

*Children of the State.*

**25** The managers of every certified institution shall be entitled to receive out of any moneys which may from time to time be appropriated by Parliament for that purpose, for every child of the State maintained in the certified institution during the preceding year, or any part thereof, a sum calculated at such rate per week as the Minister approves.

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State aid to certified institutions  
Cf. Tas., ss. 51, 59.  
Vict., s. 7.  
Eng., s. 73.

## PART V.

## CHILDREN OF THE STATE AND CHILDREN'S COURTS.

*Constitution and Powers of Court.*

**26**—(1) The Governor may by proclamation establish special courts, to be called children's courts.

Children's court.  
Cf. N.S.W., s. 9.  
W.A., s. 18.  
Vict., ss. 4, 5, 6.

(2) Every such court shall consist of One or more special magistrates, and shall have jurisdiction within the area named in a proclamation. Such court shall have such jurisdiction notwithstanding any offence or matter is committed or arises outside such area.

(3) In the absence of a special magistrate, or in places not within the area named in the proclamation, the jurisdiction of a children's court may be exercised by a police magistrate or any Two or more justices of the peace, who shall be deemed to be a children's court.

**27**—(1) A children's court and the magistrate or justices constituting such court, in addition to any other jurisdiction, powers, and authorities conferred upon them by this Act—

Powers of court.

- i. Shall have and may exercise all the powers and authorities for the time being possessed by police magistrates, courts of petty sessions, or justices in respect of children, and of offences committed by or against children: and
- ii. Shall have and may exercise the powers and authorities of a court of summary jurisdiction, magistrate, justices, or justice under—
  - (a) "The Prevention of Cruelty to and Protection of Children Act, 1895," and "The Education Act, 1885" and its amendments; and
  - (b) "The Deserted Wives and Children Maintenance Act, 1873," "The Deserted Wives and Children Maintenance Amendment Act, 1898," and "The Infant Life Protection Act, 1907";
- iii. May hear and determine all complaints, informations, and applications under this Act.

(2) Any child brought before a children's court in pursuance of the provisions of Section Five of "The Prevention of Cruelty to and Protection of Children Act, 1895," may in the discretion of the court be dealt with under that Act, or may be treated as though charged under this Act as a neglected child, and an order be made accordingly if the

Child dealt with under 59 Vict. No. 10 may be committed under this Act.  
Tas., s. 14.

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circumstances of the case would justify an order being made under the said firstmentioned Act ; but no order shall be made under this Act if there be a relative of the child willing and in the opinion of the court suitable to have charge of such child.

Jurisdiction of other courts to cease.  
Cf. N.S.W., s. 11.  
W.A., s. 20.  
Vict., s. 15.

**28** On and after the establishment of a children's court, the jurisdiction of every court of petty sessions (other than a children's court), and of every justice (other than a special magistrate) shall cease to be exercised within the area proclaimed in respect of the matters to which the children's court has jurisdiction, except in respect of offences committed against children, and except as to matters arising under the Acts referred to in Paragraph II. of Subsection (1) of the preceding section

Provided that nothing in this section shall abridge or prejudice the ministerial powers of justices in cases of committal for trial, or their powers to take any information or complaint or issue any sunmons, or grant, issue, or indorse 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.

Provided further that whenever it appears to a court of summary jurisdiction more desirable that any matter within the jurisdiction of the children's court (but not within its exclusive jurisdiction) should be heard in that court, that matter shall be remitted to the children's court.

Place of sitting.  
Vict., s. 7.  
See N.S.W., s. 12.

**29** Every children's court shall hold its sittings—

i. In some room of the building in which justices usually sit when hearing informations, but the children's court shall not be held in the same room as that in which a police magistrate or justice or justices are at the time sitting for the transaction of business other than that of a children's court or in which a justice or justices are sitting out of sessions : or

ii. In any other building or room.

Appointment of probation officers.  
Vict., s. 8.

**30** The Governor may appoint for any children's court or courts, or for the Supreme Court, One or more fit and proper persons, male or female, to be called "probation officers" who are willing to perform the duties assigned by this Act or the regulations to probation officers, and any such appointment may at any time be revoked.

Probation officer subject to directions and orders of children's court.  
Vict., s. 9.

**31** Every probation officer shall comply with the directions of the court for which he has been appointed, and shall obey all the lawful orders of such court with respect to any child under his supervision or his care and control.

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**32**—(1) It shall be the duty of every probation officer when required by a court— A.D. 1918.

