

(Queensland)



ANNO QUARTO DECIMO

ELIZABETHAE SECUNDAE REGINAE

No. 42 of 1965

**An Act to Promote, Safeguard and Protect the well-being of the Children and Youth of the State through a Comprehensive and Co-ordinated Programme of Child and Family Welfare and to Amend "The Adoption of Children Act of 1964," in certain particulars**

[ASSENTED TO 23RD NOVEMBER, 1965]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

## PART I—PRELIMINARY

1. (1) **Short title.** This Act may be cited as "*The Children's Services Act of 1965.*"

(2) **Commencement of Act.** This Act shall commence on a date to be fixed by the Governor in Council by Proclamation published in the *Gazette*.

**2. Arrangement of Act.** This Act is divided into Parts and Divisions as follows:—

- PART I—PRELIMINARY;
- PART II—ADMINISTRATION;
- PART III—CHILDREN'S COURT;
- PART IV—INSTITUTIONS;
- PART V—CHILDREN IN NEED OF ASSISTANCE;
- PART VI—CHILDREN IN NEED OF CARE AND PROTECTION;
- PART VII—CHILDREN IN NEED OF CARE AND CONTROL;**
- PART VIII—PROTECTION OF CHILDREN;
  - Division I—Health and Welfare of Children;*
  - Division II—Registration to Take Charge of Children;*
- PART IX—GUARDIANSHIP AND CUSTODY OF INFANTS;
- PART X—FOSTER PARENTS;
- PART XI—EMPLOYMENT OF CHILDREN;
- PART XII—MAINTENANCE BY RELATIVES OF CHILDREN IN NEED OF ASSISTANCE AND OF CHILDREN IN CARE;
- PART XIII—GENERAL PROVISIONS;
- SCHEDULES.

**3. Repeals.** Subject to this Act, the Acts set out in Schedule I to this Act are repealed.

**4. Persons subject to the Department to continue so to be.** Until he is otherwise lawfully dealt with pursuant to and in accordance with this Act—

- (a) a person who was committed or made subject to the care of the State Children Department and who at the commencement of this Act remains so committed or subjected shall be deemed to be a child in care and to have been admitted or committed as such pursuant to this Act and, for the purposes of this Act—
  - (i) a person who was so committed or made subject consequent upon his conviction of an offence or on the ground that he is uncontrollable shall be deemed to be committed to the care and control of the Director; and
  - (ii) a person who was so committed or made subject otherwise shall be deemed to be admitted to the care and protection of the Director;
- (b) any person who has been sent to an institution, reformatory or industrial school or who has been ordered to be detained in any place pursuant to any provision of "*The State Children Acts, 1911 to 1955,*" and who at the commencement of this Act is detained in any such institution, reformatory, industrial school or place shall continue to be so detained or to be detained in such place as the Director, from time to time directs, and shall be deemed to be detained pursuant to and in accordance with this Act;
- (c) any person who was released or discharged on probation pursuant to "*The State Children Acts, 1911 to 1955*" or "*The Children's Courts Acts, 1907 to 1930*" and who at the commencement of this Act is subject to such probation shall be deemed to be subject to the supervision of the Director and to have been made so subject pursuant to this Act;

- (d) a person who, at the commencement of this Act, is detained in any place pursuant to a direction of the Minister of the Crown for the time being charged with the administration of "*The State Children Acts, 1911 to 1955*" given pursuant to section 25A of those Acts shall—
- (i) be deemed to have been ordered by the court which sentenced him to be so detained pursuant to section sixty-three of this Act;
  - (ii) be deemed to have been ordered by the court which sentenced him to be committed to the care and control of the Director; and
  - (iii) continue to be detained subject to and in accordance with the provisions of this Act:

Provided that, save as is otherwise provided by any other Act, such a person shall not be so detained beyond the expiration of the period for which he was sentenced to be detained.

**5. Reversion of guardianship in certain cases.** On and from the commencement of this Act the guardianship of a State child within the meaning of "*The State Children Acts, 1911 to 1955*," who on and from the date of such commencement, is to receive assistance, in money or in kind, from the Director under Part V of this Act shall pass to and vest in the person or persons who at law would be guardian or guardians of the child concerned were he not a State child.

