

**ACT No. XVI., 1905.**

No. 16.

An Act to make better provision for the protection, control, education, maintenance, and reformation of neglected and uncontrollable children and juvenile offenders; to provide for the establishment and control of institutions and for contribution by near relatives towards the support of children in institutions; to constitute children's courts and to provide for appeals from such courts; to provide for the licensing and regulation of children trading in streets and in certain places open to the public; to amend the State Children Relief Act, 1901, the Children's Protection Act, 1902, the Infant Protection Act, 1904, and the Crimes Act, 1900; to repeal the Reformatory and Industrial Schools Act, 1901; and for purposes consequent thereon or incidental thereto. [Assented to, 26th September, 1905.]

**NEGLECTED  
CHILDREN AND  
JUVENILE  
OFFENDERS.**

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**PART I.****PRELIMINARY.**

1. This Act may be cited as the "Neglected Children and Juvenile Offenders Act, 1905," and shall come into operation on the first day of October, one thousand nine hundred and five.

Short title and commencement.

2. This Act is divided into the following Parts:—

Division into Parts.

**PART I.—PRELIMINARY—ss. 1-5.**

**PART II.—INSTITUTIONS—ss. 6-8.**

**PART III.—CHILDREN AND CHILDREN'S COURTS—ss. 9-33.**

**PART IV.—CHILDREN IN INSTITUTIONS—ss. 34-46.**

**PART V.—LICENSING OF CHILDREN—ss. 47, 48.**

**PART VI.—GENERAL AND SUPPLEMENTAL—ss. 49-52.**

3. The enactments specified in the Schedule are to the extent therein mentioned repealed.

Repeal and savings.

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Persons  
appointed under  
repealed Acts.

4. (1) All persons appointed under any Act hereby repealed, and holding office at the commencement of this Act, shall be deemed to have been appointed hereunder.

Reformatory  
schools or public  
industrial  
schools.

(2) All schools declared to be reformatory schools, or public industrial schools, under any Act hereby repealed, shall continue to be such schools, subject, however, to the provisions of this Act relating to institutions constituted thereunder.

Interpretation.

5. In this Act, unless the context or subject-matter otherwise indicates or requires,—

“Age” means, in the absence of positive evidence as to age, the apparent age.

“Asylum” has the meaning given to that word in the State Children Relief Act, 1901.

“Board” means State Children’s Relief Board.

“Child” means boy or girl under sixteen and over five years of age.

“Court” means children’s court established under this Act, and includes a magistrate or justices exercising the jurisdiction of a children’s court.

“Institution” means institution established under this Act, and includes a reformatory and a public industrial school established under the Reformatory and Industrial Schools Act, 1901.

“Justice” means justice of the peace.

“Juvenile offender” means child who has committed an offence.

“Local Authority” means council of a municipality, and includes the governing body of a local government area, constituted or to be constituted.

“Maintenance” includes clothing, support, training, and education.

“Near relative” means, except as regards an illegitimate child, father, mother, stepfather, or stepmother of the child; and as regards an illegitimate child—the mother and the person admitting himself to be or adjudged by a competent court to be the father of such child, and the husband of the mother of such child if born before their marriage.

“Neglected child” means child—

- (a) who is in a brothel, or lodges, lives, resides, or wanders about with reputed thieves or with persons who have no visible lawful means of support, or with common prostitutes, whether such reputed thieves, persons or prostitutes are the parents of such child or not; or

- (b) who has no visible lawful means of support or has no fixed place of abode ; or **N<sup>o</sup>. 16.**  
No. 38 of 1901,  
s. 17 (b),
- (c) who begs in any public place, or habitually wanders about public places in no ostensible occupation, or sleeps in the open air in any public place ; or *Ibid.*(c).
- (d) who without reasonable excuse is not provided with sufficient and proper food, nursing, clothing, medical aid or lodging, or who is ill-treated or exposed by his parent : No. 47 of 1902,  
s. 9.