- i. To investigate the circumstances of any complaint, charge, information, or application made in respect of any child and endeavour to ascertain his address and that of his parents: and
- ii. To inquire and furnish such court with information as to the child's habits, conduct, and mode of living: and
- iii. To render to such court such assistance as it may require; and
- iv. To visit and supervise any child before and after the hearing and determination of the case as may be directed by such court: and also
- v. To perform any other duties that the Governor may by regulation direct.

**Duties of probation officers.**  
Vict., s. 10.

(2) It shall be the duty of every probation officer under whose supervision a child has been placed, to advise, assist, and befriend such child, and when necessary to endeavour to find him suitable employment.

(3) Every probation officer may appear in any such court to represent the interests of any child, and when a child is not represented by a legal practitioner the probation officer may be heard in any such court on such child's behalf.

**Powers of probation officers.**

**33**—(1) Any child may be released by a court on probation, and if so released or if discharged on surety to appear for punishment when called upon or to be of good behaviour, such child shall if the court so orders be under the supervision of a probation officer of any court making such order or of a probation officer of some other court who shall for that purpose be deemed to be a probation officer of the court making the order as if he had been appointed for that court.

**Child released conditionally to be under supervision of probation officer.**  
Vict., s. 11.

(2) Every probation officer shall have as to the child under his supervision or care and control the powers of a police officer.

**When probation officer to have powers of peace officer.**

(3) At any time in his own discretion such probation officer may apprehend without warrant and bring any child under his supervision before the court which made its order respecting such child for further or other action as the court may see fit to exercise.

**Probation officer may bring child under his supervision before court for further action.**

**34**—(1) Where any child who under this Act—

- i. Has been released on probation:
- ii. Has been discharged on his entering into a recognisance to appear for punishment when called upon or to be of good behaviour—

**Powers of court with respect to children released on probation, &c.**  
No. 2914, 1917, s. 9 (Vict.).

fails to observe any terms or conditions imposed upon him by a court at the time of his release or discharge the court may by notice given to the parent of such child or the person with whom he is living or the probation officer direct that such child be brought before such court at a time named in the notice; and if such child is not so brought before the court may issue a warrant to apprehend such child and to bring him before such court.

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(2) If it appears to any court that such failure has occurred such court may (as the case requires) deal with such child in the same manner as if he had not been so released or discharged.

(3) This section shall be read and construed as in aid and not in derogation of any other provisions of this Act.

Powers of court  
in cases of  
children placed  
under supervision  
of probation  
officer.  
*Ibid.*, Vict., s. 10.

**35** Where a child has been placed by a court under the supervision of a probation officer such court if satisfied on the report of such probation officer that the parent of the child or the person with whom he is living has failed, neglected, or refused to comply with any condition imposed by such court for the child's welfare and health, may remove the child from the care of such parent or person and cancel any order already made by it, and further deal with the child according to law.

Exclusion of  
public from court.  
No. 2627, 1915,  
s. 16 (Vict.).  
N.S.W., s. 13.  
Removal by  
police.  
Punishment for  
disobedience.

**36**—(1) On the hearing of any complaint, information, charge, or application under this Act a children's court may order any persons who in its opinion are not directly interested in the case not being the counsel or solicitor for the prosecution or for the defendant or the clerk of such solicitor to leave the court-room or place of hearing and the precincts thereof, and in case of disobedience may direct any member of the police force to remove such persons; and also if it thinks fit so to do, in addition and on its own view, may impose on every such person so disobeying its order a penalty of not more than Forty Shillings and in default of payment forthwith, or without imposing any penalty at all, may order that he be imprisoned for a term of not more than Forty-eight hours. An order to leave the court-room or place of hearing shall not be made under this section with regard to any probation officer or with regard to the mother or sister or one female friend of any female witness under the age of Eighteen years or of any female defendant if desired by such witness or defendant to remain with her whilst necessarily present in court.

(2) It shall not be lawful to publish a report of the proceedings before the court, or the result of any such proceedings if such publication has been prohibited by the court.

Register of  
children's court.  
Vict., s. 18.

**37**—(1) The clerk shall keep a register independently of that used in the court of petty sessions of the minutes or memoranda of all convictions, orders, and proceedings of the children's court, in the prescribed form and with the prescribed particulars, and such register shall be distinguished by the name of the place at which such court is held as in the said form prescribed.

Certified extracts  
to be evidence.

(2) Such register, and also any document purporting to be an extract from such register, certified by the clerk keeping the same to be a true extract, shall be *prima facie* evidence of the matters entered therein.

Justices to sign  
register.

