

Children of the State.

57 A child on being committed to an institution may, in the discretion of the court, be placed temporarily in a receiving home.

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Children to be placed in receiving home. N.S.W., s. 32

58 Sentence of death shall not be pronounced on or recorded against a child by the Supreme Court or a judge thereof, but in lieu thereof the court or judge shall sentence the child to be detained during His Majesty's pleasure, and if so sentenced, he shall, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and under such conditions as the Governor may direct, and whilst so detained shall be deemed to be in legal custody.

Abolition of death sentence in case of children. Ch. 67 1908, s. 103, (Eng.).

59 Where a child is convicted on an information filed in the Supreme Court of rape or an attempt to murder, or of manslaughter, or with wounding with intent to do grievous bodily harm and the Supreme Court or a judge thereof is of opinion that no punishment which the court or judge is authorised to inflict is sufficient, the court or judge may sentence the offender to be detained for such period as may be specified in the sentence; and where such a sentence is passed the child shall during that period, notwithstanding anything contained in any Act, be liable to be detained in such place and on such conditions as the Governor may direct, and whilst so detained shall be deemed to be in legal custody.

Detention in the case of certain crimes committed by children. *Ibid.*, s. 104.

60--(1) A person in detention pursuant to the directions of the Governor under the last two foregoing sections of this Act may, at any time, be released by the Governor on licence.

Provisions as to release of child detained according to directions of Governor.

(2) A licence may be in such form and may contain such conditions as the Governor may direct.

Ibid., s. 105

(3) A licence may at any time be revoked or varied by the Governor, and where a licence has been revoked the person to whom the licence related shall return to such place as the Governor may direct, and if he fails to do so, may be apprehended without warrant and taken to that place.

61 The Minister as soon as practicable shall endorse on the order of committal the name of the institution and the place where the child is to be detained.

Child placed in institution. N.S.W., s. 33.

62 The Minister, with respect to any child who has been committed to, or is an inmate of any institution, shall determine the particular institution in which the child shall be placed and detained. Provided that no child may remain in a receiving-home for more than Three months, except by permission of the Minister.

Minister to determine particular institution. Cf. N.S.W., s. 35.

63 At the inquiry or hearing into any charge or information against a child the children's court shall be guided by the real justice of the case without regard to legal forms and solemnities, and shall direct itself by the best evidence it can procure or that is laid before it.

Procedure at inquiry or hearing. Vict., s. 29.

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Procedure on requiring appearance before the court for punishment of a child who has been released on surety so to appear.

Vict., s. 30.

Notice in writing.

Service of notice.

On child's failure to appear recognisance to be forfeited and warrant of apprehension issued.

No detention after age of 18. W.A., ss. 30, 31. Q., s. 25.

Cf. N.S.W., s. 34 S.A., ss. 38, 39.

Child over 16 may be detained for Two years.

Governor may extend period of detention.

W.A., s. 40.

Q., s. 32.

Discharge of State child.

W.A., s. 38.

Q., s. 29.

64—(1) Where any child has been convicted under this Act and discharged conditionally upon his entering into a recognisance in a nominal sum with a surety or sureties to appear before the children's court for punishment when called upon, and the said court at any time thinks fit to call upon such child to appear before the said court for punishment, such call may be effected and shall be sufficient if a notice in writing signed by the clerk of the children's court and addressed to such child and his surety or sureties is served on such surety or sureties commanding such child to appear, and his said surety or sureties to produce him, before some sitting of the court at a certain time and place therein mentioned to receive punishment for the offence of which he had been convicted by the said court.

(2) Service of the said notice may be effected either by prepaid letter sent by post to the address of the surety or sureties mentioned in the recognisance so as to reach such address by ordinary course of post Seventy-two hours before the time named in the said notice for the appearance of such child before the children's court, or as service of a summons may be effected under "The Magistrates Summary Procedure Act."

(3) After being so served with such notice if such child does not appear before such court for punishment accordingly the said court may declare the recognisance to be forfeited and may issue a warrant for the apprehension of such child and any justice may dispose of him in the manner provided in this Act for the disposal of a child pending the hearing of a charge or information, and order him to be brought before the next sitting of the court to be dealt with according to law.

