

(2) On an appeal of the kind referred to in paragraph 144 (1) (d) or (e), the Supreme Court may make any order that could have been made by the Childrens Court in the proceedings appealed from.

Review by Administrative Appeals Tribunal

148. (1) Application may be made to the Tribunal for a review of a decision of the Minister—

- (a) refusing to grant, or granting subject to conditions, a licence under section 120;
- (b) determining the period for which a licence under section 120 is to be granted;
- (c) varying or revoking a condition under sub-section 122 (2); or
- (d) cancelling, suspending, varying or revoking a licence under section 123.

(2) Application may be made to the Tribunal for a review of a decision of the Director—

- (a) making a determination under section 98;
- (b) refusing to grant, or granting subject to conditions, his or her consent under section 133; or
- (c) under section 134, prohibiting, or specifying conditions with respect to, the employment of a child.

PART XI—MISCELLANEOUS

Division 1—Powers of entry and search

Interpretation

149. For the purposes of this Division, a thing is connected with a particular offence if it is—

- (a) a thing with respect to which the offence has been connected;
- (b) a thing that will afford evidence of the commission of the offence; or
- (c) a thing that was used, or intended to be used, for the purpose of committing the offence.

(2) A reference in this Division to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been, or is to be, committed.

(3) In this Division, “authorised officer” means an officer authorised by the Director for the purposes of this Division, or a police officer.

Search and seizure

150. The Director or an authorised officer may enter upon land or upon or into any premises or a vessel or vehicle, and may search for and seize any thing that he or she believes on reasonable grounds to be connected with an offence against this Ordinance that is found on the land, or on or

in the premises, vessel or vehicle if, and only if, the search and seizure is made by the authorised officer—

- (a) in pursuance of a warrant issued under section 151;
- (b) in circumstances of seriousness and urgency, in accordance with section 152; or
- (c) after obtaining the consent of the occupier of the land or premises or of the person in charge of the vessel or vehicle to the entry.

Search warrants

151. (1) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be upon any land or upon or in any premises, vessel or vehicle a thing of a particular kind connected with a particular offence against a provision of this Ordinance, and the information sets out those grounds, a Magistrate may issue a search warrant authorising the Director, or authorised officer named in the warrant, with such assistance as is reasonably necessary and such force as is reasonably necessary—

- (a) to enter upon the land or upon or into the premises, vessel or vehicle;
- (b) to search the land, premises, vessel or vehicle for things of that kind; and
- (c) to seize any thing of that kind found upon the land or upon or in the premises, vessel or vehicle that he or she believes on reasonable grounds to be connected with that offence.

(2) A Magistrate shall not issue a warrant under sub-section (1) unless—

- (a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought, and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) There shall be stated in a warrant issued under this section—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the nature of the offence in relation to which entry and search are authorised;
- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things authorised to be seized; and
- (d) a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

Entry in emergencies

152. The Director or an authorised officer may enter upon any land, or upon or into any premises, vessel or vehicle, on or in which the Director or officer believes on reasonable grounds that any thing connected with an

offence against this Ordinance is situated and may search for and seize any such thing that he or she finds in the course of that search, or upon the land or upon or in the premises, vessel or vehicle, as the case may be, if—

- (a) the Director or authorised officer believes, on reasonable grounds, that it is necessary to do so for the purposes of this Ordinance; and
- (b) the search or entry is made in circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of a warrant issued under section 151.

Consent to entry

153. (1) Before obtaining the consent of a person—

- (a) for the purposes of sub-section 56 (2)—the supervisor;
- (b) for the purposes of sub-section 85 (2)—the Director, officer or supervisor, as the case requires; or
- (c) for the purposes of paragraph 150 (c)—the Director or authorised officer, as the case requires,

shall inform the person that the person may refuse to give his or her consent.

(2) Where—

- (a) the supervisor, for the purposes of sub-section 56 (2);
- (b) the Director, officer or supervisor, for the purposes of sub-section 85 (2); or
- (c) the Director or authorised officer, for the purposes of paragraph 150 (c),

obtains the consent of a person, the supervisor, Director, officer or authorised officer as the case requires, shall ask the person to sign a written acknowledgment—

- (d) of the fact that the person has been informed that he or she may refuse to give his or her consent;
- (e) of the fact that the person has given his or her consent; and
- (f) of the day on which, and the time at which, the person gave his or her consent.