Provided that such neglect, ill-treatment, or exposure has resulted or appears likely to result in any permanent or serious injury to the child ; or

- (e) who takes part in any public exhibition or performance whereby the life or limb of such child is endangered ; or *Ibid.* s. 22 (1).
- (f) who, not being duly licensed for that purpose, is engaged in street trading ; or
- (g) whose parents are habitual drunkards, or if one of these be dead, insane, unknown, undergoing imprisonment, or absent from the State, whose other parent is an habitual drunkard ; or
- (h) who, being a female, solicits men or otherwise behaves in an indecent manner, or habitually wanders at night without lawful cause in a public place ; or
- (i) who is in any place where opium or any preparation thereof is smoked ; or
- (j) who is living under such conditions as indicate that the child is lapsing into a career of vice and crime.

“ Offence ” includes any matter punishable summarily or by indictment.

“ Prescribed ” means prescribed by this Act or by regulations made thereunder.

“ Proclamation ” means proclamation in the Gazette.

“ Public place ” means road, street, thoroughfare, court, or alley to which the public have the right of access, or which the public are allowed to use, and includes any part of premises licensed under Part III of the Liquor Act, 1898, which is open to the public.

“ Shelter ” shall include a place of safety within the meaning of section twenty-five of Children’s Protection Act, 1902.

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3 Ed. VII,  
c. 45, s. 13.

“Street trading” includes the hawking of newspapers, matches, flowers and other articles, playing, singing, or performing for profit, shoe-blackening and any other like occupation carried on in any public place. But this definition does not include playing, singing, or performing at an occasional entertainment, the proceeds of which are wholly applied for the benefit of any school or of any church or charity.

“Superintendent” includes manager or person in charge.

“The Minister” shall mean the Minister of Public Instruction.

“Uncontrollable child” means child whom his parent cannot control.

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## PART II.

### INSTITUTIONS.

Governor may  
establish  
institutions.  
See Act No. 38,  
1901, s. 4.

6. The Governor may, by proclamation, establish and constitute, as institutions under this Act,—

- (a) shelters for the reception and temporary detention and maintenance of children ;
- (b) industrial schools for the reception, detention, and maintenance of children committed to such institutions ;
- (c) reformatory schools for the reception, detention, maintenance, and reformation of children committed to such institutions.

Minister to have  
direction of  
institutions.

7. Every institution shall be controlled and administered under the direction of the Minister, and shall be maintained by such moneys as may be appropriated by Parliament for that purpose.

Visitation and  
inspection.

8. Every institution shall once at least in every three months, be visited and inspected by a person appointed by the Minister.

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## PART III.

### CHILDREN AND CHILDREN'S COURTS.

#### *Constitution and powers of courts.*

Governor may  
establish special  
courts for  
dealing with  
children.

9. (1) The Governor shall by proclamation establish special courts to be called children's courts.

Every such court shall consist of a special magistrate and shall have jurisdiction within the area named in a proclamation.

(2) In places not within any such area the jurisdiction of a children's court shall be exercised by a special magistrate, or any two justices.

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10. Within the area so named a children's court and the magistrate constituting such court— Powers of court.

- (a) shall exercise the powers and authorities which are possessed by stipendiary or police magistrates, courts of petty sessions, or justices in respect of children and of offences committed by or against children ;
- (b) shall exercise the powers and authorities of a court of petty sessions or of a justice under the Children's Protection Act, 1902, or of a magistrate under the Infant Protection Act, 1904 ; and
- (c) shall hear and determine complaints, informations, and applications under this Act.

11. On and after the establishing of a children's court, the jurisdiction of every court of petty sessions in respect of the matters as to which the children's court has jurisdiction shall cease to be exercised within the area proclaimed : Jurisdiction of other courts to cease.

Provided that nothing in this section shall abridge or prejudice the ministerial powers of magistrates or justices in cases of committal for trial, or their powers to take any information or issue any summons, or grant, issue, or endorse any warrant, or admit to bail :

Provided also that no conviction, order, judgment, or proceeding made or given by or had before a court of petty sessions in contravention of this section shall be invalidated or affected by reason only of such contravention.