65 Except as in this Act otherwise provided, no child of the State shall be detained in any institution after attaining the age of Eighteen years.

Provided that if any child at the time of being committed to an institution is upwards of Sixteen years of age, such child may be ordered to be detained in an institution, or otherwise dealt with under this Act, for a period of not exceeding Three years, notwithstanding that such period would extend beyond the time of such child attaining the age of Eighteen years.

66 The Governor may order that the period of care or of detention of any child of the State shall be extended until such child shall attain the age of Twenty-one years or for any shorter period.

67 Notwithstanding anything contained in this Act, the Governor may upon the recommendation of the Minister order the discharge of any convicted child and the Minister may order the discharge of any child of the State other than a convicted child from the control of the Department or from any institution, and the child shall be forthwith discharged accordingly.

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Such discharge may, if the Governor or Minister, as the case may be, thinks proper, be a discharge on probation on such conditions (if any) as may be imposed, and in such case the child shall be subject to the care of the Department until he attains the age of Twenty-one years, or for such shorter period as the Governor or the Minister, as the case may be, determines.

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68—(1) Every order committing a child to the care of the Department or to an institution shall contain a statement of the age and religion, so far as can be ascertained of such child, and the cause for which the child is to be detained.

Form of order.
W. A., ss. 34, 35.
Cf. Q., s. 27 (2).
S. A., ss. 43, 44,
45.

(2) If there shall be an absence or insufficiency of positive evidence or information as to the age of any child, the court may on view determine the age of such child, and shall insert in the order the age so determined.

(3) The statement in any order that the child therein named is of a certain age and religion may, for the purposes of this Act, be taken to be true, unless within Six months from the date of the order the Secretary shall be satisfied to the contrary, and shall indorse on the order the correct age or religion.

Statement of age
and religion to be
prima facie
evidence.

69 Any child of the State who absconds from any institution, or from his foster-mother, or foster-parent, or from any person in whose custody he is placed, or who, whilst liable to detention, refuses or neglects forthwith to return to such institution or custody as the Secretary may order, may be apprehended without a warrant by any police officer, or by an officer of the Department, and conveyed to such institution or custody as the Secretary may direct.

State children
absconding, &c.,
may be apprehended
without
warrant.
W. A., s. 37.
Cf. Q., s. 23.

70 The Secretary or the managers of any certified institution, as the case may be, may, by indentures of apprenticeship, bind any child of the State apprentice to be taught such trade or calling as the Secretary or such managers approve.

The Department
or managers
may apprentice
children.
W. A., s. 41
Q., s. 33.

Such indentures shall be as effectual without being executed by the child as if the child were of full age at the date thereof, and had voluntarily executed the same.

71 Subject to this Act the Secretary or the managers of any certified institution, as the case may be, may place out any child of the State for such period as the Secretary or managers think fit.

Secretary or
governing
authority may
place out children
W. A., s. 34.
Q., s. 34.

A child of the State shall not be placed out with any person who is the holder of a hotel or public-house licence.

Nothing in this section shall authorise the placing out of any child for any time extending beyond the period of detention of such child.

72—(1) Every child of the State over the age of Seven years shall be sent regularly to a State school in compliance with "The Education Act, 1885," or be regularly and efficiently instructed in some other manner until such child attains the age of Fourteen years. If considered advisable the Minister may extend the limit of school age.

State children
to attend school
regularly.
W. A., s. 43.
Q., s. 37.
49 Vict. No. 15
(Tas.).
Q., s. 38

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- (2) No child of the State shall be apprenticed or placed out for hire —
- I. If he is under the age of Fourteen years: nor
 - II. Unless a medical certificate of physical fitness for employment has been obtained in respect of such child.

(3) Any parent or foster-parent committing or permitting any breach of this section shall be guilty of an offence against this Act, unless for good cause shown he shall be specially exempted by the Minister.

Certain children not to be placed out.

Q., s. 36.

The apprenticing or placing out of children to be subject to regulations.

Provisions in indentures.

W.A., s. 45.

Q., s. 39.

