

# **NORTHERN TERRITORY OF AUSTRALIA**

## **COMMUNITY WELFARE ACT**

As in force at 30 March 1998

### **Table of provisions**

<b>Part I</b>	<b>Preliminary</b>	
1	Short title .....	1
2	Commencement .....	1
3	Repeal .....	1
4	Interpretation .....	1
5	Jurisdiction of Supreme Court preserved.....	3
<b>Part II</b>	<b>Administration</b>	
6	Delegation .....	3
7	Reports.....	4
<b>Part III</b>	<b>Community welfare assistance</b>	
8	Assistance in certain circumstances.....	4
<b>Part IV</b>	<b>Welfare of children</b>	
<b>Division 1</b>	<b>Children in need of care</b>	
<b>Subdivision A</b>	<b>Preliminary</b>	
9	Duty of Minister.....	5
<b>Subdivision B</b>	<b>Custody of children in need of care</b>	
10	Responsibility in respect of children in need of care.....	5
11	Taking child in need of care into custody.....	5
12	Medical treatment for child taken into custody.....	6
<b>Division 2</b>	<b>Children who have suffered maltreatment</b>	
13	Investigation of maltreatment.....	6
14	Maltreatment to be reported .....	7
15	Child in hospital .....	7
16	Investigation where child has suffered maltreatment.....	8
<b>Division 3</b>	<b>Responsibility of Minister</b>	
17	Responsibility of Minister when notified of action under section 11(5) .....	8

---

## **Part V                    Child protection teams**

18	Establishment of child protection teams .....	9
19	Resignation of members.....	9
20	Meetings of committee .....	9
21	Functions of child protection teams .....	10
22	Powers of child protection teams.....	10
23	Minister to consult with child protection team .....	10

## **Part VI                    Family Matters Court**

### **Division 1                Family Matters Court**

24	Family Matters Court .....	11
25	Exercise of jurisdiction .....	11
26	Clerk of Family Matters Court .....	11
28	Application of <i>Justices Act</i> .....	11
29	Powers of Court .....	11
30	Jurisdiction of Court of Summary Jurisdiction to cease .....	11
31	Where Courts may sit .....	12
32	Restriction on attendance .....	12
33	Restriction of publication of proceedings or identifying material ....	12

### **Division 2                Application to Court**

34	Application of Division .....	13
35	Minister to make application .....	13
36	Applications, &c. ....	13
37	Attendance of parents, &c. ....	14
38	Offence to remove child.....	14
39	Powers of Court at hearing of application .....	14
40	Procedure .....	15
41	Statement of child too ill to attend Court .....	15
42	Proof of need of care .....	16
43	Findings of Court .....	16
44	Adjournment of proceedings, &c.....	18
45.	Powers of Court in respect of reports .....	18
46	Reports to be made available .....	19
47	Interim orders .....	20

### **Division 3                Review, &c.**

48	Application for variation of order .....	20
49	Review by Court .....	20
50	Appeal to Supreme Court .....	21

## **Part VII                    Child in care of Minister**

51	Definition.....	21
----	-----------------	----

---

52	Care of child by Minister .....	22
53	Authorized person to visit child .....	22
54	Authority may be required .....	23
55	Change of address to be notified.....	23
56	Review by Minister .....	23
57	Care of children from another State, &c. ....	23
58	Transfer of children to care in another State, &c. ....	24
59	Agreement with parent, &c. ....	24
60	Directions to Minister .....	24
61	Property of child under guardianship of Minister.....	25
62	Temporary custody.....	25

## **Part VIII            Foster care**

63	Registration of foster parents.....	26
64	Foster care .....	27
65	Authorized person may visit foster parents, &c.....	27
66	Support for parents.....	27
67	Removal of child from foster care .....	28

## **Part IX                Aboriginal child welfare**

68	Assistance to Aboriginal communities, &c. ....	28
69	Aboriginal child in need of care.....	28
70	Agreement with community government council, &c. ....	29
71	Delegation by community government council, &c. ....	29

## **Part X                 Licensing of children's homes, &c.**

### **Division 1            Children's homes**

72	Definition.....	30
73	Licensed children's home .....	30
74	Licence to be available .....	31
75	Failure to comply with licence.....	31
76	Cancellation of licence.....	32
77	Register .....	32
78	Inspection of children's home .....	32
79	Agreement.....	33
80	Duty of minister to hear complaints .....	33
81	Notification of acceptance of child, &c. ....	33

### **Division 2            Licensed child care centres**

82	Definition.....	33
83	Licensing of child care centre .....	34
84	Licence to be displayed .....	34
85	Failure to comply with licence, &c.....	35
86	Cancellation of licence.....	35

---

87	Register .....	35
88	Inspection of child care centre .....	35
89	Maximum period in child care centre .....	35
90	Drugs not to be administered.....	36
91	Inspection of other premises.....	36

## **Part XI                    Employment of children**

92	Employment of children .....	36
93	Dangerous employment.....	36

## **Part XII                    Miscellaneous**

94	Obstruction, &c. ....	36
95	Personation .....	37
96	Offence to remove child.....	37
97	Secrecy to be observed .....	37
97A	Disclosing information from which child can be identified .....	39
98	Offences and penalties .....	39
99	Regulations.....	39
100	Savings.....	40

## **Schedule                    Repealed Acts**

### **ENDNOTES**

# NORTHERN TERRITORY OF AUSTRALIA

---

As in force at 30 March 1998

---

## COMMUNITY WELFARE ACT

**An Act to provide for the protection and care of children and the promotion of family welfare, and for other purposes**

### Part I Preliminary

#### 1 Short title

This Act may be cited as the *Community Welfare Act*.

#### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3 Repeal

The Acts listed in the Schedule are repealed.

#### 4 Interpretation

(1) In this Act, unless the contrary intention appears:

**access** means the contact of a child with a person, by way of a visit by or to that person, including attendance for a period at a place other than the child's habitual residence, or by way of a letter, telephone or other means.

**authorized person** means a person authorized in writing by the Minister to exercise powers and perform functions under this Act.

**child** means a person who has not attained the age of 18 years.

**Court** means the Family Matters Court established by section 24.

**custody**, in relation to a child, means the responsibility for the daily care and control of the child, including decisions concerning accommodation, attendance at school, clothing, feeding, transportation, behaviour and urgent or routine health needs of the child.

**guardianship**, in relation to a child, means the custody of the child and the responsibility for the long-term welfare of the child, including decisions concerning the education, changes in place of residence, religion, employment and the general health of the child and other rights, powers and duties before the commencement of this Act vested by law or custom in the guardian of a child.

**hospital** means a hospital within the meaning of the *Hospitals and Medical Services Act* or a private hospital within the meaning of the *Private Hospitals and Nursing Homes Act*.

**Juvenile Court** means the Court established by section 14 of the *Juvenile Justice Act*.

**place of safety** means an institution, hospital or other place the occupier of which is willing to receive and have temporary custody of a child.

- (2) For the purposes of this Act, a child is in need of care, where:
- (a) the parents, guardians or the person having the custody of the child have abandoned him and cannot, after reasonable inquiry, be found;
  - (b) the parents, guardians or the person having the custody of the child are or is unwilling or unable to maintain the child;
  - (c) he has suffered maltreatment;
  - (d) he is not subject to effective control and is engaging in conduct which constitutes a serious danger to his health or safety; or
  - (e) being excused from criminal responsibility under section 38 of the Criminal Code he has persistently engaged in conduct which is so harmful or potentially harmful to the general welfare of the community measured by commonly accepted community standards as to warrant appropriate action under this Act for the maintenance of those standards.
- (3) For the purposes of this Act, a child shall be taken to have suffered maltreatment where:
- (a) he has suffered a physical injury causing temporary or permanent disfigurement or serious pain or has suffered impairment of a bodily function or the normal reserve or flexibility of a bodily function, inflicted or allowed to be inflicted by a parent, guardian or person having the custody of him or where there is substantial risk of his suffering such an injury or impairment;

- (b) he has suffered serious emotional or intellectual impairment evidenced by severe psychological or social malfunctioning measured by the commonly accepted standards of the community to which he belongs, because of his physical surroundings, nutritional or other deprivation, or the emotional or social environment in which he is living or where there is a substantial risk that such surroundings, deprivation or environment will cause such emotional or intellectual impairment;
- (c) he has suffered serious physical impairment evidenced by severe bodily malfunctioning, because of his physical surroundings, nutritional or other deprivation, or the emotional or social environment in which he is living or where there is substantial risk that such surroundings, deprivation or environment will cause such impairment;
- (d) he has been sexually abused or exploited, or where there is substantial risk of such abuse or exploitation occurring, and his parents, guardians or persons having the custody of him are unable or unwilling to protect him from such abuse or exploitation; or
- (e) being a female, she:
  - (i) has been subjected, or there is substantial risk that she will be subjected, to female genital mutilation, as defined in section 186A of the Criminal Code; or
  - (ii) has been taken, or there is a substantial risk that she will be taken, from the Territory with the intention of having female genital mutilation performed on her.

