

66. Discharge from care and control and from supervision. (1) The Governor in Council may, at any time, order the discharge of any person who, upon conviction for an offence,—

- (a) has been ordered (before or after the commencement of this Act) to be committed to the care and control of the Director;
or
- (b) in relation to whom it has been ordered that the Director exercise supervision,

and the Minister may, by writing under his hand, order the discharge of any person who, otherwise than upon conviction for an offence, has been ordered to be committed to the care and control of the Director or in relation to whom it has been ordered that the Director exercise supervision.

Upon the making of such an order of discharge the person concerned shall be forthwith discharged from the care and control or, as the case may be, the supervision of the Director in accordance with the order and if he is then in detention shall be released therefrom.

(2) The Governor in Council or, as the case may be, the Minister may, by the order discharging a person from the care and control of the Director order—

- (a) in the case of a person who, by virtue of section sixty-three of this Act is deemed to be subject to such care and control, that the Director exercise supervision over and in relation to such person until he attains the age of eighteen years or, should he have already attained the age of seventeen years at the date of such discharge, that the Chief Probation Officer appointed under and for the purposes of "*The Offenders Probation and Parole Act of 1959*" exercise supervision over and in relation to such person for such period as the Governor in Council, by such order, fixes;
- (b) in the case of any other person that the Director exercise supervision over and in relation to such person until he attains the age of eighteen years,

and in any such case the person so discharged shall be subject to the supervision of the Director or, as the case may be, the Chief Probation Officer accordingly.

(3) Upon the discharge of a person from the care and control of the Director the order of committal to such care and control shall cease to be in force.

67. Effect of supervision order. (1) When a court or the Governor in Council or Minister orders that the Director or the Chief Probation Officer exercise supervision over and in relation to any person—

- (a) the court or, as the case may be, the Governor in Council or Minister, in such order, may specify the matters and objects in relation to which the Director or, as the case may be, the Chief Probation Officer is to exercise his supervision;
- (b) the Director or, as the case may be, the Chief Probation Officer may, pursuant to such order, order the person concerned, a parent or guardian of such person or any two or more of such persons to do or refrain from doing any act or thing (including attendance at attendance centres maintained for the purposes of this Act, whether or not a court has so ordered) which, in the opinion of the Director or, as the case may be, Chief Probation Officer, pertains to a matter or object specified in such order or, in so far as not so specified, is in the best interests of the person being supervised.

(2) Every order issued pursuant to paragraph (b) of the preceding subsection shall be in writing under the hand of the Director, or, as the case may be, Chief Probation Officer or some person authorized by him in that behalf.

(3) A person who contravenes or fails to comply with an order issued pursuant to paragraph (b) of subsection (1) of this section commits an offence against this Act.

68. Breach of supervision order. (1) If the Chief Probation Officer—

(a) is satisfied that a person over and in relation to whom he is exercising supervision is not co-operating with him to achieve the objects of the order whereby such person was made subject to his supervision or is contravening or failing to comply with any order issued by the Chief Probation Officer pursuant to paragraph (b) of subsection (1) of the last preceding section; or

(b) is not satisfied that the conditions under which such a person is living are conducive to the welfare of such person, he shall report accordingly to the Director.

(2) If the Director—

(a) is satisfied that a person over and in relation to whom he is exercising supervision is not co-operating with him to achieve the objects of the order whereby such person was made subject to his supervision or is contravening or failing to comply with any order issued by the Director pursuant to paragraph (b) of subsection (1) of the last preceding section; or

(b) is not satisfied that the conditions under which such a person is living are conducive to the welfare of such person; or

(c) receives a report from the Chief Probation Officer under the preceding subsection,

the Director may cause an officer of the Department or any police officer without further authority than this Act to take such person into custody on behalf of the Director and, as soon as practicable,—

(i) in the case of a person who was ordered to be detained pursuant to section sixty-three of this Act, to return such person to the custody wherein he was detained immediately prior to his discharge into the supervision of the Director or the Chief Probation Officer and such person shall be therein detained in accordance with this Act during Her Majesty's pleasure until the Minister otherwise orders or until he is otherwise lawfully dealt with; or

(ii) in the case of any other person, to bring such person before a Children's Court notwithstanding that he is not a child.

