

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 9 March, 1977.*

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. , 1977.

An Act to amend the Child Welfare Act, 1939, to make further provision in relation to neglected children and children who have been assaulted, ill-treated or exposed, and in certain other respects; and to validate certain matters.

BE

Child Welfare (Amendment).

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

1. This Act may be cited as the "Child Welfare Short title. (Amendment) Act, 1977".

2. (1) Except as provided in subsections (2)–(6), this Act shall commence on the date of assent to this Act. ^{Commence-}
_{ment.}

10 (2) Section 6 shall, in its application to a provision of Schedules 1–5, commence on the day on which that provision commences.

(3) Schedules 2 and 3 and the several provisions of Schedules 4 and 5 shall commence on such day or days as ¹⁵ may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Sections 10 and 11 shall commence on the day on which Schedule 2 commences.

(5) Section 12 (1) shall commence on the day on ²⁰ which Schedule 5 (1) commences.

(6) Section 12 (2) shall commence on the day on which Schedule 5 (2) commences.

3. The Child Welfare Act, 1939, is in this Act referred to ^{Principal}
as the Principal Act. _{Act.}

Child Welfare (Amendment).

4. In this Act, "appointed day" means the day on which Interpretation.
Schedule 2 commences.

5. This Act contains the following Schedules :— Schedules.

5 SCHEDULE 1.—AMENDMENT TO PART I OF THE
CHILD WELFARE ACT, 1939.

SCHEDULE 2.—AMENDMENTS TO PART IX OF THE
CHILD WELFARE ACT, 1939.

SCHEDULE 3.—AMENDMENTS TO PART X OF THE
CHILD WELFARE ACT, 1939.

10 SCHEDULE 4.—AMENDMENTS TO PART XIV OF THE
CHILD WELFARE ACT, 1939.

SCHEDULE 5.—AMENDMENTS TO PART XVII OF THE
CHILD WELFARE ACT, 1939.

6. The Principal Act is amended in the manner set forth Amendment
of Act No.
17, 1939.
15 in Schedules 1-5.

7. (1) Section 3 of the Child Welfare (Amendment) Commence-
ment of
certain
enactments.
Act, 1967, shall be deemed to have commenced on 1st
January, 1974.

(2) For the purpose of removal of doubt it is declared
20 that—

(a) the provisions of section 10 of the Youth and
Community Services Act, 1973, in so far as they
effect the amendment specified in Part 2 of the
Schedule to that Act, and of Part 2 of that Schedule,
25 commenced; and

(b) the provisions of Part 1 of that Schedule amending
the Child Welfare (Amendment) Act, 1967, took
effect,

on 1st February, 1974.

Child Welfare (Amendment).

8. (1) In this section, "relevant period" means the interval of time commencing with 1st January, 1974, and continuing until the expiration of the period of 3 months commencing with the appointed day. Validation of certain appointments, etc.

5 (2) Any act, matter or thing that has been, or is, done or omitted to be done during the relevant period by—

(a) the Governor;

(b) the Minister for the time being administering the Principal Act; or

10 (c) an officer or employee of the Crown,

that—

(d) would have been, or would be, lawfully done or omitted to be done—

15 (i) if section 3 of the Child Welfare (Amendment) Act, 1967, had commenced on 1st January, 1974; or

20 (ii) in relation to a person, if that section had commenced on 1st January, 1974, and an order that could have been made in respect of the person under section 46 or 47 of the Principal Act had been or were in force in respect of the person at the time when the act, matter or thing was, or is, done or omitted to be done; and

25 (e) would not have been, or would not be, lawfully done or omitted to be done if this section had not been enacted,

is validated or authorised, as the case may require.

Child Welfare (Amendment).

9. Any act, matter or thing that has been, or is, done or omitted to be done before the appointed day by persons appointed under section 44 of the Principal Act, that — Validation of orders, etc., of former Tribunal.

5 (a) could have been, or could be, lawfully done or omitted to be done by persons appointed under section 43A of the Principal Act, as amended by section 6 and Schedule 2, if the Principal Act, as so amended, had been or were in force at the time when the act, matter or thing was done or omitted to be done; and

10 (b) could not have been, or could not be, lawfully done or omitted to be done if this section had not been enacted,

is validated or authorised, as the case may require, and shall 15 be deemed to have had and to have, or to have, the same consequences as if it had been or were lawfully done or omitted to be done.

10. (1) A person who, immediately before the appointed day, held office as a member of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (2) of that Act, as amended by this Act, as a member of the Intellectually Handicapped Persons Review Panel for a term of 3 years commencing with the appointed 25 day. Certain persons deemed appointed.

(2) A person who, immediately before the appointed day, held office as Chairman or Deputy Chairman of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed 30 to have been appointed under section 43A (4) of that Act, as amended by this Act—

(a) in the case of the person who held office as Chairman—as President of the Intellectually Handicapped Persons Review Tribunals; and

(b)

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(b) in the case of the person who held office as Deputy Chairman—as Deputy President of the Intellectually Handicapped Persons Review Tribunals.

11. (1) In this section, “Part IX” means Part IX of the **6** Principal Act, as amended by this Act. **Minister may make certain interim orders.**

(2) Where at any time during the period of 3 months commencing with the appointed day, the Minister is satisfied that—

10 (a) a person who, at any time occurring after 31st December, 1973, but before the appointed day, has been—

(i) admitted to State control;

15 (ii) committed to the care of the Minister to be dealt with as a ward admitted to State control; or

(iii) committed to an institution within the meaning of the Principal Act, as amended by this Act,

20 is intellectually handicapped to such a degree that he requires, otherwise than for continuous medical treatment or attention in a hospital, care, protection or supervision in his own interests or in the interests of others; and

25 (b) the interests of the person would be promoted if he were dealt with as an intellectually handicapped person under the provisions of Part IX,

the Minister may make an order that the person be dealt with under the provisions of Part IX as an intellectually handicapped person and such an order shall, subject to **30** subsection (4), be deemed to have been duly made under section 46 of the Principal Act.

(3)

Child Welfare (Amendment).

(3) Before he makes an order in respect of a person under subsection (2), the Minister shall—

- 5 (a) if he knows the name and address of either parent of the person—serve notice on the parent, either personally or by post, of his intention to make the order; and
- 10 (b) if he has served a notice under paragraph (a)—consider any representations made to him by any person in respect of the firstmentioned person within 10 days of the date of service of the notice.