(3) An entry by a supervisor, the director, an officer or an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

(4) Where it is material, in any proceedings, for a court to be satisfied of the voluntary consent of a person for the purposes of sub-section 56 (2), or 85 (2) or paragraph 150 (c) and an acknowledgment, in accordance with sub-section (2), signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such a consent.

Obstruction

154. A person shall not hinder or obstruct another person in the exercise by that other person of his or her powers, or the performance of his or her duties or functions, under this Ordinance.

Penalty: \$2,000 or imprisonment for 12 months, or both.

Division 2—General**Notification of decisions**

155. (1) Where the Director makes a decision referred to in section 148 he or she shall, within 28 days of the date of the decision, cause notice in writing to be given to the persons whose interests are affected by the decision, setting out the decision and giving reasons for the decision.

(2) A statement by the Director under sub-section (1) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, a person whose interests are affected by the decision to which the statement relates is entitled to apply to the Administrative Appeals Tribunal for a review of the decision.

(3) The validity of a decision to which a statement under sub-section (1) relates shall not be taken to be affected by a failure to comply with sub-section (2).

Breach of residential order

156. A person in respect of whom a residential order under Part IV or V is in force who—

- (a) where the order is an order that the person be placed in an approved home or that the person live at such place as the Director determines—fails to comply with the reasonable lawful directions of the person in charge of the approved home or place; or
- (b) where the order is an order that the person be placed in the care of a suitable person—fails to comply with the reasonable lawful directions of that person,

shall be deemed to have failed to comply with the order.

Establishment, &c., of shelters, &c.

157. The Minister may, for the purposes of this Ordinance—

- (a) establish shelters, attendance centres and institutions; and
- (b) in writing, declare that a place which is, at the date of commencement of this Ordinance, used as a shelter, an attendance centre or an institution, in relation to the care of children, is to be a shelter, an attendance centre or an institution, as the case requires, for the purposes of this Ordinance.

Medical examinations and surgical operations

158. (1) This section applies in relation to a child who—

- (a) is in an institution in pursuance of an order under paragraph 47 (1) (k);

- (b) has been placed in an approved home, a shelter or a remand centre; or
- (c) is a ward.

(2) The Director may, on reasonable grounds, arrange that a child in relation to whom this section applies be examined by a medical practitioner or by a dentist.

(3) The Director may consent to medical treatment that he or she is advised by a medical practitioner, or dental treatment that he or she is advised by a dentist, is in the interests of the health of a child in relation to whom this section applies.

(4) Sub-section (3) has effect notwithstanding any objection by or lack of consent of a parent of the child concerned.

Child's name may be given

159. Where—

- (a) a child has been given a warning by a police officer in respect of an act that constitutes an offence against a law of the Commonwealth or of the Territory; or
- (b) a child has been charged with an offence against a law of the Commonwealth or of the Territory,

and the Commissioner of Police or a police officer authorised by him or her is satisfied on reasonable grounds that a person has suffered loss by reason of that act or offence, the Commissioner or officer may furnish to the person the name, age and address of the child and particulars of the act or offence.

Notifications

160. A notification under this Ordinance may be given by any appropriate means, including by telephone or any other form of communication by electronic means.

Court may direct Minister to make certain determinations

161. (1) The Youth Advocate or any other person may apply to the Court for an order directing the Minister to make a determination with respect to a child under clause 3 of the Agreement (including that clause as applying by virtue of sub-clause 3 (6) of the Supplemental Agreement), being the Agreement and Supplemental Agreement within the meaning of the repealed Ordinances.

(2) On the hearing of an application under this section the Court shall, if it considers it in the interests of the child, by order direct the Minister to make the determination.

(3) The procedure in connection with an application under this section is as the Court directs.

Powers of courts with respect to reports

162. (1) A court hearing any proceedings in respect of or against a child may order the Director or a person employed by the Health Authority whose duties relate to childrens welfare to furnish to the court a report as to the child and the Director or the person shall, notwithstanding any other law of the Territory, furnish a report accordingly.

(2) For the purpose of giving effect to an order under sub-section (1), the person referred to in that sub-section may do one or more of the following:

- (a) visit and interview the child;
- (b) interview a parent of the child;
- (c) interview a schoolteacher or other person concerned with the education or welfare of the child;
- (d) require the child to submit to being interviewed by a medical practitioner or other specified person.

