

Queensland



ANNO TRICESIMO SEXTO

ELIZABETHAE SECUNDAE REGINAE



No. 32 of 1987

An Act to provide for assistance to be made available to families, youth and children; to provide for the licensing of child care facilities; and for other purposes

[ASSENTED TO 30TH APRIL, 1987]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Family and Youth Services Act 1987*.

2. Commencement. (1) This section, section 1, section 69 (4) and (5) and section 69 (1) to the extent that it provides for the amendments made by clauses 22, 23, 24, 25, 26 and 27 of the Schedule together with those clauses shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act or such of them as are specified in the Proclamation shall commence on a day or days to be appointed by Proclamation for the commencement of those provisions.

3. Arrangement. This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1-4);

PART II—OBJECTS AND ADMINISTRATION (ss. 5-13);

Division 1—Objects;

Division 2—Administration;

PART III—FAMILY, YOUTH AND COMMUNITY SERVICES (ss. 14-18);

PART IV—VOLUNTARY ARRANGEMENTS FOR CARE OF CHILDREN (ss. 19-29);

PART V—LICENSING (ss. 30-55);

Division 1—Application of Part;

Division 2—Licences;

Division 3—Supervision;

Division 4—General;

PART VI—MISCELLANEOUS (ss. 56-62);

PART VII—TRANSITIONAL AND AMENDMENTS (ss. 63-69);

SCHEDULE.

4. Interpretation. In this Act, unless the contrary intention appears—

“certificate of approval” means a certificate of approval issued under section 40;

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

“child care” means the care of a child, who has not attained the age of 13 years, by a person who receives, or holds himself out as ready to receive, for fee or reward, children for the

purpose of educating or caring for them: The term includes care provided to children at a kindergarten but does not include care provided to a child—

- (a) at any school, college or institution the sole or principal purpose of which is the education of persons attending thereat;
- (b) pursuant to a licence issued under section 31 or a certificate of approval;
- (c) during school holidays at premises where vacation care is provided;
- (d) in the child's or person's residence;
- (e) under an outside-school-hours care programme that is conducted with finances provided by the Commonwealth; or
- (f) in the course of the child's medical treatment;

“criminal history”, in relation to any person, means—

- (a) convictions of that person for any offence committed in Queensland or elsewhere not being convictions that have been quashed or set aside; and
- (b) charges made against that person in respect of any offence committed in Queensland or elsewhere that have proceeded to final determination, which has resulted—
 - (i) in respect of an offence committed in Queensland, in the making of a probation order or a community service order under the *Offenders Probation and Parole Act 1980-1983* or legislation repealed by that Act in relation to that person; or
 - (ii) in respect of an offence committed elsewhere, in the making of an order of a description similar to that of the order referred to in subparagraph (i) in relation to that person;

“Department” means the department of government of Queensland responsible for the administration of this Act;

“family day care” means the care of a child by a person who receives, or holds himself out as ready to receive, for fee or reward, children who have not attained the age of 13 years for the purpose of caring for them in that person's residence: The term does not include foster care or casual baby sitting;

“family day care agent” means a person who conducts a family day care agency pursuant to a licence issued to him for that purpose under section 31;

“foster care” does not include—

- (a) care provided to children at premises used principally for the purpose of providing care to children who have attained the age of 15 years and who are not—
 - (i) in the custody, temporary custody or guardianship of the permanent head;
 - or
 - (ii) in temporary care pursuant to an arrangement made under Part IV;
 - or
- (b) care provided to children by a person who is caring for the children pursuant to—
 - (i) a registration effected by him under section 42;
 - or
 - (ii) an approval given under section 58 (1) (c) or 65 (c) of the *Children's Services Act 1965-1987*;

“foster care agent” means a person who conducts a foster care agency pursuant to a licence issued to him for that purpose under section 31;

“foster parent” means a person who is the holder of a certificate of approval authorizing him to provide foster care;

“guardian” means any person who is recognized in law as a legal guardian of a child;

“licensee” means the holder of a licence issued under section 31;

“Local Authority” means Brisbane City Council or a Local Authority constituted under the *Local Government Act 1936-1986*;

“Minister” includes a Minister of the Crown who is temporarily performing the duties of the Minister;

“parent” includes a person who, for the time being, has the right—

- (a) to the custody of a child;
- and
- (b) to make decisions concerning the day to day care and control of the child,

but does not include a foster parent or the permanent head;

“permanent head” means the person who is the permanent head within the meaning of the *Public Service Act 1922-1978* of the Department and includes a person for the time being performing the duties of the permanent head;

“person” includes an association of persons that is not incorporated;

“police officer” means a member of the Police Force appointed under the *Police Act 1937-1985*;

“premises” includes any land or building;

“residential care” means the care of a child, who is in the custody, temporary custody or guardianship of the permanent head, in premises used principally for the purpose of providing day to day care to such a child: The term does not include—

(a) child care;

(b) family day care;

(c) foster care;

or

(d) care provided to such a child at premises where the child’s parents, step-parent, relatives or guardian ordinarily reside.

PART II—OBJECTS AND ADMINISTRATION

Division 1—Objects

5. Objects. Without limiting the operation of this Act, the objects of this Act include—

(a) the promotion and support of the welfare of families as the basis of community well-being;

(b) the establishment of services and the encouragement of the development of services that promote, support and protect the well-being of families;

(c) the encouragement of the development of co-ordinated social welfare services and programmes that promote and strengthen local, neighbourhood and community interests;

(d) the promotion of the well-being of the community by assisting individuals and families to overcome social problems with which they are confronted;

(e) the promotion of opportunities for the youth of the State to achieve their full potential.

Division 2—Administration

6. Administration of Act. This Act shall be administered by the Minister and, subject to the Minister, by the permanent head and other officers of the Department.

7. Visiting justices. (1) The Minister may appoint stipendiary magistrates to be visiting justices—

(a) for the purposes of this Act and the *Children’s Services Act 1965-1987*;

and

(b) upon such terms and conditions as the Minister thinks fit.

(2) A visiting justice shall have and may exercise all such powers, authorities, duties and functions as are prescribed by the regulations or, if not so prescribed, as directed by the Minister.

8. Honorary officers. (1) The permanent head may appoint, in writing, such persons, having qualifications or experience appropriate to the proper discharge of their duties, as he thinks fit, to be honorary officers—

- (a) for the purpose of assisting officers of the Department in giving effect to this Act or the *Children's Services Act 1965-1987*;
- (b) for a term not exceeding 2 years;
and
- (c) upon such terms and conditions as the permanent head thinks fit and specifies in the officers' appointments.

An honorary officer may be re-appointed from time to time for a term not exceeding 2 years in respect of any re-appointment.

(2) The permanent head, by writing addressed to an honorary officer, may remove the officer from his appointment at any time.

(3) The permanent head may pay an honorary officer such amounts as the permanent head thinks fit to reimburse the officer for expenses reasonably incurred, or reasonably expected to be incurred, in the course of the officer's duties.

(4) The permanent head shall arrange for an honorary officer to receive such training and to be subject to such supervision as the permanent head thinks fit.

(5) An honorary officer, whilst carrying out the duties of an honorary officer, shall be deemed to be a worker within the meaning of the *Workers' Compensation Act 1916-1986* employed by the permanent head and the provisions of that Act shall apply accordingly.

9. Engagement of agents. The permanent head may enter into contracts for services with such persons having qualifications and experience appropriate to the proper discharge of the contracts as he thinks fit with a view to those persons acting as his agents in giving effect to this Act or the *Children's Services Act 1965-1987*.

10. Delegation, and exercise of powers on behalf of permanent head. (1) Subject to any direction by the Minister to the contrary, the permanent head, by writing under his hand, may delegate, either generally or in a particular case and whether given or imposed under this or any other Act, all or any of his powers, authorities, functions and duties as specified therein (other than this power of delegation) to—

- (a) any officer of the Department;
 - (b) any holder of an office within the Department specifying its title but not the name of the holder for the time being;
 - (c) any honorary officer appointed under section 8;
- or

(d) any agent who is party to a contract made under section 9, and may in like manner and subject as aforesaid revoke at any time a delegation made by him under this subsection.

In making a delegation under subparagraph (c) or (d) of the preceding paragraph the permanent head may only delegate such of his powers, authorities, functions and duties as are necessary to enable the honorary officer to carry out the duties of his office or, as the case may be, the agent to discharge his contract.