(4) Where an order is made under this section, Part IX has effect in relation to the order as if that Part had been amended—

- 15 (a) by omitting from section 48A (1) (b) the words “two years,” and by inserting instead the words “two years; or”;
- (b) by inserting after section 48A (1) (b) the following paragraph :—
- 20 (c) notwithstanding paragraphs (a) and (b), remain in force, if the order has been made under section 11 (2) of the Child Welfare (Amendment) Act, 1977, for a period of 3 months,
- 25 (c) by inserting in section 48A (1) after the words “two years” where secondly occurring, the words “or 3 months”;
- (d) by inserting after section 48A (5) the following subsection :—
- 30 (5A) A Tribunal may not make an interim determination under subsection (5) renewing an order made under section 11 (2) of the Child Welfare (Amendment) Act, 1977.

Child Welfare (Amendment).

12. (1) Notwithstanding section 126 of the Principal Savings Act, as amended by this Act, where a child—

(a) committed an offence before the day on which this subsection commences; and

5 (b) had, at the time he committed the offence, attained the age of eight years,

he may be found guilty of the offence.

(2) Notwithstanding section 132 (1) of the Principal Act, as amended by this Act, a person who, on or after the **10** day on which this subsection commences, is found guilty of an offence committed against the Principal Act before that day shall not be liable to any greater penalty than that to which he would have been liable if he had been found guilty of the offence immediately after he had committed it.

15

SCHEDULE 1.

Sec. 6.

AMENDMENT TO PART I OF THE CHILD WELFARE ACT, 1939.

Section 4 (3)—

After section 4 (2), insert :—

20 (3) A reference in this Act to a “constable” or a “constable of police” includes, and shall be deemed to have always included, a reference to any member of the police force.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2.

Sec. 6.

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939.

(1) (a) Section 43 (1), definition of "Deputy President"—

5 After the definition of "Court", insert :—

"Deputy President" means the Deputy
President of the Tribunals.

(b) Section 43 (1), definition of "Member"—

10 After the definition of "Intellectually handicapped
person", insert :—

"Member" means a member of the Review
Panel.

(c) Section 43 (1), definitions of "President" and
"Review Panel"—

15 After the definition of "Organisation", insert :—

"President" means the President of the
Tribunals.

20 "Review Panel" means the Intellectually
Handicapped Persons Review Panel
referred to in section 43A (1).

(d) Section 43 (1), definition of "Tribunal"—

Omit the definition, insert instead :—

25 "Tribunal" means an Intellectually Handi-
capped Persons Review Tribunal
established under section 44 (2).

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Sections 43A–43D—

5 After section 43, insert :—

43A. (1) There shall be an Intellectually Handi- **Review**
capped Persons Review Panel. **Panel.**

10 (2) Subject to this section, the Governor
may appoint persons as members of the Review
Panel.

(3) The members shall be appointed from
one or more of the following classes of persons :—

- 15 (a) medical practitioners;
- (b) barristers and solicitors;
- 20 (c) persons having knowledge of and experience
in administration;
- (d) persons having knowledge of and experience
in education;
- (e) persons having knowledge of and experience
in psychology;
- 25 (f) persons having knowledge of and experience
in social work;
- (g) persons in the opinion of the Governor
having other suitable qualifications or
experience.

(4) Of the members—

- (a) one shall be appointed as President of the
Tribunals; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (b) one shall be appointed as Deputy President
of the Tribunals,

in the instrument or instruments appointing them as
members or by a subsequent instrument or instruments
executed by the Governor.

(5) A person—

10 (a) who is a temporary patient, a continued
treatment patient, a protected person or
an incapable person within the meaning of
the Mental Health Act, 1958, or a person
under detention under Part VII of that Act;
15 or

(b) who is bankrupt, is applying to take the
benefit of any law for the relief of bankrupt
or insolvent debtors, whose debts are sub-
ject to a composition with his creditors, or
20 whose fees or allowances would, upon his
appointment, be subject to an assignment
for their benefit,

is not eligible to be appointed as a member.

25 (6) The Public Service Act, 1902, does not
apply to or in respect of the appointment of a member
and a member is not, in his capacity as a member,
subject to that Act while he holds office as a member.

30 43B. (1) Subject to subsection (4), a member shall hold office for the period of 3 years commencing with the day from which he is declared to be appointed in the instrument appointing him or such shorter period as may be specified in that instrument and may, if he is otherwise eligible, be re-appointed as a member. ^{Term and vacation of office, etc.}

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) A member shall be paid such fees and allowances as may from time to time be determined in respect of him by the Governor.

(3) The Governor may, for any cause that to him seems sufficient, remove a member from office.

10 (4) A member shall be deemed to have vacated his office if he—

(a) dies;

(b) resigns his office by writing under his hand addressed to the Governor;

15 (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his fees or allowances, or estate, for their benefit;

20 (d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

25 or

(e) is removed from office by the Governor.

30 43c. (1) A President or Deputy President holds his office until he ceases to be a member and is eligible, if he is re-appointed as a member, to be appointed or re-appointed, as the case may be, as President or Deputy President.

President
and Deputy
President.

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) A Deputy President may exercise or perform the powers or duties of a President under this Part—

(a) if the President—

10 (i) delegates his powers and duties to the Deputy President (which the President is hereby authorised to do);

(ii) is absent from the State; or

15 (iii) is prevented by illness or other incapacity from exercising or performing his powers or duties under this Part; or

(b) if there is no person holding the office of President.

20 (3) No person shall be concerned to inquire whether or not any occasion has arisen authorising a Deputy President to exercise or perform the powers or duties of a President and all acts or things done or omitted to be done by a Deputy President when exercising or performing those powers or duties shall be as valid and shall have the same consequences as if they had been done or omitted to be done by a President.

30 43D. (1) A delegation under section 43C (2) (a) (i) shall be by instrument in writing and may be made subject to such conditions or such limitations as to the exercise or performance of the power or duty delegated, or as to time or circumstances, as may be specified in the instrument of delegation.

Form and effect of delegation.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) A power or duty, the exercise or performance of which has been delegated under section 43C (2) (a) (i) may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

(3) Sections 44–44J—

10 Omit section 44, insert instead :—

44. (1) The President may establish an Intellectually Handicapped Persons Review Tribunal— Establishment of Tribunals.

(a) generally for the purposes of section 48A, 48B or 48G; or

15 (b) for the purposes of—

(i) any class of cases; or

(ii) any particular case,

that may arise or arises under any one or more of those sections.

20 (2) The President establishes a Tribunal by—

(a) appointing members to the Tribunal so that the Tribunal is constituted in accordance with this section;

25 (b) where the President and the Deputy President are not among the members so appointed—nominating one of those members as chairman of the Tribunal; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (c) notifying the members so appointed, or causing those members to be notified, of their appointment and the purpose for which the Tribunal has been established.

(3) A Tribunal shall consist of not less than 3 nor more than 5 members.

10 44A. (1) The procedure for the conduct of business of a Tribunal shall, subject to this Part and any rules made under subsection (5), be as determined by the Tribunal. Procedure of Tribunals.