(3) Where a report is furnished in good faith to the Director or person referred to in sub-section (1) by a medical practitioner or other person following an interview as mentioned in paragraph (2) (d), the report shall, for all purposes, be taken not to be a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct.

Reports to be made available

163. (1) Unless the court otherwise orders, a copy of a report furnished under section 162 shall be made available to the child, a parent of the child and a barrister and solicitor acting for the child or for a parent of the child.

(2) The person furnishing a report under section 162 may be called as a witness by a party to the proceedings.

Right of appearance

164. At the hearing in any court—

- (a) of an information or complaint against a child; or
- (b) of an application, proceeding or matter under this Ordinance or in relation to which this Ordinance applies,

the Director or the Youth Advocate, or a person authorised by the Director or Youth Advocate for the purposes of this section, is entitled to appear and be heard and may call witnesses.

Matters before Childrens Court

165. So far as practicable, the sittings of the Court shall be so arranged that the extent to which children are able to associate with each other within the precincts of the Court while awaiting hearing, and the extent to which parents and other persons are obliged to be in common waiting rooms pending the hearing of proceedings, are kept to a minimum.

Next friend of child

166. (1) A court may, if it thinks it to be in the interests of a child to do so and if the person consents, by order appoint a person to be the next friend of the child for the purpose of proceedings under this Ordinance in respect of the child.

(2) The next friend may, on behalf of the child, bring any application or other proceedings in a court under this Ordinance or in relation to which this Ordinance applies that the child might have brought and defend, on behalf of the child, any proceedings brought against the child, whether under this Ordinance or otherwise.

(3) In proceedings, an order for costs may be made in favour of or against a next friend in the same circumstances as the order might have been made with respect to the child.

(4) In this section, "proceedings" includes an appeal and an application for an order to review.

Representation of children

167. (1) Where, in proceedings in a court under this Ordinance or in relation to which this Ordinance applies—

- (a) a child is not separately represented by a barrister and solicitor; and
 - (b) it appears to the court that the child should be so represented,
- the court may, of its own motion or on the application of any person (including the child)—
- (c) adjourn the proceedings in order that the child may obtain legal representation; and
 - (d) give such advice and assistance to the child as may be necessary to enable the child to obtain legal representation.

(2) In this section, "proceedings" includes an appeal and an application for an order to review.

Attendance of parents at court

168. (1) Except as otherwise provided by this section, a parent of a child who is the subject of proceedings before the Court shall, if notice of the proceedings has been served on the parent or if he or she is otherwise aware of the proceedings, attend the Court during the hearing and determination of the proceedings.

- (2) A notice of the proceedings under this section shall—
 - (a) state the time, date and place of the hearing of the proceedings; and
 - (b) state that, if the parent does not attend the Court at the hearing of the proceedings, a warrant may be issued to bring the parent before the Court.

(3) If notice of the proceedings has been served on a parent of the child but, without reasonable cause, neither parent attends the Court at the hearing of the proceedings, the Court may direct a warrant to issue to bring the parent before the Court.

(4) The Court may admit to bail a person in respect of whom a warrant has been so issued on the person's entering into a recognizance, with or without a surety or sureties, to attend the Court during the hearing and determination of the proceedings.

(5) The application of this section extends to a parent whose place of living is outside the Territory.

Proceedings not open to public

169. (1) Subject to sub-section (2), a person other than a person specified in this section is not entitled to be present at the hearing of proceedings in the Court:

- (a) an officer of the Court;
- (b) a party to the proceedings, the barrister and solicitor by whom the party is represented or an employee of the barrister and solicitor;
- (c) a parent or other person having the care of a child in respect of whom the proceedings are taken or any other person whom the Court admits as a representative of the child;
- (d) the Director or a person authorised by the Director for the purposes of this section;
- (e) the Youth Advocate or a person authorised by the Youth Advocate for the purposes of this section;
- (g) a person who has, or a representative of a body, authority or agency which has, furnished a report under section 162;
- (h) a person attending for the purpose of preparing a news report of the proceedings and authorised by his or her employer so to attend.

(2) Nothing in sub-section (1) applies to or in relation to a person required or permitted to be present by this Ordinance or by the Court.

Restrictions on publication of reports of proceedings

170. (1) A person shall not print or publish by any means a report or account of any proceedings under this Ordinance or in relation to which this Ordinance applies if the printing or publication discloses the identity of the child concerned or of a member of his or her family, or enables the identity of the child concerned or of a member of his or her family to be ascertained.