(3) A Children's Court before which a person is brought pursuant to paragraph (ii) of the last preceding subsection shall—

(a) order such investigations and medical examinations to be made in relation to such person as to the court appear necessary or desirable and, if it does so order, be furnished with reports of such investigations and examinations;

(b) remand such person into the temporary custody of the Director until such investigations and examinations are completed;

(c) hear any objection to the return of such person to the care and control of the Director;

- (d) if it appears to such court that the best interests of such person require it, adjourn such proceeding to another Children's Court whereupon it shall be deemed that such person was brought before such other Children's Court in the first instance;
- (e)—
- (i) commit or, as the case may be, recommit such person to the care and control of the Director until he attains the age of nineteen years; or
 - (ii) extend the period during which the Director is to exercise supervision over and in relation to such person until he attains the age of nineteen years; or
 - (iii) specify matters and objects or, as the case may be, further matters and objects in relation to which the Director is to exercise his supervision,
- whichever order or orders the court considers warranted in the circumstances.

(4) When a court has, pursuant to this section, varied a supervision order the order as so varied shall be deemed to be the order under which the Director is to exercise supervision over and in relation to the person concerned and may be carried into effect under section sixty-seven of this Act accordingly.

PART VIII—PROTECTION OF CHILDREN

Division I—Health and Welfare of Children

69. Offences in relation to the health of children. (1) A person having a child in his charge shall not ill-treat, neglect, abandon or expose him in a manner likely to cause him unnecessary suffering or to injure his physical or mental health nor suffer him to be so ill-treated, neglected, abandoned or exposed.

Penalty: Two hundred pounds or imprisonment for twelve months or both such fine and imprisonment.

If any person who contravenes any provision of this subsection has benefited or would, but for any provision or rule of law preventing his so doing, benefit or, to his knowledge, stands to benefit, directly or indirectly, by reason of any property or any interest therein accruing to him or to any other person upon the death of the child in question he shall be liable to a fine of five hundred pounds or to imprisonment for two years or to both such fine and imprisonment.

(2) A person convicted of an offence against the preceding subsection may, instead of, or in addition to, any punishment to which he is liable, be ordered to enter into his recognizance, with such surety or sureties or without any surety as the court may determine, in such amount as the court thinks fit conditioned that he shall keep the peace and be of good behaviour for a period not exceeding one year and that he shall observe such further terms and conditions as are specified by the court or prescribed by the Governor in Council (who is hereby thereunto empowered) and to be imprisoned until such recognizance is or, as the case may require, recognizances are entered into but so that such imprisonment shall not be for a period longer than three months.

If during the period of his recognizance such person is again convicted of a contravention of any provision of the preceding subsection or of an offence of the same or a similar nature or contravenes or fails to obey any condition of his recognizance or any further term or condition which he is required to obey by order of a court or prescription of the Governor in Council he is liable to have his recognizance forfeited and, in addition, he commits an offence against this Act.

(3) A person having the charge of a child shall be deemed to have neglected him in a manner likely to cause him unnecessary suffering or to injure his health physical or mental, as the circumstances may indicate, if—

(a) being able to so provide from his own resources, he fails to provide adequate food, clothing, medical treatment, lodging or care for such child; or

(b) being unable to so provide from his own resources, he fails to take all lawful steps within his knowledge to procure the provision of adequate food, clothing, medical treatment, lodging and care for such child.

(4) A person may be convicted of an offence against this section notwithstanding—

(a) that suffering or injury to the health of the child in question or the likelihood of suffering or injury to the health of the child in question was avoided by the action of another person; or

(b) that the child in question has died.

(5) No provision of this section shall be construed to prejudice the rights of a parent, guardian, teacher or other person having lawful charge of a child to administer reasonable punishment to such child.

(6) A person charged with any offence against this section may be convicted of any other offence against this section which is established by the evidence.

(7) When a person appears before a court charged with an offence against subsection (1) of this section the court may, in the absence of proof of age, decide upon its own view, without further inquiry or after such inquiry as it considers warranted in the circumstances, whether a person concerned in the charge is a child and if such court decides that such person is a child it shall be so deemed until the contrary is proved.