**6. (1) Completion of proceedings taken prior to commencement of this Act.** Every proceeding taken under or for the purposes of any Act repealed by this Act and every other proceeding concerning a charge of an offence taken against a child prior to the commencement of this Act shall be completed in accordance with this Act.

**(2) Saving of agreements.** Every agreement made under or for the purposes of "*The State Children Acts, 1911 to 1955*" and which is undischarged at the commencement of this Act shall continue to be of full force and effect and to be enforceable in accordance with its terms and the provisions of those Acts which, for this purpose, shall be deemed to continue in force.

**(3) Saving of orders of Children's Court.** Every order of a Children's Court which at the commencement of this Act remains in force and has not been complied with in full shall continue to be of full force and effect and may be enforced as if this Act had not been passed.

**(4) Saving of orders of Director.** Every order made by the Director of the State Children Department pursuant to "*The State Children Acts, 1911 to 1955*," and subsisting at the commencement of this Act shall continue to be of full force and effect and shall be deemed to be an order of a like kind made by the Director pursuant to this Act.

**(5) Saving of licences.** Every licence granted by the Director of the State Children Department pursuant to "*The State Children Acts, 1911 to 1955*," and subsisting at the commencement of this Act shall continue to be of full force and effect and shall be deemed to be a licence of a like kind granted by the Director pursuant to this Act.

(6) **Apprehensions valid.** Every person apprehended pursuant to "*The State Children Acts, 1911 to 1955*," and who at the commencement of this Act has not been lawfully dealt with shall be deemed to have been apprehended pursuant to this Act and may be dealt with in accordance with this Act.

(7) **Savings of appointments as guardian.** Every guardian (whether of the person, the estate or both) appointed pursuant to "*The Guardianship and Custody of Infants Acts, 1891 to 1952*" and who, at the commencement of this Act, is acting in such a capacity, shall be deemed to have been so appointed pursuant to this Act.

(8) **Enforcement of maintenance orders.** (a) An order for maintenance made pursuant to "*The Guardianship and Custody of Infants Acts, 1891 to 1952*," and subsisting at the commencement of this Act shall continue in force and shall be deemed to be a maintenance order made pursuant to this Act and may be varied or enforced accordingly.

(b) A maintenance order made pursuant to "*The State Children Acts, 1911 to 1955*," and subsisting at the commencement of this Act shall continue in force and shall be deemed to be a maintenance order made pursuant to this Act and may be varied or enforced accordingly.

(9) **Savings of registration of persons and premises.** A registration effected in respect of a person or premises pursuant to "*The Infant Life Protection Acts, 1905 to 1935*," and subsisting at the commencement of this Act shall be deemed to have been effected pursuant to this Act and may be dealt with accordingly.

**7. Continuation of appointments.** (1) Every person who at the commencement of this Act holds an office or position to which he was appointed under or for the purposes of one or more of the Acts repealed by this Act shall continue to hold that office or position or the corresponding office or position under and for the purposes of this Act until he vacates or is lawfully removed from that office or position and when such office or position has been held, immediately prior to the commencement of this Act, under, subject to and in accordance with "*The Public Service Acts, 1922 to 1965*," the same or the corresponding office or position shall be and continue to be held under, subject to and in accordance with such lastmentioned Acts.

(2) Without prejudice to the general application of the preceding subsection, the person who, at the commencement of this Act holds the appointment of Stipendiary Magistrate, Children's Court, Brisbane, shall be a Magistrate of Children's Courts under and for the purposes of this Act until he vacates or is lawfully removed from that appointment.

