



ANNO DECIMO SEPTIMO

GEORGII V REGIS.

A.D. 1926.

No. 1780.

An Act to consolidate and amend the law relating to State Children, Destitute Persons, the Summary Protection of Married Women, and other matters, and to make Provision for granting Assistance to Mothers for the Maintenance of their Children, and for other purposes.

[Assented to, December 16th, 1926.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

PART I.

PRELIMINARY.

PART I.

1. This Act may be cited as the "Maintenance Act, 1926," and shall come into operation on a day to be fixed by proclamation. Short title and commencement.
2. The Acts mentioned in the First Schedule are hereby repealed. Repeal.
3. (1) Every investigation, legal proceeding, or remedy instituted, commenced, or sought to be enforced under any of the Acts repealed by this Act, by the Destitute Board, the State Children's Council, or any officer of either of those bodies, may be continued, enforced, and completed under the provisions of those Acts by the board or any officer thereof as the case may be. Power of Board to continue proceedings commenced under repealed Acts
- (2) Except where inconsistent with this section or any other section of this Act, the provisions of the Acts Interpretation Act, 1915, relating to the effect of repeals shall apply in respect of the repeals enacted by this Act.
4. This

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Division of Act.

4. This Act is divided into Parts, as follows :—

PART I.—Preliminary.

PART II.—The Children's Welfare and Public Relief Board—

DIVISION I.—Its Constitution, Powers and Functions :

DIVISION II.—The Relief of Necessitous Persons.

DIVISION III.—Special Provisions relating to the Relief of Children.

PART III.—Maintenance Obligations—

DIVISION I.—The Maintenance of the Indigent Poor by their Relatives :

DIVISION II.—The Maintenance of Children by their Relatives :

DIVISION III.—The Summary Protection of Married Women :

DIVISION IV.—General Provisions relating to Maintenance and the Enforcement of Maintenance Orders.

PART IV.—State Children—

DIVISION I.—The Commitment, Detention, and Release of State Children :

DIVISION II.—Apprenticing and Placing Out.

PART V.—Institutions and Asylums—Their Establishment, Inspection, and Abolition.

PART VI.—The Licensing and Supervision of Lying-in Homes and Foster-mothers.

PART VII.—Procedure, Penalties, and General Matters.

5. In this Act, except where the context or subject matter or some other provision requires a different construction,—

“Affiliation case” means proceedings by way of complaint against the alleged father of an illegitimate child for relief, or maintenance, or confinement expenses :

“Asylum” means any asylum, institution, or place for the reception and relief of destitute persons established under this Act, or which was immediately prior to the commencement of this Act under the control of the Destitute Board :

“Board” means the Children's Welfare and Public Relief Board established under this Act :

“Chairman” means chairman of the board :

“Child” means any boy or girl under the age of eighteen years ; and, in the absence of positive evidence as to age, means any boy or girl apparently under the age of eighteen years :

“Confinement

Interpretation.
641, 1895, s. 4.

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702, 1898, s. 3.

- “ Confinement expenses ” includes reasonable medical and nursing expenses attendant upon the confinement of the mother, and the cost of clothing necessary for the child for two months after its birth :
- “ Convicted child ” means any child found guilty or convicted of any crime or offence punishable by imprisonment :
- “ Destitute child ” means any child who has no sufficient means of subsistence apparent to the Court, and whose near relatives are, in the opinion of the Court, in indigent circumstances and unable to support such child, or are dead, or unknown, or cannot be found, or are out of the jurisdiction, or in the custody of the law :
- “ Foster-mother ” means a female having the care, charge, or custody of a child under seven years of age, to adopt, rear, nurse, or otherwise maintain such child apart from his or her parent, and not being a near relative of such child :
- “ Foster-parent ” means any person to or with whom a State child is apprenticed or placed out under this Act, or any Act hereby repealed, and includes the assignee of such person :
- “ Guardian ” means either the mother or father of a child, or any person having the immediate custody and control of a child :
- “ Inmate ” means a State child maintained in an institution :
- “ Institution ” means and includes the Receiving Depot, the Reformatory School for Boys, the Reformatory School for Girls ; every depot, industrial school, probationary school, or reformatory school established under this Act, or any Act hereby repealed ; and every private reformatory school or private institution proclaimed under this Act, or any Act hereby repealed ; and all other institutions, schools, and places for the time being under the care, control, or supervision of the board :
- “ Lying-in-home ” means a place for the accommodation of females during their confinement and lying-in, but does not include any asylum or place under the control of the board :
- “ Maintenance ” includes the cost of clothing, support, training, and education :
- “ Maintenance order ” means an order made by a Court for payment of money by any person in respect of the maintenance of a child or any other person, and includes any order directing the payment of money to the board in respect of relief afforded by the board to any person, and so much of any order made under Division III. of Part III. of this Act as relates to the payment of money :
- “ Member ” means member of the board, other than the chairman :
- “ Near