(2) At a meeting of a Tribunal—

15 (a) if he has been appointed to the Tribunal—the President;

(b) if the President has not been appointed to the Tribunal but the Deputy President has been so appointed—the Deputy President;
20 or

(c) if a chairman for the Tribunal has been nominated under section 44 (2) (b)—that member,

shall preside as chairman of the Tribunal.

25 (3) Subject to section 48A, a Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

30 (4) The chairman of a Tribunal shall, in the event of an equality of votes at a meeting of the Tribunal, have a second or casting vote.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT, 1939—*continued.*

5 (5) Five members, who shall include the President or Deputy President, or both, may make rules not inconsistent with this Part for or with respect to the convening of and procedure at meetings of a Tribunal.

10 44B. A Tribunal is not bound by the rules or Evidence. practice as to evidence and may inform itself of any matter in such manner as it thinks fit.

44C. (1) The chairman of a Tribunal may—

Powers of a chairman of a Tribunal.

15 (a) by instrument in writing under his hand, require any person on whom the instrument is served personally or by post—

(i) to appear before the Tribunal for the purpose of giving evidence; or

20 (ii) to produce to the Tribunal any document (including a document in the possession of, or belonging to, the Crown) that is relevant to the purpose for which the Tribunal was established,

25 at a time, date and place specified in the instrument;

(b) require a person who appears before the Tribunal to be sworn for the purpose of his giving evidence on oath; and

30 (c) administer an oath referred to in paragraph (b).

*Child Welfare (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) Where a document is produced to a Tribunal in response to a requirement made under subsection (1), the Tribunal may take possession of the document for such period as it considers necessary for the purposes of the Tribunal.

10 44D. (1) Any member of a Tribunal may require a person (including an officer or employee of the Crown) who appears before the Tribunal to answer a question that is reasonably related to the purpose for which the Tribunal was established. Questions of a member of a Tribunal.

15 (2) A person is not excused from answering a question put to him by a member of a Tribunal on the ground that the answer might tend to incriminate him but, where the person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is
20 admissible in evidence against him in criminal proceedings other than proceedings under section 44E (c) or in relation to a charge of perjury in respect of the answer.

25 44E. A person who— Offences.
(a) refuses, fails or neglects to comply with a requirement made of him by—

(i) the chairman of a Tribunal under section 44C (1) (a) or (b); or
30 (ii) any member of a Tribunal under section 44D (1),
to the extent to which he is lawfully able to comply with the requirement;

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (b) in purported compliance with a requirement made of him by the chairman of a Tribunal under section 44c (1) (a) (ii), knowingly furnishes information that is false or misleading in a material particular; or

10 (c) not having been sworn, makes a statement that is false or misleading in a material particular when he is appearing before the Tribunal,

15 shall be guilty of an offence against this Act and liable to a penalty not exceeding \$100.

20 44F. (1) A person, other than an officer, who is **Witnesses.** required to appear or to give evidence during proceedings of a Tribunal is entitled to be paid such allowances and expenses as the Minister may determine in respect of him.

(2) For the purposes of section 18 of the Defamation Act, 1974, the proceedings of a Tribunal shall be deemed to be an inquiry within the meaning of that section.

25 (3) A duly qualified legal practitioner acting for a person required to give evidence during proceedings of a Tribunal may—

(a) be present during those proceedings; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

- 5 (b) to the extent that the chairman of the
Tribunal permits—
- (i) address the Tribunal; and
 - (ii) examine the person for whom he is
acting,
- 10 in relation to matters in respect of which
a member of the Tribunal has questioned
that person.

44G. (1) A decision supported by a majority of ^{Decisions} votes cast at a meeting of a Tribunal shall be the ^{of Tribunals.} decision of the Tribunal.

- 15 (2) When a Tribunal makes a decision in the
exercise or performance of its powers or duties under
section 48A or 48B, each of its members shall record
his reasons for casting his vote on the decision and the
chairman of the Tribunal shall then cause a record of
20 those reasons to be conveyed to the Director.

(3) No decision of a Tribunal shall be
vitiating by reason only of any informality or want of
form.

- 25 44H. (1) The chairman of a Tribunal shall cause ^{Record of} a record of the proceedings of a meeting of the ^{proceedings.}
Tribunal to be—

- (a) made in the prescribed manner; and
- (b) conveyed to the Director as soon as is
practicable after the conclusion of the
30 meeting.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) The Director shall cause records conveyed to him under subsection (1) and section 44G (2) to be preserved for the prescribed period of time after he receives them.

10 44I. The President for the time being may dissolve a Tribunal by giving notice or causing notice to be given of its dissolution personally or by post to the members who have been appointed to the Tribunal—

(a) when the purpose for which the Tribunal was established has been achieved; or

(b) on any other reasonable grounds.

15 44J. No proceedings lie against a Tribunal or a member for or on account of any act, matter or thing done or ordered to be done by the Tribunal or member, and purporting to be done for the purposes of carrying out the provisions of this Part, if the Tribunal or member has acted in good faith and with reasonable care.

(4) (a) Section 48A (2)—

Omit “two months”, insert instead “3 months”.

(b) Section 48A (2)—

25 Omit “Tribunal and request for the reasons stated that the order be renewed”, insert instead “President or, if there is no President for the time being, to the Deputy President and request for the reasons stated that the order be renewed by a Tribunal”.

30

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

- (c) Section 48A (2A)—
5 After section 48A (2), insert :—
(2A) When the President or Deputy President receives reports and a request under subsection (2) he shall refer them to a Tribunal.
- (d) Section 48A (3)—
10 After “Tribunal”, insert “to which the request has been referred”.
- (e) Section 48A (4)—
Omit “the Tribunal” where firstly occurring, insert instead “a Tribunal”.
- 15 (f) Section 48A (5)—
Omit “the order” where firstly occurring, insert instead “an order”.
- (g) Section 48A (5), (6)—
20 Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.
- (5) (a) Section 48B (3)—
Omit “the Tribunal for”, insert instead “the President, or if there is no President for the time being, to the Deputy President and request that”.
- 25 (b) Section 48B (3)—
After “Part”, insert “be made by a Tribunal”.

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(c) Section 48B (3A)—

5 After section 48B (3), insert:—

(3A) When the President or Deputy President receives a request under subsection (3) he shall refer it to a Tribunal.

(d) Section 48B (4)—

10 Omit “made to the Tribunal”, insert instead “referred to a Tribunal”.

(e) Section 48B (5)—

Omit “the Tribunal”, insert instead “a Tribunal”.

(f) Section 48B (6)—

15 Omit “The Tribunal if”, insert instead “If”.

(g) Section 48B (6)—

Omit “the Tribunal may”, insert instead “, the Tribunal to which the application has been referred may”.