70. Power to arrest offenders. Any police officer may arrest without warrant, any person who—

(a) within the sight of such police officer commits an offence against section sixty-nine of this Act when the name and address of such person are unknown to such police officer and he cannot forthwith ascertain the same;

(b) has committed or whom such police officer believes on reasonable grounds to have committed an offence against section sixty-nine of this Act if—

(i) he believes on reasonable grounds that such person will abscond; or

(ii) he does not know the name and address of such person and cannot forthwith ascertain the same.

71. Power to take child into custody. Any officer of the Department or any police officer may report the facts constituting an offence against section sixty-nine of this Act to a justice who may issue his written authority to take the child concerned in such offence into custody and to convey him to and to keep him in a place of safety until he can be lawfully dealt with pursuant to this Act.

Any officer of the Department or any police officer may carry out the authority of a justice issued under this section.

72. Power to search. When any person makes it appear to a Stipendiary Magistrate or Magistrate of Children's Courts by information on oath that there is reasonable cause to suspect that an offence against section sixty-nine of this Act has been committed or is being committed and that such person is *bona fide* acting in the interests of the child concerned in such offence such magistrate may issue his warrant authorizing all officers of the Department and all police officers to search for such child and for that purpose to enter any premises and to take into custody any person whom they believe on reasonable grounds to be a child in respect of whom such an offence has been or is being committed and to convey him to a place of safety and to there keep him until he can be lawfully dealt with pursuant to this Act.

For the purpose of executing such a warrant the person executing the same—

- (a) may be accompanied by a legally qualified medical practitioner;
- (b) if he is other than the person on whose information the warrant is founded, shall be accompanied by that person unless the magistrate who issues the warrant otherwise directs;
- (c) may enter (using such force as is reasonable), together with any person lawfully accompanying him, any premises or place wherein the person executing the warrant reasonably suspects such child to be.

Division II- -Registration to Take Charge of Children

73. Application of certain provisions of this Division. The provisions of sections seventy-four, seventy-five and seventy-seven of this Act shall not apply in respect of the having in charge of any child—

- (a) by any person over the age of seventeen years who has charge of such child—
 - (i) with the authority of a parent, relative or guardian of such child; and
 - (ii) in the premises which prior to the commencement of such charge has been the place of residence of such child; and
 - (iii) during the temporary absence from such premises of such parent, relative or guardian;
- (b) by any person over the age of seventeen years who has charge of such child—
 - (i) with the authority of a parent, relative or guardian of such child; and
 - (ii) while such child is *bona fide* paying a visit to or residing with such person either during the temporary absence from such child's place of residence of such parent, relative or guardian or for the purpose of—
 - (a) such child's having a holiday;
 - (b) securing education for such child;
 - (c) obtaining medical treatment for such child from or under a legally qualified medical practitioner;
 - (d) any other like or prescribed object.

No provision of this section shall be construed to extend to a temporary absence, visit or residence the purpose of which is to enable a person having charge of a child to have charge of such child permanently.

74. Registration of persons having charge of children. (1) Any person other than the Director, a person acting on his behalf, a father, mother, relative, or guardian of the child concerned and other than a person who, were he charged with an offence under section seventy-seven of this Act, would, by that section, be provided with a defence to such charge who proposes to take into his charge a child under the age of ten years for a period exceeding forty-eight hours shall apply to the Director in or to the effect of the prescribed form to be registered for such purpose.

Upon receipt of such an application the Director shall cause the applicant to be investigated with a view to ascertaining his suitability for such purpose.

(2) If the Director determines that such an applicant is suitable for such purpose he may register the applicant accordingly and, if he does so, shall give to the applicant a certificate in or to the effect of the prescribed form.

(3) A registration effected pursuant to this section shall be sufficient registration, for so long as it subsists, for the purpose of the person so registered taking into his charge any further child or children under the age of ten years.

