

Children's Services Ordinance 1986

No. 13 of 1986

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SCHEDULE

Children's Services Ordinance 1986**No. 13 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 relating to the welfare of children

PART I—PRELIMINARY**Short title**

1. This Ordinance may be cited as the *Children's Services Ordinance 1986*.¹

Commencement

2. (1) This section and section 1 shall come into operation on the day on which this Ordinance is notified in the *Gazette*.

(2) The remaining provisions of this Ordinance shall come into operation on such date as is, or such dates as respectively are, fixed by the Minister of State for Territories by notice in the *Gazette*.

Repeal and savings

3. (1) The Ordinances specified in the Schedule are repealed.

(2) Where a child is convicted of an offence in proceedings instituted before the commencement date, the court in which the proceedings were heard may make such orders in relation to the child as the court could have made if the proceedings had been instituted after the commencement date.

(3) Where, immediately before the commencement date, a child was a ward within the meaning of the *Child Welfare Ordinance 1957*, there shall be deemed to have been made, on the commencement date, an order under section 80 that the child be made a ward of the Director.

(4) Notwithstanding the repeal of the Ordinances specified in Part I of the Schedule, a licence granted under the repealed Ordinances and in force immediately before the commencement date—

- (a) subject to sections 122 and 123, remains in force for such period as it would have remained in force under the repealed Ordinances; and
- (b) for the purposes of the definition of "licence" in section 117, shall be deemed to be a licence under Part VII.

(5) Notwithstanding the repeal of the Ordinances specified in Part II of the Schedule, the Agreement and the Supplemental Agreement within the meaning of the repealed Ordinances—

- (a) shall continue in force until an agreement is entered into under Part XI with a Minister of State for the State of New South Wales; and
- (b) while they so continue in force, shall be deemed to have been entered into under Part XI.

(6) In this section, "commencement date" means the date fixed under section 2.

Interpretation

4. (1) In this Ordinance, unless the contrary intention appears—

"action" includes a suit or an original proceeding between parties but does not include a criminal proceeding;

"adopting parent" means—

- (a) a person who has adopted another person by an order of adoption under the *Adoption of Children Ordinance 1965* or by a deed of adoption and, where—
 - (i) an order under that Ordinance has been made in favour of a husband and wife on their joint application; or
 - (ii) a husband and wife have, by deed, jointly adopted a child,

includes both the husband and wife; or

- (b) a person whose adoption of another person has effect under Part V of that Ordinance;

"agreement" means an agreement with a Minister of State for a State or another Territory entered into under section 176;

- “approved home” means a home approved by the Director for the purposes of this Ordinance;
- “attendance centre” means an attendance centre established or declared by the Minister under section 157;
- “attendance centre order” means an order made by a court, in relation to a child, that requires the child, during such period, not exceeding one year, as the court specifies, to report at an attendance centre and to place himself or herself in the custody of the Director;
- “barrister and solicitor” means a barrister and solicitor within the meaning of the *Legal Practitioners Ordinance 1970*;
- “Chief Magistrate” has the same meaning as in the *Magistrates Court Ordinance*;
- “child” means a person who has not attained the age of 18 years;
- “childrens welfare” means the welfare of children in the Territory;
- “conditional discharge order” means an order made by a court in respect of a child discharging the child subject to such conditions as the court specifies;
- “Council” means the Childrens Services Council constituted by section 13;
- “custody”, in relation to a child, means the physical control of the child;
- “dentist” means a person registered as a dentist under the *Dentists Registration Ordinance 1931*;
- “Director” means the Director of Welfare holding office under Part II;
- “Health Authority” means the Australian Capital Territory Health Authority;
- “institution” means an institution established or declared by the Minister under section 157;
- “Magistrates Court Ordinance” means the *Magistrates Court Ordinance 1930*;
- “medical practitioner” means a person registered as a medical practitioner under the *Medical Practitioners Registration Ordinance 1930*;
- “offence” includes an offence against a law of the Commonwealth;
- “officer” means a person appointed by the Director to be an officer for the purposes of this Ordinance;
- “parent”, in relation to a child—
- (a) includes a step-parent, adopting parent or guardian of the child and a person who is by law liable to maintain the child; and
 - (b) does not include a parent in respect of whom a court has made an order that the parent be no longer a guardian of the child;
- “place of safety” means a police station, a hospital or a place the occupier of which is prepared to receive and care for a child temporarily;