20 (6) Section 48G (4)—

Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.

Child Welfare (Amendment).

SCHEDULE 3.

Sec. 6.

AMENDMENTS TO PART X OF THE CHILD WELFARE
ACT, 1939.

(1) Section 54 (1)—

5 Omit the subsection.

(2) Section 54 (2)—

Omit “but has not been so committed for a specified term”.

(3) Section 54 (3)—

10 Omit “subsections one and two of this section”, insert instead “subsection (2)”.

(4) Section 54 (3)—

Omit “section ninety-four of this Act”, insert instead “section 94”.

15 (5) Section 54 (3)—

Omit “subsection four of this section”, insert instead “subsection (4)”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4.

Sec. 6.

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT, 1939.

(1) Sections 81B, 81C—

5 After section 81A, insert :—

81B. (1) In this section, "court" includes a court hearing or determining an appeal from a determination or an order made by— Courts may act on certain matters.

- (a) a magistrate; or
(b) justices,

exercising the jurisdiction of a children's court.

(2) Where a child has been brought before a court as a neglected child and—

- (a) the complaint in respect of which he has been so brought alleges that he has been ill-treated or exposed; or
(b) evidence has been presented to the court that the child has been assaulted,

the court, in hearing and determining the matter, may act upon any statement, document, information or matter that may, in its opinion, assist it to deal with the complaint, whether or not the statement, document, information or matter would be admissible in evidence.

25 81C. Subject to section 81B, where a child or young person is—

- (a) brought before a court as a neglected child or an uncontrollable child or young person; or
(b) is charged with an offence,

Certain statements, etc., inadmissible.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

5 the court, in hearing or determining the matter or
charge, shall not admit in evidence or act upon any
statement, confession, admission or information made
or given by the child or young person at a police
station unless there was present throughout the period
10 of time during which the statement, confession,
admission or information was made or given—

- (c) one of his parents;
- (d) a person aged 18 years or upwards who has
his guardianship; or
- 15 (e) with the consent of one of the persons
referred to in paragraph (c) or (d)—a
person aged 18 years or upwards who is
not—
 - (i) one of those persons; or
 - (ii) a member of the police force.

20 (2) Section 82 (2)—

At the end of section 82, insert :—

- (2) If a court finds that a child is a neglected
child it may release the child—
 - 25 (a) upon such terms and conditions as the court
may think fit and as are willingly undertaken
to be observed by the child's parents, one of
the child's parents or another person
approved by the court; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (b) for such period of time (whether expiring before or after the date upon which the child attains the age of 16 years) as the court may think fit.

(3) (a) Section 83 (4)—

10 Omit “paragraph (e) of section eighty-two”, insert instead “section 82 (1) (e)”.

(b) Section 83 (7)—

Omit “eighty-two of this Act”, insert instead “82 (1)”.

(4) Section 84 (1)—

15 Omit “eighty-two or section eighty-three of this Act”, insert instead “82 (1) or 83”.

(5) Section 89 (3)—

Omit “the Intellectually”, insert instead “an Intellectually”.

20 (6) (a) Section 90 (1)—

Omit “paragraph (c) of section eighty-two or paragraph (b) of subsection one or paragraph (b) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (c) or section 83 (1) (b) or (2) (b)”.

25

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT
1939—*continued.*

(b) Section 90 (2)—

- 5 Omit “paragraph (b) of section eighty-two or paragraph (a) of subsection one or paragraph (a) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (b) or (2) or section 83 (1) (a) or (2) (a)”.

10 (7) Section 91 (1), (1A)—

Omit the subsections, insert instead :—

(1) Where—

- 15 (a) a person who, as a child or young person was, under section 82 (1) or section 83 (1) or (2), released on probation or was committed to the care of a person, breaks or is reasonably suspected of having broken the terms or conditions of his release or committal; or
- 20 (b) a person was, as a child, under section 82 (2), released upon his parents, one of his parents or another person undertaking to observe any terms or conditions that have been broken or are reasonably suspected of
- 25 having been broken,

30 he may (whether or not a warrant has been issued under subsection (1A)) be apprehended by any constable or by any officer authorised by the Minister in that behalf and shall, upon being so apprehended, be taken to a shelter and shall, as soon as practicable thereafter, be brought before a court.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (1A) Any justice, upon oath being made before
him by any constable or by an officer authorised by
the Minister in that behalf that, having made due
inquiry, he believes—

10 (a) that a person who, as a child or young
person, was, under section 82 (1) or section
83 (1) or (2), released on probation or
was committed to the care of a person has
broken the terms or conditions of his release
or committal; or

15 (b) that the terms or conditions upon which a
person was, as a child, released under
section 82 (2), have been broken,

may—

20 (c) issue his summons for the appearance of the
person so released or committed before a
court; or

(d) in the first instance issue his warrant
directing the apprehension of the person so
released or committed.

SCHEDULE 5.

Sec. 6.

25 AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939.

(1) Section 126—

Omit "eight", insert instead "10".

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Section 132 (1)—

5 Omit “two hundred dollars”, insert instead “\$1,000”.

(3) Section 146A—

After section 146, insert :—

146A. (1) When a child or young person is brought into a police station— Notification of parent or guardian by police.

10 (a) at which he is to be questioned about any offence that has been, or may have been, committed; or

15 (b) for the purpose of determining whether he is to be brought before a court as a neglected child or an uncontrollable child or young person within the meaning of Part XIV,

the officer in charge of the police station shall forthwith—

20 (c) notify a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person that the child or young person is at the police station; or

25 (d) cause a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person to be so notified.

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) An officer in charge of a police station
who fails to comply with subsection (1) shall be guilty
of an offence against this Act unless he satisfies the
court—

10 (a) that he used all reasonable diligence in
attempting to comply with that subsection;
or

(b) that he had a reasonable excuse for failing
to comply with that subsection.

(4) Sections 148B, 148C—

After section 148A, insert :—

15 148B. (1) In this section—

“court”, except in subsection (7) (d), means any
court; Notification
of certain
injuries to
children.

“prescribed person” means—

20 (a) a medical practitioner; and

(b) a person who is a member of any
class of persons prescribed for the
purposes of this paragraph, being a
person who follows a profession,
calling or vocation, other than a
25 solicitor or barrister in the course of
his profession, so prescribed, or who
holds any office so prescribed.

(2) Any person who forms the belief upon
reasonable grounds that a child—

30 (a) has been assaulted; or

(b) is a neglected child within the meaning of
Part XIV,

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

may—

5 (c) notify the Director of his belief and the grounds therefor either orally or in writing; or

(d) cause the Director to be so notified.

