

CHILD WELFARE (No. 2).No. 73 of 1976.**AN ACT to amend the Child Welfare Act, 1947-1976.**

[Assented to 6th October, 1976.]

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

1. (1) This Act may be cited as the *Child Welfare Act Amendment Act (No. 2), 1976.*

Short title
and
citation.

(2) In this Act the Child Welfare Act, 1947-1976, is referred to as the principal Act.

Reprinted
as
approved
for reprint
28th April,
1974, and
amended
by Act No.
106 of 1975
and Act No.
36 of 1976.

(3) The principal Act as amended by this Act may be cited as the Child Welfare Act, 1947-1976.

Commence-
ment.

2. The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation.

Long title
amended.

3. The long title to the principal Act is amended by deleting the passage "making of better provision for the protection, control, maintenance and reformation of neglected and destitute children", in lines two to four, and substituting the passage "protection, guidance and maintenance of children in need of care and protection, for the control and treatment of children offending against the law".

Section 2
amended.

4. Section 2 of the principal Act is amended—
- (a) by deleting the word "INSTITUTIONS", in line four, and substituting the words "CENTRES AND FACILITIES";
 - (b) by inserting after the passage "WARDS," in line five, the passage "CHILDREN UNDER DEPARTMENTAL CONTROL,";
 - (c) by deleting the passage "66", in line six, and substituting the passage "66D";
 - (d) by inserting, in line seven, the passage "PART V—CHILDREN'S PANELS, ss. 70-78.;" and
 - (e) by deleting the words "LICENSING OF CHILDREN AND", in line nine.

Section 4
amended.

5. Section 4 of the principal Act is amended—
- (a) by inserting after the section designation "4." the subsection designation "(1)";
 - (b) by deleting the definition of the term "board out";
 - (c) as to the definition of the term "child", by adding at the end of that definition the passage "but also includes any boy or girl

dealt with under this Act by virtue of the provisions of subsection (2) of section twenty of this Act;" ;

- (d) by inserting after the definition of the term "child" a new definition as follows—

"child in need of care and protection" means a child who—

- (a) has no sufficient means of subsistence apparent to the court and whose near relatives are, in the opinion of the court, in indigent circumstances or are otherwise unable or unwilling to support the child, or are dead, or unknown, or can not be found, or are out of the jurisdiction, or in the custody of the law;
- (b) has been placed in a subsidised centre or subsidised facility and whose near relatives have not contributed regularly towards the maintenance of the child;
- (c) 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 habitually under the influence of alcohol or drugs;
- (d) is under the guardianship or in the custody of a person whom the court considers is unfit to have that guardianship or custody;
- (e) is not being maintained properly or at all by a near relative, or is deserted;
- (f) is found in a place where any drug is used and is in the opinion of the court in need of care and protection by reason thereof;

- (g) being under the age of fourteen years is employed or engaged in any circus, travelling show, acrobatic entertainment, or exhibition by which his life, health, welfare, or safety is likely to be lost, prejudiced, or endangered;
 - (h) is unlawfully engaged in street trading;
 - (i) is ill-treated, or suffers injuries apparently resulting from ill-treatment;
 - (j) lives under conditions which indicate that the child is lapsing or likely to lapse into a career of vice or crime; or
 - (k) is living under such conditions, or is found in such circumstances, or behaves in such a manner, as to indicate that the mental, physical or moral welfare of the child is likely to be in jeopardy; ;
- (e) by deleting the definition of the term "destitute child";
- (f) as to the definition of the term "drug", by adding the passage—
- "or
- (c) referred to in section ninety-four A of the Police Act, 1892;" ;
- (g) by deleting the definition of the term "foster-mother";
- (h) as to the definition of the term "foster-parent"—
- (i) by deleting the words "to or", in line one; and

- (ii) by deleting the words "is apprenticed or", in line two, and substituting the words "or a child placed under the control of the Department is";
- (i) as to the definition of the term "governing authority", by deleting the word "institution" and substituting the words "centre or subsidised facility";
- (j) by deleting the definition of the term "industrial school";
- (k) by deleting the definition of the term "inmate";
- (l) by deleting the definition of the term "institution";
- (m) by deleting the definition of the term "maintenance" and substituting a new definition as follows—
 - "maintenance" means financial support, but may include provision for clothing, training and education; ;
- (n) as to the definition of the term "maintenance order", by deleting the word "the", in line two, and substituting the word "a";
- (o) by deleting the definition of the term "neglected child";
- (p) by deleting the definition of the term "orphanage";
- (q) by inserting after the definition of the term "parent" a new definition as follows—
 - "place out" means to place a child in the charge of some person for the purpose of being cared for, reared or supervised by that person, or to reside in the house of that person; ;