“Near relative,” as regards a child other than an illegitimate child, means and includes the father, mother, stepfather, stepmother, grandfathers, and grandmothers of the child ; and, as regards an illegitimate child, means and includes the mother, father, and the husband of the mother of such child ; and as regards any person other than a child means and includes the father, grandfather, mother, grandmother, children, and grandchildren of such person :

“Neglected child ” means any child who—

- (a) habitually begs or receives alms, whether under the pretext of sale or otherwise, or frequents any public place for the purpose of so begging or receiving alms ; or
- (b) wanders about, or frequents any public place, or sleeps in the open air, and does not satisfy a Court that he or she has a home or settled place of abode ; or
- (c) resides in any reputed brothel, or associates or dwells with any person known to the police or reputed to be a prostitute, whether such person is the mother of such child or not ; or
- (d) associates or dwells with any person who has been convicted of vagrancy, or is known to the police as of bad repute, or who has been or is reputed to be a thief or habitual drunkard ; or
- (e) being under the age or apparent age of ten years, sells or offers for sale, between the hours of eight o'clock in the evening and five in the morning, in any public place or in any place other than the child's home, any matches, newspapers, or any other article whatsoever ; or
- (f) is under the guardianship of any person whom a Court considers unfit to have such guardianship ; or
- (g) is illegitimate, and whose mother is dead or is unable to maintain or take charge of such child ; or
- (h) is found in any brothel or house of ill fame ; or
- (i) being under the age of fourteen years, and not being on any lawful business or errand, habitually frequents public streets or places between the hours of eight o'clock in the evening and five o'clock in the morning ; or
- (j) being under the age of sixteen years, and not being the child or ward of the licensee, is, on more than one occasion and without lawful excuse, found in the bar, barroom, or taproom of any public house or wine saloon, or is on more than one occasion served with intoxicating liquor in or upon the premises of such public house or wine saloon :

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- “ Private institution ” means an institution or establishment for the detention, maintenance, training, education, and employment of destitute or neglected children, established and maintained by private persons :
- “ Private reformatory school ” means a school or institution for the detention, maintenance, reformation, training, employment, and education of convicted children, established and maintained by private persons :
- “ Public place ” includes every erection, building, or place to which free access is permitted to the public with the express or tacit consent of the owner ; or to which the public are admitted on payment of money, and the test of the right to admission to which is the payment of money only ; and also every road, street, thoroughfare, footway, court, or alley to which the public have the right of access, or which the public are allowed to use :
- “ State child ” means any child who has been committed to an institution, or has been placed in the custody or under the control of the board, pursuant to this Act, or any Act hereby repealed, for a period which has not yet expired :
- “ The Destitute Board ” means the board appointed pursuant to the Destitute Persons Act, 1881 :
- “ The State Children’s Council ” means the State Children’s Council constituted under The State Children Act, 1895.

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PART II.

THE CHILDREN’S WELFARE AND PUBLIC RELIEF BOARD.

DIVISION I.—CONSTITUTION, GENERAL POWERS, AND FUNCTIONS.

DIVISION I.

6. (1) A board to be called the “ Children’s Welfare and Public Relief Board ” is hereby constituted for the purposes of this Act.