75. Registration of premises for the care of children under ten years. (1) Any person other than the Director, a person acting on his behalf, a father, mother, relative or guardian of the child concerned, who desires to use any premises other than premises referred to in paragraph (a) of subsection (2) of section seventy-seven of this Act for the purpose of having in his charge a child under the age of ten years for a period exceeding forty-eight hours, shall apply to the Director in or to the effect of the prescribed form for registration of such premises for such use.

(2) Upon receiving such an application the Director shall cause the premises concerned to be inspected by an officer of the Department who, for this purpose, may be accompanied by a legally qualified medical practitioner.

(3) If the Director grants such an application he—

- (a) shall specify as a condition of such registration, the maximum number of children who may at any time be cared for in the premises concerned;
- (b) may, from time to time, impose such other conditions upon such registration as he thinks fit;
- (c) may, from time to time, vary, revoke or re-impose any such condition;
- (d) shall issue to the applicant a certificate of registration which shall identify the premises concerned; and
- (e) shall, from time to time, provide the applicant with a list of the conditions for the time being applicable in respect of such registration.

(4) A registration effected pursuant to this section shall be sufficient registration, for so long as it subsists, for the purpose of the premises so registered being used, subject to and in accordance with conditions imposed by the Director, for having in charge any further child or children under the age of ten years.

76. Cancellation of registration. (1) The Director may at any time by notice in writing call upon a person—

(a) who is registered pursuant to section seventy-four of this Act;
or

(b) in respect of whose premises a certificate of registration has been issued pursuant to section seventy-five of this Act,

to show cause why such registration should not be cancelled and if within fourteen days after the giving of such notice such person does not show such cause to the satisfaction of the Director, the Director may cancel the registration concerned.

(2) Upon such cancellation the Director shall in writing notify the person concerned thereof and such person shall within seven days after receipt of such notice surrender to the Director the certificate issued by the Director in respect of the registration so cancelled.

77. Offence to have charge of child in contravention of this Part. (1) A person who, in any premises, has in his charge a child under the age of ten years for a period in excess of forty-eight hours commits an offence against this Act unless—

(a) such person is the Director or a person acting on his behalf, a father, mother, relative or guardian of the child concerned;
or

(b)—

(i) such person is registered under this Part; and

(ii) such premises are registered under this Part.

In any proceeding in respect of an offence against this section the court may form its own view of the age of any child concerned and, if it is of opinion that such child is under the age of ten years, may convict the defendant notwithstanding that the age of such child has not been proved.

(2) A person shall not be convicted of an offence under the preceding subsection if it is shown—

(a) in relation to a charge which alleges that the premises concerned were not registered under this Division, that such premises were, at the relevant time—

(i) a hospital within the meaning of "*The Hospitals Acts, 1936 to 1964*";

(ii) an institution within the meaning of "*The Charitable Institutions Management Act of 1885*";

(iii) a private hospital within the meaning of "*The Health Acts, 1937 to 1964*";

(iv) an institution licensed under Part IV of this Act;

(v) an institution wholly maintained by the State;

(vi) a school, institution or establishment conducted solely for educational purposes;

(vii) premises wherein, in addition to the child concerned, there was also present, at the relevant time, a father, mother, relative or guardian of such child and such father, mother, relative or guardian was not absent from such premises for a period in excess of forty-eight consecutive hours during such child's stay in such premises; or

(viii) premises exempted by or under this Act from the provisions of section seventy-five of this Act;

- (b) in relation to a charge which alleges that the defendant was not registered under this Division, that such defendant was, at the relevant time,—
- (i) a person in charge of any of the premises referred to in provisions (i) to (vii) (both inclusive) of paragraph (a) of this subsection and that the child concerned was, at the relevant time, in his charge in one of such premises; or
 - (ii) a person exempted by or under this Act from the provisions of section seventy-four of this Act.

(3) Exemption by Director. In any case where the Director is satisfied that the provisions of sections seventy-five or seventy-four of this Act need not apply he may, by writing under his hand, exempt the premises concerned or the person in charge thereof or both from those provisions either generally or for such period as he therein specifies and may, by notice in writing to the person in charge of premises so exempted or, as the case may be, to the person so exempted, revoke such an exemption.