73 No child who is suffering from enthetic disease shall be placed out.

74 The apprenticing or placing out of a child of the State by the managers of any institution shall be subject in all respects to the regulations made under this Act.

75—(1) All agreements for the placing out for hire of children of the State under this Act shall be in the form approved by the Minister.

(2) All indentures of apprenticeship shall be in the form prescribed by or under "The Wages Boards Act, 1910," whenever applicable, but otherwise shall be in such form as the Minister shall approve.

(3) All such agreements and indentures shall (in addition to the provisions, if any, prescribed under "The Wages Boards Act, 1910"), contain provisions respecting the maintenance of such children, and for the due payment of such wages as may be payable thereunder, and shall be exempt from stamp duty.

(4) Any indentures executed in conformity with the provisions of this Act shall be good and valid indentures for all purposes under "The Wages Boards Act, 1910," and enforceable in the same manner as if the same were in a form (if any) prescribed under that Act.

Wages may be paid into savings bank.

Cf. W.A., s. 46.

Q., s. 40.

76 All wages earned by a child of the State, except such part thereof as the employer is required to pay to the child personally as pocket-money shall be paid by the employer to the guardian of the child or other person mentioned in the indentures or agreement.

The guardian or such person shall deposit every amount so paid in a savings bank in trust for the child.

Moneys banked may be expended for the child's benefit.

Cf. W.A., s. 47.

Q., s. 42.

77—(1) All or any part of the money so deposited, and any interest thereon, may be expended for the benefit of the child when and in such manner as its guardian may from time to time deem advisable.

(2) When a child of the State is discharged his guardian shall pay to him or expend for his benefit, as the guardian thinks fit, such portion of the money earned by the child as aforesaid, and then in the savings bank, as the guardian thinks advisable.

Any such payments may be made by instalments if considered advisable.

Any balance not so paid to the child or applied for his benefit shall remain in the savings bank at interest until the child attains the age of Twenty-one years, and shall then be transferred to the child on application and proof of his identity.

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78 The wages or earnings due by any person on account of any child of the State may be sued for and recovered by and in the name of the guardian of the child or of any other person mentioned in the indenture or agreement as aforesaid for the benefit of the child.

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Guardian may recover wages.
W.A., s. 48.
Q., s. 41.

79 On the death of a child of the State, the money held in trust to the credit of the child in any savings bank pursuant to this Act shall, after payment thereof of any funeral or other expenses approved by the Minister, be paid into the Consolidated Revenue.

Disposal at death.
Cf. W.A., s. 47.
Q., s. 44.

80—(1) The foster-parent of any child of the State may, by an assignment bearing the consent of the Secretary or the managers, as the case may be, but not otherwise, assign the indentures of apprenticeship or agreement for placing out in relation to such child to any fit and proper person.

Indentures of apprenticeship, agreement, or placing-out may be assigned with consent of Secretary

(2) Every such assignment shall be executed in duplicate by the assignor and assignee, and one part of the assignment so executed shall be forthwith forwarded to the Secretary or managers by the assignor, and thereafter the indentures or agreement placing out, shall, for the purposes of this Act, be read and construed as if the assignee had originally been party thereto in the place of the assignor.

(3) Every foster-parent who assigns any indentures of apprenticeship or agreement without such consent as aforesaid shall be guilty of an offence against this Act, and the assignment shall be null and void.

81—(1) The Minister may at any time by order require any child of the State placed out or apprenticed forthwith to surrender himself at any institution or to any person to be named in the order.

Minister may order return of child apprenticed or placed out.
Q., s. 48.

(2) The Minister may by the same or a separate order, and without incurring any liability for breach of contract or otherwise cancel the indentures of apprenticeship or agreement relating to any child of the State, and require the person with or to whom such child is placed out or apprenticed forthwith to deliver such child at an institution or some person to be named in the order.

(3) Any police officer or officer of the Department may, without warrant, take into custody such child and bring him to the institution or person named in the order, and for such purpose may enter upon or into any land, house, building, or vessel whereon or wherein the child is or is supposed to be.

82 No person with or to whom a child of the State is placed out or apprenticed shall change his place of residence without giving to the Secretary or the managers the prescribed notice.

