

## CHILD WELFARE.

11° and 12° GEO. VI., No. LXVI.

No. 66 of 1947.

AN ACT to consolidate and amend the law relating to the making of better provision for the protection, control, maintenance and reformation of neglected and destitute children, and for other purposes connected therewith.

[Assented to 10th January, 1948.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same as follows:—

1. This Act may be cited as the *Child Welfare Act*, Short title.  
1947.

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

PART I.—PRELIMINARY, SS. 1-4.

PART II.—THE CHILD WELFARE DEPARTMENT, SS. 5-12.

PART III.—INSTITUTIONS, SS. 13-18.

PART IV.—WARDS, AND CHILDREN'S COURTS, SS. 19-66.

No. 31 of  
1907, s. 2, as  
amended by  
No. 21 of  
1919, ss. 21  
and 22 and  
No. 22 of  
1927, s. 3,  
and this Act.

PART V.—MAINTENANCE OF CHILDREN BY THEIR RELATIVES, SS. 67–91.

PART VI.—COMMITTAL TO THE CARE OF PRIVATE PERSONS OR SOCIETIES, SS. 92–105.

PART VII.—LICENSING OF CHILDREN AND RESTRICTIONS ON EMPLOYMENT OF CHILDREN, SS. 106–109.

PART VIII.—LYING-IN HOMES AND FOSTER MOTHERS, AND THE CARE AND ADOPTION OF CHILDREN, SS. 110–120.

PART IX.—PROCEDURE, PENALTIES, AND GENERAL PROVISIONS, SS. 121–149.

Repeal First Schedule

3. The Act specified in the First Schedule to this Act is repealed.

Interpretation.  
No. 31 of 1907, s. 4, as amended by No. 21 of 1919, s. 3, No. 31 of 1926, s. 3, No. 22 of 1927, s. 3, and No. 56 of 1941, s. 2 and this Act.

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

“board out” means to place a ward in the care or charge of some person for the purpose of being nursed or maintained by such person, or in such person’s house;

“child” means any boy or girl under the age of eighteen years; and, in the absence of positive evidence as to age, means any boy or girl under the apparent age of eighteen years;

“court” means a Children’s Court established under this Act;

“Department” means the Child Welfare Department constituted under this Act;

“destitute child” means any child who has no sufficient means of subsistence apparent to the Court, and whose near relatives are, in the opinion of the Court, in indigent circumstances and unable to support such child, or are dead, or unknown, or cannot be found, or out of the jurisdiction, or in the custody of the law;

“foster-mother” means a female having the care, charge, or custody of a child under six years of age to adopt, rear, nurse, or otherwise maintain such child apart from his or her parent, and not being a near relative of such child;

- “foster parent” means any person to or with whom a ward is apprenticed or placed out under this Act, or under any enactment by this Act repealed, and includes the assignee of such person;
- “governing authority” means the manager or committee of management of any subsidised institution;
- “industrial school” means an institution approved and certified by the Governor for the purposes of this Act, for the detention, maintenance, and training of children found guilty of an offence punishable by imprisonment, or of children transferred from another institution under this Act, and includes a reformatory;
- “inmate” means a ward maintained in an institution;
- “institution” means and includes any Government industrial school, and all orphanages, industrial or reformatory schools established under the Industrial Schools Act, 1874, every receiving depot, or shelter, established under this Act, and all other places for the time being under the supervision of the Department;
- “lying-in home” means a place for the accommodation of females during their confinement and lying-in, and includes any home maintained for such purpose by the Government;
- “maintenance” includes clothing, support, training, and education;
- “maintenance order” means an order made by the Court for payment of money by any near relative in respect of the maintenance of a child;
- “near relative” means, except as regards an illegitimate child, father, mother, step-father, step-mother, brother, sister, or any grand-parent of the child; and as regards an illegitimate child, the mother and the father of such child, and the husband of the mother of such child, if born before their marriage;

“neglected child” means any child who—

- (1) habitually begs or receives alms, whether under the pretext of sale or otherwise, or frequents any public place for the purpose of so begging or receiving alms; or
- (2) wanders about, or frequents any public place, or sleeps in the open air, and does not satisfy the court that he or she has a home or settled place of abode; or
- (3) resides in any reputed brothel, or associates or dwells with any person known to the police or reputed to be a prostitute, whether such person is the mother of such child or not; or
- (4) associates or dwells with any person who has been convicted of vagrancy, or is known to the police as of bad repute, or who has been or is reputed to be a thief or habitual drunkard; or
- (5) is under the guardianship or in the custody of any person whom the court considers is unfit to have such guardianship or custody; or
- (6) is not being maintained properly or at all or is deserted; or
- (7) is living under such conditions as to indicate that the child is lapsing or likely to lapse into a career of vice or crime; or
- (8) not being duly licensed for that purpose, is engaged in street trading; or
- (9) is deemed so to be under section one hundred and thirty-eight of this Act;

*Cf. s. 138  
post.*

“orphanage” means an institution for the detention, maintenance, training, education, and employment of destitute or neglected children, and which has been approved and certified by the Governor for the purposes of this Act;

“police officer” includes any constable or officer of police;

“Secretary” means the Secretary of the Department appointed under this Act;

“special magistrate” means a police magistrate, government resident, or resident magistrate, or a justice of the peace nominated by the Governor for the purposes of this Act;

“subsidised institution” means an institution maintained wholly or partially by contributions from the Consolidated Revenue Fund;

“ward” means a child who, under the provisions of this or any other Act, is received into an institution, or apprenticed, boarded out, or placed out.