A person shall not be convicted of an offence under subsection (1) of this section if it is shown that such an exemption subsisted at the time in question in respect of the premises or, as the case may be, person concerned.

78. Director's powers relating to children in unregistered premises. Where the Director is satisfied that any child is in the charge of any person contrary to the provisions of this Division then whether or not such person is prosecuted for an offence thereby committed the Director may—

- (a) transfer such child to the custody of a father, mother, relative or guardian of such child; or
- (b) transfer such child to the care of a person registered under this Act upon a parent, relative or guardian of such child entering into an agreement with such registered person for the care and maintenance of such child; or
- (c) admit such child into his care and protection,

and, for the purposes of this section, take the child concerned into his custody or cause the child to be taken into the custody of some person on his behalf.

79. Duties of persons in charge of premises required to be registered. A person in charge of premises required to be registered under this Division shall—

- (a) keep upon such premises a register in the prescribed form and shall enter or cause to be entered therein all such particulars as are prescribed;
- (b) comply with every condition for the time being applicable in respect of the registration of such premises;
- (c) produce for the inspection of the Director or of any officer of the Department the register required by this section to be kept;
- (d) within seven days after the reception into such premises of a child under the age of ten years, notify the Director in or to the effect of the prescribed form of all such particulars as are prescribed;
- (e) provide every child cared for in such premises with adequate food, clothing, medical treatment, lodging and care;

- (f) at all times keep every part of such premises in a fit and proper state for the care of children;
- (g) secure for every child being cared for in such premises adequate education and religious training of a type and form approved by the Director;
- (h) do, observe and carry out all acts, requirements and directions prescribed by this Act or specified by any order of the Director in relation to such premises or the care of any child therein;
- (i) upon the removal of a child from such premises, forthwith notify the Director of such removal;
- (j) upon the death of a child being cared for in such premises, forthwith notify the Director and the police officer in charge of the police station nearest to such premises of such death;
- (k) forthwith notify the Director of every change in the abode of such person.

Where there are two or more persons in charge of any such premises and the duty in question may be adequately performed by one of such persons it shall be deemed sufficient compliance with this section if one of such persons performs or causes to be performed that duty.

80. Responsibility of person in charge of premises required to be registered. A person in charge of premises required to be registered under this Division shall be responsible not only for his own acts or defaults in relation to a child in his charge or in relation to such premises but also for any act or default in relation to such child or premises of any person employed by him in or in connection with such premises.

It is immaterial for the purposes of establishing the liability of such a person in charge that, in respect of any such act or default, he—

- (a) did not know of such act or default; or
- (b) had instructed the person who has done such act or made such default not to do such act or not to make such default.

81. Power to inspect and to issue orders relating to premises required to be registered. (1) The Director or any officer of the Department authorized in writing by him may at all reasonable hours enter and inspect every part of—

- (a) premises required to be registered under this Division; or
- (b) premises which the Director reasonably suspects to be premises required to be registered under this Division.

(2) The person who makes such an inspection may issue an order in writing to the person in charge of such premises specifying such matters as, in the opinion of such first-mentioned person, are necessary to comply with the provisions of this Division or to comply with the conditions for the time being applicable in respect of the registration of such premises.

- (3) The person who makes such inspection may be accompanied by—
 - (a) a police officer; and
 - (b) a legally qualified medical practitioner.

(4) Any person who—

- (a) wilfully obstructs any person making an inspection pursuant to this section or a person lawfully accompanying him; or
- (b) fails to comply with an order issued pursuant to this section either forthwith or, if a time is specified in such order, within the time specified,

commits an offence against this Act.

82. (1) Restriction on placing child with a view to adoption. A person who, for the time being, has a child in his charge whether by virtue of his being a parent, relative or guardian of such child or otherwise, shall not place such child in the charge of any other person with a view to the adoption of such child by such other person unless—

- (a) the Director has first approved thereof; or
- (b) such other person is a father, mother or relative of such child.

(2) Restriction on receiving child with a view to adoption. A person shall not receive into his charge a child with a view to his adoption of such child unless—

- (a) the Director has first approved thereof; or
- (b) such person is a father, mother or relative of such child.