- (r) by deleting the definition of the term "special magistrate" and substituting a new definition as follows—

"special magistrate" means a person appointed as a special magistrate pursuant to section nineteen of this Act; ;

- (s) by inserting after the definition of the term "street" a new definition as follows—

"street trading" means the selling, offering or exposing for sale, or the delivering for gain or reward of any article, which is wholly or in part carried out in or from a public place; but does not include the occasional selling of any article if the net proceeds of the sale are wholly applied for the benefit of a church or school or other charitable or cultural purpose; ;

- (t) by deleting the definition of the term "subsidised institution" and substituting a new definition as follows—

"subsidised centre" or "subsidised facility" means a centre or facility, not being a Departmental Centre or Departmental facility, maintained wholly or in part by contributions from the Consolidated Revenue Fund, and declared to be such, pursuant to section fourteen of this Act"; ;

- (u) by deleting the definition of the term "treatment, discipline and training";

- (v) by deleting the definition of the term "ward"; and

(w) by adding three new subsections as follows—

(2) A child who—

- (a) is declared to be a child in need of care and protection;
- (b) is to be treated as a child in need of care and protection pursuant to section thirty-two of this Act;
- (c) was, immediately prior to the coming into operation of the Child Welfare Act Amendment Act (No. 2), 1976, a ward and in relation to whom the period of care or custody has not expired; or
- (d) is committed to the care of the Department by the Minister under this Act, or to the custody of the Director, for a period which is not expired,

is for the purposes of this Act referred to as a "ward" and shall be under the guardianship of the Director.

(3) Where a child is placed under the control of the Department under this Act he does not thereby come under the guardianship of the Director, but in all other respects he may be treated as though he was a ward and may be placed in any centre or facility, required to carry out the lawful directions of the Director or his officers, and required not to leave the State without the consent of the Director.

(4) A person shall be taken to stand *in loco parentis* to a child if that person, whether male or female, is a person—

- (a) responsible for providing for the day to day needs of the child as required having regard to the

age of the child, a. whether or not financial support is provided from any other source; or

- (b) with whom the child habitually resides, notwithstanding that the child may at any relevant time be in the custody of the law or living away from that person for the time being for educational or other reasons,

and the fact that a person stands *in loco parentis* to a child shall not be taken to derogate from the rights which the Director might otherwise exercise in relation to that child.

Section 8
amended.

6. Section 8 of the principal Act is amended by deleting the words "Government institutions", in line three, and substituting the words "Departmental Centres and Department facilities".

Section 9A
amended.

7. Section 9A of the principal Act is amended—

- (a) by inserting before the word "section", in line seven, the passage "paragraph (c) of subsection (2) of section ten,"; and
- (b) by inserting after the word "sixty-six", in line eight, the passage ", sixty-six B".

Section 10
amended.

8. (1) Subsection (1) of section 10 of the principal Act is amended—

- (a) by deleting the word "and", in line three of paragraph (a);
- (b) by deleting paragraph (b); and
- (c) by adding two new paragraphs as follows—
- (b) have the supervision and control of all children placed under the control of the Department; and

- (c) have the supervision of all children to whom a licence granted under section one hundred and eleven or section one hundred and twelve of this Act applies.

(2) Subsection (2) of section 10 of the principal Act is repealed and a new subsection substituted as follows—

- (2) Any ward and any child placed under the control of the Department may from time to time be dealt with by the Director in any one or more of the following ways—
 - (a) by placing the child in any suitable centre or other facility;
 - (b) with the approval of the Minister or a person to whom the power to give approval on behalf of the Minister has been delegated pursuant to section nine A of this Act, by transferring the child from one centre or facility to another centre or facility or from one kind of training or employment to any other which in the opinion of the Director is likely to prove more beneficial to the child;
 - (c) by placing out that child or placing the child in employment with some suitable person; or
 - (d) by placing that child in the care, charge or custody of a suitable person willing to take the child.

(3) Subsection (3) of section 10 of the principal Act is repealed and re-enacted with amendments to stand as section 10A as follows—

10A. The Director may take such action or cause such action to be taken, not inconsistent with the provisions of this Act, as may be

General
function
of the
Director.