## **5 Jurisdiction of Supreme Court preserved**

Nothing in this Act limits the jurisdiction of the Supreme Court in relation to the custody or guardianship of children.

## **Part II Administration**

### **6 Delegation**

- (1) The Minister may, by instrument in writing, delegate to a person any of his powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.

- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister.

## **7 Reports**

The Minister shall, as soon as practicable after 31 December in each year, cause a report on the administration of this Act and on the operation of community welfare services in the Territory during the year ending on that date to be prepared and cause a copy of the report to be laid before the Legislative Assembly within 3 sitting days of the Legislative Assembly after the preparation of the report.

## **Part III Community welfare assistance**

### **8 Assistance in certain circumstances**

- (1) A person, family or group claiming to be in need of assistance under this Act may apply to the Minister for such assistance.
- (2) Where, in the opinion of the Minister, a person, family or group is in need of assistance as a result of problems related to social, personal or economic reasons, he may provide such assistance as he thinks fit to promote the welfare of the person, family or group.
- (3) Assistance provided under subsection (2) may be in the form of financial assistance, the provision of community welfare services or welfare programmes or otherwise as the Minister thinks fit.
- (4) Without limiting the generality of subsections (2) and (3), the Minister may enter into such arrangements as he thinks fit with charitable or other community organizations or groups for them to act as agents for the Minister for the provision of assistance under this section to persons, families or groups.
- (5) The Minister shall prepare guidelines for establishing the criteria and procedures to be followed in relation to the provision of financial assistance under this section.



## **Part IV               Welfare of children**

### **Division 1           Children in need of care**

#### **Subdivision A   Preliminary**

##### **9               Duty of Minister**

In exercising his powers under this Part, the Minister shall, at all times, have as his main consideration the welfare of the child in relation to whom those powers are exercised and particularly for:

- (a) securing for the child such care and guidance as will promote that welfare; and
- (b) the maintenance and development of those family relationships that are, in his opinion, in the best interests of the child.

#### **Subdivision B   Custody of children in need of care**

##### **10           Responsibility in respect of children in need of care**

Where the Minister is of the opinion that a child is in need of care, he may:

- (a) give to the child or its parents, guardians or persons having the custody of the child, such assistance and guidance as he thinks fit for ensuring the adequate care of the child within the child's family;
- (b) on the application of a parent, guardian or person having the custody of the child, enter into an agreement under section 62 to receive the child into care and to provide for the child; or
- (c) take such other action under this Act, as he thinks fit, to ensure the adequate care of the child.

##### **11           Taking child in need of care into custody**

- (1) The Minister, an authorized person or a member of the Police Force may, where he believes on reasonable grounds that a child is in need of care and that no other action would ensure the adequate care of the child, take the child into custody.
- (2) For the purposes of subsection (1), the Minister, an authorized person or member of the Police Force may, without warrant, enter a place where a child is or is reasonably believed to be located and,

unless he is satisfied that adequate steps will be taken to ensure that the child will cease to be in need of care should the child remain at that place, remove the child, and may use such force as is reasonably necessary for those purposes.

- (3) A person taking a child into custody under subsection (1):
  - (a) may have the child held in a place of safety for a period not exceeding 48 hours; and
  - (b) shall, as soon as practicable, but not later than 48 hours after so taking the child into custody, apply to a Justice of the Peace for a holding order under subsection (4).
- (4) On application by the person referred to in subsection (3) or a person in charge of a hospital acting under section 15, where a Justice of the Peace is satisfied on the oath of the person that there are reasonable grounds for believing that the child to whom the application relates is in need of care, he may make an order authorizing the holding of the child in a place of safety for such period, not exceeding 14 days, as he thinks fit.
- (5) A person taking a child into custody under subsection (1) or in charge of a hospital acting under section 15 shall, within 48 hours after so taking the child into custody or taking action under section 15, in writing, notify the Minister of the action taken.

## **12                      Medical treatment for child taken into custody**

Where a person taking a child into custody under section 11(1) believes, on reasonable grounds, that the child is urgently in need of medical treatment, he shall take such steps as are reasonably necessary to ensure that the child receives the medical treatment and, for that purpose, may give his consent for the carrying out of a medical procedure on the child, and that consent shall, for all purposes, be sufficient consent for the carrying out of the medical procedure or treatment.

## **Division 2                      Children who have suffered maltreatment**

### **13                      Investigation of maltreatment**

- (1) Where a member of the Police Force believes on reasonable grounds that a child has suffered or is suffering maltreatment, he:
  - (a) shall, as soon as practicable, notify the Minister of the circumstances and the knowledge that constitutes the reasonable grounds for his so believing; and

- (b) may investigate the circumstances to ascertain if the child has suffered or is suffering maltreatment.
- (2) Where a member of the Police Force carries out an investigation under subsection (1)(b), he shall, within 24 hours after completing the investigation, furnish to the Minister a report on his investigations and, if he is satisfied on reasonable grounds that the child has suffered maltreatment, all material facts on which the knowledge that constitutes the reasonable grounds for his belief is based.

#### **14 Maltreatment to be reported**

- (1) A person, not being a member of the Police Force, who believes, on reasonable grounds, that a child has suffered or is suffering maltreatment shall, as soon as practicable after obtaining the knowledge that constitutes the reasonable grounds for his so believing, report the fact, and all material facts on which that knowledge is based, to the Minister or a member of the Police Force.

Penalty: \$500.

- (2) Where a person, acting in good faith, makes a report under or in purported compliance with subsection (1):
  - (a) the report shall not be held to be a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct; and
  - (b) no civil or criminal liability is incurred by reason only of the making of the report.

#### **15 Child in hospital**

A person in charge of a hospital who believes, on reasonable grounds, that a child has suffered or is suffering maltreatment:

- (a) may detain the child in hospital, for the purposes of securing medical examination or treatment for the child, for such period, not exceeding 48 hours, as is reasonably necessary to enable the examination or treatment to be carried out; and
- (b) if after the medical examination referred to in paragraph (a) he is still of that belief shall, as soon as practicable, but not later than 48 hours after the detention of the child, apply to a Justice of the Peace for a holding order under section 11(4).

**16            Investigation where child has suffered maltreatment**

- (1) Where the Minister receives a report under section 13 or 14 that a child has suffered or is suffering maltreatment, he shall, as soon as practicable, cause the circumstances of the child to be further investigated or investigated, as the case may be, and shall take such other action under this Act as he thinks fit.
- (2) For the purposes of carrying out an investigation under subsection (1), the Minister may cause a child to be medically examined and his request that a child be so examined shall, for all purposes, be sufficient consent for the carrying out of the examination.

**Division 3            Responsibility of Minister**

**17            Responsibility of Minister when notified of action under section 11(5)**

Where the Minister is notified under section 11(5) of the removal of a child in need of care or of the detaining of a child in a hospital, he shall:

- (a) assume responsibility for the care, protection and maintenance of the child;
- (b) cause the child:
  - (i) to be taken before the Court within the period of the holding order, if any, under section 11(4) but in any case not later than 14 days after the removal or detention of the child; and
  - (ii) to remain in or be removed to a place of safety approved by the Minister that, in his opinion, is suitable to ensure that the welfare of the child is provided for;
- (c) as soon as practicable, cause the parents, guardians or persons who had the custody of the child at the time of the removal or detention to be notified of the removal or detention of the child and of any subsequent action taken or intended to be taken in respect of the child; and
- (d) take such other action under this Act, including securing medical examination and treatment, if required, for the child, as the Minister thinks fit.