Constitution and incorporation of board.

(2) The board shall be a body corporate and by the name aforesaid shall have perpetual succession and a common seal.

7. Judicial notice shall be taken of the incorporation and of the common seal of the board ; and the production of any deed instrument or writing, if sealed with the said seal, shall be sufficient evidence of the due making and execution of that deed instrument or writing.

Judicial notice of seal

8. (1) The board shall consist of—

(a) the chairman ; and

(b) eight other members appointed by the Governor.

Membership of board.

Four, at least, of the members shall be women.

(2) The

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(2) The eight persons first appointed as members of the board under this Act shall be appointed from among persons holding office as members of the Destitute Board or the State Children's Council immediately prior to the coming into operation of this Act.

(3) No member of either House of Parliament shall be at any time appointed to the board.

Tenure of office.

9. (1) Each member of the board shall be appointed for a term of three years, and may from time to time, at the expiration of his term of office, be re-appointed for a further term of three years.

(2) Whenever a vacancy occurs in the office of either member whether by expiration of the member's term of office or otherwise, the Governor shall appoint a person to fill the vacancy: Provided that the person appointed to fill the vacancy caused otherwise than by the expiration of the term of office of a member shall hold office only for the unexpired portion of the term of office of the member in whose place he is appointed, and any retiring member shall hold office until his successor is appointed.

(3) The provisions of the Public Service Act, 1916, shall not apply to any member of the board by virtue only of his appointment as such member.

Casual vacancies.

10. In addition to the retirement of members by the expiration of their terms of office, the seat of a member shall become vacant on—

- (a) his death, lunacy, or insolvency, or his executing a statutory deed of assignment for the benefit of his creditors, or compounding with his creditors for less than Twenty Shillings in the Pound, or his being convicted of an indictable offence; or
- (b) his resignation by notice in writing posted or delivered to the chairman; or
- (c) his absence from three consecutive meetings of the board without the leave of the board.

Effect of defects in appointment of members of board.

11. (1) No act or proceeding of the board shall be invalid or illegal in consequence only of the number of the members of the board not being complete at the time of such act or proceeding.

(2) All acts and proceedings of the board shall, notwithstanding the discovery of any defect in the appointment of any member thereof, or that any member was disqualified or disentitled to act, be as valid as if such member had been duly appointed and was qualified and entitled to be and to act, and had acted, as a member of the board, and as if the board had been properly and fully constituted.

Chairman.

12. (1) The Governor may appoint a fit and proper person to be chairman of the board.

(2) The person so appointed shall be subject to the Public Service Act, 1916.

13. (1) At

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- 13.** (1) At all meetings of the board the chairman shall preside. Meetings and quorum.
 (2) The chairman and four other members of the board shall constitute a quorum thereof.
- 14.** Each member shall, at the discretion of the Minister, be reimbursed any expenses incurred by him in the exercise of his office. Expenses of members may be reimbursed.
- 15.** (1) The board shall, on or before the first day of September in every year, report to the Governor on the working of this Act, and shall in such report specify the number of children and destitute persons in the several institutions and asylums, the number of children placed out and apprenticed during the period covered by the report, the nature and value of the relief given by the board to destitute persons, including the weekly payments to children under Division III. of Part II. of this Act, and set out a summary of the receipts and expenditure of the board during the same period, and any other particulars which the Chief Secretary may direct from time to time to be included in such report. Reports by board. 641, 1895, s. 19.
 (2) All reports shall be laid before Parliament.
- 16.** (1) The board shall have the following general powers and functions, namely:— General powers of board. Ibid., s. 16.
- i. The care, management, and control of the persons and property of all State children; and the supervision of all children nursed by foster-mothers:
 - ii. Power to apprentice and place out State children:
 - iii. Power to licence fit and proper persons to be foster-mothers to children under the age of seven years:
 - iv. The supervision of all illegitimate children under the age of seven years, and the homes of such children:
 - v. Power, subject to the approval of the Governor, to appoint institutions for the reception, detention, education, employment, training, or reformation of State children:
 - vi. The control, supervision, and management of all institutions as hereinafter provided:
 - vii. The licensing, control, and supervision of lying-in homes:
 - viii. The control, supervision, and management of asylums, and of the officers and servants employed therein, and of all visiting officers:
 - ix. The ordering of the persons and property of destitute persons and children so long as they shall be inmates of any asylum:
 - x. Power, subject to the approval of the Chief Secretary, to appoint superintendents, matrons, psychologists, inspectors, teachers, officers, and servants:
 - xi. The management, custody, and control of all property, real or personal, vested in or belonging to the board:
 - xii. The