(2) Subject to any direction by the Minister to the contrary, the permanent head, by writing under his hand, may delegate to an individual who has the care of a child of whom the permanent head is guardian all or any of the permanent head's powers, authorities, functions and duties specified therein (other than this power of delegation) had by the permanent head as such guardian, and may in like manner and subject as aforesaid revoke at any time a delegation made by him under this subsection.

(3) The permanent head may make pursuant to subsection (1) such and as many delegations of the same power, authority, function or duty and to such number of persons as he considers necessary or desirable.

(4) A delegation—

(a) may be made subject to such conditions as the permanent head thinks fit and specifies in the instrument of delegation or free of any condition;

(b) shall be authority to the delegate thereunder to exercise the delegated power or authority or discharge the delegated function or duty subject to and in accordance with the instrument of delegation;

and

(c) shall not prevent or prejudice the exercise or discharge by the permanent head of the power, authority, function or duty thereby delegated.

(5) A delegation under subsection (2) shall not be made, if the child has attained the age of 15 years, unless the child consents thereto.

(6) If the permanent head is at any time absent from duty or unable to perform the duties of his office, any power, authority, function or duty had by him pursuant to this or any other Act or arising by reason of his having guardianship or custody of a child may be exercised or discharged by another officer of the Department authorized in writing in that behalf by the Minister, without any delegation by the permanent head in respect thereof.

11. Advisory committees. (1) The Minister, from time to time, by writing under his hand may appoint such number of persons as he thinks fit to constitute a committee with such functions and duties as from time to time are assigned to it by the Minister to investigate, to report to him and to advise him in respect of, such matters as the Minister thinks fit.

(2) The Minister shall appoint one of the members of a committee to be chairman thereof upon the first constitution of the committee and thereafter as often as a vacancy occurs in the office of chairman.

The chairman of a committee shall preside at each meeting of the committee at which he is present and in his absence another member of the committee, appointed by the members present or the majority of them, shall preside.

(3) The conditions of appointment of members of a committee and whether a committee shall be or continue as a standing committee or shall be appointed for a particular purpose, shall be as determined from time to time by the Minister.

(4) Members of a committee may be paid by the permanent head such expenses reasonably incurred by them in connexion with the discharge by them of their functions and duties and, if the Minister so approves, may be paid such fees as are from time to time approved by the Governor in Council: Provided that any member of a committee who is an officer of the Public Service of Queensland or any statutory body shall not be entitled to payment of any fee in respect of the discharge of the functions and duties of the committee during his ordinary hours of work.

12. Offences with respect to officers of the Department, etc. (1) A person who, with intent to influence any officer of the Department or any other person in the exercise of his powers or authorities or the discharge of his duties or functions under this Act, gives, offers or promises any bribe, recompense, inducement or reward to that officer or other person, or attempts so to do, commits an offence against this Act.

(2) A person who—

(a) falsely assumes or uses the name, designation or description of any honorary officer, agent, visiting justice or other person appointed for any purpose of this Act;

or

(b) pretends that he is any honorary officer, agent, visiting justice or other person appointed for any purpose of this Act,

for the purpose of assuming to do any act, exercise any power or authority or discharge any duty or function had by, or imposed on, that officer, agent, justice or person pursuant to this Act or the *Children's Services Act 1965-1987* commits an offence against this Act.

13. Annual report. (1) In each year the permanent head shall furnish to the Minister a report on the operation of this Act and the *Children's Services Act 1965-1987* during the year covered by the report.

(2) The Minister shall lay every such report before the Legislative Assembly within 14 sitting days from the date on which he receives the report.

PART III—FAMILY, YOUTH AND COMMUNITY SERVICES

14. Permanent head may develop or carry out programmes. (1) The permanent head may—

(a) develop or carry out;

or

(b) where the Minister so approves under section 15 (3), make grants to any body corporate or association of persons that is not incorporated to develop or carry out,

programmes for the provision of family, youth or community services.

(2) In considering whether to develop or carry out a programme referred to in subsection (1), or whether to recommend to the Minister that a grant be made for that purpose, the permanent head shall consider whether the programme has as its object—

(a) the promotion and protection of family life;

(b) the development and strengthening of local, neighbourhood and community interests;

(c) the preservation and fostering of the dignity and independence of individuals;

(d) the provision of assistance to individuals who are disadvantaged or disabled;

or

(e) any other object that is consistent with the objects of this Act.

15. Grants. (1) An application for a grant under section 14 shall be made in writing to the permanent head and shall be made in accordance with such guidelines as are issued by the permanent head, with the approval of the Minister, and shall contain such information as is required by the permanent head.

(2) The permanent head may make such inquiries in respect of an application for a grant as he thinks fit.

(3) The Minister may approve or refuse an application for a grant as he thinks fit.

(4) If a grant is approved the Minister may subject the grant to such conditions as he thinks fit.

(5) If the permanent head has reasonable cause to suspect that the conditions of a grant are not being, or have not been, complied with, he may call upon the person who received the grant, by notice served upon the person, to show cause to the permanent head within 21 days of receipt of the notice why further payments of the grant should be made or, as the case may be, monies paid under the grant should not be refunded.

(6) If after the expiration of the 21 days, the permanent head, after considering any submission made by the person, is satisfied that the

conditions of a grant are not being or have not been complied with, he, with the approval of the Minister, may refuse to make further payments of the grant.

If that non-compliance consists of the application of moneys paid under the grant to a purpose other than the purpose for which the grant was approved the amount of those moneys may be recovered from the applicant by action in a court of competent jurisdiction as a debt due and owing to the Crown.

16. Permanent head may inspect books, etc. If the permanent head has reasonable cause to suspect that the conditions of a grant made under section 14 are not being, or have not been, complied with, he may request the person to whom the grant has been made to produce to the permanent head any books and records kept by that person in respect of moneys received under that grant.

The permanent head may examine and make copies of, or take extracts from, the books and records so produced relating to the receipt and expenditure of those moneys.

17. Auditor-General may audit books, etc. If the permanent head has reasonable cause to suspect that the conditions of a grant made under section 14 are not being, or have not been, complied with, he may request the Auditor-General to audit the accounts of the person to whom the grant has been paid.

The Auditor-General shall have with respect to such audit all the powers and authorities conferred on him by the *Financial Administration and Audit Act 1977-1985* in respect of an audit of the description of audit that he is performing under the preceding paragraph and the provisions of that Act shall apply in respect of such audit and to all persons concerned therein.

18. Establishment of residential care facilities, etc. (1) The Minister may cause to be established residential care facilities for children and other places wherein services may be provided for families, youth and children.

When any such facility or place has been established notification of its establishment shall be published in the Gazette.

(2) The permanent head shall establish services and programmes that are to be conducted in facilities or places established under subsection (1).

PART IV—VOLUNTARY ARRANGEMENTS FOR CARE OF CHILDREN

19. Welfare and interests of child to be paramount. For the purposes of this Part, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

20. Interpretation and application of Part. (1) In this Part “licensee” means—

- (a) a foster care agent;
- (b) a family day care agent that is authorized under Part V to enter into an arrangement under this Part;
- and
- (c) the holder of a licence to conduct a residential care facility which holder is authorized under Part V to enter into an arrangement under this Part.

(2) The provisions of this Part do not apply to an application made to the permanent head or a licensee for the provision of temporary care of a child for a period that does not exceed 3 consecutive days.

21. Applications. (1) An application may be made to—

- (a) the permanent head, to arrange temporary care of a child;
- (b) a licensee specified in section 20 (1) (b), to arrange for a person who is the holder of a certificate of approval to provide temporary care of a child;
- (c) a foster care agent, to arrange for a foster parent to provide temporary care of a child;
- (d) a licensee specified in section 20 (1) (c), to enter into an arrangement under this Part, to arrange for temporary care to be provided to a child in that facility.

(2) An application referred to in subsection (1) shall be in or to the effect of the form prescribed by the regulations and may be made by—

- (a) a parent of the child who has custody of the child;
- (b) any other person who is entitled to custody of the child;
- or
- (c) a step-parent of the child, where the persons specified in paragraphs (a) and (b) are in such physical or mental condition as to be not capable of making an application.

22. Consideration of applications. Where an application is made to the permanent head or a licensee under section 21 the permanent head or, as the case may be, licensee shall—

- (a) make reasonable inquiries to ascertain where the child resided during the period of 2 years preceding the date the application was made;
- (b) make such other inquiry as the permanent head or licensee considers necessary;
- (c) if the application is made by a person referred to in section 21 (2) (b), take reasonable steps to ascertain the wishes of the parents of the child;
- (d) consider any objection made to the permanent head or licensee concerning the application;
- (e) consider any wishes expressed by the child and give those wishes such weight as the permanent head or licensee considers appropriate in the circumstances.