(3) The minutes or memoranda of every day's sitting of the children's court shall be signed by the special magistrate or justices constituting such court by and before whom the convictions, orders, or proceedings referred to in the minutes or memoranda were made or had.

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(4) Every such register shall be open for inspection, without fee or reward, by any justice, and by any person authorised in that behalf by a justice, or by a law officer of the Crown, or so far as relates to the proceedings in any particular case by any party to the proceedings, or by the parent of the child in respect of whom the entry is made.

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Register open for inspection.

*Admission or Committal of Children of the State.*

**38**—(1) Subject to the approval of the Minister any child under the age of Seventeen years, may on the application of its parent or near relative, or any person of good repute, be admitted by the Secretary as a child of the State.

Children admitted on application. Cf. s. 19 (Q.). 7 Ed. VII. No. 51 (Tas.).

(2) Every child so admitted may be dealt with in the same way as any neglected child committed by a children's court to the care of the Department.

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

Warrant for apprehension. N.S.W., s. 15.

- I. Issue his summons for the appearance of such child before a children's court : or
- II. In the first instance, issue his warrant to a police officer or a probation officer directing such child to be apprehended.

**40** A police officer or any person authorised by the Secretary 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.

Apprehension of child. N.S.W., s. 16.

**41**—(1) If it appears to any justice, on information laid before him on oath by any credible person, that there is reasonable cause to suspect that a child is in a place which is or is reputed or suspected to be a brothel, or where opium or any preparation thereof is smoked, or where he is associated with a thief, or where there is reasonable cause to suspect he is being illtreated, 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 receiving home to be dealt with under this Act.

Warrant to search for child suspected to be in brothel or place where opium is smoked, &amp;c. N.S.W., s. 17.

(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 laying the information (if such person so desires), unless the justice issuing the warrant otherwise directs.

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

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Apprehension of  
child in brothel,  
&c.  
N.S.W., s. 18.

**42** Any person authorised by the Secretary in that behalf, or any officer of police, of or above the rank of senior constable, may without warrant apprehend a child—

- i. Who is in a place which is a brothel, or where opium or any preparation thereof is smoked : or
- ii. Who, he has reason to believe, is a neglected or uncontrollable child.

Procedure  
when child  
apprehended.  
Vict., s. 19 (1).

**43**—(1) Where a child is apprehended as a neglected or uncontrollable child, or upon a charge for any offence, such child shall, if practicable, be taken before a children's court within Twenty-four hours, or if such a court does not sit within such time, before some justice out of sessions, or special magistrate acting ministerially out of court, to be dealt with according to law as provided by this Act.

Disposal of child  
pending or during  
adjournment of  
hearing.

(2) When such child is apprehended, pending the hearing of the charge or information, or during any adjournment of the hearing thereof, such child shall be disposed of in one of the following ways:—

In receiving  
home.

- i. Such child may be taken when practicable, expedient, or convenient, to a receiving home :

Under care of  
private persons.

- ii. When not so practicable, expedient, or convenient, having regard to distance, the condition or state of health, or the welfare of such child, such child may be placed with some respectable person or persons, and such arrangements or agreements may be made by a probation officer, or a police officer, as may be necessary or proper, with such person or persons for the care and maintenance of such child by them, or such probation officer, or police officer, if married, may place such child in his own dwelling under the care and supervision of himself and his wife, and may provide for his or her care and maintenance at a reasonable charge :

In gaol or  
lock-up.

- iii. Where the charge pending against such child is of so serious a nature that his safe custody is a matter of paramount importance, such child may be placed in a gaol or the lock-up of a police station, but must be kept apart from other prisoners :

Bail.

- iv. Or such child may be admitted to bail.

(5) When such child has been brought before a children's court or a justice or special magistrate it or he may make an order in accordance with these provisions, which order shall be a sufficient authority for the detention of such child as aforesaid.

Abonders may  
be placed in gaol.

(6) If any such child escapes from the custody of any such persons or from any such place of detention he may be re-arrested as an absconder and placed in a gaol till the charge or information is dealt with by the children's court.

Warrant not  
necessary to  
child.

(7) In any of the abovementioned cases no warrant shall be necessary to authorise the detention of any such child, but if the right to the custody of any such child is called in question by *habeas corpus* or otherwise it shall be sufficient to give in evidence the said order of the children's court or justice or special magistrate and the authority granted by the provisions of this Act to the persons abovenamed.

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**44** Any person having the actual care and custody of the child may apply to a children's court to commit the child to an institution upon the ground that the child is an uncontrollable child. The provisions of Section Forty-three of this Act shall apply to such child as if it were a child apprehended as an uncontrollable child.