"probation order" means an order made by a court—

- (a) placing a child under the supervision of the Director or of some other person specified in the order for the period specified in the order; and
- (b) requiring the child to report to the supervisor at a place and at intervals specified by the supervisor;

"remand centre" has the same meaning as in the *Remand Centres Ordinance 1976*;

"repealed Ordinances" means the Ordinances repealed by this Ordinance;

"residential order" means an order—

- (a) that a child be placed—
 - (i) in an approved home; or
 - (ii) in the care of a person specified in the order, whether the person resides in the Territory or elsewhere; or
- (b) directing the child to live at such place, whether within or outside the Territory, as the Director from time to time determines;

"school" includes any place of education or training;

"shelter" means a shelter established or declared by the Minister under section 157;

"Standing Committee" means the Standing Committee of the Council;

"State institution" means an institution situated in a State or Territory with a Minister of State of which an agreement has been entered into, being an institution established or constituted under a law of the State or Territory as a place in which children may be detained;

"supervision order" means an order made by a court in respect of a child who has been declared to be in need of care—

- (a) placing the child under the supervision of the Director or of some other person specified in the order for the period specified in the order; and
- (b) requiring the child, a parent of the child or both the child and a parent of the child to report to the supervisor at a place and at intervals specified by the supervisor;

"supervisor", in relation to a child in respect of whom a probation order or a supervision order is in force, means the person under whose supervision the child is placed by virtue of the order;

"the Court" means the Magistrates Court when known by virtue of section 20 as the Childrens Court;

"the school-leaving age" has the same meaning as in the *Education Ordinance 1937*;

"ward" means a child who is a ward of the Director by reason of an order or declaration made under this Ordinance and includes a child who becomes a ward of the Director by reason of the operation of sub-section 3 (3);

"Youth Advocate" means the Youth Advocate appointed under section 9.

(2) A reference in this Ordinance to the parents of a child or to one of the parents of a child shall, where the child has only one parent, be read as a reference to that parent.

(3) A reference in this Ordinance to the person in charge of a hospital shall be read as including a reference to a medical practitioner having authority to act on behalf of the person so in charge.

(4) A reference in this Ordinance to the person in charge of an approved home shall be read as including a reference to a person having authority to act on behalf of the person so in charge.

(5) A provision of this Ordinance referring to a shelter shall, in relation to the Jervis Bay Territory, be read as including a reference to a place of safety.

Matters to be considered concerning children

5. (1) In any proceedings in a court having jurisdiction in the Territory, whether the proceedings are under this Ordinance or under some other law, being proceedings against or concerning or affecting a child, the court shall, in the exercise of its jurisdiction or powers, seek to procure for the child such care, protection, control or guidance as will best lead to the proper development of the personality of the child and to the child's becoming a responsible and useful member of the community.

(2) In the exercise of a power, whether under this Ordinance or under some other law of the Territory, by a body, authority or person, being a power the exercise of which affects or concerns a child, the body, authority or person shall seek to procure for the child the matters referred to in subsection (1).

(3) For the purpose of sub-sections (1) and (2), the court, body, authority or person shall have regard to such matters as seem to it or the person to be appropriate and, in particular, to such of the following as are appropriate:

- (a) the need to strengthen and preserve the relationship between the child and his or her parents and other members of his or her family;
- (b) the desirability of leaving the child in his or her own home;
- (c) the desirability of allowing the education, training or lawful employment of the child to be continued without interruption or disturbance;
- (d) the desirability of ensuring that the child is aware that he or she must bear responsibility for anything that he or she does that is contrary to law; and
- (e) the need to protect the community or a particular person from the violent or other unlawful acts of the child.

Courts to see that child understands proceedings

6. In any proceedings in a court having jurisdiction in the Territory, being proceedings to which a child is a party, and whether the proceedings are under this Ordinance or under some other law, the court shall endeavour to ensure that the child and any other parties present at the hearing understand the nature and purpose of the proceedings and of any order that the court proposes to make or has made.