## PART II.—THE CHILD WELFARE DEPARTMENT.

5. For the purposes of this Act there is hereby constituted a Department, under the control of the Minister, to be called the Child Welfare Department.

Child Welfare Department.  
No. 31 of 1907, s. 5, as amended by No. 22 of 1927, s. 4.

6. The Governor may, from time to time, appoint a Secretary of the Department, and it shall be the duty of the Secretary, under the direction of the Minister, to carry into operation the provisions of this Act so far as the execution thereof is not expressly committed to any other person.

Secretary.  
No. 31 of 1907, s. 6.

7. The Governor may, from time to time, appoint inspectors and other officers, with such powers and functions as he deems necessary to carry out the purposes of this Act.

Inspectors and other officers.  
No. 31 of 1907, s. 7, as amended by this Act.

8. The Minister may, from time to time, appoint so many fit and proper persons as he thinks necessary to be visitors of Government institutions.

Visitors.  
No. 31 of 1907, s. 8.

9. (1) The Minister may, from time to time, appoint so many fit and proper persons as he thinks necessary to form boarding-out committees.

Boarding-out committees.  
No. 31 of 1907, s. 9, as amended by No. 22 of 1927, s. 2.

(2) The persons appointed as members of such committees shall, in accordance with the regulations, assist the Department in procuring and supervising boarding-out homes and in the care of the wards sent to such homes under this Act.

General powers of secretary. No. 31 of 1907, s. 10, as amended by No. 14 of 1921, s. 3, and No. 22 of 1927, s. 3.

10. (1) Subject to the regulations and the direction of the Minister, the Secretary shall have the care, management, and control of the persons and property of all wards, and the supervision of all children nursed by foster-mothers.

(2) All children committed to the care of the Department may from time to time be dealt with by the Secretary in any of the following ways:—

- (a) Placed in some receiving depot.
- (b) Detained in an institution.
- (c) Transferred with the approval of the Minister from one institution to another institution.
- (d) Boarded out, apprenticed, or placed at service with some suitable person.
- (e) Placed in the custody of some suitable person who may be willing to take charge of such child:

Provided that when any recommendation has been made by the court, such recommendation shall not be departed from without the consent of the Minister.

Record of wards to be kept. No. 31 of 1907, s. 11, as amended by No. 22 of 1927, s. 3.

11. The Secretary shall keep records of all moneys received and paid, and so far as known of the names, ages, dates of reception, near relatives, nationality, sex, religion and dates of departure of all wards, and of all dispositions of and dealings with such children.

Annual report No. 31 of 1907, s. 12.

12. The Secretary shall in every year report to the Minister on the working of this Act, and shall in such report specify the number of children in the several institutions, the number placed out and apprenticed during the period covered by the report, and set out a summary of the receipts and expenditure of the Department during the same period, and any other particulars which the Minister may direct from time to time to be included in such report. All such reports shall be laid before Parliament.

## PART III.—INSTITUTIONS.

13. (1) The Governor may declare any building or place to be a Government institution, and such building or place so proclaimed shall thereupon be a Government institution within the meaning and for the purposes of this Act.

Government institutions. No. 31 of 1907, s. 13.

(2) The Governor may discontinue and close any Government institution, and direct the removal of the inmates to some other institution.

(3) Any order under this section may be altered or revoked by the Governor.

14. (1) The Governor may declare any building or place to be a subsidised institution, and such building or place so proclaimed shall thereupon be a subsidised institution within the meaning and for the purposes of this Act.

Subsidised institutions. No. 31 of 1907, s. 14, as amended by No. 22 of 1927, s. 3.

(2) The Governor may discontinue any such institution as a subsidised institution, whereupon all wards being inmates thereof, and all wards apprenticed or placed out by the governing authority thereof, shall be sent to and detained in any other institution, or otherwise dealt with under this Act.

(3) Any order under this section may be altered or revoked by the Governor.

15. The orphanages and industrial schools specified in the Second Schedule are hereby declared to be subsidised institutions within the meaning and for the purposes of this Act.

Existing institutions continued. No. 31 of 1907, s. 15, as amended by No. 22 of 1927, ss. 5 and 6. Second Schedule.