10 (3) A prescribed person who, in the course of practising his profession, calling or vocation, or in exercising the functions of his office, as the case may be, has reasonable grounds to suspect that a child has been assaulted, ill-treated or exposed shall—

15 (a) notify the Director of the name or a description of the child and those grounds either orally or in writing; or

(b) cause the Director to be so notified, promptly after those grounds arise.

20 (4) A prescribed person who fails to comply with subsection (3) shall be guilty of an offence against this Act.

(5) Where the Director has been notified under subsection (2) or (3), he shall—

25 (a) promptly cause an investigation to be made into the matters notified to him; and

(b) if he is satisfied that the child in respect of whom he was notified may have been assaulted, ill-treated or exposed, take such action as he believes appropriate, which may include reporting those matters to a constable of police.

30

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

- 5 (6) Where a person notifies the Director
pursuant to subsection (2) or (3)—
- 10 (a) the notification shall not, in any proceedings
before a court, tribunal or committee, be
held to constitute a breach of professional
etiquette or ethics or a departure from
accepted standards of professional conduct;
- 15 (b) no liability for defamation is incurred by
reason of the making of the notification;
- (c) the notification shall not constitute a
ground for civil proceedings for malicious
prosecution or for conspiracy;
- 20 (d) subject to subsections (7) and (8), the
notification shall not be admissible in
evidence in any proceedings before a court,
tribunal or committee and no evidence of
its contents is admissible; and
- 25 (e) subject to subsection (7), a person shall
not be compelled in any proceedings before
a court, tribunal or committee to produce
the notification, or any copy of, or extract
from the notification (if it is capable of
being produced) or to disclose, or give any
evidence of, any of the contents of the
notification.
- 30 (7) Subsection (6) (d) and (e) does not
apply in relation to—
- (a) the admissibility in, or of, evidence of a
notification made under subsection (2) or
(3);

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

- 5 (b) the production of such a notification, a copy thereof or an extract therefrom; or
- (c) the disclosure or giving of evidence of the contents of such a notification,
- either—
- 10 (d) in any proceedings before a court, within the meaning of section 81B, in which the child to whom the notification relates is brought before the court as a neglected child; or
- 15 (e) in support of, or in answer to, a charge or allegation made in proceedings referred to in subsection (6) (d) or (e) against any person in relation to his exercising or performing any of his powers, duties or functions in pursuance of this Act.
- 20 (8) Subsection (6) (d) does not apply where a notification under subsection (2) or (3) is tendered in evidence, or evidence in respect of such a notification is given—
- 25 (a) by the person by whom the notification was, or was caused to be, made; and
- (b) in answer to a charge or allegation made against him in proceedings referred to in subsection (6) (d).

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

5 148c. (1) Where the Director or a constable of police believes on reasonable grounds (which may consist wholly or partly of information received by him) that a child has suffered injury to his health as a result of the child's having been assaulted, ill-treated or exposed, he may serve a prescribed notice—

- 10 (a) naming or describing the child; and
- (b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or another place specified in the notice for the purposes of the child's being medically examined,
- 15

on the person who appears to him to be a parent of the child or to have the care of the child for the time being.

20 (2) A person who fails to comply with the requirement contained in a notice served on him under subsection (1) shall be guilty of an offence against this Act unless it is proved that the person was not a parent of the child described in the notice and did not have the care of the child at the time the notice was served.

25

 (3) Where a person fails to comply with the requirement contained in a notice served under subsection (1), a constable of police or an officer authorised by the Minister in that behalf may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a hospital or another place for the purpose of the child's being medically examined.

30

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (4) A constable of police or an officer may,
when exercising his powers under subsection (3)—

(a) subject to paragraph (b), use all reasonable
force; and

10 (b) enter (if need be by force) any house,
building or other place but shall not enter
any place occupied as a dwelling except
under the authority of a warrant issued
under section 145 or 146.

(5) Where a child is presented to a medical
practitioner under subsection (1) or (3)—

15 (a) the practitioner may conduct, or cause to be
conducted, such medical examination of the
child as he thinks fit, including examination
at a hospital that is not the place specified
in the request made under subsection (1)
20 in respect of the child; and

(b) the Director shall, commencing with the
time at which the child is presented to the
practitioner and until the expiration of such
period of time as is reasonably necessary for
25 the child to be medically examined in
accordance with paragraph (a) or 72 hours,
whichever period first expires, be deemed to
have custody of the child—

30 (i) if the consent of a parent or any
other person who would, but for this
paragraph, have lawful custody of

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

5 the child to the examination has not
been obtained or has been revoked;
and

(ii) for the purpose only of enabling the
examination to be conducted.

10 (6) No proceedings lie against a medical
practitioner or a constable of police for or on account
of any act, matter or thing done or ordered to be done
by him, and purporting to be done for the purpose of
carrying out the provisions of this section, if he has
acted in good faith and with reasonable care.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977

[40c]

No. , 1977.

A BILL

To amend the Child Welfare Act, 1939, to make further provision in relation to neglected children and children who have been assaulted, ill-treated or exposed, and in certain other respects; and to validate certain matters.

[MR JACKSON—2 March, 1977.]

BE

Child Welfare (Amendment).

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

1. This Act may be cited as the "Child Welfare Short title. (Amendment) Act, 1977".

2. (1) Except as provided in subsections (2)–(6), this Act shall commence on the date of assent to this Act. Commence-
ment.

10 (2) Section 6 shall, in its application to a provision of Schedules 1–5, commence on the day on which that provision commences.

(3) Schedules 2 and 3 and the several provisions of Schedules 4 and 5 shall commence on such day or days as 15 may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Sections 10 and 11 shall commence on the day on which Schedule 2 commences.

(5) Section 12 (1) shall commence on the day on 20 which Schedule 5 (1) commences.

(6) Section 12 (2) shall commence on the day on which Schedule 5 (2) commences.

3. The Child Welfare Act, 1939, is in this Act referred to as the Principal Act. Principal
Act.

4.

Child Welfare (Amendment).

4. In this Act, "appointed day" means the day on which Schedule 2 commences. Interpre-
tation.

5. This Act contains the following Schedules :— Schedules.

5 SCHEDULE 1.—AMENDMENT TO PART I OF THE
CHILD WELFARE ACT, 1939.

SCHEDULE 2.—AMENDMENTS TO PART IX OF THE
CHILD WELFARE ACT, 1939.

SCHEDULE 3.—AMENDMENTS TO PART X OF THE
CHILD WELFARE ACT, 1939.

10 SCHEDULE 4.—AMENDMENTS TO PART XIV OF THE
CHILD WELFARE ACT, 1939.

SCHEDULE 5.—AMENDMENTS TO PART XVII OF THE
CHILD WELFARE ACT, 1939.