---

## **Part V                      Child protection teams**

### **18                      Establishment of child protection teams**

For each location where he considers it necessary or desirable, the Minister may establish a Child Protection Team, the members of which shall be:

- (a) the Minister or his nominee, who shall be the Chairman of the Team;
- (b) the Chief Executive Officer, as defined in the *Public Sector Employment and Management Act*, of the department of the Public Service primarily responsible through the relevant minister for the administration of health matters in the Territory, or his nominee;
- (c) the Commissioner of Police or his nominee; and
- (d) such other persons as the Minister thinks fit and, in writing, appoints.

### **19                      Resignation of members**

A member appointed under section 18(d) may resign his office by writing signed by him and delivered to the Minister.

### **20                      Meetings of committee**

- (1) The Chairman of a Child Protection Team shall call such meetings of the Team as are necessary for the exercise of its powers and the performance of its functions.
- (2) The Minister may, where he is not the Chairman of a Child Protection Team, at any time, direct the Chairman to convene a meeting of the Team and the Chairman shall convene a meeting accordingly.
- (3) The Chairman shall preside at all meetings of his Team at which he is present and, in his absence, the members present shall elect one of their number to act as the Chairman.
- (4) At a meeting of a Child Protection Team:
  - (a) 3 members constitute a quorum; and
  - (b) subject to this Act, the Team shall determine the procedure to be followed at or in connection with the meeting.
- (5) The Team shall take and keep records of its meetings.

**21 Functions of child protection teams**

The functions of a Child Protection Team are, subject to the directions of the Minister, to:

- (a) co-operate and consult with departments and agencies required by law, or which have the resources, to take action in relation to the maltreatment of children;
- (b) examine every notification under this Act concerning the known or suspected maltreatment of children in the location for which the Team is established and, as soon as practicable, recommend the action, if any, that should be taken in relation to that maltreatment;
- (c) review the action taken as a result of recommendations referred to in paragraph (b);
- (d) obtain from the departments responsible for the action referred to in paragraph (b) undertakings in respect of any additional action to be taken; and
- (e) maintain a regular review of all cases related to children in its location who have suffered maltreatment.

**22 Powers of child protection teams**

- (1) A Child Protection Team has such powers as are necessary to carry out its functions.
- (2) Where a person, acting in good faith, furnishes information to a Child Protection Team at its request:
  - (a) the furnishing of information shall not be held to be a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct; and
  - (b) no civil or criminal liability is incurred by him by reason only of the furnishing of the information.

**23 Minister to consult with child protection team**

- (1) In determining a course of action, including the taking of proceedings in the Court, relating to a child who has suffered maltreatment, the Minister shall consult with the relevant Child Protection Team and seek its recommendation in connection with the matter.

- (2) No action by the Minister under this Act shall be invalid or illegal by reason only of the Minister failing to consult with, or act on the recommendation of, a Child Protection Team.

## **Part VI            Family Matters Court**

### **Division 1        Family Matters Court**

#### **24            Family Matters Court**

- (1) There is hereby established a court to be known as the Family Matters Court.
- (2) Each magistrate is a magistrate of the Court.

#### **25            Exercise of jurisdiction**

The jurisdiction of the Court shall be exercised by a magistrate sitting alone.

#### **26            Clerk of Family Matters Court**

A Registrar of the Local Court is a Clerk of the Family Matters Court.

#### **28            Application of *Justices Act***

Subject to this Act, the *Justices Act* applies to the proceedings and orders of the Court as if the Court were the Court of Summary Jurisdiction established by that Act.

#### **29            Powers of Court**

Subject to this Act, the Court shall hear and determine all applications under this Act.

#### **30            Jurisdiction of Court of Summary Jurisdiction to cease**

- (1) Subject to subsection (2), the jurisdiction of the Court of Summary Jurisdiction under the *Justices Act* ceases to exist in relation to a matter in which the Court has jurisdiction.
- (2) Nothing in subsection (1) derogates from the powers of a Justice of the Peace to:
- (a) take an information or complaint;
  - (b) issue a summons;

- (c) grant, issue or endorse a warrant; or
- (d) grant bail.

### **31            Where Courts may sit**

- (1) Subject to this section, the Court shall sit in such places as the Minister directs and in a building approved or appointed by the Minister for the holding of the Court.
- (2) In making a direction under subsection (1) the Minister shall ensure as far as practicable that the facilities available to, and the proceedings in, the Court can and will be adequately separated from the facilities of a magistrate's office or the facilities of, and proceedings in, other courts operating at the place or in the building approved by him for the holding of the Court.
- (3) Where in a place or building appointed under subsection (1) for the holding of the Court it is not practicable to ensure the adequate separation referred to in subsection (2), the Court shall not sit while any other proceeding in or in the vicinity of the office, place or building is being conducted.

### **32            Restriction on attendance**

- (1) The Court shall, unless the person gives a sufficient reason why he should attend, order a person not directly interested in proceedings before the Court not to remain in or enter a room or place in which they are taking place or remain within the hearing of the Court.
- (2) A person shall not remain in or enter a room or place, or remain within the hearing of the Court, in contravention of an order under subsection (1).

Penalty:            \$2,000 or imprisonment for one month.

### **33            Restriction of publication of proceedings or identifying material**

Except with the leave of the Court, a person shall not publish a report of proceedings or the result of proceedings before the Court, unless the publishing is done by the person in the performance of his official duties under an Act.

Penalty:            In the case of an individual – \$1,000 or imprisonment for 6 months.

                          In the case of a body corporate – \$20,000.



## **Division 2            Application to Court**

### **34            Application of Division**

This Division has effect in relation to an application made by the Minister or in pursuance of leave granted under section 35(3) and, where such leave is granted, a reference to the Minister shall be read as a reference to the person to whom it was granted.

### **35            Minister to make application**

- (1) Subject to subsection (2), the Minister has the sole authority to make an application to the Court that a child be found to be in need of care.
- (2) Where the Minister has not made an application under this Part in relation to a child, a person may, after consultation with the Minister, seek the leave of the Court to make such an application.
- (3) The Court shall hear the person referred to in subsection (2) and the Minister and may make an order granting leave to the person to make the application.

### **36            Applications, &c.**

- (1) Before making an application under this Part in relation to a child, the Minister shall satisfy himself that the welfare of the child would not be adequately provided for by some other means.
- (2) Where the Minister intends to make an application under this Part, he shall give notice in writing:
  - (a) to the parents, guardians or persons having the custody of the child in relation to whom the application is intended to be made; and
  - (b) where the child has attained the age of 10 years, to the child, which shall include:
    - (c) a copy of the application endorsed with particulars of the time, date and place of the hearing of the application; and
    - (d) a statement of the requirements of this Act, including requirements as to the attendance of the parents, guardians or persons having the custody of the child at the hearing of the application.
- (3) Where, for the purposes of subsection (2), the parents, guardians or persons having the custody of the child in relation to whom an

application is intended to be made cannot, after reasonable enquiry, be found, the Minister shall state to the Court the means by which their whereabouts was investigated.

- (4) In an application under this Part in relation to a child, the Minister, the child and the parents, guardians or persons having the custody of the child are, or shall be deemed to be, parties to the application.

### **37 Attendance of parents, &c.**

- (1) The parents, guardians or persons having the custody of a child in relation to whom an application is made under this Part shall attend the Court, and remain in attendance, during the hearing of the application, unless the Court is satisfied that it would be unreasonable to require that attendance or continued attendance.
- (2) Where the parents, guardians or persons having the custody of a child referred to in subsection (1) fail, without reasonable excuse, to attend the hearing of the application under this Part or remain in attendance, the Court may direct that a warrant be issued to bring them before the Court at the hearing or a further hearing.
- (3) The Court may proceed with the hearing of an application referred to in this section notwithstanding that the parents, guardians or persons having the custody of the child are absent.

### **38 Offence to remove child**

A person who has knowledge that proceedings under this Part are pending and who removes the child in relation to whom the proceedings are being taken from the jurisdiction of the Court is guilty of an offence.

Penalty: \$500.