PART II—ADMINISTRATION

Director of Welfare

7. (1) For the purposes of this Ordinance there shall be a Director of Welfare, who shall be appointed by the Minister.

(2) A person shall not be so appointed unless he or she is a person appointed or employed under the *Public Service Act 1922*.

Director to provide assistance

8. (1) For the purpose of assisting the parents of children, and others, to discharge their duties and responsibilities to children adequately, it is the duty of the Director to do such things as he or she may properly do, or is required by law to do, for the purpose of promoting the physical, mental, moral, spiritual and social development of children in a normal and healthy manner.

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

- (a) make advice and guidance available to the parents of children and to others concerned with childrens welfare; and
- (b) arrange for the provision of financial or other assistance to—
 - (i) the parents of children, and others, for or in connection with childrens welfare and, as required, the welfare of particular children;
 - (ii) organisations whose objects include the promotion of childrens welfare; and
 - (iii) any person for the purposes of lessening the need to bring children before a court.

Youth Advocate

9. (1) For the purposes of this Ordinance there shall be a Youth Advocate, who shall be appointed by the Minister.

(2) In addition to the functions conferred on the Youth Advocate by this Ordinance, the Youth Advocate has—

- (a) the functions conferred on him or her by any other law of the Territory; and

- (b) such other functions, if any, relating to childrens welfare as are specified in the instrument of his or her appointment or as the Minister, by instrument in writing, from time to time determines.

(3) Subject to this Ordinance, a person appointed as the Youth Advocate holds office for such period, not exceeding 7 years, as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

(4) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Youth Advocate and a person shall not be appointed or re-appointed as the Youth Advocate for a period that extends beyond the date on which the person will attain the age of 65 years.

(5) The Minister shall issue to a person appointed under sub-section (1) a certificate signed by the Minister to the effect that the person is the Youth Advocate.

Acting appointments

10. (1) The Minister may appoint a person to act as Director or Youth Advocate—

- (a) during a vacancy in the office of Director or Youth Advocate, as the case may be, whether or not an appointment has been previously made to the office; or
- (b) during any period, or during all periods, when the Director or Youth Advocate, as the case may be, is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of his or her office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in circumstances specified in the instrument of appointment.

(3) Where a person is acting as Director or Youth Advocate in accordance with paragraph (1) (b) and the office of Director or Youth Advocate, as the case may be, becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The appointment of a person to act as Director or Youth Advocate ceases to have effect if the person resigns the appointment by writing signed by him or her and delivered to the Minister.

(5) While a person is acting as Director or Youth Advocate, the person has and may exercise all the powers, and shall perform all the functions, of the Director or Youth Advocate, as the case may be, under this Ordinance or under any other law.

(6) The validity of anything done by a person purporting to act under the preceding provisions of this section shall not be called in question on the ground that the occasion for the person's appointment had not arisen, that there is a defect or irregularity in or in connection with the person's appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

Appointment of officers

11. (1) The Director may, from time to time, appoint persons to be officers for the purposes of this Ordinance.

(2) The Director shall cause to be issued to each person appointed under sub-section (1) an identity card that specifies the name and appointment of the person and to which is attached a recent photograph of the person.

(3) A person who was appointed under sub-section (1) shall not, upon ceasing to be an officer, fail or refuse, without reasonable excuse, to return to the Director the identity card issued to the person.

(4) A person who contravenes sub-section (3) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

Advice and assistance by Director and Youth Advocate

12. The Director and the Youth Advocate shall give to the Council and the Standing Committee such advice or assistance as the Council or Standing Committee reasonably requests.

Childrens Services Council

13. (1) For the purposes of this Ordinance there is constituted a body to be known as the Childrens Services Council.

(2) The Council consists of—

- (a) the Director;
- (b) the Chief Magistrate or another magistrate nominated by the Chief Magistrate;
- (c) the Youth Advocate;
- (d) a person nominated by the Health Authority;
- (e) a police officer appointed by the Commissioner of Police of the Australian Federal Police;
- (f) a member of the House of Assembly nominated by that Assembly;
- (g) a court counsellor within the meaning of the *Family Law Act 1975* nominated by the Principal Director of Court Counselling referred to in section 37 of that Act;
- (h) a person nominated by the Australian Capital Territory Schools Authority; and
- (i) such other persons as the Minister from time to time appoints.