23. Arrangements may be entered into. (1) If the permanent head or a licensee after considering an application is satisfied that—

- (a) the applicant is temporarily unable to care for the child concerned;
- (b) no other appropriate form of assistance is available to be provided;
- and
- (c) the child is in need of temporary care,

the permanent head or, as the case may be, licensee may provide temporary care of the child and, if the permanent head or licensee does so, an arrangement shall be entered into with the applicant.

(2) An arrangement shall be in the form prescribed by the regulations and shall include matters agreed to by the permanent head or, as the case may be, licensee and the applicant with reference to, but not limited to—

- (a) the health and medical and dental care of the child;
- (b) the education or employment of the child;
- (c) communication between the child and the child's family or relatives;
- (d) social, recreational and religious activities of the child;
- (e) financial matters (including financial contributions, if any, payable by the applicant and method of payment thereof).

(3) An arrangement shall be signed by the permanent head or, as the case may be, licensee and the applicant.

(4) The terms of an arrangement may be varied by the permanent head or, as the case may be, licensee, who entered into the arrangement and the applicant signing a form of variation containing the variation to those terms.

24. Duration of arrangements. (1) Subject to this section, an arrangement shall be for any period not exceeding 3 months.

(2) An arrangement from time to time may be extended for any period not exceeding 3 months in respect of any extension by the permanent head or, as the case may be, licensee and the applicant signing the arrangement to that effect.

(3) A family day care agent shall not—

- (a) enter into an arrangement for any period that exceeds 28 days;
- or
- (b) extend the period of an arrangement the effect of which is that the child concerned will be in temporary care for a continuous period that exceeds 28 days,

without the prior approval of the permanent head.

(4) Before an arrangement is extended the permanent head or, as the case may be, licensee shall review the circumstances of the child concerned and shall again give consideration to the matters specified in section 23 (1).

(5) A further arrangement in respect of the same child may be entered into.

(6) Unless the prior approval of the permanent head thereto is obtained, a licensee shall not extend an arrangement the effect of which would be that at the expiration of the extended arrangement the child concerned will have been in temporary care for a continuous period of more than 6 months.

(7) Subject to subsection (8), the permanent head or a licensee shall not—

(a) extend an arrangement;

or

(b) enter into a further arrangement in respect of the same child,

the effect of which would be that at the expiration of the period of the extended or further arrangement the child concerned will have been in temporary care for periods exceeding in the aggregate 12 months in any period of 2 years.

(8) If the permanent head is satisfied that it is in the welfare and interests of the child concerned and that the applicant intends to resume custody of the child at the expiration of the period in question he may, and he may approve that a licensee—

(a) extend an arrangement;

or

(b) enter into a further arrangement,

referred to in subsection (7) but so that at the expiration of the period of the extended or further arrangement the child will not have been in temporary care for periods exceeding in the aggregate 18 months in any period of 2 years.

25. Termination of arrangements. (1) An applicant who has entered into an arrangement may at any time terminate the arrangement by giving not less than 2 days' notice to the permanent head or, as the case may be, licensee that at the expiration of that time the arrangement will be terminated.

(2) If the permanent head or a licensee considers that the child concerned is no longer in need of temporary care, the permanent head or, as the case may be, licensee shall give not less than 7 days' notice in writing to the applicant that at the expiration of that time the arrangement will be terminated.

- (3) An arrangement terminates—
- (a) upon the applicant and the permanent head or, as the case may be, licensee agreeing that it should terminate;
 - (b) at the expiration of the term of the arrangement;
 - (c) when under the authority of an Act or an order of a court the child is placed in the guardianship or custody of a parent of the child or another person;
 - (d) upon the child attaining the age of 18 years or marrying prior to attaining that age.

(4) Where an arrangement terminates the permanent head or, as the case may be, licensee shall arrange for the applicant to resume care of the child except where the termination is due to—

- (a) the permanent head becoming the guardian of the child;
 - (b) a court placing the child in the guardianship or custody of a person other than the applicant;
- or
- (c) the child attaining the age of 18 years or marrying prior to attaining that age.

26. Duties of permanent head and licensees. (1) Where an arrangement is entered into it is the duty of the permanent head or, as the case may be, licensee to—

- (a) utilize the resources available to the permanent head or licensee so as to adequately provide for the welfare and interests of the child;
- (b) endeavour to provide or arrange services that will assist the child's early reunification with the applicant;
- (c) give preference to placing the child—
 - (i) in geographic proximity to the child's family;
 - (ii) with persons who share the child's indigenous or ethnic background and cultural background;
 - (iii) with persons who are, or will be, caring for the child's siblings,

unless, in the opinion of the permanent head or, as the case may be, licensee it is not reasonably practicable to do so or the welfare and interests of the child will not be best served by so doing.

(2) In the performance of the permanent head's duty specified in subsection (1) (a), but without limiting his discretion in that regard, the permanent head may from time to time make use of the services of—

- (a) any member of the child's family or a relative of the child;
 - (b) a licensee;
- or
- (c) the holder of a certificate of approval issued by the permanent head:

Provided that the permanent head shall not place a child in a residential care facility that is established under section 18 for the purpose of providing secure custody for certain children.

(3) The permanent head may enter into an agreement with any person referred to in subsection (2) (a), (b) or (c) whereby that person undertakes to care for the child in accordance with that agreement and the permanent head undertakes to provide such supporting measures to that person and the child as the permanent head thinks fit.

(4) If in carrying out the terms of an arrangement the permanent head makes use of the services of a person referred to in subsection (2) (a), (b) or (c) he may pay that person such sums as he thinks fit not exceeding such sums or in accordance with such scales of sums, as are prescribed by the regulations.

(5) A person who, pursuant to an arrangement, has the care of a child shall furnish to the permanent head or, as the case may be, licensee, prior notice in writing of his intention to change his place of residence and the address of his new residence.

(6) The permanent head, a licensee, and a person who, pursuant to an arrangement, has the care of a child shall permit the applicant concerned to communicate with and have access to a child the subject of an arrangement in accordance with the terms of the arrangement unless there is an order of a court to the contrary of which the permanent head, licensee or person has been advised in writing.

27. Effect of arrangements. The fact that an arrangement has been entered into with respect to a child does not—

(a) affect the rights, powers, duties, obligations and liabilities of a person who is the guardian of the child or the person who is entitled to the custody of the child;

or

(b) affect the operation of any law of this State or the Commonwealth relating to the power of a court to make orders with respect to the guardianship, custody or maintenance of, or access to, a child.

28. Aid for caring for children. If the Minister so approves under section 15 (3), the permanent head may make grants under Part III to assist a licensee to provide temporary care of children under this Part.

29. Offence to remove certain children without authority. A person (other than a person who in respect of the child concerned has entered into an arrangement with the permanent head or, as the case may be, a licensee under this Part) who, without authority of the permanent head or licensee or other lawful authority, removes a child from a place, or the care of a person, in which the child has been placed pursuant to the terms of the arrangement before the arrangement is terminated or terminates as provided by section 25 commits an offence against this Act.

PART V—LICENSING

Division 1—Application of Part

30. Application of Part. This Part does not apply to persons who conduct programmes the principal purpose of which is to provide care for children who are intellectually or physically disabled.

Division 2—Licences

31. Types of licences. The permanent head may issue licences authorizing persons to conduct the following programmes:—

- (a) family day care agencies;
- (b) foster care agencies;
- (c) residential care facilities.

32. Applications for licences. (1) Application for a licence to conduct a programme specified in section 31 may be made to the permanent head in the form prescribed by the regulations by—

- (a) an individual whose usual place of residence is in the State;
- (b) a body corporate the principal place of business or activity of which is in the State;

or

- (c) the president or secretary of an unincorporated association of persons the principal place of business or activity of which is in the State in the name and on behalf of the association.

(2) Application for renewal of a licence shall be made by or on behalf of a licensee in like manner as an application for a licence.

33. Consideration of applications. (1) The permanent head shall cause each application to be investigated and shall receive reports of such investigation.

(2) In considering an application for a licence the permanent head may have regard to such matters as he thinks fit but, as far as is reasonably practicable, shall satisfy himself that—

- (a) the applicant's systems of management, including, but not limited to, the number, qualifications and experience of the persons who will be conducting the programme and of any employees, or proposed employees, of the applicant;
- (b) where the application is for a licence to conduct a family day care agency or a foster care agency, the procedures proposed by the applicant for—
 - (i) the selection of proposed holders of certificates of approval and the training and supervision of those holders; and
 - (ii) the placement of children with, and supervision of children to be cared for by, the holders of certificates of approval;
- (c) where the application is for a licence to conduct a residential care facility the procedures proposed by the applicant for

the placement of, and the supervision of the standard of care provided to, children in the facility;

(d) the procedures proposed by the applicant for the selection, approval, training and supervision of any employees or proposed employees of the applicant;

and

(e) the procedures proposed by the applicant for the approval, training and supervision of any volunteers or agents assisting the applicant,

are adequate for the purpose of conducting the programme.