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Application to commit uncontrollable child.  
Cf. N.S.W., s. 21.

**45** Where any child is charged before a children's court with being a neglected or uncontrollable child or with an indictable offence or with an offence punishable on summary conviction, or when any application is made to the said court with respect to any such child under the provisions of the last preceding section—

Parent's attendance in court.  
*Ibid.* s. 19.  
Cf. N.S.W., s. 22

- I. The parent of such child shall be entitled to be heard on his or her behalf either personally or by a legal practitioner and may cross-examine witnesses for the prosecution and examine and re-examine witnesses testifying on behalf of the accused :
- II. If the parent of the said child is not present the children's court may hear the charge, information, or application in his absence or may order a summons to be issued for the attendance of the parent before such court and may adjourn the hearing of the case in the meantime : and
- III. If the parent neglects or refuses to attend accordingly without furnishing to the court a reasonable excuse after being duly served with such summons the children's court may order a warrant to be issued to bring him before the court at the hearing of the case and on his arrest he may be admitted to bail on entering into recognisances, with or without sureties, to attend at the court at the hearing.

Parent may appear on behalf of child.

Enforcement of parent's attendance by court by summons.

By warrant

**46** If on the hearing a children's court finds that any child charged with being a neglected or uncontrollable child is a neglected or uncontrollable child it may—

Power of court with respect to neglected or uncontrollable child.  
N.S.W., s. 23.

- i. Release the child on probation upon such terms and conditions and for such period of time as the court may think fit : or
- ii. Commit the child to the care of the Department : or
- iii. Commit the child to an institution.

Provided that where a near relative applies for an order of committal of an uncontrollable child the children's court may decline to make the order unless security is given to the satisfaction of the court for the making of such payments as, in the opinion of the court, the applicant is able to afford towards the maintenance of such child.

**47** Whenever a child is committed to the care of the Department, the order of committal shall be sufficient authority to any police officer or probation officer or officer of the Department to take the child to such institution as the Secretary may direct, or in default of any such direction to such receiving home as may be nearest or most convenient.

Order for detention.  
Cf. *ibid.* (Tas.), s. 21.  
Cf. N.S.W., s. 50.  
Q., s. 22.

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Power with respect to child liable to be summarily convicted. N.S.W., s. 24. Vict., s. 21. W.A., s. 28. Q., s. 24.

On conviction may discharge child on entering into recognisances with sureties.

May impose penalty.

Summary trial of children not over the age of Fourteen years for an indictable offence.

Procedure where parent deemed to have contributed to commission of child's offence. Vict., s. 22. N.S.W., s. 25. Court may direct institution of proceedings against parent. When parent present.

**48**—(1) 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 children's court shall not sentence such child to imprisonment, but may—

- i. Release the child on probation upon such terms and conditions and for such period of time as the children's court may think fit: or
- ii. Commit the child to the care of the Department: or
- iii. Commit the child to an institution: or
- iv. Upon convicting the child discharge him conditionally on his entering into recognisance for a nominal sum with a surety or sureties to the satisfaction of the court in such sum as the court thinks reasonable and proper, to appear for punishment when called upon, or be of good behaviour for a term of not more than Twelve months, and also if it thinks fit, in addition, to order him to pay such damages and costs or either of them as the court thinks reasonable: or
- v. Adjudge the child to pay a penalty of not more than Forty Shillings.

(2) Instead of summarily convicting a child of any offence referred to in Subsection (1) of this section, the Children's Court may dismiss the information subject, if it thinks fit so to order, to the condition that the child pay such damages and costs of the proceedings or either of them as the court thinks reasonable.

**49** Where any child whose age does not exceed Fourteen years is charged before a children's court with any indictable offence other than rape, homicide, attempt to murder, or wounding with intent to do grievous bodily harm, the court (notwithstanding the provisions of any Act to the contrary) shall not commit such child for trial at the Supreme Court, but shall deal summarily with the offence, and in its discretion if it finds the charge to be proved, may deal with the case in any of the modes specified in the next preceding section, which the court is empowered to adopt in respect of offences dealt with under that section.

**50**—(1) Where a child is summarily convicted by a children's court of an offence in respect of which a penalty, damages, or costs, or any one or more of them is or are adjudged to be paid, and the court has reason to believe that such child's parent has contributed to the commission of the said offence by wilful default or by habitually neglecting to exercise due care of the said child, the children's court may direct a member of the police force to forthwith charge such parent with so contributing to the commission of the said offence, and if the parent is present and does not ask for an adjournment of the hearing of the charge to enable him to answer it, such court may hear the charge there and then, and on being satisfied that it is proved may convict the said parent thereof.