15 6. The Principal Act is amended in the manner set forth
in Schedules 1–5. Amendment
of Act No.
17, 1939.

7. (1) Section 3 of the Child Welfare (Amendment) Act, 1967, shall be deemed to have commenced on 1st January, 1974. Commence-
ment of
certain
enactments.

20 (2) For the purpose of removal of doubt it is declared
that—

25 (a) the provisions of section 10 of the Youth and
Community Services Act, 1973, in so far as they
effect the amendment specified in Part 2 of the
Schedule to that Act, and of Part 2 of that Schedule,
commenced; and

(b) the provisions of Part 1 of that Schedule amending
the Child Welfare (Amendment) Act, 1967, took
effect,

on 1st February, 1974.

Child Welfare (Amendment).

8. (1) In this section, "relevant period" means the interval of time commencing with 1st January, 1974, and continuing until the expiration of the period of 3 months commencing with the appointed day. Validation of certain appointments, etc.

5 (2) Any act, matter or thing that has been, or is, done or omitted to be done during the relevant period by—

(a) the Governor;

(b) the Minister for the time being administering the Principal Act; or

10 (c) an officer or employee of the Crown,

that—

(d) would have been, or would be, lawfully done or omitted to be done—

15 (i) if section 3 of the Child Welfare (Amendment) Act, 1967, had commenced on 1st January, 1974; or

20 (ii) in relation to a person, if that section had commenced on 1st January, 1974, and an order that could have been made in respect of the person under section 46 or 47 of the Principal Act had been or were in force in respect of the person at the time when the act, matter or thing was, or is, done or omitted to be done; and

25 (e) would not have been, or would not be, lawfully done or omitted to be done if this section had not been enacted,

is validated or authorised, as the case may require.

Child Welfare (Amendment).

9. Any act, matter or thing that has been, or is, done or omitted to be done before the appointed day by persons appointed under section 44 of the Principal Act, that — Validation of orders, etc., of former Tribunal.

5 (a) could have been, or could be, lawfully done or omitted to be done by persons appointed under section 43A of the Principal Act, as amended by section 6 and Schedule 2, if the Principal Act, as so amended, had been or were in force at the time when the act, matter or thing was done or omitted to be done; and

10 (b) could not have been, or could not be, lawfully done or omitted to be done if this section had not been enacted,

15 is validated or authorised, as the case may require, and shall be deemed to have had and to have, or to have, the same consequences as if it had been or were lawfully done or omitted to be done.

20 10. (1) A person who, immediately before the appointed day, held office as a member of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (2) of that Act, as amended by this Act, as a member of the Intellectually Handicapped Persons Review Panel for a term of 3 years commencing with the appointed day. Certain persons deemed appointed.

30 (2) A person who, immediately before the appointed day, held office as Chairman or Deputy Chairman of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (4) of that Act, as amended by this Act—

(a) in the case of the person who held office as Chairman—as President of the Intellectually Handicapped Persons Review Tribunals; and

(b)

Child Welfare (Amendment).

(b) in the case of the person who held office as Deputy Chairman—as Deputy President of the Intellectually Handicapped Persons Review Tribunals.

11. (1) In this section, "Part IX" means Part IX of the **5** Principal Act, as amended by this Act.

Minister may make certain interim orders.

(2) Where at any time during the period of 3 months commencing with the appointed day, the Minister is satisfied that—

10 (a) a person who, at any time occurring after 31st December, 1973, but before the appointed day, has been—

(i) admitted to State control;

(ii) committed to the care of the Minister to be dealt with as a ward admitted to State control; or

15 (iii) committed to an institution within the meaning of the Principal Act, as amended by this Act,

20 is intellectually handicapped to such a degree that he requires, otherwise than for continuous medical treatment or attention in a hospital, care, protection or supervision in his own interests or in the interests of others; and

25 (b) the interests of the person would be promoted if he were dealt with as an intellectually handicapped person under the provisions of Part IX,

the Minister may make an order that the person be dealt with under the provisions of Part IX as an intellectually handicapped person and such an order shall, subject to **30** subsection (4), be deemed to have been duly made under section 46 of the Principal Act.

(3)

Child Welfare (Amendment).

(3) Before he makes an order in respect of a person under subsection (2), the Minister shall—

- 5 (a) if he knows the name and address of either parent of the person—serve notice on the parent, either personally or by post, of his intention to make the order; and
- 10 (b) if he has served a notice under paragraph (a)—consider any representations made to him by any person in respect of the firstmentioned person within 10 days of the date of service of the notice.

(4) Where an order is made under this section, Part IX has effect in relation to the order as if that Part had been amended—

- 15 (a) by omitting from section 48A (1) (b) the words “two years,” and by inserting instead the words “two years; or”;
- (b) by inserting after section 48A (1) (b) the following paragraph :—
- 20 (c) notwithstanding paragraphs (a) and (b), remain in force, if the order has been made under section 11 (2) of the Child Welfare (Amendment) Act, 1977, for a period of 3 months,
- 25 (c) by inserting in section 48A (1) after the words “two years” where secondly occurring, the words “or 3 months”;
- (d) by inserting after section 48A (5) the following subsection :—
- 30 (5A) A Tribunal may not make an interim determination under subsection (5) renewing an order made under section 11 (2) of the Child Welfare (Amendment) Act, 1977.

Child Welfare (Amendment).

12. (1) Notwithstanding section 126 of the Principal Savings Act, as amended by this Act, where a child—

(a) committed an offence before the day on which this subsection commences; and

5 (b) had, at the time he committed the offence, attained the age of eight years,

he may be found guilty of the offence.

(2) Notwithstanding section 132 (1) of the Principal Act, as amended by this Act, a person who, on or after the 10 day on which this subsection commences, is found guilty of an offence committed against the Principal Act before that day shall not be liable to any greater penalty than that to which he would have been liable if he had been found guilty of the offence immediately after he had committed it.

15

SCHEDULE 1.

Sec. 6.

AMENDMENT TO PART I OF THE CHILD WELFARE ACT, 1939.

Section 4 (3)—

After section 4 (2), insert :—

20 (3) A reference in this Act to a “constable” or a “constable of police” includes, and shall be deemed to have always included, a reference to any member of the police force.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2.

Sec. 6.

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939.

(1) (a) Section 43 (1), definition of "Deputy President"—

5 After the definition of "Court", insert :—

"Deputy President" means the Deputy
President of the Tribunals.

(b) Section 43 (1), definition of "Member"—

10 After the definition of "Intellectually handicapped
person", insert :—

"Member" means a member of the Review
Panel.

(c) Section 43 (1), definitions of "President" and
"Review Panel"—

15 After the definition of "Organisation", insert :—

"President" means the President of the
Tribunals.

20 "Review Panel" means the Intellectually
Handicapped Persons Review Panel
referred to in section 43A (1).