### **39 Powers of Court at hearing of application**

- (1) At the hearing of an application under this Part, the Court may, in addition to any other powers it has:
- (a) require the person having the custody of the child at the time to account for the cause of an injury which is a ground for the application; and
- (b) admit as evidence the finding that any other child in the care of the person having the custody of the child in relation to whom the application is made has suffered maltreatment.

- (2) In hearing an application under this Part the Court is not bound by the rules of evidence but may inform itself on any matters it thinks fit.
- (3) At the hearing of an application under this Part, where the Court is of the opinion that the child the subject of the proceedings needs legal representation and that such representation has not been arranged by or on behalf of the child, it may, by order, make such provision for the legal representation of the child as it thinks fit.

#### **40 Procedure**

In proceedings under this Part, the Court shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted.

#### **41 Statement of child too ill to attend Court**

- (1) Where a Court is satisfied by the evidence of a medical practitioner that the attendance before the Court of a child in relation to whom an application under this Part is made would be injurious or dangerous to the health of the child:
  - (a) the magistrate may take in writing the de-position or statement of the child without requiring his attendance before the Court; and
  - (b) the deposition or statement may be received in evidence, and shall have effect, as if it were proved that:
    - (i) the child was so ill as not to be able to travel; and
    - (ii) there was no reasonable probability that the child would ever be able to travel or give evidence.
- (2) Notwithstanding subsection (1), a deposition or statement of a child shall not be received in evidence unless the Court is of the opinion that the child is possessed of sufficient intelligence to justify the reception of the deposition or statement and understands the duty of speaking the truth.
- (3) Where in proceedings under this Part the Court is satisfied by the evidence of a medical practitioner that:
  - (a) the attendance before the Court of a child in relation to whom an application under this Part is made for the purpose of that child giving evidence would be injurious or dangerous to the health of the child; and

- (b) the evidence of the child is not essential to the hearing and determining of the application,

the Court may proceed with and determine the application in the absence of the child.

#### **42 Proof of need of care**

The burden of proving that a child is in need of care in an application under this Part lies on the Minister and the standard of proof is on the balance of probabilities.

#### **43 Findings of Court**

- (1) In proceedings in relation to a child in relation to whom an application under this Part is made, the Court shall consider:
  - (a) the need to safeguard the welfare and development of the child;
  - (b) having regard to the age and comprehension of the child, the reactions of the child to the proceedings and the child's wishes in relation to the outcome of the proceedings;
  - (c) the importance of maintaining and promoting the relationship between the parents, guardians or persons having the custody of the child (and, where appropriate, the extended family of the child) and the child;
  - (d) the desirability of maintaining the continuity of living in the child's usual ethnic and social environment; and
  - (e) where the child is an Aboriginal – the person or persons to whom, in its opinion, custody of the child should be given should the child be found to be in need of care, having regard to the criteria imposed on the Minister by section 69.
- (2) Subject to subsections (1) and (3), the Court shall only declare a child to be in need of care where it is satisfied that an order declaring the child to be in need of care would ensure that the standard of care of the child as a result of that order would be significantly higher than the standard presently maintained in respect of the child.
- (3) For the purpose of subsection (2), the Court shall, in assessing the standard of care of the child, consider the social and cultural standards of the community in which the parents, guardians or persons having the custody of the child (and, where appropriate, the extended family of the child) reside or with which they maintain social and cultural ties.

- (4) Subject to this section, the Court may, on the hearing of an application under this Part, make an order:
  - (a) declaring the child in relation to whom the application is made to be in need of care; or
  - (b) dismissing the application.
- (5) Where the Court makes a declaration under subsection (4)(a), the order may include:
  - (a) a direction to the parents, guardians or persons having the custody of the child to take the necessary steps to secure the proper care and welfare of the child (including a direction that they comply with the direction, if any, of the Minister in relation to the child's care and welfare), as it thinks fit, subject to review by the Court at the end of a period not exceeding 12 months after the date of the making of the order;
  - (b) a direction that the child reside with a person whom it considers suitable, for such period, subject to subsection (6), not exceeding 12 months, as it thinks fit;
  - (c) a direction that the child be under the guardianship of the Minister and the parents, guardians or persons having the custody of the child (including a direction relating to the custody of and access to the child while under that guardianship) for such period, subject to subsection (6), not exceeding 12 months, as it thinks fit; or
  - (d) subject to subsection (7), a direction to transfer the sole rights in relation to the guardianship of the child to the Minister or such other person, for such period, not extending beyond the eighteenth birthday of the child, as it thinks fit (including a direction relating to access of the parents, and such other persons as the court thinks fit, to the child).
- (6) A period specified in an order under subsection (5)(b) or (c) may be extended from time to time, as the Court thinks fit, for further periods, each not exceeding 12 months, and not extending beyond the eighteenth birthday of the child.
- (7) An order shall not be made under subsection (5)(d) unless the Court is satisfied that:
  - (a) no other order that it may make will adequately provide for the welfare of the child; or

- (b) the parents of the child have, without reasonable excuse, failed to maintain substantial contact with the child during the period of 12 months before the application as a result of which the order is made.
- (8) Where the Court makes a declaration under subsection (4)(a), the Minister shall, as soon as practicable after the order containing the declaration is made, take out the order and serve a copy, together with a statement drawing attention to the rights of persons referred to in section 48 to seek under that section a variation of the order, on each party to the application and such other person, if any, as the Court directs.

#### **44       Adjournment of proceedings, &c.**

- (1) The Court may adjourn the hearing of an application under this Part for such periods, not exceeding 14 days, as it thinks fit.
- (2) During a period of adjournment under subsection (1), the Court shall, having received the recommendation of the Minister, direct that the child in relation to whom the application is made:
  - (a) live, or continue to live at home;
  - (b) be placed, or remain in, the custody of a person specified in the direction;
  - (c) live, or continue to live, in a place of safety specified in the direction; or
  - (d) be detained in a hospital specified in the direction.
- (3) The person in charge of the place of safety or hospital specified in a direction under subsection (2) shall accept the child into his custody for the period of the adjournment.
- (4) The Court may make such order as to costs of the care and maintenance of a child in relation to whom a direction under subsection (2) is made as it thinks fit.

#### **45.       Powers of Court in respect of reports**

- (1) The Court hearing an application under this Part may require a person to furnish to it a report on the child in relation to whom the application is made and that person shall comply with the requirement accordingly.

Penalty:       \$500.

- (2) Notwithstanding anything in this Act, for the purpose of giving effect to a requirement under subsection (1), the person referred to in that subsection may:
  - (a) make such inquiries as he is required to make or as he thinks fit; and
  - (b) request the child to submit to being interviewed and medically examined by a medical practitioner or interviewed or examined by another specified person.
- (3) Without limiting the generality of subsection (2), a requirement under subsection (1) to furnish a report may include an order that the child to whom it relates be interviewed and medically examined by a medical practitioner or interviewed or examined by another specified person and, when it so orders, the report shall contain details of the results of that interview or examination.
- (4) Where a report required under subsection (1) to be furnished is furnished in good faith to the Court:
  - (a) the report shall not, in relation to information obtained as a result of an interview or examination conducted in pursuance of the order referred to in subsection (3), be held to constitute a breach of confidence or of professional etiquette or ethics or of a rule of professional conduct; and
  - (b) liability for defamation is not incurred by any person as a result of the furnishing of the report.
- (5) Subsection (4) has effect both within and outside the Territory.

#### **46 Reports to be made available**

- (1) Unless the Court otherwise directs, a copy of a report furnished under section 45 shall, as soon as practicable after it is prepared, be made available to the Minister, the child to whom it relates and the parents, guardians or persons having the custody of him and the legal practitioners, if any, representing them.
- (2) The Court may, if it thinks fit, direct that a copy of a report furnished under section 45 or a specified part of it shall not be made available to the child to whom it relates if in its opinion the report or that part would be likely to cause him distress.
- (3) A person furnishing a report under section 45 may be called as a witness and examined by way of cross-examination and re-examination by a person entitled under subsection (1) to receive a copy of it.

- (4) A child or a parent, guardian or person having the care and custody of him may give evidence, or call witnesses, to rebut the contents of a report furnished under section 45.

**47            Interim orders**

Where the Court thinks fit, it may make an interim order in accordance with this Part which shall include particulars of the date, time and place fixed by the Court for a further hearing of the application to which it relates and it shall remain in force:

- (a) subject to paragraph (b), for such period not exceeding 2 months, as the Court thinks fit; or
- (b) where the Court thinks fit, for a further period not exceeding 4 months from the making of the first interim order.