12. A court shall be held—

- (a) where practicable, in the proximity of a shelter ;
- (b) in some building or room approved of in that behalf by the Minister : Provided that if a court room or police office is so approved of, the hearing shall not take place at an hour when the ordinary court business is being transacted.

Children's courts not held in ordinary courts.

13. (1) At any hearing or trial by a court under this Act, the court may order that any persons not directly interested in the case shall be excluded from the court-room or place of hearing or trial. Exclusion of persons from hearing.

(2) Section thirty-two of the Infant Protection Act, 1904, shall apply to the hearing of a complaint under Part II of that Act, but in no other case. Section 32 of Act of 1904.

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Appeal from  
children's court.

14. Proceedings in the nature of appeal to the Supreme Court or a Judge thereof, or to a Judge of the District Court, from any determination, conviction, or order of a court may be taken by a child or by a parent on behalf and in the name of his child under Part V of the Justices Act, 1902. The provisions of the said Part applicable to justices in the exercise of their summary jurisdiction shall apply to a court :

Provided that in place of the release of the appellant from custody upon entering into recognizances or depositing any money with the court, he may be committed by the court from which the appeal is made to a shelter pending the determination of the appeal :

Provided also that this section shall not apply to an order committing a child to take his trial.

The Judge hearing the appeal may order that any person not directly interested in the case shall be excluded from the court-room.

*Committal of neglected or uncontrollable children or juvenile offenders.*

Warrant for  
apprehension.  
Act No. 38, 1901,  
s. 18.

15. Any justice may, upon oath being made before him by an officer of the board or other person appointed by the Minister in that behalf that, having made due inquiry, he believes any child to be a neglected or uncontrollable child,—

- (a) issue his summons for the appearance of such child before a court; or
- (b) in the first instance, issue his warrant directing such child to be apprehended.

Apprehension of  
child.

16. A constable or any person authorised by the Governor in that behalf may, although the warrant is not at the time in his possession, apprehend any child for whose apprehension a warrant has been issued under the last preceding section.

Warrant to  
search for child  
suspected in  
brothel or place  
where opium is  
smoked.

17. (1) If it appears to any justice, on information made before him on oath by any credible person, that there is reasonable cause to suspect that a child is in a place which is a brothel, or where opium or any preparation thereof is smoked, such justice may issue his warrant authorising any person named therein to search in such place for any child, and to take such child to a shelter to be dealt with under this Act.

(2) Any person authorised by warrant under this section to search for a child may enter (if need be by force) into any house, building, or other place specified in the warrant, and may remove the child therefrom.

(3) Every such warrant shall be addressed to and executed by some sergeant of police or officer of a higher grade in the police force, who shall be accompanied by the person making the information (if such person so desire), unless the justice issuing the warrant otherwise directs.

(4) It shall not be necessary in the information or warrant to name the child.

18. Any person authorised by the Governor in that behalf, or any officer of police of or above the rank of senior-constable, may without warrant apprehend a child who is in a place which is a brothel or where opium or any preparation thereof is smoked, or who he has reason to believe is a neglected or uncontrollable child.

Apprehension of child in brothel, &c.

19. Any child apprehended as a neglected or uncontrollable child or juvenile offender shall be taken to a shelter and there detained pending the determination of a court.

Child placed in shelter.

20. If within forty-eight hours after the admission to a shelter of a child apprehended or placed in the shelter as a neglected or uncontrollable child, or within such further time as the court may allow, an application is made to a court having jurisdiction in the place where the shelter is situate, to commit the child to an institution, the child shall be brought before the court by the superintendent of the shelter, but if no such application is made within the said time or further time, the child shall be discharged.

Child to be brought before a court or discharged.

21. Any person having the actual care and custody of the child may apply to a court to commit his child to an institution upon the ground that the child is an uncontrollable child. Such child may be detained at a shelter pending the determination of the court.

Application to commit uncontrollable child to institution.