(d) Section 43 (1), definition of "Tribunal"—

Omit the definition, insert instead :—

25 "Tribunal" means an Intellectually Handi-
capped Persons Review Tribunal
established under section 44 (2).

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Sections 43A–43D—

5 After section 43, insert :—

43A. (1) There shall be an Intellectually Handi- **Review**
capped Persons Review Panel. **Panel.**

10 (2) Subject to this section, the Governor
may appoint persons as members of the Review
Panel.

(3) The members shall be appointed from
one or more of the following classes of persons :—

- 15 (a) medical practitioners;
(b) barristers and solicitors;
(c) persons having knowledge of and experience
in administration;
(d) persons having knowledge of and experience
in education;
20 (e) persons having knowledge of and experience
in psychology;
(f) persons having knowledge of and experience
in social work;
25 (g) persons in the opinion of the Governor
having other suitable qualifications or
experience.

(4) Of the members—

- (a) one shall be appointed as President of the
Tribunals; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (b) one shall be appointed as Deputy President
of the Tribunals,

in the instrument or instruments appointing them as
members or by a subsequent instrument or instruments
executed by the Governor.

(5) A person—

10 (a) who is a temporary patient, a continued
treatment patient, a protected person or
an incapable person within the meaning of
the Mental Health Act, 1958, or a person
15 under detention under Part VII of that Act;
or

(b) who is bankrupt, is applying to take the
benefit of any law for the relief of bankrupt
or insolvent debtors, whose debts are sub-
ject to a composition with his creditors, or
20 whose fees or allowances would, upon his
appointment, be subject to an assignment
for their benefit,

is not eligible to be appointed as a member.

25 (6) The Public Service Act, 1902, does not
apply to or in respect of the appointment of a member
and a member is not, in his capacity as a member,
subject to that Act while he holds office as a member.

30 43B. (1) Subject to subsection (4), a member
shall hold office for the period of 3 years commencing
with the day from which he is declared to be appointed
in the instrument appointing him or such shorter
period as may be specified in that instrument and
may, if he is otherwise eligible, be re-appointed as a
member.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) A member shall be paid such fees and allowances as may from time to time be determined in respect of him by the Governor.

(3) The Governor may, for any cause that to him seems sufficient, remove a member from office.

10 (4) A member shall be deemed to have vacated his office if he—

(a) dies;

(b) resigns his office by writing under his hand addressed to the Governor;

15 (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his fees or allowances, or estate, for their benefit;

20 (d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

25 or

(e) is removed from office by the Governor.

30 43c. (1) A President or Deputy President holds his office until he ceases to be a member and is eligible, if he is re-appointed as a member, to be appointed or re-appointed, as the case may be, as President or Deputy President.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) A Deputy President may exercise or
perform the powers or duties of a President under
this Part—

(a) if the President—

10 (i) delegates his powers and duties to
the Deputy President (which the
President is hereby authorised to
do);

(ii) is absent from the State; or

15 (iii) is prevented by illness or other
incapacity from exercising or
performing his powers or duties
under this Part; or

(b) if there is no person holding the office of
President.

20 (3) No person shall be concerned to inquire
whether or not any occasion has arisen authorising
a Deputy President to exercise or perform the powers
or duties of a President and all acts or things done
or omitted to be done by a Deputy President when
25 exercising or performing those powers or duties shall
be as valid and shall have the same consequences as
if they had been done or omitted to be done by a
President.

30 43D. (1) A delegation under section 43C (2) (a)
(i) shall be by instrument in writing and may be made
subject to such conditions or such limitations as to
the exercise or performance of the power or duty
delegated, or as to time or circumstances, as may be
specified in the instrument of delegation.

Form and
effect of
delegation.

SCHEDULE

*Child Welfare (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) A power or duty, the exercise or performance of which has been delegated under section 43c (2) (a) (i) may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

(3) Sections 44–44J—

10 Omit section 44, insert instead :—

44. (1) The President may establish an Intellectually Handicapped Persons Review Tribunal— Establishment of Tribunals.

(a) generally for the purposes of section 48A, 48B or 48G; or

15 (b) for the purposes of—

(i) any class of cases; or

(ii) any particular case,

that may arise or arises under any one or more of those sections.

20 (2) The President establishes a Tribunal by—

(a) appointing members to the Tribunal so that the Tribunal is constituted in accordance with this section;

25 (b) where the President and the Deputy President are not among the members so appointed—nominating one of those members as chairman of the Tribunal; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (c) notifying the members so appointed, or causing those members to be notified, of their appointment and the purpose for which the Tribunal has been established.

(3) A Tribunal shall consist of not less than 3 nor more than 5 members.

10 44A. (1) The procedure for the conduct of business of a Tribunal shall, subject to this Part and any rules made under subsection (5), be as determined by the Tribunal. Procedure of Tribunals.

(2) At a meeting of a Tribunal—

15 (a) if he has been appointed to the Tribunal—the President;

(b) if the President has not been appointed to the Tribunal but the Deputy President has been so appointed—the Deputy President; or

20 (c) if a chairman for the Tribunal has been nominated under section 44 (2) (b)—that member,

shall preside as chairman of the Tribunal.

25 (3) Subject to section 48A, a Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

30 (4) The chairman of a Tribunal shall, in the event of an equality of votes at a meeting of the Tribunal, have a second or casting vote.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (5) Five members, who shall include the President or Deputy President, or both, may make rules not inconsistent with this Part for or with respect to the convening of and procedure at meetings of a Tribunal.

10 44B. A Tribunal is not bound by the rules or Evidence. practice as to evidence and may inform itself of any matter in such manner as it thinks fit.

44C. (1) The chairman of a Tribunal may— Powers of a chairman of a Tribunal.

15 (a) by instrument in writing under his hand, require any person on whom the instrument is served personally or by post—

(i) to appear before the Tribunal for the purpose of giving evidence; or

20 (ii) to produce to the Tribunal any document (including a document in the possession of, or belonging to, the Crown) that is relevant to the purpose for which the Tribunal was established,

25 at a time, date and place specified in the instrument;

(b) require a person who appears before the Tribunal to be sworn for the purpose of his giving evidence on oath; and

30 (c) administer an oath referred to in paragraph (b).

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) Where a document is produced to a
Tribunal in response to a requirement made under
subsection (1), the Tribunal may take possession of
the document for such period as it considers necessary
for the purposes of the Tribunal.

10 44D. (1) Any member of a Tribunal may require
a person (including an officer or employee of the
Crown) who appears before the Tribunal to answer
a question that is reasonably related to the purpose
for which the Tribunal was established. Questions
of a
member of
a Tribunal.