**Division 3            Review, &c.**

**48            Application for variation of order**

- (1) The Minister or the parents, or the persons who were, immediately before the order, the guardians or persons having the custody of a child, or any other person who has an interest in the welfare of, or acting on behalf of and at the request of, the child in relation to whom the application under this Part was made, may apply to the Court for the variation or further variation of an order made under section 43.
- (2) An application under subsection (1) shall not be made unless it states that the circumstances that resulted in the making of the order, in some respect specified in the application, have changed significantly since the order sought to be varied was made.
- (3) On an application under subsection (1), the Court may vary or revoke the order, or make any other order it could have made under section 43 on the original application.

**49            Review by Court**

- (1) The Court shall review the circumstances of a child in relation to whom an order under section 43(4) is made containing a direction referred to in section 43(5)(d):
- (a) where the sole rights in relation to the custody of the child are vested in the Minister – at intervals not exceeding 2 years; or
- (b) in any other case – at such times as it thinks fit,



and may make such further orders in relation to the child as it could have made on the original application.

- (2) In carrying out a review under subsection (1), the Court may require such reports under section 45 to be furnished to it as it thinks fit as if the review were the hearing of an application under this Part, and copies of those reports shall be made available under section 46(1) accordingly.
- (3) The Court may, at such times as it thinks fit, vary or revoke an order made under this section.
- (4) The Court shall not carry out a review under subsection (1) or vary or revoke an order made as a result of a review unless it has first given to each party to the application resulting in the relevant order, and to such other persons as it thinks fit, not less than 7 days written notice of the proposed action.
- (5) Notice under subsection (4) may be given by posting it to the party or other person at his address for service in the application or last known residential address.

## **50      Appeal to Supreme Court**

- (1) The Minister or the parents, or the persons who were, immediately before the order, the guardians or persons having the custody of a child, or any other person who has an interest in the welfare of, or acting on behalf of and at the request of, the child in relation to whom an order under section 43(4) or 49 was made, may appeal to the Supreme Court against the order made or as varied under this Part.
- (2) The provisions of the *Justices Act* relating to appeals from a Court of Summary Jurisdiction shall apply, so far as they are applicable, to an appeal under subsection (1).

## **Part VII              Child in care of Minister**

### **51      Definition**

For the purposes of this Part, ***a child to whom this Part applies*** means a child the sole rights in relation to the guardianship of whom are placed in the Minister pursuant to section 43(5)(d) or in the Minister and another person pursuant to section 43(5)(c).

**52 Care of child by Minister**

- (1) In relation to a child to whom this Part applies the Minister shall, subject to such limitations on the Minister or the parent as the Court imposes, have the same rights, powers, duties, obligations and liabilities as a parent of the child.
- (2) Without limiting the generality of subsection (1), the rights, powers, duties, obligations and liabilities of the Minister in relation to a child to whom this Part applies include:
  - (a) the right to the custody of the child;
  - (b) the obligation to provide for the child the necessities of life, including accommodation, maintenance, education and recreation;
  - (c) the right to exercise discipline over the child; and
  - (d) the obligation to provide medical and dental health care for the child.
- (3) The Minister may, in the exercise of his duties under this section in relation to a child to whom this Part applies:
  - (a) permit the child to remain in the custody of a parent or guardian;
  - (b) place the child, in accordance with this Act, under the foster care of such persons as the Minister thinks fit;
  - (c) place the child in a licensed children's home; or
  - (d) provide such accommodation or assistance for, and care in respect of, the child as the Minister thinks fit.

**53 Authorized person to visit child**

- (1) The Minister shall cause an authorized person to visit a child to whom this Part applies at least once in every 2 months.
- (2) A person who has the custody of a child to whom this Part applies shall, at all reasonable times, permit an authorized person to enter a place at which the child is located for the purpose of visiting the child.
- (3) As soon as practicable after a visit under this section, the authorized person shall furnish to the Minister a report in writing concerning the child and his welfare.

**54 Authority may be required**

A person who has the custody of a child to whom this Part applies may require the production of an authority in writing by the Minister before permitting the removal of the child out of his custody, or a visit under section 53 by an authorized person.

**55 Change of address to be notified**

A person who has the custody of a child to whom this Part applies shall furnish to the Minister, in writing, prior notice of an intended change of his residence, including the address of the proposed residence.

**56 Review by Minister**

The Minister shall, while an order under section 43(4) placing a child under his guardianship or joint guardianship remains in force, at least once in every 3 months, review the circumstances of the child and the arrangements made for the child's care and welfare for the purpose of:

- (a) ensuring that the continuance of the arrangements is suitable and desirable; or
- (b) considering change to the arrangements.

**57 Care of children from another State, &c.**

- (1) The Minister may, on request by or on behalf of an authority having the guardianship in any State or other Territory of the Commonwealth of a child who has entered or is about to enter the Territory, by order in writing, place the child under the guardianship of the Minister for so long as he remains in the Territory.
- (2) The Minister may make financial or other arrangements with an authority in any State or other Territory of the Commonwealth for the guardianship of a child while in the Territory and may, subject to those arrangements, cause the child, at any time while he remains under the guardianship of the Minister, to be removed from the Territory and returned to the custody of the authority in that State or other Territory.
- (3) Where under this section a child has been placed under the guardianship of the Minister, the Minister shall have the custody and be the lawful guardian of the child to the exclusion of any other person or authority.

- (4) The child referred to in this section shall not remain under the guardianship of the Minister for a period in excess of that for which he would, if he had not been placed under the guardianship of the Minister, have remained subject to the custody of the authority from which he was received.

**58        Transfer of children to care in another State, &c.**

- (1) The Minister may make financial or other arrangements with an authority in a State or other Territory of the Commonwealth which, under the law of that State or Territory corresponding to this Act, is competent to accept, or take action equivalent to the undertaking of, guardianship under this Act of children in need of care, for the care in that State or Territory of a child to whom this Part applies.
- (2) Where, in the opinion of the Minister, the law of a State or other Territory of the Commonwealth contains a provision corresponding to section 57 and, on the request of the Minister, a child to whom this Part applies is declared under that provision to be placed under the guardianship of that authority for the purposes of the law of that State or other Territory, the functions conferred or imposed by or under this Act on the Minister or other persons shall be deemed to be suspended in relation to that child while he remains under guardianship in consequence of the declaration under that provision, except in so far as they may be exercised in accordance with arrangements made under subsection (1).

**59        Agreement with parent, &c.**

The Minister may, in relation to a child to whom this Part applies, enter into an agreement with a parent or person from whose custody the child is placed under the guardianship of the Minister for the parent or person to make a financial contribution towards the maintenance of the child whilst the child is under the guardianship of the Minister.

**60        Directions to Minister**

- (1) The Court may, on its own motion or on an application by a parent, a joint guardian or another person with an interest in the welfare of a child to whom this Part applies or a person acting on behalf of and at the request of the child, direct the Minister in relation to the exercise of the duties of the Minister under an order made under section 43(4).
- (2) The Minister shall comply with the directions, if any, under subsection (1).

**61 Property of child under guardianship of Minister**

- (1) Subject to subsection (3), the Court may, on the application of the Minister, make an order empowering the Public Trustee to manage, control or deal with the property of a child to whom this Part applies.
- (2) An order under subsection (1) may make such incidental or supplementary provisions as are necessary to give effect to the order.
- (3) The Court shall not make an order under subsection (1) in relation to property if there is some other person, not being a child to whom this Part applies, empowered to manage, control or deal with the property.
- (4) A copy of an application under this section shall be served on such persons as the Court directs, and the procedure upon the hearing of the application shall be as the Court directs.
- (5) An order under subsection (1) is binding on all persons affected by the order and each such person shall take steps to give effect to the order so far as it is binding on him.