22. Where any child is brought before a court as a neglected or uncontrollable child or juvenile offender, or where an application is made under the last preceding section, the court may, if a parent of the child is present, thereupon hear and determine the matter.

Procedure of court.

If a parent of the child is not present, the court in its discretion may hear and determine the matter or require the parent to be present and remand the child for the purpose of securing the attendance of the parent if practicable.

If the parent refuses to attend without reasonable excuse, the court may issue a warrant to bring him before the court at the hearing, but the parent may be admitted to bail on entering



**No. 16.** into recognisances, with or without sureties, to attend at the court at the hearing of the matter.

Power of court with respect to neglected or uncontrollable children.

**23.** If on the hearing the court finds that a child is a neglected or uncontrollable child it may—

- (a) release the child on probation upon such terms and conditions and for such period of time as the court may think fit; or
- (b) commit the child for such period of time as the court may think fit, either to an asylum, or to the care of some person who is willing to undertake such care; or
- (c) commit the child to an institution:

Provided that no order of committal of an uncontrollable child on the application of a near relative shall be made unless—

- (a) he proves that he has not by neglect lost control of the child; and
- (b) security is given to the satisfaction of the court for the making of such payment as, in the opinion of the court, the applicant is able to afford towards the maintenance of such child.

Power with respect to child liable to be summarily convicted.

**24.** Where a child is summarily convicted of an offence for which the penalty is punishment by imprisonment, or imprisonment in default of payment of a fine, the court may—

- (a) release the child on probation upon such terms and conditions and for such period of time as the court may think fit; or
- (b) commit the child for such period of time as the court may think fit, either to an asylum, or to the care of some person who is willing to undertake such care; or
- (c) commit the child to an institution; or
- (d) sentence the child according to law.

If the court sentences a child it shall forthwith transmit to the Minister a copy of the proceedings and a statement of the reasons for passing sentence.

The Minister may order the removal to an institution of the child so sentenced.

Court may order parent to pay penalty, damages, or costs in certain cases.

**25.** (1) Where a child is summarily convicted before a court of an offence in respect of which a penalty, damages, or costs are imposed, and there is reason to believe that his parent has contributed to the commission of the offence by wilful default or by habitually neglecting to exercise due care of the child, the court may, on information, issue a summons against



such parent, charging him with so contributing to the commission of the offence. **No. 16.**

(2) If the court is satisfied that the parent has contributed to the commission by the child of the offence by wilful default, or by habitually neglecting to exercise due care of him, the court may order that the penalty, damages, or costs shall be paid by the parent instead of by the child, and may also order the parent to give security for the good behaviour of the child.

(3) Any sums so imposed and ordered to be paid may be recovered from the parent in the same manner as sums ordered by justices to be paid may be recovered under the Justices Act, 1902.

(4) Proceedings in the nature of an appeal may be taken by the parent, under Part V of the Justices Act, from any order made against him in pursuance of this section.

**26.** (1) Where a child is charged before a court with an indictable offence other than homicide or rape, and is not dealt with summarily, the court may—

Power with respect to child charged with certain indictable offences.

- (a) release the child on probation upon such terms and conditions and for such period of time as the court may think fit; or
- (b) commit the child for such period of time as the court may think fit, either to an asylum, or to the care of some person who is willing to undertake such care; or
- (c) commit the child to an institution; or
- (d) commit the child to take his trial according to law.

If the court commits a child to take his trial it shall forthwith transmit to the Minister a copy of the proceedings and a statement of the reasons for its decision.

(2) When a court has committed a child to take his trial for an indictable offence other than homicide or rape, the Minister may commit the child to an institution, if the Attorney-General shall have entered a nolle prosequi in regard to proceedings against the child:

Child committed for trial may be sent to institution.

Provided that the Minister may exercise his powers under this section only if the child or his parent consents, or if evidence on behalf of the child has been given before the court.

**27.** Where a child is charged before a court with any offence other than homicide or rape, or is brought before a court as a neglected or uncontrollable child, the court, before making any order or committal, shall give the child or his parent an

Court to hear evidence on behalf of child