(3) The permanent head may issue a licence subject to such conditions as he thinks fit or he may refuse to issue a licence.

(4) If the permanent head refuses an application for a licence he shall advise the applicant in writing of his decision together with reasons therefor.

34. Form and content of licences. A licence shall be in the form prescribed by the regulations and shall show the name and address of the licensee and shall include the following terms:—

(a) the programme that is to be conducted by the licensee and the location of the premises approved for such purpose;

(b) the ages of children for whom the programme is to be conducted;

(c) the maximum number of children for whom the programme is to be conducted at any one time;

(d) any conditions to which the licence is subject;

(e) the expiry date of the licence;

(f) the primary form of care to be provided by the licensee;

(g) in respect of a licence to conduct a programme specified in section 31 (a) or (c), the permanent head's approval (if any) to the licensee's entering into arrangements under Part IV.

35. Authority and duration of licences. (1) For as long as it remains in force a licence is authority for the licensee to conduct the programme to which it relates in the premises specified in the licence.

(2) A licence and any renewal thereof shall be in force for the period specified in the licence or certificate of renewal thereof, not exceeding in the case of a licence to conduct—

(a) a residential care facility, 5 years;

(b) a family day care agency or foster care agency, 2 years.

(3) If a licence is at any time suspended pursuant to this Act, for the purpose of calculating the period for which the licence has been in force, the period of suspension shall be included as if the suspension had not occurred.

36. Conditions of licences. A licensee shall comply with—

- (a) the provisions of this Act;
- (b) such conditions as are prescribed by the regulations as are applicable to the licence;
- (c) the terms of the licence specified in section 34.

37. Cancellation, suspension, etc. of licences. (1) Upon application in writing, signed by a person specified in section 32 (1) (a), (b) or (c), by or on behalf of a licensee the permanent head may—

- (a) cancel the licence;
- (b) suspend the licence for the period specified in the application;
- (c) revoke a condition imposed pursuant to section 33 (3) or varied pursuant to section 39;
- (d) at any time during the period of suspension, revive a licence that has been suspended.

(2) The permanent head, if he is satisfied that—

- (a) a licensee—
 - (i) is no longer a fit and proper person to hold a licence;
 - (ii) is not conducting the programme specified in the licence;or
 - (iii) has failed to comply with section 36;
- or
- (b) a licensee's systems of management or procedures proposed under section 33 (2) have proved to be inadequate,

may call upon the licensee, by notice served upon the licensee, to show cause to the permanent head within 21 days of service of the notice why the licence should not be varied, suspended or cancelled.

(3) The permanent head shall not take action under subsection (2) in respect of a failure by a licensee to comply with section 36 unless the permanent head has first directed the licensee to comply with that section and the licensee has failed to do so.

(4) After the expiration of the 21 days referred to in subsection (2), the permanent head, after considering any submissions made by the licensee during that time, may—

- (a) vary the licence in such manner as the permanent head thinks fit;
 - (b) suspend the licence for such period as the permanent head thinks fit;
 - (c) cancel the licence;
- or
- (d) decide to take no further action.

(5) If the permanent head varies, suspends or cancels a licence he shall serve notification thereof on the licensee and the variation,

suspension or cancellation shall take effect from the date of service of the notification on the licensee.

(6) Any variation, suspension or cancellation made under this section shall be endorsed by the permanent head on the licence concerned.

38. Emergency suspension of licences. (1) If the permanent head is satisfied that a licence should be suspended immediately because of the existence of emergent circumstances he may suspend the licence, by notice served on the licensee, for such period as is specified in the notice.

(2) Where a licence is suspended pursuant to subsection (1), the permanent head shall call upon the licensee, by notice in writing served upon the licensee, to show cause to the permanent head within 21 days of service of the notice on the licensee why the licence should not be varied, cancelled or continued to be suspended.

(3) Subsections (4) and (5) of section 37 apply to a notice to show cause served on a licensee pursuant to subsection (2) of this section as if the notice had been served pursuant to section 37 (2).

(4) If the permanent head makes a decision under section 37 (4) (d) in respect of a licence suspended under subsection (1) that licence shall be revived from the date of that decision.

39. Variation of certain terms and particulars. (1) A licensee may at any time apply to the permanent head to vary any of the terms of the licence specified in section 34 other than the expiry date of the licence.

(2) The holder of a certificate of approval may at any time apply to the permanent head, foster care agent or, as the case may be, family day care agent who issued the certificate to vary any of the particulars specified in the certificate.

(3) If—

(a) the permanent head;

or

(b) the foster care agent or family day care agent who issued a certificate of approval,

approves that the terms specified in a licence or, as the case may be, the particulars specified in the certificate be varied the permanent head or person shall endorse the variations on the licence or certificate.

40. Issue of certificates of approval. (1) Upon application by an individual made in the form prescribed by the regulations, a foster care agent or family day care agent may issue a certificate of approval in the form prescribed by the regulations to that individual certifying that he is a person approved by the agent to provide foster care or, as the case may be, family day care on behalf of that agent in premises specified in the certificate.

(2) Upon application by an individual made in the form prescribed by the regulations the permanent head may issue a certificate of approval in the form prescribed by the regulations to that individual certifying that he is a person approved by the permanent head to provide foster care or, as the case may be, family day care on behalf of the permanent head in premises specified in the certificate.

(3) The holder of a certificate of approval shall comply with—

- (a) the provisions of this Act;
- (b) such conditions as are prescribed by the regulations as are applicable to the certificate;
- (c) such other conditions as the agent or, as the case may be, permanent head imposes.

(4) In considering an application to provide foster care, the agent concerned or, as the case may be, the permanent head may have regard to such matters as the agent or permanent head thinks fit but, as far as is reasonably practicable, shall be satisfied that the applicant has the capacity—

- (a) to properly care for a child;
and
- (b) to carry out such duties as are prescribed by the regulations as are applicable to the applicant.

(5) In considering an application to provide family day care, the agent concerned or, as the case may be, the permanent head may have regard to such matters as the agent or permanent head thinks fit but, as far as is reasonably practicable, shall be satisfied that the applicant has the capacity—

- (a) to properly care for a child;
and
- (b) to carry out such duties as are prescribed by the regulations as are applicable to the applicant.

(6) A certificate of approval shall be in force for such period, not exceeding 2 years, as the agent or permanent head thinks fit and specifies in the certificate.

(7) Upon application made in the form prescribed by the regulations—

- (a) in respect of a certificate of approval issued by an agent, that agent;
or
- (b) in respect of a certificate of approval issued by the permanent head, the permanent head,

may from time to time renew the certificate for a period not exceeding 2 years in respect of any renewal.

(8) Notwithstanding that an agent's licence has been cancelled or suspended under section 37 or 38 any certificate of approval issued, or

renewal thereof made, by the agent and subsisting at the date of that cancellation or suspension shall continue to be of full force and effect (unless cancelled or suspended by the permanent head under section 41 (2) or until it expires) as if it were a certificate of approval issued under section 40 (2).

41. Suspension etc., of certificates of approval. (1) If a foster care agent or family day care agent or the permanent head has issued a certificate of approval and the agent or permanent head is satisfied that—

- (a) the holder of the certificate can no longer comply with section 40 (3);
- (b) premises specified in the certificate are no longer suitable premises in which to provide foster care or, as the case may be, family day care;
- or
- (c) the holder of the certificate no longer has the capacity to properly care for a child or is not a fit and proper person to hold a certificate of approval,

the agent or, as the case may be, permanent head may cancel or suspend the certificate for such period as the agent or permanent head thinks fit.

(2) If the permanent head cancels or suspends a licence under section 37 or 38 he may cancel or suspend a certificate of approval issued by the licensee.

(3) On application by the holder of a certificate of approval that has been suspended, the certificate may be revived by—

- (a) the agent that issued the certificate;
- or
- (b) if the certificate was issued or suspended by the permanent head, the permanent head.