16. No person shall be appointed or continue to be the manager to have the chief control of any subsidised institution unless approved by the Governor.

Manager to be approved. No. 31 of 1907, s. 16

17. If any institution is established and maintained for the children of any particular religious denomination exclusively, the Governor may limit the same as an institution for such children only, and in such case no child shall be committed to such institution who is not of the denomination mentioned in the Order in Council.

Institutions may be established for particular religious denominations. No. 31 of 1907, s. 17.

Special Magistrates and Members of Court may visit institutions.  
No. 21 of 1919, s. 4.

18. A special magistrate or any member of the Children's Court authorised in that behalf by the Governor shall have the right at any time to enter, visit, and inspect any institution.

#### PART IV.—WARDS, AND CHILDREN'S COURTS.

##### *Constitution and powers of Court.*

Children's courts.  
No. 31 of 1907, s. 18, as amended by No. 21 of 1919, s. 4, No. 31 of 1926, s. 5, and this Act.

19. (1) The Governor may by Order in Council establish special courts to be called Children's Courts, and may appoint a special magistrate for any particular court or courts, and may by Order in Council from time to time determine the area in and for which each court shall exercise jurisdiction.

(2) (a) The Governor may also appoint such persons, male or female, as he may think fit, to be members of any particular Children's Court, and may determine the respective seniorities of members heretofore or hereafter appointed, and may appoint any person to be a clerk of any court.

(b) Of the persons appointed as members of any particular Children's Court for which a special magistrate is appointed, one, but not more than one at any particular time, shall have the right to sit and adjudicate with the special magistrate from time to time, and if more than one person has been so appointed, the exercise from time to time of the right shall be according to agreement of those persons, but, failing agreement, according to seniority.

(3) No Children's Court shall be competent to exercise its jurisdiction unless there be present the special magistrate or at least two members.

(4) If for any reason it is not convenient for the special magistrate of any court to attend any particular sitting of the court, the special magistrate of any other court may attend and act in his place.

(5) When the persons sitting as a Children's Court are divided in opinion as to the decision to be given on any question, the question shall be decided according to the opinion of the majority, if there is a majority, but if the court is equally divided in opinion, the opinion of

the special magistrate, if present, shall prevail, but if a special magistrate is not present, the case shall be re-heard and determined in the presence of a special magistrate.

(6) Subject to this Act, all the provisions of the Justices Act, 1902-1942, shall apply to the proceedings, orders, and convictions of Children's Courts, and for the purposes of this Act the special magistrate of a court shall have the powers of a police magistrate throughout the State, and every member of the court shall have the powers of a justice of the peace in and for the area of the court, and every such court shall be deemed to be a court of summary jurisdiction.

**20. A Children's Court—**

- (a) shall exercise jurisdiction in respect of all offences alleged to have been committed by children;
- (b) shall hear and determine all complaints and applications under this Act;
- (c) shall hear and determine all complaints and applications under sections thirteen, sixteen, seventeen, eighteen and twenty of the Education Act, 1928-1943;
- (d) shall exercise the powers and authorities of a court of summary jurisdiction under the Guardianship of Infants Act, 1926, and notwithstanding any other provision to the contrary, the jurisdiction conferred by this paragraph shall be exercised by the special magistrate sitting alone or with one person appointed a member of the court;
- (e) may make recommendations concerning any child appearing before the court—
  - (i) on a charge of delinquency or of being an uncontrollable or incorrigible child; or
  - (ii) in respect of whom application is made for a declaration that the child is neglected or destitute,

and the recommendations shall not be departed from without the consent of the Minister.

Power of Court.  
No. 31 of 1907, s. 19, as amended by No. 14 of 1921, s. 8, No. 31 of 1926, s. 5, No. 56 of 1941, s. 3, and this Act.

Jurisdiction  
of other  
courts to  
cease.  
No. 31 of  
1907, s. 20, as  
amended by  
this Act.

**21.** On and after the establishment 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:

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 summons, 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 heard before a court of petty sessions in contravention of this section shall be invalidated or affected by reason only of such contravention.

Children's  
Courts not to  
be held in  
ordinary  
courts.  
No. 31 of  
1907, s. 21.

**22.** (1) The Children's Court shall be held within the City of Perth and in such other places as the Governor may direct, in some building approved or appointed in that behalf by the Minister, and not in any police or other court-house.

(2) Subject as hereinbefore provided, a Children's Court shall be held in some building or place approved of in that behalf by the Minister.

Provided that if a court-house or magistrate's office is so approved of, the hearing shall not take place at an hour when the ordinary court business is being transacted.

Exclusion of  
persons from  
hearing.  
No. 31 of  
1907, s. 22 as  
amended by  
this Act.

**23.** (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 courtroom or place of hearing.

Publication  
of proceedings  
unlawful.

(2) Publication of any report of the proceedings before the court on a charge against a child, or the result thereof, is unlawful, unless—

(i) the court expressly authorises the same; or