**62 Temporary custody**

- (1) Subject to subsection (5), the Minister may, on the application of a person having the custody of a child, enter into an agreement to admit the child into the temporary custody of the Minister for a period, subject to subsection (3), not exceeding 2 months.
- (2) An agreement under subsection (1) shall set out the rights and responsibilities of the Minister in relation to the child.
- (3) A period specified in an agreement under subsection (1) may be extended from time to time by the parties to the agreement by mutual consent for further periods, each not exceeding 2 months, but not extending beyond 6 months after the date the agreement was first entered into.
- (4) The Minister may, as a condition of an agreement under subsection (1), receive contributions towards the maintenance of the child from the person making the application.
- (5) An agreement under subsection (1) shall not be entered into in relation to a child who has attained the age of 15 years, unless the child has consented in writing to the Minister to be received into the temporary custody of the Minister.

- (6) If at any time during which a child is in the temporary custody of the Minister in pursuance of an agreement under this section the person giving custody of the child to the Minister requests the Minister to return the child to his custody the Minister shall, within 48 hours after the request:
  - (a) return the child to the custody of the person; or
  - (b) where he is of the opinion that it would not be in the best interest of the child to so return him – make an application under Division 2 of Part VI in relation to the child.
- (7) The Court may give such directions in relation to an application referred to in subsection (6), and make such orders for the temporary custody of a child to whom the application relates, as it thinks fit.

## **Part VIII Foster care**

### **63 Registration of foster parents**

- (1) Persons may apply to the Minister for registration as foster parents.
- (2) In considering an application for registration under subsection (1), the Minister shall, as far as practicable, be satisfied that the applicants:
  - (a) will have adequate interest in, and affection and respect for, a child placed in their custody;
  - (b) will provide a stable environment for the child and will treat the child in a manner consistent with establishing a stable and secure environment;
  - (c) are capable of, and will understand the development of, the child, including the provision of opportunities to encourage that development and the abilities of the child;
  - (d) will be capable of providing adequate accommodation and material requirements necessary for the welfare of the child;
  - (e) will understand the need, and provide opportunities, for the child to maintain or recover his identity as a member of his own family and will allow the child reasonable access to his parents; and
  - (f) are qualified to be registered according to such other criteria for registration as the Minister thinks fit.

- 
- (3) Registration of persons as foster parents under this section shall be for 12 months, and may be renewed from time to time for such period, not exceeding 12 months, as the Minister thinks fit.

#### **64 Foster care**

- (1) The Minister may, in relation to a child for whose welfare he is responsible under this Act, place the child in the custody of foster parents for such period as the Minister thinks fit.
- (2) The placement of a child under subsection (1) is subject to review by the Minister at such periods as he thinks fit.
- (3) Before the placement of a child under this section, the foster parents shall enter into an agreement with the Minister undertaking to care for the child to be placed in their custody in accordance with the agreement and this Act.
- (4) An agreement under subsection (3) shall include a provision for a foster allowance in respect of the child and shall provide for such other supporting measures to the foster parents and the child as the Minister thinks fit.

#### **65 Authorized person may visit foster parents, &c.**

- (1) The Minister may cause an authorized person to visit a child placed under this Part with foster parents in order to ascertain whether this Part is being complied with and to provide advice or guidance concerning the welfare of the child.
- (2) Foster parents shall, at all reasonable times, permit an authorized person to enter a place at which a foster child is located for the purpose of visiting the child.
- (3) As soon as practicable after a visit under this section, the authorized person shall furnish to the Minister a report in writing concerning the child and its welfare.
- (4) Where it appears to an authorized person or the Minister that the provisions of an agreement under section 64(3) or this Part are not being complied with or the care of a child by foster parents is not being carried out in the child's best interests, the Minister may cancel the registration of the foster parents.

#### **66 Support for parents**

Notwithstanding the placement of a child in foster care under section 64, the Minister may provide such support as he thinks fit to the parents of the child to facilitate access of the parents to the child and the child to his parents.

**67 Removal of child from foster care**

On:

- (a) the cancellation or expiry of the registration of persons as foster parents;
- (b) the cancellation or expiry of the authority by which the Minister arranged for the care under this Part of a child; or
- (c) the Minister being of the opinion that the interests of the child would be better served by the removal,

the Minister may remove the child from a foster placement and cause the child to be placed elsewhere in accordance with this Act.

**Part IX                    Aboriginal child welfare****68 Assistance to Aboriginal communities, &c.**

The Minister shall provide such support and assistance to Aboriginal communities and organizations as he thinks fit in order to develop their efforts in respect of the welfare of Aboriginal families and children, including the promotion of the training and employment of Aboriginal welfare workers.

**69 Aboriginal child in need of care**

Where a child in need of care is an Aboriginal, the Minister shall ensure that:

- (a) every effort is made to arrange appropriate custody within the child's extended family;
- (b) where such custody cannot be arranged to his satisfaction, every effort is made to arrange appropriate custody of the child by Aboriginal people who have the correct relationship with the child in accordance with Aboriginal customary law; and
- (c) where the custody referred to in paragraph (a) or (b) cannot be arranged without endangering the welfare of the child – after consultation with:
  - (i) the child's parents and other persons with responsibility for the welfare of the child in accordance with Aboriginal customary law; and



- (ii) such Aboriginal welfare organizations as are appropriate in the case of the particular child,

a placement that is consistent with the best interests and the welfare of the child shall be arranged taking into consideration:

- (iii) preference for custody of the child by Aboriginal persons who are suitable in the opinion of the Minister;
- (iv) placement of the child in geographical proximity to the family or other relatives of the child who have an interest in, and responsibility for, the welfare of the child; and
- (v) undertakings by the persons having the custody of the child to encourage and facilitate the maintenance of contact between the child and its own kin and with its own culture.

#### **70 Agreement with community government council, &c.**

- (1) A community government council constituted under the *Local Government Act* or an association incorporated under the *Associations Incorporation Act* may, subject to agreement with the Minister, undertake functions under this Act in relation to the welfare of children and the provision of facilities and trained staff to provide counselling and assistance to, or in relation to the welfare of, children.
- (2) An agreement under subsection (1) shall be in accordance with:
  - (a) the community government scheme, and shall be effective within the boundaries of the area, of the community government council; or
  - (b) the rules of the association,as the case may be.

#### **71 Delegation by community government council, &c.**

- (1) For the purposes of this Act, a community government council, or the committee of an incorporated association, that enters into an agreement under section 70 may, by instrument in writing, delegate to a person any of its powers and functions under this Act by virtue of that agreement, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised by the delegate, shall, for the purposes of this Act and the agreement under section 70, be deemed to have been exercised or

performed by the community government council or the committee of the incorporated association, the party to the agreement.

- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by a community government council or the committee of an incorporated association, as the case may be.

## **Part X            Licensing of children's homes, &c.**

### **Division 1       Children's homes**

#### **72            Definition**

In this Part,

***children's home*** means premises in respect of which the occupier holds himself out as being willing to conduct a residential children's home and in which more than 4 children who have not attained the age of 15 years, not being children or relatives of adults resident at the premises, are cared for for periods exceeding 24 consecutive hours duration, but does not include:

- (a) a Juvenile Detention Centre established under the *Juvenile Justice Act*;
- (b) the residence of foster parents registered under Part VIII;
- (c) a residential establishment attached to a school or other educational institution within the meaning of the *Education Act*; or
- (d) a hospital.

#### **73            Licensed children's home**

- (1) No person shall have the conduct or control of a children's home unless the person is the holder of a current licence granted under this section in respect of the children's home.
- (2) A person may apply to the Minister, in a form approved by the Minister, for a licence under this section to be granted to him in respect of premises specified in the licence.
- (3) In determining whether or not to grant a licence to an applicant under subsection (2), the Minister shall have regard to:

- (a) the qualifications and experience of the person or persons who will be conducting or managing, and of the persons who will be employed in, the children's home;
  - (b) the system of management proposed;
  - (c) the suitability of the premises proposed to be used as the children's home; and
  - (d) such other matters as the Minister thinks fit.
- (4) The Minister may grant a licence under this section subject to such terms and conditions (which shall include terms and conditions as to the standards to be observed in the management and operation of the children's home) as the Minister thinks fit and specifies in the licence document.
- (5) A licence granted under this section shall, subject to this Division, remain in force for 3 years after the day on which it was granted and may be renewed from time to time for successive periods of 3 years.

**74            Licence to be available**

A licence document under section 73(4) shall be kept by the licensee at the children's home in relation to which it relates and shall be produced to any person on the request of that person.

