child**

s 113 sub 1971 No. 72 s 16

**Employment of child in unauthorised street trading prohibited**

s 114 sub 1971 No. 72 s 16

**Offence to employ children in certain occupations**

s 115 amd 1970 No. 17 s 25

**Director may issue permits**

s 116 amd 1971 No. 72 s 17

**Definition of "relative" and "child"**

s 119 amd 1987 No. 32 s 69 sch (never proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1)

**Powers of court in proceeding concerning children of parents not married to each other**

prov hdg amd 1978 No. 30 s 14 sch

s 122 amd 1978 No. 30 s 14 sch

**Undertaking to pay maintenance**

s 123 amd 1973 No. 3 s 7

**Enforcement of liability to pay maintenance**

s 124 amd 1970 No. 17 s 26; 1978 No. 26 s 15

**Variation of maintenance order**

s 125 amd 1970 No. 17 s 27

**Procedure in proceedings to enforce maintenance orders**

s 128 sub 1970 No. 17 s 28

**Complaint and averments**

s 129 amd 1970 No. 17 s 29; 1978 No. 30 s 14 sch

**Offence to disobey maintenance order or to desert children in care**

s 130 om 1978 No. 26 s 16

**Information about whereabouts of a child in care**

s 131A ins 1996 No. 51 s 84 sch 1

**Child in care not to leave State**

s 134 amd 1970 No. 17 s 30

**Absconding children**

s 135 amd 1992 No. 44 s 235 sch 3

**Order on parent or guardian to attend**

s 137 amd 1971 No. 72 s 18; 1992 No. 44 s 235 sch 3

**Restrictions on reporting proceeding concerning child**

s 138 amd 1971 No. 72 s 19; 1973 No. 3 s 8  
sub 1989 No. 17 s 81  
amd 1992 No. 44 s 235 sch 3

**Power to exclude child in certain circumstances**

s 138A ins 1989 No. 17 s 81

**Reference to certain offences prohibited**

s 139 amd 1970 No. 17 s 31; 1977 No. 47 s 3(1) sch 1 pt E  
om 1992 No. 44 s 235 sch 3

**Guardianship of director**

s 143 amd 1970 No. 17 s 32

**Recoupment of expenses**

s 143A ins 1971 No. 72 s 20

**Director to give notice of reviewable decision**

s 143B ins 1996 No. 51 s 84 sch 1

**Appeal against reviewable decision**

s 143C ins 1996 No. 51 s 84 sch 1

**Secrecy provisions**

s 144 amd 1970 No. 17 s 35 sch; 1979 No. 75 s 4; 1987 No. 32 s 69 sch; 1992  
No. 44 s 235 sch 3; 1998 No. 41 s 14(1) sch 1

**Examination under Act to be performed notwithstanding lack of consent**

prov hdg amd 1970 No. 17 s 33

s 145 amd 1970 No. 17 s 33

**Evidence of child**

s 146 om 1977 No. 47 s 3(1) sch 1 pt E

**Offence to contravene Act**

s 148 amd 1970 No. 17 s 35 sch; 1992 No. 44 s 235 sch 3

**Regulations**

s 152 amd 1970 No. 17 s 34; 1971 No. 72 s 21; 1987 No. 32 s 69 sch (never  
proclaimed into force and om 1994 No. 87 s 3 sch 3 pt 1); 1989  
No. 116 s 6 (never proclaimed into force and om 1992 No. 44 s 236);  
1991 No. 79 s 86 sch 2; 1992 No. 44 s 235 sch 3

**Amendments to "The Adoption of Children Act of 1964"**

s 154 om R1 (see RA s 40)

**SCHEDULE—REVIEWABLE DECISIONS AND AGGRIEVED PERSONS**

sch ins 1996 No. 51 s 84 sch 1

**SCHEDULE I**

sch I om R1 (see RA s 40)

**SCHEDULE II—Amendments to “*Adoption of Children Act of 1964*”**

**sch II**      om R1 (see RA s 40)