**8. Meaning of terms.** In this Act unless the context otherwise indicates or requires, the following terms have the meanings respectively assigned to them in this section:—

"Breach of duty"—A breach of duty as defined by "*The Justices Acts, 1886 to 1964*";

"Child"—A person under or apparently under the age of seventeen years:

The term includes where necessary a person who though not under or apparently under the age of seventeen years may lawfully be dealt with by a court or has been dealt with by a court on the basis that he is a child;

- “ Child in care ”—A person (whether a child or not) who is for the time being in the care and protection or the care and control of the Director;
- “ Day care centre ”—Premises at which a person receives or in relation to which he holds himself out as ready to receive children for the purpose of minding or caring for them for a day or part of a day for fee or reward: The term does not include—
- (a) a kindergarten;
  - (b) a school, college or institution the sole or main purpose of which is the education of persons attending thereat;
  - (c) a dwelling-house at which a person minds or cares for children of whom he is a parent, relative or guardian;
- “ Department ”—The department preserved, continued in existence and constituted for the purposes of this Act under the title “ Department of Children’s Services ”;
- “ Deputy Director ”—The Deputy Director of the Department of Children’s Services and includes a person for the time being performing the duties of Deputy Director;
- “ Director ”—The Director of the Department of Children’s Services and includes a person for the time being performing the duties of Director;
- “ Family ”—The unit constituted by persons standing in the relationship of parent and child;
- “ Father ”—In relation to an adopted child means the adoptive father and in relation to an illegitimate child, includes a person who, by his acts or words, recognizes the child as his or who has been found by a court to be the putative father of the child;
- “ Infant ”—A person who has not attained the age of twenty-one years;
- “ Institution ”—Includes any place wherein a child is cared for apart from his parent or guardian;
- “ Justice ”—A Justice of the Peace for the State: The term includes a Magistrate of Children’s Courts, a Stipendiary Magistrate and an Acting Stipendiary Magistrate;
- “ Kindergarten ”—A school conducted for the education of children who have not attained the age at which they are required by law to attend school;
- “ Licensed premises ”—Premises in relation to which a license to sell liquor issued pursuant to “ *The Liquor Acts, 1912 to 1965* ” subsists;
- “ Local Authority ”—A Local Authority constituted under “ *The Local Government Acts, 1936 to 1965* ”: The term includes a Joint Local Authority and, in relation to the City of Brisbane, the Brisbane City Council constituted under “ *The City of Brisbane Acts, 1924 to 1960* ”;
- “ Magistrates Court ”—A Magistrates Court constituted under “ *The Justices Acts, 1886 to 1964* ”;
- “ Maintenance ”—Includes adequate food, clothing, nursing, medical treatment, training, discipline, education, lodging and care;

- “ Medical examinations ”—Includes physical, mental or psychological examinations;
- “ Minister ”—The Minister for Labour and Industry or other Minister of the Crown to whom the administration of this Act is, for the time being, entrusted; the term includes any person performing temporarily the duties of the Minister administering this Act;
- “ Mother ”—Includes the mother of an illegitimate infant and in relation to an adopted infant means the adoptive mother;
- “ Parent ”—Includes a person in *loco parentis* to a child;
- “ Person ”—Includes a body corporate and any association of persons;
- “ Police officer ”—A member of the Police Force of Queensland;
- “ Premises ”—Any land, building, vehicle or vessel;
- “ Registry district ”—A registry district proclaimed pursuant to “ *The Registration of Births, Deaths, and Marriages Act of 1962* ” or deemed by that Act so to have been;
- “ Relative ”—A grandfather, grandmother, brother or sister of the child concerned, a brother or sister of the father or mother of the child concerned, and any child, grandchild or spouse (including a surviving spouse) of such lastmentioned brother or, as the case may be, sister whether the relationship is, in any case, of the whole blood or half blood or by affinity and notwithstanding that the relationship is traced through or to an illegitimate person or depends upon the adoption of any person: The term does not include any person who has not attained the age of seventeen years;
- “ Sell ”—Includes to offer or expose for sale;
- “ Simple offence ”—A simple offence as defined by “ *The Justices Acts, 1886 to 1964* ”;
- “ Street-trading ”—Includes canvassing for orders for the supply of goods whether ascertained or to be ascertained and whether such canvassing occurs in a public place or premises adjacent to a public place or in any other place.

When a meaning is assigned to a term by this section any derivative of that term when used in this Act has a corresponding meaning.

## PART II—ADMINISTRATION

**9. Administration of Act.** This Act shall be administered by the Minister and, subject to the Minister, by the Director, Deputy Director, and other officers appointed or continuing to hold an office or position for the purposes of this Act.