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XII. The administration, subject to the regulations of the Public Service, of all moneys voted by Parliament or otherwise acquired by the board, for the purposes of this Act.

Powers of chairman in emergencies.

(2) In cases of emergency requiring immediate action, and in all cases where it is impracticable, or would be likely to cause delay calculated to defeat the proper attainment of any object contemplated by the Act, to obtain the authority of the board before acting, the chairman may, in the name and on behalf of the board, do any act or exercise any power which the board is authorised to do or exercise; but all such acts, or the exercise of any such powers and authorities, shall be reported by the chairman to the board at its next subsequent meeting, and shall be subject to the ratification of the board, but until such meeting shall for all purposes be deemed to be valid and effectual.

Transfer of certain property to the board.

(3) All property of whatever kind vested in the State Children's Council or the Destitute Board or any member or officer of either of those bodies for the purposes of any of the Acts repealed by this Act is hereby transferred to the board.

Power of board with respect to estates of children or other inmates.

210, 1881, s. 37.

17. The board may manage, and demise for any term not exceeding three years, the lands of or to which any inmate is seized or entitled, and may make allowances and arrangements with all or any of the tenants or occupiers for the time being of the said lands, and accept surrenders of leases and tenancies, as fully and effectually as such inmate if of the full age of twenty-one years could do.

Collection by board of moneys due to inmates.

Ibid., s. 38.

18. The board may demand, sue for, collect, and receive, all the rents and profits which shall be due to any such inmate, and may give effectual receipts and discharges for such rents and profits or so much thereof as shall be received, and in case of non-payment of the same or any part thereof, in the name of the chairman of the board or in the name and on behalf of such inmate, may enter into and upon all or any of the lands in respect of which any rents shall be unpaid, and may distrain for the said rents and profits, and the costs and expenses of and incidental to the non-payment thereof; and the distress then and there found may dispose of in due course of law, and may take and use all lawful proceedings and means for recovering and receiving the said rents and profits, and for evicting and ejecting defaulting tenants and occupiers from all or any of the said lands, and determining the tenancy or occupation thereof, and for obtaining, recovering, and retaining possession of all or any of the lands held or occupied by such defaulters.

Board may bring actions.

Ibid., s. 39.

19. The board may, in its corporate name, or in the name and on behalf of any such inmate, commence and prosecute at law and in equity all actions, suits, claims, demands, and proceedings, touching any land, estate, interest, or rights of any such inmate, or of his tenants therein or thereto, or touching any matter or thing whatsoever in which any such inmate or his real or personal estate or effects may be in any way interested, affected, or concerned.

20. The

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20. The board may appoint and remove at their pleasure any attorney or agent in respect of all or any of the matters aforesaid, upon such terms and for such remuneration as the said board shall think fit, and may allow to such attorney or agent all costs, charges, and expenses lawfully incurred by him in executing the powers and trusts reposed in the board by this Act.

Board may appoint agents.
Ibid., s. 40.

21. In sections 17 to 20 inclusive the term "inmate" includes a person who is an inmate of any asylum.

Application of sections 17 to 20.

DIVISION II.—THE RELIEF OF NECESSITOUS PERSONS BY THE BOARD.

DIVISION II.

22. (1) The board may, subject to any directions given by the Minister, afford relief, whether in money or by the supply of commodities to such destitute or necessitous persons as the board think fit, and subject to the regulations may admit any such person into any asylum.

Duty of board to determine proper objects of relief.
210, 1881, s. 29.