42. Registration of persons having care of certain of children. (1) Any person other than—

- (a) the permanent head;
- (b) a father, mother, relative, step-parent or guardian of the child concerned;
- or
- (c) any other person acting under the authority of this or any other Act or any other law,

who has attained the age of 18 years and proposes to assume, in respect of a child who has not attained the age of 13 years, the custody of the child and the right to make decisions concerning the day to day care and control of the child shall apply to the permanent head in or to the effect of the form prescribed by the regulations to be registered for that purpose.

Upon receipt of such an application the permanent head shall cause the applicant to be investigated with a view to ascertaining the applicant's suitability for that purpose.

(2) If the permanent head determines that such an applicant is suitable for that purpose he may register the applicant accordingly and, if he does so, shall issue to the applicant a certificate in or to the effect of the form prescribed by the regulations which may be made subject to such conditions as the permanent head imposes at the time of issuing the certificate.

(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 care the child named in his certificate of registration.

(4) The permanent head may at any time cancel a certificate of registration issued under subsection (2) or vary any condition to which the certificate is subject.

43. Offence to have certain children in care if not registered. A person who assumes, in respect of a child who has not attained the age of 13 years, the custody of the child and the right to make decisions concerning the day to day care and control of the child, commits an offence against this Act unless that person is—

- (a) the permanent head;
- (b) a father, mother, relative, step-parent or guardian of the child;
- or
- (c) any other person acting—
 - (i) pursuant to a registration effected by him under section 42;
 - or
 - (ii) otherwise under the authority of this or any other Act or any other law.

44. Licensees may appoint individuals to carry out duties. (1) A licensee may appoint such number of individuals who have such qualifications or experience as are prescribed by the regulations to carry out in respect of the programme that the licensee is licensed to conduct the procedures specified in section 33 (2).

(2) An individual appointed under subsection (1), on behalf of the licensee that appointed him, may (unless the licensee otherwise directs)—

- (a) exercise the powers conferred (other than the making of an application referred to in section 39 (1));
- and

(b) carry out the duties imposed, on the licensee by this Part.

(3) Where an application is made to a licensee under section 21 an individual appointed under subsection (1), on behalf of the licensee that appointed him, may (unless the licensee otherwise directs)—

(a) exercise the powers conferred;
and

(b) carry out the duties imposed,
on the licensee by Part IV.

45. Disclosure of criminal histories. (1) With a view to enabling a proper consideration to be made in respect of—

(a) an applicant for a licence under section 31;

(b) an applicant for a certificate of approval;

(c) an applicant for registration under section 42;

or

(d) an applicant for appointment under section 44 (1),

the applicant upon the request of the permanent head or, as the case may be, licensee in that behalf shall disclose to the permanent head or licensee his criminal history to such an extent and in respect of such matters as, in the opinion of the permanent head or licensee, is necessary to enable that consideration to be made.

(2) If an applicant referred to in subsection (1) (a) is a body corporate the requirement in that subsection that the applicant shall make disclosure shall be taken to be a requirement that the managing director, manager or other governing officer (by whatever name called) of the body corporate make disclosure of his criminal history.

(3) If an applicant referred to in subsection (1) (a) is an association of persons that is not incorporated the requirement in that subsection that the applicant shall make disclosure shall be taken to be a requirement that each member of the committee or other governing body (by whatever name called) of the association make disclosure of his criminal history.

(4) Where an applicant referred to in subsection (1) (a), (b) or (c) makes application to the permanent head, the Commissioner of Police or a person delegated by the Commissioner for the purpose, upon request signed by the permanent head, shall disclose in writing to the permanent head the criminal history (as shown in the Commissioner's records) of the applicant or if that applicant is—

(a) a body corporate, of the managing director, manager or other governing officer (by whatever name called) of the body corporate;

or

(b) an association of persons that is not incorporated, of each member of the committee or other governing body (by whatever name called) of the association.

(5) The Crown, a police officer or any other person shall not incur liability on account of a disclosure of the whole or any part of the

criminal history of any person pursuant to the obligation imposed by subsection (4).

Division 3—Supervision

46. Permanent head to supervise standard of programmes and premises. (1) The permanent head shall cause supervision to be exercised over—

- (a) the conduct of a programme by a licensee;
and
- (b) the standard of the premises in which that programme is being conducted,

to ascertain—

- (i) whether the programme is the programme that the licensee is licensed to conduct;
- (ii) whether the programme is being conducted in compliance with section 36;
and
- (iii) whether the systems of management and procedures proposed under section 33 (2) have proved to be adequate.

(2) The permanent head shall cause supervision to be exercised over the standard of care provided by each person to whom the permanent head has issued a certificate of approval or whose certificate of approval continues to be of full force and effect under section 40 (8).

(3) For the purposes of this section, the permanent head may enter upon the premises referred to in subsection (1) or the premises of the holder of a certificate of approval referred to in subsection (2) at all reasonable hours and inspect the premises and the activities carried on therein and interview any child or other person found on the premises and if necessary remove the child therefrom.

47. Power to enter premises. (1) Upon complaint on oath before a justice made by the permanent head or a police officer that the complainant suspects that an offence against section 43 or 53 has been or is being committed the justice may issue his warrant authorizing the permanent head, all officers of the Department authorized in that behalf by the permanent head and all police officers to enter the premises wherein the offence is suspected to have been or is being committed together, if the permanent head, officer or police officer executing the warrant considers it desirable, with a medical practitioner for the purpose of—

- (a)—
 - (i) examining or interviewing any child;
 - (ii) interviewing any other person,
found on the premises;

and

- (b) police officers searching the premises.

The person executing such a warrant may use such force as is necessary for the purpose of executing the warrant.

(2) If upon the execution of a warrant issued under subsection (1), the person who executes the warrant believes that an offence against section 43 or 53 is being committed he may, in respect of any child found on the premises entered—

- (a) direct a parent, step-parent or guardian of the child or person who is entitled to the custody of the child to remove the child from the premises;

or

- (b) remove the child from the premises and—

- (i) place the child in the care of a parent, step-parent or guardian of the child or person who is entitled to the custody of the child;

or

- (ii) if the whereabouts of the parents, step-parent, guardian or person who is entitled to the custody of the child are not known, deliver the child to a suitable person who is prepared to care for the child temporarily.

(3) A direction referred to in subsection (2) (a) may be given by any appropriate means, including telephone.

(4) Where a child is delivered to a person pursuant to subsection (2) (b) (ii), the person who executed the warrant shall cause advice as to the whereabouts of the child to be given by any appropriate means, including telephone, to the parent, step-parent, guardian or person entitled to the custody of the child as soon as is practicable.

48. Supervision by licensees. (1) Each licensee shall cause supervision to be exercised over the standard of care provided by—

- (a) each person to whom the licensee has issued a certificate of approval;

- (b) each individual appointed by the licensee under section 44 (1),

to ascertain whether that person or individual is complying with section 40 (3) or, as the case may be, 36.

(2) For the purposes of this section a foster care agent or family day care agent may enter upon premises of a foster parent or person who provides family day care at all reasonable hours to inspect the premises and interview any child or other person found on the premises and if necessary to remove therefrom any child placed with that foster parent or person by that agent.

Division 4—General

49. Production of licences and certificates. The permanent head or a police officer may at any reasonable time require a licensee or the holder of a certificate of approval or certificate of registration issued under section 42 to produce and, if so required by the permanent head or police officer, deliver the licence or, as the case may be, certificate to the permanent head or police officer.

50. Licensees to produce records and furnish information. (1) A licensee, if so required by the permanent head, shall produce for inspection such records as the licensee is required by the regulations to keep.

(2) A licensee shall furnish to the permanent head such information in relation to a child—

- (a) in the care of a holder of a certificate of approval issued by the licensee;
- (b) as the case may be, being cared for in the residential care facility that the licensee is licensed to conduct,

or the activities of the holder or, as the case may be, being carried on in that facility as the permanent head requires the licensee to furnish.

51. Permanent head to authorize receipt into care of certain children. A foster care agent, foster parent who has been issued a certificate under section 40 (2) or licensee who is the holder of a licence to conduct a residential care facility shall not receive into care a child who is a child in care within the meaning of the *Children's Services Act 1965-1987* except under the authority of the permanent head.

52. Deaths and serious injuries to be notified. If a child dies or suffers serious injury whilst in the care of a person (other than the permanent head) pursuant to this Act that person forthwith shall notify the permanent head of the death or injury.

53. Offence not to have licence or certificate of approval. (1) A person who conducts a programme specified in section 31 or holds himself out as ready so to do, commits an offence against this Act, unless he is the holder of a licence issued under that section to conduct that programme.

(2) A person who is not a licensee who provides, or holds himself out as ready to provide, foster care or family day care commits an offence against this Act unless he is the holder of a certificate of approval authorizing him to provide foster care or, as the case may be, family day care.