**10. Department of Children's Services.** The State Children Department constituted under and for the purposes of “ *The State Children Acts, 1911 to 1955,* ” is hereby preserved, continued in existence and constituted for the purposes of this Act under the title “ Department of Children's Services ”.

**11. Director.** The Governor in Council may appoint a Director of the Department.

Except so far as such duty is entrusted by this Act to any other person or entity, it is the duty of the Director to carry this Act into effect and the Director shall have and may exercise and perform all the powers, authorities, duties and functions necessary or desirable to effect that object.

Unless and until another appointment is made the person who at the commencement of this Act is the Director of the State Children Department shall be the Director.

**12. Deputy Director.** (1) The Governor in Council may appoint a Deputy Director of the Department.

Unless and until another appointment is made the person who at the commencement of this Act is the Deputy Director of the State Children Department shall be the Deputy Director.

(2) The Deputy Director shall, subject to this Act, exercise and perform all such powers, authorities, functions and duties as the Director may either generally or in a particular case direct or require.

(3) During any absence from duty of the Director, or during any vacancy occurring in the office of Director, the Deputy Director shall act as Director and while he so acts shall have and may exercise and perform all the powers, authorities, functions and duties of the Director under this Act.

**13. Tenure of office.** The Director and Deputy Director shall be appointed to and shall hold their respective offices subject to and in accordance with "*The Public Service Acts, 1922 to 1965.*"

**14. Visiting justices.** The Governor in Council may appoint justices to be visiting justices for the purposes of this Act and vest in such justices such powers, authorities, duties and functions as he may deem necessary to effect the objects of this Act.

**15. Honorary officers.** The Minister may appoint such number of honorary officers as he deems necessary or expedient to effect the objects of this Act.

Subject to this Act, honorary officers shall assist the Director in the carrying into effect of this Act as he may, from time to time, require.

**16. Power to delegate.** (1) Subject to any direction by the Minister to the contrary, the Director may either generally or in a particular case, by writing under his hand delegate to any officer or employee of the Department or any visiting justice or honorary officer all or any of the powers, authorities, duties and functions of the Director or the Deputy Director as may be therein specified (other than this power of delegation) so that the delegated powers, authorities, duties and functions may be exercised or as the case may require, shall be performed by the delegate according to the delegation.

(2) Where pursuant to this Act or any other Act the exercise or performance of any power, authority, duty or function of the Director or, as the case may be, Deputy Director is dependent upon the opinion, belief or state of mind of the Director or, as the case may be, Deputy Director in relation to any matter; that power, authority, duty or

function may be exercised or performed upon the opinion, belief, or state of mind of the person to whom it has been delegated pursuant to this section and who is considering the exercise or performance of the power, authority, duty or, as the case may be, function.

(3) The Director may make such and so many delegations of the same power, authority, duty or function pursuant to this section and to such number of persons as he considers necessary or desirable.

(4) The Director may at his own discretion and shall if thereunto directed by the Minister revoke, by writing under his hand, any such delegation.

A delegation made pursuant to this section shall not prevent or prejudice the exercise or performance by the Director or, as the case may be, Deputy Director of the power, authority, duty or function the subject of such delegation.

(5) **Presumption of authority.** Until the contrary is proved every exercise or performance of any power, authority, duty or function by the Director or the Deputy Director or, where it is alleged that such exercise or performance has occurred by virtue of a delegation made pursuant to this section, any officer or employee of the Department (not being a visiting justice or honorary officer) shall be presumed to be a lawful exercise or, as the case may be, performance.

**17. Annual Report.** (1) In each year the Director shall furnish to the Minister a report on the operation of this Act during the year covered by such report.

Such report shall contain such particulars as are prescribed.

(2) The Minister shall lay every such report before the Legislative Assembly.

### PART III—CHILDREN'S COURT

**18. Children's Court.** (1) There shall be constituted a Children's Court which shall be a court of record and shall have a seal which shall be judicially noticed.

(2) A Children's Court may be constituted at every place for the time being appointed as a place for holding Magistrates Courts pursuant to "*The Justices Acts, 1886 to 1964.*"

(3) The records of a Children's Court shall be in the custody of the clerk of the court at the place where the Children's Court concerned is constituted.