Change of residence to be notified by foster-parent.
W.A., s. 52.
Q., s. 45.

83 If a child of the State apprenticed or placed out absconds, becomes ill, meets with an accident, or dies, the person with or to whom such child is placed out or apprenticed shall immediately give such notice and do all such further acts and things as may be prescribed.

Notice to be given if child absconds, becomes ill, or dies.
W.A., s. 54.
Q., s. 47.

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Department to have general supervision of State children. W.A., s. 55.

Children of the State to be visited. W.A., s. 56. Q., s. 49. Tas., s. 24.

84 The Department shall have general supervision over all children of the State detained in any institution or placed out for adoption or otherwise, or apprenticed.

85—(1) The Secretary shall cause all children of the State to be visited once at least in every Three months by an officer of the Department, or person appointed for that purpose by the Secretary, to ascertain whether the stipulations of the indentures of apprenticeship or agreements respecting such children have been fulfilled, and that the treatment, education, and care of such children are satisfactory.

(2) The managers of any institution or any person authorised by such managers may for the like purpose visit any child of the State apprenticed or placed out by such managers.

(3) Every person with or to whom a child of the State is placed out or apprenticed, shall at the request of any such officer, managers, or person—

- I. Produce the child and his outfit or show cause to the satisfaction of the officer, managers, or person, for the non-production or absence of such child; and
- II. Permit an examination to be made of such outfit and the sleeping and other accommodation, and food provided for such child; and
- III. Permit such officer, managers, or person, out of the presence and hearing of such first mentioned person, to examine and question such a child.

Payments for maintenance of State children to foster-mother. W.A., s. 58.

86 The Minister may, out of any moneys which may from time to time be appropriated by Parliament for that purpose, pay to the foster-mother of any child for the care and maintenance of such child, such sum as he thinks reasonable and proper.

PART VI.

MAINTENANCE OF CHILDREN BY THEIR RELATIVES.

Order of liability of near relatives for maintenance of any child. W.A., s. 59. Q., s. 50.

87 The undermentioned near relatives of any child of the State shall be liable to pay or contribute towards the maintenance of such child according to their several abilities, and in the following order, namely—

- I. In the case of a legitimate child—Father, mother, stepfather, stepmother, brothers and sisters, grandparents;
- II. In the case of an illegitimate child—Father, mother.

On complaint court to issue summons. W.A., s. 60. Q., s. 51.

88—(1) Upon complaint that any persons are near relatives of any child of the State, and are able to pay or contribute towards the maintenance or past maintenance of such child, such persons or any of them may be summoned to appear before a children's court at a time and place to be named in such summons, to show cause why they or he should not pay for or contribute towards the past or future maintenance of such child.

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(2) The court may adjourn the hearing, and may summon any other persons alleged to be near relatives to appear at the adjourned hearing. A.D. 1918.

(3) If the court is satisfied that the persons summoned, or any of them, are near relatives, and are able to, and in the opinion of the court, should pay for or contribute towards the past or future maintenance of such child, the court may order payment to be made by such near relatives, or some One or more of them to the Secretary, or to the managers of an institution as the court thinks fit—

- i. Of such sum for past maintenance of the child as seems sufficient: and
- ii. Of such sum for future maintenance, and for such period and by such instalments as the court deems sufficient.

(4) If a maintenance order is made against Two or more near relatives, One order may be made against all of them, or separate orders may be made against each or any of them jointly or severally, as to the court seems fit.

(5) No maintenance order shall be made for payment in advance for future maintenance, otherwise than by periodical instalments not exceeding Four weeks in advance, without the consent of the Secretary.

(6) Every maintenance order shall be served upon the persons against whom the same is made personally, or in such manner and at such place as may be prescribed, or as the children's court shall direct; but the order shall take effect from the time of its pronouncement, notwithstanding that the formal order has not been signed or served. Order to take effect from pronouncement. W.A., s. 62.

89—(1) In any case in which a maintenance order under this Act might be made against any near relative of any child of the State, the Secretary or a children's court may in lieu thereof accept from such near relative or any other person an undertaking to pay. Undertaking may be given.