(2) A person who contravenes sub-section (1) is guilty of an offence punishable—

- (a) in the case of a body corporate—by a fine not exceeding \$25,000; and

(b) in the case of a natural person—by a fine not exceeding \$5,000, or imprisonment for a period not exceeding 2 years, or both.

(3) Proceedings for an offence against this section shall not be commenced except by, or with the consent in writing of, the Attorney-General or the Director of Public Prosecutions.

Protection of children in other courts

171. (1) The Supreme Court may, in relation to proceedings before that court concerning a child, order that section 169 apply to and in relation to those proceedings, and that section thereupon so applies.

(2) The powers conferred upon the Supreme Court by virtue of subsection (1) are in addition to any other powers possessed by that court.

Confidentiality

172. (1) A person shall not, otherwise than for the purposes of this Ordinance or as required by law, make a record of or divulge or communicate to any person any information or document, being information or a document that the first-mentioned person acquired under or by virtue of this Ordinance.

Penalty: \$2,000 or imprisonment for a period not exceeding 12 months, or both.

(2) This section does not affect the operation of any other law relating to the confidentiality of information or documents.

Evidentiary certificates

173. In proceedings under this Ordinance—

- (a) a certificate purporting to be signed by an authorised officer stating—
 - (i) that he or she was, on a date or during a period specified in the certificate, an authorised officer; and
 - (ii) that, on the date specified in the certificate, he or she consented to the prosecution of the person specified in the certificate for the offence specified in the certificate and that consent has not been revoked,
 is evidence of the matters stated in the certificate;
- (b) a certificate purporting to be signed by the Director stating that, on a date or during a period specified in the certificate, the person specified in the certificate was a ward of the Director is evidence of the matters stated in the certificate; and
- (c) a certificate purporting to be signed by the Director stating that—
 - (i) on the date specified in the certificate, the person specified in the certificate was committed to the shelter, approved home, institution or State institution specified in the certificate;
 - (ii) on the date specified in the certificate, the period for which the person was so committed had not expired or been reduced; and

- (iii) on the date or during the period specified in the certificate, the Director had not granted leave of absence to the person or had granted the leave of absence at the times or during the periods specified in the certificate,

is evidence of the matters stated in the certificate.

Power of Minister to determine fees

174. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Ordinance.

Exemption from court fees

175. No court fees are payable under section 292 of the *Magistrates Court (Civil Jurisdiction) Ordinance 1982* in respect of proceedings instituted under this Ordinance.

Minister may enter into agreements

176. The Minister may, from time to time, enter into an agreement with a Minister of State of a State or of another Territory with respect to—

- (a) the transfer of children who have been dealt with under this Ordinance to State institutions in that State or Territory; and
- (b) the reception into the Territory and the detention in shelters and institutions of children who have been dealt with under a law of that State or Territory with respect to the welfare or punishment of children.

Regulations

177. (1) The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters that this Ordinance requires or permits to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

(2) Without limiting the generality of sub-section (1), the regulations may—

- (a) make provision for or with respect to—
 - (i) the keeping of registers and records by or in relation to; and
 - (ii) the conditions to be included in licences granted to, persons providing child care to which Part VII applies; and
- (b) make provision for or with respect to—
 - (i) the duties of persons in charge of shelters, attendance centres and institutions;
 - (ii) the health and safety of children attending attendance centres or detained in shelters and institutions;
 - (iii) travel and transport arrangements for children attending attendance centres; and

- (iv) the periods to be taken into account when calculating the time to be spent in the custody of the Director as mentioned in sub-section 57 (2); and
- (c) prescribe penalties, not exceeding a fine of \$500, in respect of offences against the regulations.

SCHEDULE

Section 3

ORDINANCES REPEALED**PART I**

Child Welfare Ordinance 1957
Child Welfare Ordinance 1962
Child Welfare Ordinance 1968
Child Welfare Ordinance 1969
Child Welfare Ordinance 1971
Child Welfare Ordinance 1973
Child Welfare (Amendment) Ordinance 1979
Child Welfare (Amendment) Ordinance (No. 2) 1979
Child Welfare (Amendment) Ordinance 1982

PART II

Child Welfare Agreement Ordinance 1941
Child Welfare Agreement Ordinance 1962

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 4 June 1986.