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(2) Provided that where it is shown that a parent's want of pecuniary means is the cause of such default or neglect, the charge shall be held not proved. A.D. 1918.

(3) If the said parent is not present the children's court may direct a member of the police force to obtain a summons on such charge against the parent of such child, and upon the day appointed by the summons for the hearing of such charge, and after due service thereof on the said parent, the court on being satisfied that the charge is proved, may convict the said parent thereof. When parent not present.

**51—**(1) Where the children's court convicts the parent of the charge as aforesaid it may in and by its conviction adjudge the said parent to pay the penalty, damages, or costs, or any one or more of them that his child has been adjudged to pay instead of him, and may in addition order the said parent to forthwith enter into his own recognisance with or without surety for the good behaviour of such child for any period not less than Three months or more than Twelve months, and in default of such recognisance being entered into accordingly, may order the said parent to be imprisoned for a term of not more than Three months. May adjudge parent to pay penalty, damages, or costs instead of child. Vict. s. 28.

(2) Any such sums so adjudged to be paid by such parent may be recovered from him by distress, and in default of distress he may be imprisoned for not exceeding Six months. Recovery of sums so adjudged to be paid.

(3) Where the parent is so adjudged to pay all or any of such sums as aforesaid, the children's court shall permanently suspend enforcement of the payment of the said sums so adjudged to be paid by the said child convicted in the first instance, but these provisions shall not prejudice the right of the court to deal with the said child as a "neglected child" under this Act, in which event the said parent shall not be ordered to enter into a recognisance as aforesaid for the child's good behaviour. Suspension of conviction against child.

**52—**(1) Where a child over the age of Fourteen years and under Seventeen years is charged before a children's court with an indictable offence other than rape, homicide, attempt to murder, or wounding with intent to do grievous bodily harm, and is not dealt with summarily, the children's court may— Power with respect to child charged with certain indictable offences. N.S.W., s. 26.

- i. Release the child on probation upon such terms and conditions and for such period of time as the court may think fit : or
- ii. Commit the child to the care of the Department : or
- iii. Commit the child to an institution : or
- iv. Commit the child to take his trial according to law.

(2) When a children's court has committed a child to take his trial for an indictable offence other than rape, homicide, attempt to murder, or wounding with intent to do grievous bodily harm, the Minister may commit the child to an institution, if no information shall be filed in the Supreme Court or a *nolle prosequi* shall have been entered in regard to proceedings against the child. Child committed for trial may be sent to institution.

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

Court to hear  
evidence on  
behalf of child.

**53** Where a child is charged before a children's court with any offence other than rape, homicide, attempt to murder, or wounding with intent to do grievous bodily harm, 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 opportunity to call evidence, or make a statement, and shall hear any evidence that may be tendered by or on behalf of the child.

As to Sections  
46, 48, 52, or 55.  
N.S.W., s. 28.

**54** When a child has been released on probation under Sections Forty-six, Forty-eight, Fifty-two, or Fifty-five the following provisions shall apply :—

- i. The child and the premises wherein he resides shall be subject to inspection by the probation officers of the court which released such child on probation, or officers appointed in that behalf by a court or any officer of the Department :
- ii. Any person having the care of a child as aforesaid who neglects or ill-treats such child shall be liable to a penalty of Five Pounds, to be recovered in a summary way, and the child may be removed from his custody and control by the Minister.

Child convicted  
of indictable  
offence may be  
sent to institution.  
N.S.W., s. 30.

**55** Subject to the provisions of Sections Fifty-eight, Fifty-nine and Sixty where a child upon his trial in the Supreme Court has pleaded guilty to or has been convicted of an indictable offence, the court or judge shall not sentence such child to imprisonment, but may—

- i. Discharge the child on his entering into a recognisance ; or
- ii. Release the child on probation upon such terms and conditions and for such period of time as the court or a judge thereof may think fit ; or
- iii. Commit the child to the care of the Department ; or
- iv. Commit the child to an institution ; or
- v. Order the child to pay a fine, damages, or costs ; or
- vi. Order the parent or guardian of the child to pay a fine damages, or costs ; or
- vii. Order the parent or guardian of the child to give security for his good behaviour.

Form of  
committal.  
N.S.W. s. 31.

**56** A court in committing a child to an institution shall do so in general terms, but may recommend to the Minister that the child be sent to an institution of a particular class.

Provided that in the case of a child charged with an indictable offence, such committal may be made to a reformatory school, and if so made, shall, subject to the provisions of Section Sixty-five, be for the period named.