(3) Where a person is convicted of an offence defined in subsection (1) or (2), the permanent head may cause a notice of the conviction identifying the person to be published in a newspaper circulating in the locality where the offence was committed.

No action or proceeding, civil or criminal, shall lie against a person who in good faith and without negligence publishes such notice.

54. Offence to conduct programme or provide care while licence or certificate suspended. (1) A licensee who conducts a programme specified in section 31, or holds himself out as ready so to do, when his licence is suspended commits an offence against this Act.

(2) The holder of a certificate of approval who provides foster care or, as the case may be, family day care or holds himself out as ready so to do when his certificate is suspended commits an offence against this Act.

55. Members of Legislative Assembly may be foster parents. Having regard to section 7B (3) of the *Legislative Assembly Act 1867-1978*, it is expressly permitted that a member of the Legislative Assembly—

- (a) may be the holder of a certificate of approval issued by the permanent head authorizing him to provide foster care;
 - (b) may, subject to this Act, provide foster care under the authority of such certificate;
- and
- (c) shall be entitled to be paid as the holder of such certificate such sums or in accordance with such scales of sums as are prescribed by the regulations to be payable in respect of the provision of foster care.

PART VI—MISCELLANEOUS

56. Service of documents. (1) A notice required by this Act to be served or any direction or notification required by this Act to be given to any person shall be taken to have been duly served or given if it is—

- (a) served personally on the person to whom it is directed or on a person authorized by the person to whom it is directed, either generally or in a particular case, to accept service of documents on his behalf;
- (b) left at the place of residence or business of the person to whom it is directed last known to the person serving or giving it;
- (c) sent by post to the place of residence or business of the person to whom it is directed last known to the person serving or giving it.

(2) A notice, direction or notification referred to in subsection (1) shall be deemed to have been received by the person to whom it is

directed where it has been served or given in the manner referred to in—

- (a) subsection (1) (a), on the day it is served in accordance with that subsection;
- (b) subsection (1) (b), on the day next following the day it is left at the place specified therein;
- (c) subsection (1) (c), unless the contrary is proved, at the time when it would be delivered in the ordinary course of post.

57. Right to appear. In any proceedings for an offence against this Act—

- (a) a police officer;
or
- (b) the permanent head,

although not the complainant may appear and act in court on behalf of the complainant.

58. General penalty. A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.

Penalty: 40 penalty units, or imprisonment for 2 years, or both such penalty and imprisonment.

59. Evidentiary provisions. (1) Any document purporting to be any licence, notice, direction, approval or registration under the hand of—

- (a) the permanent head;
or
- (b) the Director or Deputy Director of the Department of Children's Services,

in any legal proceeding shall be evidence of the licence, notice, direction, approval or registration duly made by the permanent head, Director or, as the case may be, Deputy Director and in the absence of evidence to the contrary, shall be conclusive such evidence.

(2) A document purporting to be executed by a delegate of the permanent head or the Director of the Department of Children's Services shall be received in evidence as if it were a document executed by the permanent head or, as the case may be, Director and, until the contrary is proved, shall be deemed to be executed by a delegate appointed by the permanent head or, as the case may be, Director.

60. Liability for offences by bodies corporate and unincorporate. (1) Where an offence against this Act is committed by a body corporate each of the following persons is deemed to have committed the offence and may be proceeded against and punished in respect of the offence:—

- (a) the body corporate;
- (b) the managing director, manager or other governing officer (by whatever name called).

(2) Where an offence against this Act is committed and any association of persons that is not incorporated is by this Act liable therefor, each member of the committee or other governing body (by whatever name called) of the association is deemed to have committed the offence and may be proceeded against and punished in respect of the offence.

(3) If an individual referred to in subsection (1) or (2) is charged with an offence against this Act it shall be a defence to show that the contravention or failure to comply in question occurred without his consent or connivance and that he exercised all due diligence to prevent it.

61. Control of child care centres. (1) Regulations may be made under section 62 in relation to—

- (a) premises used or to be used for the purpose of child care which regulations—
 - (i) may classify the premises for the purposes of the regulations in such manner as the Governor in Council thinks fit;
 - (ii) may provide differently in respect of premises of different classifications;
 - (iii) may provide for control of premises of all or any of the classifications by way of a system of licensing and, in relation thereto, may assign the administration of a system to Local Authorities;
 - (iv) may provide for the control and supervision of premises of all or any of the classifications to be vested in Local Authorities;
 - (v) may provide for the fixing by Local Authorities of fees payable in connexion with a system of licensing or other control and supervision of premises of all or any of the classifications;
- and
- (b) supervision by the permanent head of the standard of care being provided and programmes being conducted in premises referred to in paragraph (a).

(2) The regulation of premises of any classification referred to in subsection (1) (a) shall be administered by the Local Authority in whose Area the premises are situated as a function of local government.

(3) A Local Authority, in respect of premises referred to in subsection (1) (a) and situated in its Area, may do all things that are required or permitted by the regulations to be done or that are necessary or desirable to be done with a view to the proper administration of the regulations.

62. Regulations. The Governor in Council may make regulations, not inconsistent with this Act, for or with respect to—

- (a) the duties, powers, functions, authorities and privileges of officers of the Department and other persons engaged in

- carrying this Act into effect (including, but without limiting the generality of the foregoing, licensees and holders of certificates of approval or certificates of registration issued under section 42);
- (b) the licensing of persons to conduct programmes specified in section 31;
 - (c) the approval of persons to be holders of certificates of approval and the variation, suspension, revival and cancellation of such certificates;
 - (d) the management, control and supervision of programmes that licensees conduct;
 - (e) controlling the discipline of children being cared for pursuant to this Act and other matters relating to the well-being of such children;
 - (f) the records to be kept by licensees and holders of certificates of approval;
 - (g) the assistance to be given for the provision of care to children who are children in care within the meaning of the *Children's Services Act 1965-1987* or in the custody or temporary custody of the Director as defined in that Act;
 - (h) the form and content of arrangements and agreements entered into and appointments made pursuant to this Act;
 - (i) the fees to be paid under this Act, the purposes for which they are to be paid and the waiver of the payment of such fees, wholly or partly;
 - (j) forms to be used for the purposes of this Act and the functions for which they are to be used, and the verification of information inserted in such forms by means of a statutory declaration in accordance with the *Oaths Act 1867-1981*;
 - (k) all matters required or permitted by this Act to be prescribed;
 - (l) all matters that may be convenient for the administration of this Act or that may be necessary or expedient to achieve the objects and purposes of this Act.

A regulation may impose a penalty not exceeding 10 penalty units for a breach of that regulation or any other regulation.

PART VII—TRANSITIONAL AND AMENDMENTS

63. Saving of licensed institutions. (1) Every licence issued under section 31 of the *Children's Services Act 1965-1982* and subsisting at the date of repeal of that section is hereby deemed to be a licence issued under section 31 (c) of this Act and the governing authority named in the licence is hereby deemed to be the person to whom the licence was issued authorizing that person, in accordance with this Act, to conduct as a residential care facility the institution specified in the licence.

(2) A licence referred to in subsection (1) may be dealt with under this Act in the same way as any other licence issued under section 31 (c) of this Act.

(3) Unless a licence referred to in subsection (1) is cancelled under this Act it shall expire at the expiration of 12 months from the date of repeal of section 31 of the *Children's Services Act 1965-1982*.

(4) Every person who at the date of repeal of section 31 of the *Children's Services Act 1965-1982* is—

(a) the person in charge of an institution referred to in subsection (1) of that section;

or

(b) the superintendent of an institution referred to in subsection (3) of that section,

is hereby deemed to have been employed pursuant to an appointment duly made under section 44.

64. Saving of registration of certain persons. (1) Every certificate of registration given to a person pursuant to section 74 of the *Children's Services Act 1965-1982* and subsisting at the date of repeal of that section is hereby deemed to be a certificate of registration issued to that person by the permanent head under section 42 authorizing that person, in accordance with this Act, to have in his care children who have not attained the age of 13 years and who are in his charge at the date of that repeal.

(2) A certificate of registration referred to in subsection (1) if it is not cancelled under this Act, shall expire at the expiration of the period of its registration specified in the certificate or 12 months from the date of repeal of section 74 of the *Children's Services Act 1965-1982*, whichever is the first to occur.

65. Saving of approval of persons as foster parents. (1) An approval given to a person pursuant to section 104 of the *Children's Services Act 1965-1982* and subsisting at the date of repeal of that section is hereby deemed to be a certificate of approval issued to that person by the permanent head under section 40 (2) authorizing that person, in accordance with this Act, to provide foster care.