83. Restriction on the removal of new-born children from premises. A person in charge of premises in which a woman has given birth to a child shall not permit such child to be taken from such premises, unless such child is in the charge of its mother, without first obtaining the consent in writing of the Director.

84. Restriction on payment for child in the charge of another. (1) A person shall not receive into his charge or agree to receive into his charge a child under the age of ten years in consideration of the payment of valuable consideration (in money or in kind) otherwise than by way of periodical instalments unless he has first obtained the written approval of the Director.

(2) A person shall not make or agree to make nor receive or agree to receive a payment of such valuable consideration which—

- (a) is for a longer period than four weeks; or
- (b) exceeds the amount prescribed.

(3) The provisions of subsections (1) and (2) of this section do not apply—

- (a) to the Director or a person acting on his behalf, father, mother or guardian of the child concerned; or
- (b) to a relative of the child concerned who has charge of the child in such circumstances that the Director is satisfied that such provisions need not apply and has certified in writing accordingly (the Director being hereby thereunto empowered); or
- (c) where, in addition to the child concerned, there is also present a father, mother, relative or guardian of such child and such father, mother, relative or guardian is not absent for a period in excess of forty-eight consecutive hours.

(4) The evidence of any officer of the Department that the Director has not certified in the manner referred to in paragraph (b) of the last preceding subsection shall be accepted in any proceeding as *prima facie* evidence of that fact.

85. Children born out of wedlock. (1) This section applies in respect of every child who, in a case referred to in subsection (2) of this section, is not legitimate at the date of his birth or who, in a case referred to in subsection (3) of this section, is not, at the date of his death, legitimate or taken to have been born in lawful wedlock.

(2) The occupier of premises in which a child in respect of whom this section applies is born shall within three days after the birth of such child give notice in writing thereof to the district registrar or assistant district registrar of the registry district in which such birth occurs.

(3) The occupier of premises in which any child under the age of six years in respect of whom this section applies dies or to which the body of any such child who has died under that age is brought shall within twenty-four hours of the death of such child or the reception of his body, as the case may be, give notice in writing of such death to the district registrar or assistant district registrar of the registry district in which such death or reception as the case may be, occurred.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section—

(a) if the premises in question are not situated within the boundaries of a city or town, the occupier thereof—

(i) may give the notice required of him by this section to the police officer in charge of the nearest police station; and

(ii) may give the notice required of him by this section within one week after the birth, death or, as the case may be, reception of a body, has occurred;

(b) if the occupier of the premises in question is the mother of the child notice of whose birth is required by this section to be given, such occupier may give the notice required of her by this section within three weeks after such birth has occurred.

(5) In any proceeding in respect of an offence against any of the preceding subsections of this section it shall be a defence that the defendant had no reason to believe and did not believe the child a notice of whose birth, death, or, as the case may be, the reception of whose body is required by this section to be given is or was a child to whom this section applies.

(6) (a) A district registrar, assistant district registrar or police officer in charge of a police station who receives a notice required by this section to be given shall forthwith notify the Director of the receipt of such notice and of the particulars shown therein.

(b) In the case of the birth of a child to whom this section applies the Director, upon learning of such birth, shall take all steps to ensure that the well-being of such child and of its mother are adequately provided for.

(7) Every person (other than a district registrar within the meaning of "*The Registration of Births, Deaths and Marriages Act of 1962*") who knows of the birth, death or, as the case may be, reception in or into any premises of the body of a child in relation to whom or which notice is required by this section to be given shall forthwith inform the occupier of such premises that the child concerned is or was a child to whom this section applies unless he believes on reasonable grounds that such occupier already is aware of that fact and of the fact of such birth, death or reception.

(8) No provision of this section shall be construed to prejudice or affect—

(a) the provisions of "*The Registration of Births, Deaths, and Marriages Act of 1962*";

(b) the provisions of Division II of Part III of "*The Health Acts, 1937 to 1964*"; or

- (c) the provisions of this Act which impose upon any person the duty to give notice to the Director in relation to any child in his charge.

86. Day care centres. The person in charge of a day care centre shall comply with the provisions of regulations made pursuant to this Act in relation to such a centre.