**19. Appointment of Magistrates of Children's Courts.** (1) The Governor in Council may appoint any justice to be a Magistrate of Children's Courts and may appoint such number of Magistrates of Children's Courts as he considers necessary to effect the objects of this Act.

(2) A Magistrate of Children's Courts may exercise the jurisdiction conferred upon a Children's Court or upon him by this Act throughout the State.



**20. Constitution of Children's Courts.** A Children's Court shall be constituted—

- (a) in a Magistrates Courts District wherein is stationed a Magistrate of Children's Courts, by such magistrate sitting alone if he is available but otherwise by a Stipendiary Magistrate or Acting Stipendiary Magistrate sitting alone or, if neither of such Magistrates is available, by two or more justices;
- (b) in any other case, by a Stipendiary Magistrate or Acting Stipendiary Magistrate sitting alone or, if neither of such magistrates is available, by two or more justices.

**21. Powers, authorities and jurisdiction.** (1) In relation to persons who and matters which, by this Act, are assigned to its jurisdiction a Children's Court shall have and may exercise—

- (a) the powers, authorities and jurisdiction conferred upon a Children's Court by this Act; and
- (b) subject to this Act, the powers, authorities and jurisdiction conferred upon a Magistrates Court by "*The Justices Acts, 1886 to 1964.*"

(2) Except when it is, by this Act, otherwise provided,—

- (a) the provisions of "*The Justices Acts, 1886 to 1964*" shall, with all necessary adaptations and subject to the provisions of any Order in Council made pursuant to section twenty-two of this Act, apply to—
  - (i) the institution and conduct of a proceeding before a Children's Court;
  - (ii) the exercise by a Children's Court of its powers, authorities and jurisdiction; and
  - (iii) the enforcement of an order made by a Children's Court;
- (b) a person who feels aggrieved by a conviction or order of a Children's Court may appeal against such conviction or order in the same circumstances and in the same manner as if such conviction or order were a conviction or, as the case may be, order of a Magistrates Court;
- (c) a justice acting in any capacity under this Act shall be entitled to the same powers, privileges and protection as are afforded to a justice by "*The Justices Acts, 1886 to 1964.*"

(3) In the last preceding subsection the term "order" when used in relation to a Children's Court has the same meaning as is defined for that term in "*The Justices Acts, 1886 to 1964,*" which definition shall, for this purpose, be read as if a reference to a Magistrate's Court therein were a reference to a Children's Court:

Provided that the term does not include a determination of a Children's Court to refrain from exercising its jurisdiction under section twenty-nine of this Act.

**22. Rules of court, forms and fees.** The Governor in Council may from time to time by Order in Council,—

- (a) with the concurrence of two Judges of the Supreme Court of Queensland of whom one shall be the Chief Justice make Rules of Court, not inconsistent with this Act,

which in his opinion are necessary or desirable for regulating the practice and procedure of a Children's Court in relation to the exercise by such court of jurisdiction conferred upon it by this Act or any other Act;

- (b) prescribe forms to be used for the purpose of proceedings before a Children's Court;
- (c) prescribe fees to be paid for the purpose of proceedings before a Children's Court and the purpose for which such fees shall be payable.

A Rule of Court may be of general application to all Children's Courts or may be made to meet a particular case.

Every such Order in Council shall upon its publication in the *Gazette*, have force and effect as if its provisions were enacted in this Act and shall be judicially noticed.

**23. Child charged with simple offence or breach of duty.** A child charged with a simple offence or breach of duty shall be brought or, as the case may require, summoned to appear before a Children's Court.

Subject to this Act, a Magistrates Court shall not have jurisdiction in respect of a child charged with a simple offence or breach of duty.

**24. Child charged with indictable offence.** Where an examination of witnesses in relation to an indictable offence charged against a child is to be taken at a place where a Magistrate of Children's Courts is available such child shall be brought or, as the case may require, summoned to appear before that magistrate sitting alone to take an examination of witnesses in relation to such indictable offence.