(2) The board shall cause a record to be kept showing the age, date of reception, parentage, nationality, sex, period of detention, and religion so far as known of all persons admitted into an asylum under this division and of all dispositions of and dealings with those persons.

23. All relief given by the board under this Division to or on account of any wife, or any child, shall be deemed to be given to the husband of the wife or the father of the child as the case may be; but if the husband of any wife is dead, out of the State, in custody of the law, or is lunatic or idiot, any relief given to or on account of the wife shall be deemed to be given to her personally, and if the father of any child is dead, out of the State, in custody of the law, or is lunatic or idiot, any relief given to or on account of any child shall be deemed to be given to the mother thereof.

Liability of husbands and fathers for relief given to wives and children.
Ibid., s. 30.

24. (1) In any case in which relief has been afforded to any person, or to the wife and child of any person, and such person, or the father, grandfather, mother, grandmother, husband, child, children, or grandchildren of such person is at any time within six years thereafter able to repay the amount or cost of such relief or part thereof, a Court of Summary Jurisdiction may, upon the complaint of an officer of the board, inquire into the matter in a summary way.

Recovery of cost of past relief from relatives.
Ibid., s. 32.

(2) If the Court is of opinion that such person, or the father, or other near relative as aforesaid is able to repay the whole or part of the amount or cost of such relief, it may order such person or father, or other near relative as aforesaid, to pay such officer such sum of money either in one sum or by instalments as in its judgment such person, father, or other relative as aforesaid can reasonably afford and ought to contribute towards the past relief of such person.

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Onus of proof.
Ibid., s. 33.

25. Upon any trial of any complaint made by or with the authority of the board for the recovery from any near relatives of any sum of money the onus of proving that the person complained of is not a near relative, or that such near relative is not of sufficient means, or that any inmate of an asylum is of sufficient means, shall lie upon the defendant, who shall be competent and compellable to give evidence touching the matter of such complaint.

Enforcement of orders.

26. Any order made under this Division may be enforced in the manner set forth in Division IV. of Part III. of this Act.

DIVISION III.

DIVISION III.—SPECIAL PROVISIONS RELATING TO THE RELIEF OF CHILDREN.

Interpretation.
Cf. Victoria,
3001, 1919, s. 2.

27. In this Division, unless inconsistent with the context or subject-matter, "child" means any person under the age of fourteen years, whether born in lawful wedlock or not.

Application by mother in respect of maintenance of child without sufficient means of support.

Ibid., ss. 3, 17,
(1) and (2).

28. (1) Any mother whose child is without sufficient means of support and who is unable to provide and is unable by any available legal proceedings to obtain sufficient means of support for such child may, in the prescribed form, make an application in writing, under this Division, to the Board that a weekly sum be paid to her for or towards the maintenance of such child.

(2) Every application under this Division shall be in accordance with the regulations.

(3) Every applicant shall, by declaration to be made under the Statutory Declarations Act, 1915, and indorsed on the application, declare that the contents of the application are true and correct in every particular.

Investigation by Board.
Ibid., s. 4.

29. The Board shall, on receipt of the said application, make or cause to be made such investigations as appear to it desirable in order to ascertain—

- I. the circumstances and character of the applicant ;
- II. the ability of the applicant to maintain the child the subject of the application without assistance as provided under this Division ; and
- III. the truth of the statements in the application.

Provisions as to investigation by Board.

30. (1) The Board shall notify the applicant of the time when and place where she is required to attend to support her application.

(2) For the purposes of any investigation by the Board under this Division the following provisions shall have effect :—

- (a) Where the Board is satisfied that by reason of physical disability or other sufficient cause the applicant is unable to attend, the Board may dispense with the attendance of the applicant :
- (b) The

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- (b) The Board may call and examine such witnesses as it thinks fit :
- (c) In investigating any application the Board shall not be bound by any rules of evidence, but shall investigate the matter and make its recommendation according to equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms :
- (d) If an applicant makes application in respect of more than one child, the Board may investigate all the applications together :
- (e) With regard to summoning and compelling the attendance of witnesses and the examination of and production of documents by witnesses, the provisions of the Justices Act, 1921, shall apply as if the Board investigating the application were a Court of Summary Jurisdiction :
- (f) The powers conferred upon the Board by this Division may be exercised by a quorum thereof, and any summons, subpoena, warrant, or other document issued by the Board under this section shall be sufficiently authenticated if signed by the Chairman.