The undertaking shall have the same effect as a maintenance order; and if it contains a direction to any other person to pay into court any sum owing or to become owing to such near relative, such sum shall become and be attached in the hands of such person and the provisions of Section Ninety-one shall *mutatis mutandis* apply.

(2) Any proceedings authorised under a maintenance order may be taken against any person who has signed an undertaking.

(3) A children's court may at any time rescind any undertaking given under this section and make a maintenance order.

90 Upon the hearing of any complaint under this Act in respect of the maintenance of a legitimate child of the State, the averment in the complaint that the person complained against is a near relative liable to maintain, and is able to pay or contribute towards the maintenance of such child, and that any sum has been expended upon, or is due, or owing for, or in respect of maintenance, shall be sufficient evidence of the facts; and the onus of proving that such person is not a near relative, or is not able to pay or contribute towards the maintenance of such child, or that some other person is prior in order of liability, or that the sum stated to have been expended, or to be due, or owing, was not expended, or is not due, or owing, shall lie upon the defendant. Allegations in complaint *prima facie* evidence. W.A., s. 63. Q., s. 56.

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Attachment of property of persons against whom order is sought.
W.A., s. 66.

91—(1) Upon complaint made under Section Ninety of this Act, notice may be given by the Secretary to any banker or other person having, or supposed to have, the care, custody, or control of any money or property of, or belonging or payable to, any person complained against, not to pay or part with the possession of such money or property until such complaint has been heard and determined, and such money and property shall thereby become and be attached in the hands of the person having the care, custody, or control thereof, who shall be compellable to give evidence on the hearing of such complaint as to all matters relating to or concerning such money or property.

(2) Any person who, after receipt of any such notice, pays or hands over any such money or property otherwise than in accordance with the order made by a children's court, or who neglects or refuses to comply with the order made, shall be personally liable to pay to the Secretary the amount of money or the value of the property ordered to be paid or handed over, and such amount or value may be recovered before the court in a summary way.

Court may make orders for delivery, &c., of attached property.
W.A., s. 67.

92 The children's court hearing any such complaint may direct that the money or property attached, or any portion thereof, shall be paid or handed over to the Department or to the person to whom the maintenance money is ordered to be paid, and the person having the care, custody, or control thereof shall pay or hand over the same accordingly, and shall be thereby discharged from all liability to the owner thereof, or any person claiming under him in respect of the money or property so paid or handed over.

Court may require security for compliance with order.
W.A., s. 68.
Q., s. 55.

93 A children's court on the hearing of a complaint that any person liable upon any maintenance order made under this Act has made default thereunder, or intends to evade compliance therewith, may order that the person liable for the maintenance shall find good and sufficient security that he will comply with the order made against him.

The children's court may, by this lastmentioned order or by a further order on the same complaint, adjudge that in default of such security being found, such person shall be imprisoned for any period not exceeding Six months, if the order for security is not sooner complied with.

The children's court may determine upon the sufficiency of any proposed security, and in what manner the security shall be given.

Power to increase amount.
W.A., s. 69.
Q., s. 57.

94 The amount of the weekly payments payable in respect of maintenance, under any order made under this Act, may, by any subsequent orders from time to time made by a children's court, be increased if the persons liable are able to pay such greater amount.

Orders may be varied, &c., on further inquiry.
W.A., s. 58.
Q., s. 58.

95—(1) On the complaint of a near relative liable upon a maintenance order under this Act, all or any of the persons alleged to be near relatives, may be summoned to appear before a children's court.

(2) At the hearing, or at any adjourned hearing, the court may make further inquiry as to the means and ability of the complainant,

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and as to the relationship to the child of the persons summoned, and as to their several abilities to maintain or contribute towards the maintenance of such child, and may make such order increasing, reducing, or varying the periodical sum to be thenceforth paid by the complainant, or suspending for a specified time or annulling the previous order, or directing that the persons so summoned, or some or one of them, shall thenceforth pay for or contribute towards the maintenance of the child, or may make such other order not inconsistent with this Act, as appears just.