(2) An approval referred to in subsection (1)—

(a) may be dealt with under this Act in the same way as any certificate of approval issued under section 40;

(b) if it is not cancelled under this Act, shall expire at the expiration of 2 years from the date of repeal of section 104 of the *Children's Services Act 1965-1982*.

66. Saving of family day care licences, etc. (1) Every licence issued to a person under the Children's Services (Family Day Care) Regulations 1982 authorizing that person to conduct a family day care scheme and subsisting at the date section 152 of the *Children's Services Act 1965-1982* is amended by this Act is hereby deemed to be a licence issued to that person under section 31 and that person is hereby authorized, in accordance with this Act, to conduct that scheme as a family day care agency.

(2) Every licence issued to a person under the Children's Services (Family Day Care) Regulations 1982 authorizing that person to be a care provider and subsisting at the date section 152 of the *Children's Services Act 1965-1982* is amended by this Act is hereby deemed to be a certificate of approval issued to that person by the permanent head under section 40 (2) and the person named in the licence is hereby authorized, in accordance with this Act, to provide family day care.

(3) Every person who at the date section 152 of the *Children's Services Act 1965-1982* is amended by this Act holds the appointment of co-ordinator of a family day care scheme conducted under the Children's Services (Family Day Care) Regulations 1982 is hereby deemed to be an individual appointed pursuant to section 44 and every certificate of approval issued by that person under those regulations shall be deemed to be a certificate of approval issued under section 40 (1) authorizing the person named in the certificate, in accordance with this Act, to provide family day care.

(4) A licence first referred to in subsection (1) or referred to in subsection (2) or a certificate referred to in subsection (3)—

- (a) may be dealt with under this Act in the same way as any licence issued under section 31 or, as the case may be, any certificate issued under section 40;
- (b) if it is not cancelled under this Act, shall continue in force until the date the licence or certificate specifies it is to be in force.

67. Saving of day care centre licences. (1) Every licence issued under the Children's Services (Day Care Centres) Regulations of 1973 and subsisting at the date of repeal of section 86 of the *Children's Services Act 1965-1982* is hereby deemed to be a licence issued under regulations made pursuant to section 61 in substitution for the firstmentioned regulations authorizing the person named in the licence, in accordance with those substituted regulations, to conduct the day care centre specified in the licence as a child care centre.

(2) A licence first referred to in subsection (1)—

- (a) may be dealt with under the substituted regulations in the same way as any other licence issued under those substituted regulations;
- (b) if it is not cancelled under those substituted regulations, shall continue in force until the date the licence specifies it is to be in force.

68. Saving of appointment of visiting justices. Every stipendiary magistrate who at the date of repeal of section 14 of the *Children's Services Act 1965-1982* holds the appointment of visiting justice under that Act shall be for the purposes of this Act a visiting justice.

69. Amendments to certain Acts. (1) The Acts specified in the Schedule are amended in the manner and to the extent set out in the Schedule.

(2) The *Children's Services Act 1965-1982* as amended by the Schedule may be cited as the *Children's Services Act 1965-1987*.

(3) The *Adoption of Children Act 1964-1987* as amended by the Schedule may be cited as the *Adoption of Children Act 1964-1987*.

(4) The *Adoption of Children Act Amendment Act 1983-1987* as amended by the Schedule may be cited as the *Adoption of Children Act Amendment Act 1983-1987*.

(5) The *Adoption of Children Act and Another Act Amendment Act 1986-1987* as amended by the Schedule may be cited as the *Adoption of Children Act and Another Act Amendment Act 1986-1987*.

(6) The *Criminal Law (Sexual Offences) Act 1978* as amended by the Schedule may be cited as the *Criminal Law (Sexual Offences) Act 1978-1987*.

(7) The *Justices Act 1886-1985* as amended by the Schedule may be cited as the *Justices Act 1886-1987*.

(8) The *Maintenance Act 1965-1981* as amended by the Schedule may be cited as the *Maintenance Act 1965-1987*.

(9) The *Registration of Births, Deaths and Marriages Act 1962-1986* as amended by the Schedule may be cited as the *Registration of Births, Deaths and Marriages Act 1965-1987*.

(10) The *Succession Act 1981-1986* as amended by the Schedule may be cited as the *Succession Act 1981-1987*.

(11) The *Bail Act 1980-1986* as amended by the Schedule may be cited as the *Bail Act 1980-1987*.

(12) The *Local Government Act 1936-1986* as amended by the Schedule may be cited as the *Local Government Act 1936-1987*.

(13) The *Criminal Law (Rehabilitation of Offenders) Act 1986* as amended by the Schedule may be cited as the *Criminal Law (Rehabilitation of Offenders) Act 1986-1987*.

SCHEDULE

[s. 69]

Amendments of the Children's Services Act 1965-1982

1. Amendment of s. 2. Arrangement of Act. In section 2 omit the following expressions:—

- (a) "PART II—ADMINISTRATION;";
- (b) "PART IV—INSTITUTIONS;";
- (c) "PART V—CHILDREN IN NEED OF ASSISTANCE;";
- (d) "Division II—Registration to Take Charge of Children;";
- (e) "PART X—FOSTER PARENTS;".

2. Repeal of ss. 4, 5 and 6. Sections 4, 5 and 6 are repealed.

3. Amendment of s. 8. Meaning of terms. In section 8—

(a) omit the following definitions:—

- (i) “day care centre”;
- (ii) “Kindergarten”;
- (iii) “Local Authority”;

(b) omit the definitions “Department”, “Deputy Director” and “Director” and substitute the following definitions:—

“Department”—The department of government of Queensland responsible for the administration of the *Family and Youth Services Act 1987*;

“Director”—means the permanent head for the purposes of the *Family and Youth Services Act 1987*;

4. Repeal of Part II. Administration. Repeal all sections comprising Part II and the heading to that Part.

5. Repeal of Part IV. Institutions. Repeal all sections comprising Part IV and the heading to that Part.

6. Repeal of Part V. Children in Need of Assistance. Repeal all sections comprising Part V and the heading to that Part.

7. Amendment of s. 46. Children in need of care and protection. In section 46 (1) (o) omit the words “under Part V of this Act” and substitute the words “by the Director to the child”.

8. Amendment of s. 47. Voluntary admission to care and protection. Add at the end of section 47 the following subsection:—

“(4) On and from the commencement of Part IV of the *Family and Youth Services Act 1987* an application shall not be made under this section and if made shall not be given effect to by the Director.”.

9. Amendment of s. 48. Duration of care and protection. In section 48 omit the words “Subject to a direction of the Minister given pursuant to section fifty-seven of this Act, a” and substitute the word “A”.

10. Amendment of s. 53. Duration and effect of certain orders. In section 53 (1) omit the words “Subject to any direction of the Minister given pursuant to section fifty-seven of this Act an” and substitute the word “An”.

11. Amendment of s. 58. Duty of Director to child admitted to care and protection. In section 58—

(a) in subsection (1),

(i) omit paragraph (c) and substitute the following paragraph:—

“(c) any person who is a foster care agent within the meaning of the *Family and Youth Services Act 1987*, any foster parent

within the meaning of that Act who is approved by the permanent head within the meaning of that Act or other person approved by the Director;”;

(ii) in paragraph (d), omit the words “an institution established or licensed pursuant to Part IV of this Act” and substitute the words “a residential care facility established under section 18 of the *Family and Youth Services Act 1987* or licensed under Part V of that Act”;

(b) in subsection (2), omit the words “child training centre” and substitute the words “residential care facility that is established under section 18 of the *Family and Youth Services Act 1987* for the purpose of providing secure custody for certain children”;

(c) add at the end of the section the following subsection:—

“(3) An approval given to any other person by the Director under subsection (1) (c), whether before or after the date of commencement of this subsection, shall expire at the expiration of 2 years from that date.”.

12. Amendment of s. 65. Duty of Director to child committed to care and control. In section 65—

(a) omit paragraph (c) and substitute the following paragraph:—

“(c) any person who is a foster care agent within the meaning of the *Family and Youth Services Act 1987*, any foster parent within the meaning of that Act who is approved by the permanent head within the meaning of that Act or other person approved by the Director;”;

(b) in paragraph (d), omit the words “an institution established or licensed pursuant to Part IV of this Act” and substitute the words “a residential care facility established under section 18 of the *Family and Youth Services Act 1987* or licensed under Part V of that Act”;

(c) add at the end of the section the following paragraph:—

“An approval given to any other person by the Director under subparagraph (c) of the preceding paragraph, whether before or after the date of commencement of this paragraph, shall expire at the expiration of 2 years from that date.”.