Subject to this Act, the provisions of "*The Justices Acts, 1886 to 1964*," applicable to a justice sitting to take an examination of witnesses in relation to an indictable offence shall, with all necessary adaptations, apply to such a magistrate so sitting.

**25. (1) Times for hearing charges.** A Children's Court shall fix special times for the hearing of charges of simple offences or breaches of duty against children and for the hearing of any other proceeding before such court which concerns a child and a justice, who is about to sit to take examinations of witnesses in relation to indictable offences charged against children, shall fix special times for such sitting.

**(2) Notice of special times.** Such Children's Court or, as the case may require, justice shall cause reasonable notice of such special times to be given to—

- (a) the children concerned;
- (b) each parent of such children whose whereabouts is known to such court or justice;
- (c) the guardians of such children whose whereabouts are known to such court or justice;
- (d) an officer of the Department; and
- (e) if such court or justice thinks fit, any religious, charitable or public organization or institution which is concerned with the care and rehabilitation of children.

(3) **Venue of hearings.** Whenever practicable the hearing of a charge against a child of an offence (whether indictable or not) and the taking of an examination of witnesses in relation to an indictable offence charged against a child shall be held in a room other than a room usually used by a court other than a Children's Court.

Should a room usually used by a court other than a Children's Court be the only room reasonably available for the hearing of such a charge or the taking of such an examination, the special times fixed pursuant to subsection (1) of this section shall be on a day or at an hour when the business of such other court is not being conducted in that room.

This subsection does not apply in respect of a hearing before the Supreme Court, a Circuit Court or a District Court.

**26. Custody of children.** (1) A child taken into custody in respect of an offence shall be brought as soon as practicable before a Children's Court or, as the case may require, a justice to be dealt with according to law.

A Children's Court or, as the case may require, a justice may—

- (a) admit such child to bail without a surety or with such one or more sureties as it or he considers fit; or
- (b) give such child into the custody of the Director or of a person who such court or, as the case may be, justice considers suitable and who is willing to receive such child and who undertakes in writing to produce such child where and when the court or, as the case may be, justice requires.

(2) Until such child can be brought before a Children's Court or, as the case may require, a justice,—

- (a) the person having charge of the case with which such child is concerned shall arrange for his care;
- (b) the Director and any person acting on his behalf may detain such child in such institution or place as the Director directs;
- (c) such child shall not be detained in a prison or lock-up unless his safe custody cannot otherwise be provided for.

**27. Hearing or examination concerning child not public.** Notwithstanding the provisions of any other Act or of any rule of law or practice to the contrary, a Children's Court or justice sitting to hear or take any proceeding in respect of a child shall cause to be excluded from the room wherein such court or justice is then sitting all persons except—

- (a) the complainant;
- (b) the child in respect of whom the proceeding has been commenced;
- (c) the police officer or other person in charge of the case;
- (d) counsel or solicitor for any party;
- (e) the parent or guardian of any child directly concerned in the case whether as defendant or witness or otherwise;
- (f) a representative of the Department;

- (g) a representative of an organization or institution concerned with the care and rehabilitation of children and being directly concerned in the case:

Provided that such court or justice may permit to be present—

- (a) any person whose presence, in the opinion of such court or justice, is not detrimental to the interests of the child concerned; or  
 (b) any person who, in the opinion of such court or justice, might assist such court or justice.

**28. (1) Apparent age of child.** In the absence of proof of age a Children's Court, or a justice sitting to take an examination of witnesses in relation to an indictable offence may decide upon its or his own view, without further enquiry or after such enquiry as it or he considers warranted in the circumstances, whether a person before it or him charged with an offence is a child and if such court or justice decides that such a person is a child it shall be so deemed until the contrary is proved.

**(2) Certain persons to be dealt with as children.** Where in relation to a child any proceeding is commenced before a Children's Court or a justice and the person in relation to whom such proceeding was commenced ceases to be a child before such proceeding is completed it shall be lawful to complete such proceeding as though he had continued to be a child and in that event, should the case require it, he may be dealt with by any court or justice having cognizance of the proceeding on the basis that he is a child.