Penalty:       \$100.

**75            Failure to comply with licence**

- (1) A person who contravenes section 73(1), or contravenes or fails to comply with a term or condition to which a licence under section 73 is subject, is guilty of an offence.

Penalty:       For a first offence – \$500.

For a subsequent offence – \$1,000 or imprisonment for 12 months.

- (2) In a proceeding for an offence against this section, the court hearing the charge may, on the application of the Minister, and in addition to any other penalty it may impose, cancel a licence granted under section 73 to the person against whom the charge is laid.

## **76            Cancellation of licence**

- (1) Subject to subsection (2), where the Minister is satisfied that proper cause for the cancellation of a licence granted under section 73 exists, he may, by notice in writing served personally or by post on the licensee, cancel the licence.
- (2) The Minister shall not under subsection (1) cancel a licence unless he has given notice in writing to the licensee of his intention to cancel the licence, and his reasons for intending to do so, at least 28 days before he does so, and has given the licensee an opportunity to submit to the Minister reasons why the licence should not be cancelled and he has considered those reasons.

## **77            Register**

A licensee of a licensed children's home shall keep a register in which he shall record, in relation to every child received by him into the children's home, so far as those particulars are reasonably ascertainable by him:

- (a) the name, age, place of birth and religion, if any, of the child;
- (b) the names and addresses of the parents, guardians or persons having custody of the child;
- (c) the names and addresses of the person, other than a person referred to in paragraph (b), from whom the child was received and his relationship to the child;
- (d) the date on which the child was received into, and the date on which the child left, the children's home;
- (e) the race or ethnic origin of the child; and
- (f) such other particulars as are prescribed.

## **78            Inspection of children's home**

- (1) The Minister or an authorized person may, at any reasonable time, enter and inspect a licensed children's home.
- (2) The licensee of a licensed children's home shall, if so required by the Minister or an authorized person, produce for inspection the register that he is required under section 77 to keep, and shall furnish the Minister or the authorized person with such information in relation to a child in, or who has at any time been in, the children's home as the Minister or authorized person requires.

**79            Agreement**

- (1) The licensee of a licensed children's home shall not receive a child to be cared for in the home unless a parent, guardian or person having the custody of the child has signed an agreement, in the prescribed form, relating to the period for which the child will remain in the home and to the care and control of the child while he remains in the home.

Penalty:        \$1,000 or imprisonment for 6 months.

- (2) A licensee of a licensed children's home shall, at the request of the Minister or an authorized person, produce an agreement referred to in subsection (1) for inspection by the Minister or authorized person.

Penalty:        \$500.

**80            Duty of minister to hear complaints**

A child being cared for in a licensed children's home, or a parent, guardian or person having the custody of that child, may request the Minister to investigate a complaint that the child or the parent, guardian or person, as the case may be, has in relation to the care the child is receiving in the home or the control being imposed on him, and the Minister shall investigate the complaint.

**81            Notification of acceptance of child, &c.**

- (1) The licensee of a licensed children's home shall, within 24 hours after a child is received into the home, by notice in writing, advise the Minister of the licensee's acceptance of the custody of the child.
- (2) Where a child has been cared for in a licensed children's home for a period of 12 months or more, and during that period there has been no substantial contact between the child and his parents, guardians or persons in whose custody the child was before his admission to the children's home, the child shall be deemed, for the purposes of this Act, to be abandoned.

**Division 2            Licensed child care centres**

**82            Definition**

In this Division, unless the contrary intention appears:

**child care centre** means premises in which more than 5 children (including children of persons providing child care on the premises) who have not attained the age of 6 years and who are not enrolled for primary education at a school, some or all of whom are being

cared for apart or away from their parents, guardians, foster parents or other persons having the custody of such children, are cared for:

- (a) for reward or gain, whether monetary or otherwise;
  - (b) as a community service; or
  - (c) incidental to a community service or commercial enterprise,
- but does not include:
- (d) a children's home licensed under Division 1; or
  - (e) a pre-school, school or other educational institution within the meaning of the *Education Act*.

### **83            Licensing of child care centre**

- (1) No person shall have the conduct or control of a child care centre unless that person is the holder of a current licence granted under this section in respect of the child care centre.
- (2) A person may apply to the Minister, in a form approved by the Minister, for a licence under this section to be granted to him in respect of premises specified in the licence.
- (3) The Minister may grant a licence under this section subject to such terms and conditions as are prescribed and additional terms and conditions, if any, as the Minister thinks fit and specifies in the licence document.
- (4) A licence granted under this section shall, subject to this Division, remain in force for 3 years after the day on which it was granted and may be renewed from time to time for successive periods of 3 years.

### **84            Licence to be displayed**

A licence document under section 83(3) shall be displayed conspicuously at the child care centre in relation to which the licence was granted.

**85            Failure to comply with licence, &c.**

A person who contravenes section 83(1), or contravenes or fails to comply with a term or condition to which a licence under section 83 is subject, is guilty of an offence.

Penalty:        For a first offence – \$500.

For a subsequent offence – \$1,000 or imprisonment for 12 months.

**86            Cancellation of licence**

Where the Minister is satisfied that prescribed grounds for the cancellation of a licence granted under this Division exist, he may, in the prescribed manner, cancel the licence.

**87            Register**

A licensee of a licensed child care centre shall keep a register containing the prescribed particulars in relation to every child received by him into the centre.

**88            Inspection of child care centre**

- (1) The Minister or an authorized person may, at any reasonable time, enter and inspect a licensed child care centre.
- (2) The licensee of a licensed child care centre shall, if so required by the Minister or an authorized person, produce for inspection the register that he is required under section 87 to keep, and shall furnish the Minister or the authorized person with such information in relation to a child in, or who has at any time been in, the child care centre as the Minister or authorized person requires.

**89            Maximum period in child care centre**

- (1) No person shall permit a child in his custody to remain in a child care centre for a period in excess of the prescribed period.

Penalty:        \$100.

- (2) Where a child remains in a child care centre for a period in excess of the prescribed period, the licensee of the child care centre shall notify the Minister.

Penalty:        \$250.

---

**90            Drugs not to be administered**

- (1) Subject to the Regulations and to subsection (2), no licensee of a licensed child care centre shall cause or permit medicines or drugs of any description to be administered to a child who is cared for at the child care centre.

Penalty:        \$100.

- (2) A parent, guardian or person having the custody of a child may authorize the licensee of a licensed child care centre to administer drugs to the child at that centre.

**91            Inspection of other premises**

The Minister or an authorized person may, where he believes on reasonable grounds that premises in respect of which a licence under this Part is not in force are being conducted as a child care centre, enter those premises for the purpose of ascertaining the state of the welfare of the children in those premises.

**Part XI            Employment of children****92            Employment of children**

No person shall, except with and in accordance with the consent in writing of the Minister, employ or cause or permit to be employed between the hours of 10 o'clock at night and 6 o'clock in the following morning a child who has not attained the age of 15 years.

Penalty:        \$500 or imprisonment for 3 months.

**93            Dangerous employment**

No person shall, except with and in accordance with the consent in writing of the Minister, employ or cause or permit to be employed, a child where the employment involves the child engaging in activity dangerous to the health or safety of the child.

Penalty:        \$1,000 or imprisonment for 6 months.

**Part XII            Miscellaneous****94            Obstruction, &c.**

No person shall:

- (a) fail to comply with a requirement of; or



(b) hinder, obstruct, assault or threaten violence to,

the Minister or an authorized person in the exercise of his powers or performance of his functions under this Act.

Penalty: \$500 or imprisonment for 3 months.

**95 Personation**

A person who falsely represents himself to be an authorized person is guilty of an offence.

Penalty: \$500 or imprisonment for 3 months.

**96 Offence to remove child**

- (1) A person who, without lawful excuse, removes or causes to be removed a child from the custody of a person with whom, or from a place at which, the child has been placed under this Act, is guilty of an offence.

Penalty: \$1,000 or imprisonment for 6 months.

- (2) For the purposes of subsection (1), a person shall not be taken to have had a lawful excuse for removing or causing to be removed a child to whom Part VII applies unless he had the prior permission of the Minister to remove the child or cause it to be removed.

**97 Secrecy to be observed**

- (1) An authorized person shall, if the Minister directs, before assuming his duties, or exercising a power or performing a function under this Act, make a declaration in accordance with the prescribed form.