The Local Authority having jurisdiction in the area in which such a centre is situated shall administer and enforce such regulations.

PART IX—GUARDIANSHIP AND CUSTODY OF INFANTS

87. Meaning of terms. In this Part, unless the context otherwise indicates or requires and without prejudice to any provision of section eight of this Act, the following terms have the meanings respectively assigned to them in this section:—

- “ Court ”—The Supreme Court of Queensland and a Judge thereof and a Children's Court constituted by a Magistrate of Children's Courts or a Stipendiary Magistrate;
- “ Father ”—Does not include the natural father of an illegitimate child;
- “ Parent ”—Includes a person who is in law liable to maintain the infant concerned and a person who is entitled to custody of such infant.

88. Principle on which questions relating to custody, &c., of infants are to be decided. (1) Where in any proceeding before the court or any other court of competent jurisdiction the custody or upbringing of an infant, or the administration of any property belonging to or held on trust for an infant, or the application of the income thereof is in question the court in deciding that question shall regard the welfare of the infant as the first and paramount consideration, and shall not take into consideration whether from any point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

(2) The mother of an infant has the like powers to apply to the court in respect of any matter affecting the infant as are possessed by the father.

89. Rights of surviving parent as to guardianship. (1) On the death of the father of an infant the mother, if she is surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the father.

(2) When no guardian has been appointed by the father (who is deceased) of an infant, or if the guardian or all the guardians appointed by such a father is or are dead or refuses or refuse to act, the court may, if it thinks fit, appoint a guardian to act jointly with the mother of the infant.

(3) On the death of the mother of an infant the father, if he is surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the mother.

(4) When no guardian has been appointed by the mother (who is deceased) of an infant, or if the guardian or all the guardians appointed by such a mother is or are dead or refuses or refuse to act, the court may, if it thinks fit, appoint a guardian to act jointly with the father of the infant.

(5) If, pursuant to this section, a guardian has been appointed by the court to act jointly with a mother or, as the case may be, father of an infant as guardian of such infant such appointed guardian shall, until the court otherwise orders, continue to act as guardian after the death of such surviving mother or, as the case may be, father but if such surviving mother or, as the case may be, father has appointed a guardian or guardians of such infant the guardian appointed by the court shall act jointly with the guardian or guardians appointed by such surviving mother or, as the case may be, father as guardian of such infant.

90. Power of father and mother of an infant to appoint guardians.

(1) The father of an infant may, by deed or (if otherwise competent at law to make a will) by will, appoint any person or persons to be guardian or guardians of the infant after the death of such father.

(2) The mother of an infant may, by deed or (if otherwise competent at law to make a will) by will, appoint (and in the case of the mother of an illegitimate infant shall be deemed always to have had the power to so appoint) any person or persons to be guardian or guardians of the infant after the death of such mother.

(3) Any guardian so appointed shall act jointly with the surviving mother or, as the case may be, father of the infant for so long as such mother or father lives unless such mother or father objects to his so acting.

If such mother or father so objects, or if any guardian so appointed considers that such mother or father is unfit to have the custody of such infant, such guardian may apply to the court to declare as to the guardianship in issue and thereupon the court may—

- (a) refuse to make any order or declaration in which case the mother or, as the case may be, father shall continue as sole guardian of the infant concerned; or
- (b) order that the guardian or guardians so appointed or any of them and, when there are more than one guardian so appointed, whether or not any of them is party to such application, shall act jointly with such mother or, as the case may be, father as guardian of the infant concerned; or
- (c) order that the guardian or guardians so appointed or any of them and, when there are more than one guardian so appointed, whether or not any of them is party to such application, shall be guardian of the infant concerned in lieu of such mother or, as the case may be, father.

When the court makes an order upon an application made pursuant to this section, it may—

- (d) make such order with respect to the custody of the infant and the right of access to such infant by such mother or father or other guardian as, having regard to the welfare of the infant, the court thinks fit;
- (e) order that such mother or, as the case may require, father shall pay to the guardian who, from time to time, has lawful custody of the infant concerned towards the maintenance of such infant such weekly or other periodical sum as, having regard to the means of such mother or father, the court thinks reasonable.