For the purposes of this subsection a proceeding of taking an examination of witnesses in relation to an indictable offence shall be deemed not to be completed until the person in relation to whom such proceeding was commenced has been sentenced or otherwise dealt with by a court of competent jurisdiction.

**(3) Vacating Children's Court's order in certain circumstances.** The fact that at the time of taking any proceeding or making any order the person in relation to whom such proceeding was taken or order was made was not a child shall not invalidate or render inoperative such proceeding or order:

Provided that a Children's Court may vacate an order made by it or by any other Children's Court in relation to a person who at the commencement of the proceeding in which such order was made was not a child and thereupon it shall be deemed that such proceeding had been commenced at the time and in the manner of its commencement but that it had not been pursued and that such order had not been made and such person shall be liable to be dealt with according to law as the circumstances of the case may require.

**(4) Vacating court orders made upon misapprehension of age.** The fact that at the time of taking any proceeding or making any order taken or made in relation to a person on the basis that he is not a child the person in relation to whom such proceeding was taken or order was made was a child shall not invalidate or render void or inoperative such proceeding or order:

Provided that—

- (a) any court may vacate such an order made by it or by any other court of like jurisdiction in relation to a person who at the time of the commencement of the proceeding in which

such order was made or the making of such order was a child and thereupon it shall be deemed that such order had not been made; and

- (b) any court which vacates such an order may, upon satisfying itself of the facts which must be taken to have been proved or accepted in the proceeding in which such order was made, make such order as, in its opinion, should have been made in such proceeding and for this purpose a Magistrates Court shall be deemed to have jurisdiction in respect of a child charged with a simple offence or breach of duty.

**29. Jurisdiction of Children's Courts in indictable offence.** (1) A Children's Court constituted by a Magistrate of Children's Courts or a Stipendiary Magistrate or an Acting Stipendiary Magistrate shall have jurisdiction to try or sentence or otherwise deal with, in accordance with this Act, a person who—

- (a) is a child charged with an indictable offence other than such an offence for which he would be liable, were he not a child, to imprisonment with hard labour for life;
- (b) was a child when a proceeding was commenced against him whereby he stands before such court charged with such an offence.

(2) A Children's Court shall refrain from exercising its jurisdiction under this section unless it is satisfied that—

- (a) the right of the defendant to be tried before a judge and jury has been explained to the defendant and to such parent or guardian of the defendant as is present before such Children's Court; and
- (b) the defendant and such parent or guardian consent to the Children's Court exercising such jurisdiction; and
- (c) the circumstances of the case and of the defendant are such that the case may be adequately dealt with by a Children's Court.

(3) When a justice taking an examination of witnesses in relation to an indictable offence charged against a child is about to commit the defendant to be tried before a court of competent jurisdiction and is satisfied that the circumstances of the case and of the defendant are such that the case may be adequately dealt with by a Children's Court he—

- (a) shall explain to the defendant and to such parent or guardian of the defendant as is present before him that the defendant is entitled to be tried—
  - (i) by a jury; or
  - (ii) by a Children's Court without a jury; and
- (b) shall enquire of the defendant and such parent or guardian as aforesaid whether each of them consents to the defendant's being tried by a Children's Court;
- (c) shall not commit the defendant to be tried by a Children's Court or proceed in accordance with the next succeeding subsection unless the defendant and such parent or guardian as aforesaid consent.

The provisions of this subsection shall not be construed to absolve the Children's Court before which the defendant, so committed, appears from the duty imposed on it by the last preceding subsection.

(4) A justice taking an examination of witnesses in relation to an indictable offence charged against a child who is about to commit the defendant to be tried or for sentence before a court of competent jurisdiction, if he may lawfully constitute a Children's Court at the place where he is then sitting, may (but only with the consent of counsel or a solicitor appearing for the defendant), instead of so committing the defendant and subject to the provisions of the last preceding subsection where they apply, cause a Children's Court to be there constituted and, subject to the provisions of subsection (1) of this section, such court may thereupon deal with the defendant according to law.

Such Children's Court shall not again hear evidence already adduced in the course of the examination of witnesses in relation to the indictable offence in question but such evidence shall be deemed to have been adduced before such Children's Court on behalf of the party on whose behalf it was adduced in such examination.