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96 Subject to the provisions of a maintenance order, any officer of the Department, and any police officer when so directed by the Commissioner of Police, may demand, collect, and receive from any person liable to pay the same all sums of money due to the Department under any maintenance order, and the receipt in writing of any such officer for moneys paid to him shall be a sufficient discharge therefor.

Collection by the police of moneys due to the Department.
W.A., s. 71.

97—(1) If any money payable under a maintenance order is in arrear for One month, a police magistrate may issue a warrant authorising the Secretary, or some person named in such warrant, to receive the whole or part of the rents, profits, and income of the real and personal estate or business, or any part of the wages or salary already earned or thereafter to be earned of the person against whom such order was made.

Warrants may be granted to enforce payment under orders
W.A., s. 73.

(2) No notice or demand whatsoever shall be requisite before issuing any such warrant as is mentioned in this section or before exercising all or any of the powers thereby conferred.

Warrant may be issued without previous demand.
W.A., s. 77.

(3) Any person, who after service of a copy of such warrant upon him, pays or hands over any such rents, profits, income, wages or salary, otherwise than in accordance with the tenor of such warrant, or who neglects or refuses to comply with the directions of such warrant, shall be personally liable to pay to the secretary or person named in the warrant the moneys by the warrant directed to be paid or handed over, and the amount of such moneys may be recovered before a children's court in a summary way.

98 The payment to the Secretary or person named in any such warrant shall be a good discharge to any person for all moneys paid by him pursuant to such warrant.

Payment under warrant to discharge persons paying.
W.A., s. 78.

99 The rents, profits, income, wages, or salary received under any such warrant, shall be applied first in payment of the costs of collection; next in payment of the costs of obtaining such warrant; thirdly, in paying any money due under the original order; and the balance shall be applied in or towards future maintenance, or in such other manner as a children's court may direct.

Application of moneys received under warrant.
W.A., s. 79.

100 All complaints under this part, except where otherwise provided, shall be made by the Secretary or an authorised officer.

Who may complain.
W.A., s. 60.
Q., s. 60.

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PART VII.

FOSTER-MOTHERS AND NURSING HOMES.

Repeal of certain portions of No. 51 of 1907.

101—(1) The following parts and provisions of “The Infant Life Protection Act, 1907” (in this section referred to as “the said Act”), are hereby repealed :—

- i. The words and figures in the Third and Fourth lines of Section Two :
- ii. The definitions of “nursing home” and “relatives” contained in Section Four :
- iii. The whole of Parts II. and III. :
- iv. Paragraph II. of subsection (7) of Section Forty :
- v. Sections Forty-one and Forty-two :
- vi. All the words of Section Forty-four except the following, namely :—

“The Governor may from time to time make regulations for giving effect to this Act. Such regulations may impose a penalty not exceeding Twenty-five Pounds for any breach of the same.”

Saving.

(2) All orders, registrations, registers, certificates, rolls, and notices, in existence or in force under Part II. of the said Act at the time of the repeal of that Part shall, in so far as is not inconsistent with this Part, continue as if this Part had been in force when they were respectively made, effected, kept, issued, or given, and they had been respectively made, effected, kept, issued, or given under this Part, and as if, in the case of a certificate of the registration of any person as the occupier of a nursing home, such certificate were a licence issued under this Part to such person as a foster-mother.

(3) Upon the repeal of Part II. of the said Act the secretary shall be entitled to the custody of the register kept under that Part, and all records, documents, and writings relating solely to transactions under that Part.

Application of Act.
No. 51, 1907, s. 5 (Tas.).

102 This Part of this Act shall not extend to—

- i. The near relatives or lawful guardians of any child, not being a child of the State, retained or received by such relatives or guardians :
- ii. Any person or institution of a public nature exempted for the time being from the operation of this Act by special order of the Minister.

Interpretation.

103 In this Part of this Act “infant” means and includes—

- i. Any child of the State :
- ii. Any infant under the age of Five years which is not a child of the State.

Foster-mothers to be licensed and nursing homes registered.
Ibid., s. 6 (Tas.).

104—(1) No person shall, retain in or receive into the care of such person or charge in any house any infant for the purpose of either—

- i. Nursing or providing for such infant apart from its parents for a longer period than Twenty-four hours ; or
- ii. Adopting such infant—