(3) The members of the Council, other than the members referred to in paragraphs (2) (a), (b), (c) and (e), shall be appointed by the Minister.

(4) The persons referred to in paragraph (2) (i) shall be persons concerned with, or persons associated with bodies, authorities or agencies concerned with, childrens welfare.

(5) The Director shall be the Chairman of the Council and shall preside at all meetings at which he or she is present.

(6) Meetings of the Council shall be convened by the Chairman or, in the Chairman's absence, by the Youth Advocate.

(7) Meetings of the Council shall be so convened that a period of not more than 3 months elapses between a meeting of the Council and the next meeting.

(8) If the Chairman is unable to attend a meeting of the Council, the members present shall elect one of their number to preside at that meeting.

(9) Five members of the Council form a quorum.

(10) Questions arising at a meeting of the Council shall be decided by the votes of a majority of the members present and voting.

(11) If the voting is equal, the Chairman or other person presiding has a casting vote.

(12) If a member of the Council other than the Chairman or the Youth Advocate is unable to attend a meeting of the Council, a person nominated for the purpose by the member may attend in the member's place and shall, in respect of that meeting, be regarded as a member of the Council, may vote and shall be taken into account in determining a quorum.

(13) The proceedings and decisions of the Council are not affected by reason of any failure to comply with a provision of this section.

Functions of Council

14. The functions of the Council are—

- (a) to consider matters related to childrens welfare referred to it by the Minister;
- (b) to consider any other matter related to childrens welfare;
- (c) to make recommendations concerning childrens welfare to a Minister, body, authority or agency concerned with the welfare of children;
- (d) to make recommendations to the Minister with respect to the granting of money, or the furnishing of other assistance, to a body, authority or agency concerned with childrens welfare;
- (e) to inform itself concerning matters related to childrens welfare;
- (f) to arrange meetings for the discussion of matters related to childrens welfare;
- (g) to prepare and issue papers related to childrens welfare; and

- (h) to arrange for the preparation of statistics with respect to any matter dealt with under this Ordinance or otherwise with respect to childrens welfare.

Annual reports

15. (1) The Youth Advocate shall, as soon as practicable after each 30 June, furnish to the Council a report as to the exercise of his or her powers and the performance of his or her duties and functions during the previous 12 months.

(2) The Council shall, as soon as practicable after each 30 June but not later than each 30 September, furnish to the Minister a report as to the operation of this Ordinance, and as to childrens welfare in the Territory, during the previous 12 months.

(3) The Minister shall cause a copy of each report furnished under subsection (2) to be laid before each House of the Parliament within 15 sitting days of the House after its receipt by the Minister and shall also cause a copy of each report to be laid before the House of Assembly.

Standing Committee of Council

16. (1) For the purposes of this Ordinance, there shall be a Standing Committee of the Council consisting of the members of the Council referred to in paragraphs 13 (2) (a), (c), (d) and (e).

(2) The Youth Advocate may invite other persons to attend a meeting of the Standing Committee but a person so invited is not entitled to vote at the meeting.

(3) The Youth Advocate shall be the Chairman of the Standing Committee.

(4) If the Youth Advocate is unable to attend a meeting of the Standing Committee, the members present shall elect a person to preside at that meeting.

(5) Three members of the Standing Committee form a quorum.

(6) The Youth Advocate may, and shall, if a member of the Standing Committee so requests, convene a meeting of the Standing Committee.

(7) Questions arising at a meeting of the Standing Committee shall be decided by the votes of a majority of the members present and voting.

(8) If the voting is equal, the person presiding has a casting vote.

(9) If a member of the Council referred to in paragraph 13 (2) (d) or (e) is unable to attend a meeting of the Standing Committee, the person nominating or appointing him or her, as the case may be, may appoint another person to attend that meeting and the person so appointed may attend and vote and shall be taken into account in determining a quorum.