**Children's Services (Miscellaneous
Amendments) Ordinance 1986**

No. 14 of 1986

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 29 May 1986.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

G. SCHOLLES
Minister of State for Territories

An Ordinance to amend certain Ordinances in consequence of the making of the *Children's Services Ordinance 1986*, and for other purposes

Short title

1. This Ordinance may be cited as the *Children's Services (Miscellaneous Amendments) Ordinance 1986*.¹

Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for Territories by notice in the *Gazette*.

Amendment of Crimes Act 1900

3. Section 429 of the Crimes Act, 1900 of the State of New South Wales in its application to the Territory is repealed.

Amendment of Evidence Ordinance 1971

4. Section 66 of the *Evidence Ordinance 1971* is amended by omitting paragraph (3) (b) and substituting the following paragraph:

“(b) with an offence against section 133, 134, 135, 139 or 140 of the *Children's Services Ordinance 1986*.”.

Amendment of Hawkers Ordinance 1936

5. Section 5 of the *Hawkers Ordinance 1936* is amended by omitting from sub-section (2) “by boys in accordance with Part XIA of the *Child Welfare Ordinance 1957-1962*” and substituting “by a child in accordance with Part VIII of the *Children's Services Ordinance 1986*”.

Amendment of Education Ordinance 1937

6. (1) Section 5 of the *Education Ordinance 1937* is amended by omitting "*Child Welfare Ordinance 1957*" from the definition of "the Court" and substituting "*Children's Services Ordinance 1986*".

(2) Section 18 of the *Education Ordinance 1937* is amended—

(a) by omitting sub-section (7) and substituting the following sub-section:

"(7) Where, in pursuance of this section, the Court orders a child to be detained in an institution, the Court may commit the child to an institution or a State institution until the child reaches the school leaving age."; and

(b) by omitting sub-section (10) and substituting the following sub-section:

"(10) In this section, 'institution' and 'State institution' each have the same respective meanings as in the *Children's Services Ordinance 1986*."

Amendment of Magistrates Court (Civil Jurisdiction) Ordinance 1982

7. Section 4 of the *Magistrates Court (Civil Jurisdiction) Ordinance 1982* is amended by omitting paragraph (b).

Amendment of Maintenance Ordinance 1968

8. Section 23 of the *Maintenance Ordinance 1968* is amended by omitting paragraph (2) (b) and substituting the following paragraph:

"(b) if the child is a ward of the Director of Welfare under the *Children's Services Ordinance 1986*;"

Amendments of Remand Centres Ordinance 1976

9. (1) Section 3 of the *Remand Centres Ordinance 1976* is amended—

(a) by omitting the definition of "juvenile"; and

(b) by omitting the definition of "shelter" and substituting the following definition:

"'shelter' has the same meaning as in the *Children's Services Ordinance 1986*;"

(2) Section 15 of the *Remand Centres Ordinance 1976* is amended by omitting paragraph (1) (f) and substituting the following paragraph:

"(f) a person who is required under the *Children's Services Ordinance 1986* to be detained in a remand centre;"

Amendment of Seat of Government (Administration) Ordinance 1930

10. Part I of the Second Schedule to the *Seat of Government (Administration) Ordinance 1930* is amended by omitting—

"*Child Welfare Ordinance 1957, Part III*",

and substituting—

"*Children's Services Ordinance 1986, Parts III and X*".

Amendment of Testamentary Guardianship Ordinance 1984

11. Section 2 of the *Testamentary Guardianship Ordinance 1984* is amended—

- (a) by inserting in sub-section (3) “the Director of Welfare or to” before “a Minister of State”; and
- (b) by adding at the end the following sub-section:

“(5) In this section, ‘Director of Welfare’ has the same meaning as in the *Children's Services Ordinance 1986*.”.

Amendment of Remand Centres Regulations

12. (1) Regulation 2 of the Remand Centres Regulations is amended by omitting the definition of “Director” and substituting the following definition:

“ ‘Director’ has the same meaning as in the *Children's Services Ordinance 1986*;”.

(2) Regulation 10 of the Remand Centres Regulations is amended by omitting from sub-regulation (6) “juvenile detainees” and substituting “detainees under the age of 18 years”.

NOTE

- 1. Notified in the *Commonwealth of Australia Gazette* on 4 June 1986.

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