- (2) A person shall not, directly or indirectly, except in the performance of his duties, or in the exercise of his powers or the performance of his functions under this Act, and while he is, or after he ceases to be, an authorized person, make a record of, or disclose or communicate to any person, information, in respect of the affairs of another person, acquired by him in the performance of his duties or in the exercise of his powers or the performance of his functions under this Act.

Penalty: \$500 or imprisonment for 3 months.

- (3) A person who is, or has been, an authorized person shall not, except for the purposes of this Act, be required to:

- (a) produce in a court a document that has come into his possession or under his control; or

- (b) disclose or communicate to a court any matter or thing that has come under his notice,

in the performance of his duties or functions under this Act.
- (4) Notwithstanding subsections (1), (2) and (3), an authorized person may disclose information or records that have come to his notice or into his possession in the performance of his duties or functions under this Act:
  - (a) to the person to whom the information or records relate;
  - (b) in connection with the administration of this Act;
  - (c) if the Minister certifies that it is necessary in the public interest that information should be disclosed – to such person as the Minister directs;
  - (d) to a prescribed authority or person;
  - (e) to a person who, in the opinion of the Minister, is expressly or impliedly authorized by the person to whom the information relates to obtain it; or
  - (f) subject to the approval of the Minister – to a person engaged in a bona fide research programme where the person has given an undertaking in writing to the Minister to preserve the identity of and confidentiality relating to individual persons to whom the information and records relate.
- (5) An authority or person to whom information is disclosed under subsection (4), and any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under sub-sections (2) and (3) as if it or he were an authorized person and had acquired the information and records in the performance of his duties as such.

---

**97A      Disclosing information from which child can be identified**

Subject to sections 33 and 97, a person shall not, except for the purposes and in the course of carrying out the person's duties, if any, under this or any other Act, publish any material which may identify a child in respect of whom an action under Part IV or Part V has been or is intended to be taken or, under Part VI, a notice has been given or an application, declaration or order has been made.

Penalty:      In the case of an individual – \$1,000 or imprisonment for 6 months.

In the case of a body corporate – \$20,000.

**98      Offences and penalties**

- (1) A person shall not contravene or fail to comply with this Act or the Regulations or an order under this Act or the Regulations.
- (2) A person who contravenes or fails to comply with this Act or the Regulations or an order under this Act or the Regulations for which a penalty is not provided by this Act or the Regulations other than by this section, is punishable on a finding of guilt by a fine of \$1,000 or imprisonment for 6 months.

**99      Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular in relation to:

- (a) the licensing of child care centres and the cancellation of such licences;
- (b) the standard of construction, facilities (including provision for the storage and preparation of food), cleanliness, sanitation, lighting, heating, ventilation and safety of child care centres;
- (c) the maintenance of child care centres in a proper state of repair;
- (d) the play space in and around child care centres and the facilities and equipment for play to be provided;
- (e) the maximum number of children who may be received into a child care centre or into a child care centre of a particular class, having regard to the available facilities, space and staff of the centre;

- (f) the operation of child care centres;
- (g) the suitability of persons operating child care centres and of the staff employed in such centres and the numbers of such staff;
- (h) the proper management of child care centres and the health and safety of the children therein;
- (i) the display of the name of proprietors, and details of the registration, of child care centres;
- (k) the form of licences and other documents; and
- (m) penalties, not exceeding \$1,000 or imprisonment for 6 months, for offences against the Regulations.

## **100 Savings**

- (1) Where, immediately before the commencement of this Act, a child was a State child within the meaning of the repealed Act, he shall, on and from that commencement, for the remainder of the period during which he would have remained a State child had this Act not commenced, be deemed to be a child declared under section 43(4)(a) to be in need of care and ordered under section 43(5)(d) to be placed under the sole guardianship of the Minister.
- (2) Where, immediately before the commencement of this Act, a State child referred to in subsection (1) was in the custody of a person, in an institution or released on probation, he shall, on the commencement of this Act, be deemed to be in the custody of that person, in that institution or at large, as the case may be, subject to the same terms and conditions as applied to and in relation to him under the repealed Act, as a child to whom Part VII of this Act applies and with the agreement or approval of the Minister, until the Minister makes other arrangements under that Part for his custody.
- (3) Where, immediately before the commencement of this Act, a person had, under the repealed Act, the permission of the Director to operate a child minding centre at a house or place and that house or place was registered under the repealed Act as a child minding centre, that person shall, on the commencement of this Act, be deemed to be licensed under section 83 of this Act in respect of that house or place and this Act shall apply subject to the same terms and conditions, not inconsistent with this Act, as then applied to and in relation to that permission and registration as if the licence were issued on that commencement and those terms and conditions were specified under section 83(3) in the licence.

- (4) For the purposes of this section, ***repealed Act*** means the Acts repealed by section 3 as in force immediately before the commencement of this Act.

---

**Schedule      Repealed Acts**

section 3

---

Short Title	Number and year
Child Welfare Ordinance 1958	No. 20, 1958
Child Welfare Ordinance 1960	No. 21, 1960
Child Welfare Ordinance 1964	No. 53, 1964
Child Welfare Ordinance 1965	No. 27, 1965
Child Welfare Ordinance 1967	No. 16, 1967
Child Welfare Ordinance (No. 2) 1967	No. 53, 1967
Child Welfare Ordinance 1969	No. 5, 1969
Child Welfare Ordinance 1971	No. 5, 1971
Child Welfare Ordinance (No. 2) 1971	No. 15, 1971
Child Welfare Ordinance 1973	No. 72, 1973
Child Welfare Amendment Act 1980	No. 16, 1981
Statute Law Revision Act 1981	No. 29, 1981
Child Welfare Amendment Act 1982	No. 38, 1982
Child Welfare Amendment Act (No. 2) 1982	No. 58, 1982
Social Welfare Ordinance 1964	No. 31, 1964
Social Welfare Ordinance 1967	No. 31, 1967
Social Welfare Ordinance 1969	No. 51, 1969
Social Welfare Ordinance 1971	No. 12, 1971
Social Welfare Ordinance 1972	No. 20, 1972
Social Welfare Ordinance 1974	No. 70, 1974
Social Welfare Ordinance 1978	No. 110, 1978
Social Welfare Act 1979	No. 105, 1979

---

---

## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***Community Welfare Act 1983 (Act No. 76, 1983)***

Assent date	28 November 1983
Commenced	20 April 1984 ( <i>Gaz</i> S14, 30 March 1984)

***Statute Law Revision Act 1984 (Act No. 28, 1984)***

Assent date	20 July 1984
Commenced	20 July 1984

***Community Welfare Amendment Act 1989 (Act No. 70, 1989)***

Assent date	12 December 1989
Commenced	12 December 1989

***Local Court (Consequential Amendments) Act 1990 (Act No. 31, 1990)***

Assent date	11 June 1990
Commenced	1 January 1991 (s 2, s 2 <i>Local Court Act 1989</i> (Act No. 31, 1989) and <i>Gaz</i> G49, 12 December 1990, p. 2)

***Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)***

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and <i>Gaz</i> S53, 29 June 1993)

***Community Welfare Amendment Act 1995 (Act No. 54, 1995)***

Assent date	28 December 1995
Commenced	1 August 1996 (s 2, s 2 <i>Criminal Code Amendment Act (No. 2) 1995</i> (Act No. 63, 1995) and <i>Gaz</i> G30, 24 July 1996, p 2)

---

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date	19 April 1996
Commenced	1 July 1996 (s 2, s 2 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and Gaz S15, 13 June 1996)

***Statute Law Revision Act 1998 (Act No. 11, 1998)***

Assent date	30 March 1998
Commenced	30 March 1998

**3 LIST OF AMENDMENTS**

s 4	amd No. 54, 1995, s 3
s 10	amd No. 28, 1984, s 3
s 18	amd No. 28, 1993, s 3
s 26	amd No. 31, 1990, s 7
s 27	rep No. 31, 1990, s 7
s 32	amd No. 31, 1990, s 7
s 33	amd No. 70, 1989, s 2
s 82	amd No. 11, 1998, s 4
s 97A	ins No. 70, 1989, s 3
s 98	amd No. 17, 1996, s 6