(5) When a Children's Court refrains from exercising its jurisdiction under this section the magistrate who constitutes such court shall commit the defendant to be tried or, as the case may require, for sentence before a court of competent jurisdiction and may exercise in relation to such defendant all such powers as such magistrate would possess by virtue of "*The Justices Acts, 1886 to 1964*," were he a justice taking an examination of witnesses in relation to an indictable offence charged against such defendant and the provisions of those Acts shall apply in relation to such committal and to proceedings taken consequent thereon as if such magistrate were a justice taking such an examination.

(6) A Children's Court may, pursuant to this section, exercise its jurisdiction with respect to an indictable offence notwithstanding that more than one year has elapsed from the time when the matter of complaint arose.

(7) (a) The provisions of "*The Criminal Code*" with respect to offences charged upon indictment, the conviction of any person so charged and the matters to be alleged or proved in relation to such a charge shall, subject to this Act, apply with respect to indictable offences charged against persons before a Children's Court as if such persons were charged upon indictment and, subject to this Act, the Children's Court, in the exercise of the jurisdiction conferred by this section, shall be subject to and may exercise the powers conferred by such provisions accordingly.

(b) The provisions of section six hundred of "*The Criminal Code*" shall apply in relation to a defendant committed for sentence before a Children's Court as if he appeared before such court charged upon indictment.

(c) A person convicted of an indictable offence before a Children's Court and the Attorney-General of the State shall have the same rights of appeal against conviction and against sentence passed consequent thereupon as if the convicted person had been convicted on indictment.

A person who desires to appeal against his conviction of an indictable offence before a Children's Court or against a sentence passed consequent upon such a conviction shall appeal or apply to the court and in the manner provided for in Chapter LXVII of "*The Criminal Code*" and "*The Criminal Practice Rules of 1900*" as amended from time to time.

The provisions of such Chapter and such Rules, with all necessary adaptations and modifications, shall apply in respect of every such appeal or application for leave to appeal.

## PART IV—INSTITUTIONS

**30. Establishment of institutions.** (1) The Governor in Council may, by Order in Council, establish admission centres, homes, assessment, remand and treatment centres, training centres, hostels, attendance centres and other types of institutions to provide for the care, protection, education, treatment, training, control and welfare (including religious, moral and material aspects of the same) of children in care and may, in like manner, abolish any of the same.

(2) All institutions under the operation and control of the State Children Department at the commencement of this Act shall be deemed to have been established under this section for their respective purposes for the purposes of this Act.

(3) The Governor in Council may by Order in Council vary the purposes for which any institution established under this Act exists and may, in like manner change any type of such institution to another type of institution.

**31. Licensing of institutions.** (1) The Minister may, by writing under his hand, approve, for the purposes of this Act, of any institution conducted or to be conducted by any person or organization for the care, protection, education, treatment, training, control or welfare of children.

In every such approval there shall be named the governing authority of the institution so approved and, in addition, some person as the person in charge of the institution concerned who shall thereupon be deemed to be the person in charge of such institution until the appointment of another person as such has been notified to the Director in accordance with this Act.

(2) Upon approval given under this section the Director shall issue in respect of the institution concerned a licence in or to the effect of the prescribed form and such institution shall be a licensed institution until—

- (a) the governing authority of that institution surrenders such licence; or
- (b) the Minister, by writing under his hand, revokes such approval; or
- (c) the purpose for which such institution is or is to be established at the time of the issue of such licence is varied.

(3) Every institution which at the commencement of this Act is a licensed institution under and for the purposes of "*The State Children Acts, 1911 to 1955*," shall be deemed to have been so licensed under this section and for the purposes of this Act.

**32. Notification of change in control of licensed institution.** Whenever, in relation to a licensed institution, there is a change in—

- (a) the person in charge; or
- (b) the persons constituting the governing authority,

the governing authority of such licensed institution shall cause notification in writing of such change to be given forthwith to the Director.

**33. Control of licensed institutions.** The governing authority of a licensed institution shall, subject to the Director, have the sole management and supervision of such institution and control of the appointment of all persons employed at such institution.