13. Repeal of Div. II of Part VIII. Registration to Take Charge of Children. In Part VIII omit all sections comprising Division II and the heading to that Division.

14. Repeal of Part X. Foster Parents. Repeal all sections comprising Part X and the heading to that Part.

15. Amendment of s. 119. Definition of “relative” and “child”. In section 119 omit the words “pursuant to Part V of this Act”.

16. Amendment of s. 144. Secrecy provisions. In section 144 (1) omit the words “, Deputy Director”.

17. Amendment of s. 152. Regulations. In section 152—

- (a) omit provisions (2), (3), (4), (6), (7), (8), (13) and (14);
- (b) omit provision (10) and substitute the following provision:—
“(10) The visiting of children in care;”.

Amendments of the Adoption of Children Act 1964-1987

18. Amendment of s. 6. Interpretation. In section 6 omit the definition “Director” and substitute the following definitions:—

“Department”—The department of government of Queensland responsible for the administration of the *Family and Youth Services Act 1987*;

“Director”—The permanent head for the purposes of the *Family and Youth Services Act 1987*;”.

19. New s. 41A. Restriction on placing or receiving child with a view to adoption. Insert after section 41 the following section:—

“41A. Restriction on placing or receiving child with a view to adoption. (1) A person who, for the time being, has a child in that person’s care whether by virtue of being a father, mother, relative or guardian of the child or otherwise, shall not place the child in the care of any other person with a view to the adoption of the child by that other person unless—

- (a) the Director has first approved thereof;

or

- (b) that other person is a father, mother or relative of the child.

(2) A person shall not receive into his care a child with a view to the adoption of the child by that person unless—

- (a) the Director has first approved thereof;

or

- (b) the person is a father, mother or relative of the child.”.

20. Amendment of s. 59B. Disclosure of information authorized in certain cases. In section 59B, omit the words “of Children’s Services”.

21. Amendment of s. 61. Judicial notice of signatures. In section 61, insert after the word “Services” appearing at the end of paragraph (b) the following expression and paragraph:—

;

- (c) the permanent head for the purposes of the *Family and Youth Services Act 1987*”.

**Amendments of the Adoption of Children Act
Amendment Act 1983-1987**

22. Amendment of s. 6. New Part II. In section 6 of the *Adoption of Children Act Amendment Act 1983-1987*, in section 8 (4) provided for therein—

(a) in the first paragraph,

(i) omit the word “Neither” and substitute the words “Except where the Minister otherwise authorizes in respect of a particular person, neither”;

(ii) omit the words “of Children’s Services”;

(b) insert at the end of the subsection the following paragraph:—

“If the chairman or a member of the tribunal is—

(a) an officer of the Public Service of Queensland;

or

(b) a person who in the discharge of his duties is accountable to the Director,

he shall not be accountable in the discharge of his duties as such chairman or member to the Director.”.

23. Amendment of s. 31. Repeal of and new s. 59. In section 31 of the *Adoption of Children Act Amendment Act 1983-1987*, in section 59 provided for therein, omit the words “of Children’s Services” wherever occurring.

24. Amendment of s. 34. Amendment of s. 65. Regulations. In section 34 (g) of the *Adoption of Children Act Amendment Act 1983-1987*, in the substitution of section 65 (1) (i) provided for therein, omit the words “of Children’s Services”.

25. Amendment of s. 36. New second schedule. In section 36 of the *Adoption of Children Act Amendment Act 1983-1987* omit subclause (3) of clause 12 of the Second Schedule provided for in that section and substitute the following subclause:—

“(3) Except where the Minister otherwise authorizes in respect of a particular person, the registrar shall not be an officer of the Department or a person who in the discharge of his duties is accountable to the Director.

If the registrar is—

(a) an officer of the Public Service of Queensland;

or

(b) a person who in the discharge of his duties is accountable to the Director,

he shall not be accountable in the discharge of his duties as such registrar to the Director.”.

**Amendments of the Adoption of Children Acts and
Another Act Amendment Act 1986-1987**

26. Amendment of s. 7. New Part IVA. In section 7 of the *Adoption of Children Acts and Another Act Amendment Act 1986-1987*, in section 39B (2) (b), provided for therein, omit the words “of Children’s Services”.

27. Amendment of s. 11. New s. 59C. In section 11 of the *Adoption of Children Acts and Another Act Amendment Act 1986-1987*, in section 59C (1) provided for therein, omit the words “of Children’s Services”.

Amendments of the Criminal Law (Sexual Offences) Act 1978

28. Amendment of s. 5 (1) (h) (ii). Exclusion of public. In section 5 (1) (h) (ii), omit the words “of Children’s Services” and substitute the words “for the time being administering the *Children’s Services Act 1965-1987*”.

29. Amendment of s. 8 (1) (c). Exempted reports. In section 8 (1) (c), omit the words “of Children’s Services” and substitute the words “for the time being administering the *Children’s Services Act 1965-1987*”.

Amendment of the Justices Act 1886-1985

30. Amendment of s. 71A. Sexual offences against children to be heard in camera. In section 71A (1) omit the words “of Children’s Services” and substitute the words “for the time being administering the *Children’s Services Act 1965-1987*”.

Amendments of the Maintenance Act 1965-1981

31. Amendment of s. 9. Matters affecting amount of orders. In section 9 omit subsection (3) and substitute the following subsection:—

“(3) In determining the amount that a defendant is to be ordered to pay by an order under this Part in respect of a child who is a “child in care” within the meaning of the *Children’s Services Act 1965-1987* no regard shall be had to the fact that the child is a “child in care”.”

32. Amendment of s. 133. Children in care. In section 133, omit the words “Director of the Department of Children’s Services” and substitute the words “permanent head for the purposes of the *Family and Youth Services Act 1987*”.

**Amendments of the Registration of Births, Deaths and Marriages Act
1962-1986**

33. Amendment of s. 28. Registration of name after registration of birth. In section 28 (1)—

(a) omit the words “of the Department of Children’s Services” and substitute the words “within the meaning of the *Children’s Services Act 1965-1987*”;

(b) omit the expressions “1979” and “1980” and substitute the expression “1987” in each case.

34. Amendment of s. 28A. Entry of change of surname of child. In section 28A—

(a) in subsection (5),

(i) omit the words “of the Department of Children’s Services” where firstly and secondly occurring and substitute in each case the words “within the meaning of the *Children’s Services Act 1965-1987*”;

(ii) omit the words “of Children’s Services” where thirdly occurring and substitute the words “for the time being administering the *Children’s Services Act 1965-1987*”;

(b) in subsection (6), omit the words “of Children’s Services” and substitute the words “for the time being administering the *Children’s Services Act 1965-1987*”.

Amendment of the Succession Act 1981-1986

35. Amendment of s. 41. Estate of deceased person liable for maintenance. In section 41 (7), omit the words “of Children’s Services” and substitute the words “within the meaning of the *Children’s Services Act 1965-1987*”.

Amendments of the Bail Act 1980-1986

36. Amendment of s. 20. Undertaking as to bail. In section 20—

(a) in subsection (5), omit the words “of Children’s Services” and substitute the words “for the time being administering the *Children’s Services Act 1965-1987*”;

(b) in subsection (6) (c) (ii),

(i) omit the expression “1982” and substitute the expression “1987”;

(ii) omit the words “of Children’s Services” and substitute the words “for the time being administering that Act”.

Amendment of the Local Government Act 1936-1986

37. Amendment of s. 24. In section 24 (1), in paragraph (g), omit subparagraph (1) and substitute the following subparagraph:—

“(1) A residential care facility that a person under the *Family and Youth Services Act 1987* is licensed to conduct.”.

Amendment of the Criminal Law (Rehabilitation of Offenders) Act 1986

38. Amendment of s. 9A. Disclosure of particulars in special cases. In section 9A (1), in the Table appearing therein—

(a) in the first column,

(i) omit the expression “1982” where secondly occurring and substitute the words “1987 or the *Family and Youth Services Act 1987*”;

(ii) omit the words “Department of Children’s Services” where firstly occurring and substitute the words “department of government

of Queensland responsible for the administration of the *Family and Youth Services Act 1987*”;

(iii) omit the words “Department of Children’s Services” where secondly occurring and substitute the words “permanent head for the purposes of the *Family and Youth Services Act 1987*”;

(b) in the second column, in the words “*Children’s Services Act 1965-1982*” omit the expression “1982” and substitute the expression “1987”.