31. (1) On the completion of its investigation the Board shall forward to the Minister a report upon the results of its investigations and a recommendation as to whether in its opinion assistance under this Division should or should not be granted to the applicant in respect of her child, and (if she has applied in respect of more than one child) shall state with respect to how many (if any) children such assistance should in his opinion be granted.

Report and
recommendation of
Board.
Ibid., s. 6.

(2) The Board shall not recommend that assistance be granted unless it is satisfied that the applicant is deserving of assistance, and unless the evidence (if any) of the applicant is corroborated on all material points by documentary information or oral evidence.

32. (1) Upon receipt of the report and recommendation of the Board the Minister, if he thinks fit, may cause further inquiries to be made into the matter.

Submission of
report, &c., to
Minister.
Ibid., s. 7.

(2) The Minister, after considering—

(a) the report and recommendation of the Board :

(b) the results of the further inquiries (if any) made as aforesaid,

may, with such modifications and conditions (if any) as he thinks fit, grant the application, or may refuse the same.

33. At the request of the Minister the Board may at any time rehear any such application previously refused by the Minister and shall forward a report on the result of the rehearing for the consideration

Rehearing by
Board at request of
Minister.
Ibid., s. 8.

consideration of the Minister. In the case of a rehearing the Board shall have as nearly as may be the same powers and duties as in the case of the original hearing.

Limitation of amount payable. *Ibid.*, s. 10.

34. (1) The sum payable under this Division to a mother for or towards the maintenance of any child shall be payable out of moneys provided by Parliament for the purpose, and shall not be more than Fifteen Shillings a week unless in the opinion of the Minister exceptional circumstances warrant the payment of a larger sum.

(2) Any sum paid to a mother pursuant to this Division shall be payable as from the date of the receipt of the application by the Board and shall cease to be paid on the child's attaining the age of fourteen years: Provided that the Minister may, where in his opinion the special circumstances of the case make it advisable, direct, in writing, that such sum shall, after the child reaches the age of fourteen years, continue to be paid for such period, not exceeding two years, as is fixed by the Minister on the recommendation of the Board.

Power to discontinue and vary payments. *Ibid.*, s. 11.

35. (1) The payment of any sum to a mother pursuant to this Division may, on the direction in writing of the Minister, be discontinued, and, subject to this Division, any sum so paid may, on the like direction, be increased or reduced at any time, if the Minister is satisfied that the circumstances of any case warrant such discontinuance, increase, or reduction.

Power to direct cessation of payments on misconduct, &c. *Ibid.*, s. 12.

(2) Whenever it is proved to the satisfaction of the Minister that the mother of any child for or towards whose maintenance any sum is being paid to such mother pursuant to this Division is guilty of conduct rendering her unfit, in the opinion of the Minister, to have the custody of the child, or that the mother is not properly maintaining the child, the Minister may, by indorsement signed by him upon the application for assistance, direct that the payment shall forthwith cease.

Provision in case of illness or death of mother. *Ibid.*, s. 13.

36. (1) When a mother to whom payments are made for or towards the maintenance of her child pursuant to this Division becomes incapable, whether from illness or any other cause not within her control, of properly caring for and maintaining such child, the chairman—

(a) may direct that during such incapacity some other fit person shall have the care and maintenance of the child; and

(b) shall make such arrangements as he thinks proper as to the person who may during such incapacity receive the payments in respect of the maintenance of such child.

Proceedings on death of mother.

(2) Whenever the chairman is satisfied that the mother of any child for or towards whose maintenance any sum is being paid pursuant to this Division is dead the chairman may by indorsement signed by him upon the application for assistance certify to the fact and the date of death.

(3) Upon