(4) When guardians are appointed by both father and mother of an infant, the guardians so appointed shall, after the death of the surviving such parent act jointly as guardian of such infant.

91. Power of court to appoint guardian. When an infant has no parent, no guardian of the person and no other person having parental rights in relation to him the court, upon the application of any person, may, if it thinks fit, appoint the applicant to be guardian of the infant.

92. Powers of a guardian. (1) Subject to the provisions of any Act rule of law or order of a court of competent jurisdiction, a guardian in Queensland who is acting as such by virtue of this Act or who has been appointed pursuant to this Part may,—

- (a) if he is guardian of the person of the infant concerned,—
 - (i) institute and maintain proceedings against any person wrongfully detaining or taking away the infant from his custody or control and recover damages in respect thereof to the use of the infant;
 - (ii) take into his custody and control the infant and the tuition of the infant;
- (b) if he is guardian of the estate of the infant concerned,—
 - (i) take into his custody and control the profits of all lands, tenements and hereditaments of the infant and the management of the goods, chattels and personal estate of the infant to the use of the infant;
 - (ii) institute and maintain such proceedings in relation to the property of the infant as may be necessary for effectually carrying out any of the powers conferred by the last preceding subparagraph.

(2) Subject to an order of any court of competent jurisdiction a guardian may exercise a power conferred by the preceding subsection from time to time until the infant subject to the guardianship attains the age of twenty-one years and no longer.

93. Court may make orders as to custody and maintenance of infants. (1) Upon application by the mother or the father of an infant (which application may be made without next friend), the court may make such order as it thinks to be in the best interests of the infant concerned regarding the custody of such infant and the right of access to such infant by its father or, as the case may require, its mother.

In determining such an application the court shall have regard to—

- (a) the welfare of the infant;
- (b) the conduct of the mother and the father of the infant;
- (c) the wishes of both the mother and father of the infant.

(2) Where such an order has been made the court may, upon application by the mother or father of the infant concerned, or, if both such mother and father have died, by any guardian appointed in accordance with the provisions of this Act, vary or discharge such order in such manner as it thinks to be in the best interests of the infant concerned.

(3) Upon an application made pursuant to this section the court—

- (a) may make such order regarding the costs of the mother or, as the case may require, the father or guardian and the liability of any person therefor as the court thinks just;
- (b) may make such order regarding the maintenance of the infant concerned and the liability of the mother or, as the case may be, the father of such infant to make weekly or other periodical payments towards such maintenance as the court, having regard to the means of the person who is to be ordered to pay such maintenance, thinks reasonable.

(4) The court may exercise all or any of the powers conferred by this section notwithstanding that the mother of the infant concerned is, at the time, residing with the father of such infant:

Provided that an order made by the court pursuant to this section shall not be enforceable and no liability under such an order shall accrue while such mother resides with such father and if such residence continues for a period of three months after such order is made such order shall cease to have any force and effect.

94. When maintenance order may be enforced by a clerk of the Magistrates Court. (1) The court may by maintenance order made pursuant to this Part or by a subsequent order made upon the application of the person having custody of the infant in respect of whose maintenance such order has been made direct that such maintenance (including, in the case of a subsequent order, all arrears of maintenance accrued under the maintenance order and unpaid at the date of the making of such subsequent order, the amount of which arrears may be determined by the court) shall be paid to the clerk of the court at a place appointed for holding Magistrates Courts specified by the court:

Provided that, in the case of a subsequent order, the court shall not direct in manner provided for in this subsection unless it is satisfied, having regard to the proviso to subsection (4) of the last preceding section, that the maintenance order is enforceable.

(2) Upon the filing in the registry of the Supreme Court of Queensland or upon the making by a Children's Court of an order containing the direction provided for in the preceding subsection the registrar or, as the case may require, clerk of the court shall forward an office copy thereof (and, in the case of an order subsequent to a maintenance order, an office copy of such maintenance order, and any order varying the same) to the clerk of the court at the place appointed for holding Magistrates Courts specified in the direction aforesaid.