15 (2) A person is not excused from answering
a question put to him by a member of a Tribunal on
the ground that the answer might tend to incriminate
him but, where the person claims, before answering
the question, that the answer might tend to incriminate
20 him, neither the question nor the answer is
admissible in evidence against him in criminal pro-
ceedings other than proceedings under section 44E
(c) or in relation to a charge of perjury in respect
of the answer.

25 44E. A person who— Offences.
(a) refuses, fails or neglects to comply with a
requirement made of him by—
(i) the chairman of a Tribunal under
section 44C (1) (a) or (b); or
(ii) any member of a Tribunal under
30 section 44D (1),
to the extent to which he is lawfully able
to comply with the requirement;

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (b) in purported compliance with a require-
ment made of him by the chairman of a
Tribunal under section 44c (1) (a) (ii),
knowingly furnishes information that is
false or misleading in a material particular;
or

10 (c) not having been sworn, makes a statement
that is false or misleading in a material
particular when he is appearing before the
Tribunal,

15 shall be guilty of an offence against this Act and
liable to a penalty not exceeding \$100.

20 44F. (1) A person, other than an officer, who is **Witnesses.**
required to appear or to give evidence during pro-
ceedings of a Tribunal is entitled to be paid such
allowances and expenses as the Minister may
determine in respect of him.

(2) For the purposes of section 18 of the
Defamation Act, 1974, the proceedings of a Tribunal
shall be deemed to be an inquiry within the meaning
of that section.

25 (3) A duly qualified legal practitioner acting
for a person required to give evidence during
proceedings of a Tribunal may—

(a) be present during those proceedings; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

- 5 (b) to the extent that the chairman of the
Tribunal permits—
- (i) address the Tribunal; and
 - (ii) examine the person for whom he is
acting,
- 0 in relation to matters in respect of which
a member of the Tribunal has questioned
that person.

44G. (1) A decision supported by a majority of ^{Decisions} votes cast at a meeting of a Tribunal shall be the ^{of Tribunals.} decision of the Tribunal.

- 15 (2) When a Tribunal makes a decision in the
exercise or performance of its powers or duties under
section 48A or 48B, each of its members shall record
his reasons for casting his vote on the decision and the
chairman of the Tribunal shall then cause a record of
20 those reasons to be conveyed to the Director.

(3) No decision of a Tribunal shall be
vitiating by reason only of any informality or want of
form.

25 44H. (1) The chairman of a Tribunal shall cause ^{Record of} a record of the proceedings of a meeting of the ^{proceedings.} Tribunal to be—

- (a) made in the prescribed manner; and
- (b) conveyed to the Director as soon as is
practicable after the conclusion of the
30 meeting.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) The Director shall cause records conveyed to him under subsection (1) and section 44G (2) to be preserved for the prescribed period of time after he receives them.

10 44I. The President for the time being may dissolve a Tribunal by giving notice or causing notice to be given of its dissolution personally or by post to the members who have been appointed to the Tribunal—

Dissolution of Tribunals.

(a) when the purpose for which the Tribunal was established has been achieved; or

(b) on any other reasonable grounds.

15 44J. No proceedings lie against a Tribunal or a member for or on account of any act, matter or thing done or ordered to be done by the Tribunal or member, and purporting to be done for the purposes of carrying out the provisions of this Part, if the Tribunal or member has acted in good faith and with reasonable care.

Certain proceedings prohibited.

(4) (a) Section 48A (2)—

Omit “two months”, insert instead “3 months”.

(b) Section 48A (2)—

25 Omit “Tribunal and request for the reasons stated that the order be renewed”, insert instead “President or, if there is no President for the time being, to the Deputy President and request for the reasons stated that the order be renewed by a Tribunal”.

30

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

- (c) Section 48A (2A)—
5 After section 48A (2), insert :—
(2A) When the President or Deputy President receives reports and a request under subsection (2) he shall refer them to a Tribunal.
- (d) Section 48A (3)—
10 After “Tribunal”, insert “to which the request has been referred”.
- (e) Section 48A (4)—
Omit “the Tribunal” where firstly occurring, insert instead “a Tribunal”.
- 15 (f) Section 48A (5)—
Omit “the order” where firstly occurring, insert instead “an order”.
- (g) Section 48A (5), (6)—
20 Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.
- (5) (a) Section 48B (3)—
Omit “the Tribunal for”, insert instead “the President, or if there is no President for the time being, to the Deputy President and request that”.
- 25 (b) Section 48B (3)—
After “Part”, insert “be made by a Tribunal”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(c) Section 48B (3A)—

5 After section 48B (3), insert:—

(3A) When the President or Deputy President receives a request under subsection (3) he shall refer it to a Tribunal.

(d) Section 48B (4)—

10 Omit “made to the Tribunal”, insert instead “referred to a Tribunal”.

(e) Section 48B (5)—

Omit “the Tribunal”, insert instead “a Tribunal”.

(f) Section 48B (6)—

15 Omit “The Tribunal if”, insert instead “If”.

(g) Section 48B (6)—

Omit “the Tribunal may”, insert instead “, the Tribunal to which the application has been referred may”.

20 (6) Section 48G (4)—

Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.

Child Welfare (Amendment).

SCHEDULE 3.

Sec. 6.

AMENDMENTS TO PART X OF THE CHILD WELFARE
ACT, 1939.

(1) Section 54 (1)—

5 Omit the subsection.

(2) Section 54 (2)—

Omit "but has not been so committed for a specified term".

(3) Section 54 (3)—

10 Omit "subsections one and two of this section", insert instead "subsection (2)".

(4) Section 54 (3)—

Omit "section ninety-four of this Act", insert instead "section 94".

15 (5) Section 54 (3)—

Omit "subsection four of this section", insert instead "subsection (4)".

Child Welfare (Amendment).

SCHEDULE 4.

Sec. 6.

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT, 1939.

(1) Sections 81B, 81C—

5 After section 81A, insert :—

81B. (1) In this section, "court" includes a court hearing or determining an appeal from a determination or an order made by— Courts may act on certain matters.

(a) a magistrate; or

10 (b) justices,

exercising the jurisdiction of a children's court.

(2) Where a child has been brought before a court as a neglected child and—

15 (a) the complaint in respect of which he has been so brought alleges that he has been ill-treated or exposed; or

(b) evidence has been presented to the court that the child has been assaulted,

20 the court, in hearing and determining the matter, may act upon any statement, document, information or matter that may, in its opinion, assist it to deal with the complaint, whether or not the statement, document, information or matter would be admissible in evidence.

25 81C. Subject to section 81B, where a child or young person is— Certain statements, etc., inadmissible.

(a) brought before a court as a neglected child or an uncontrollable child or young person; or

30 (b) is charged with an offence,

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

5 the court, in hearing or determining the matter or
charge, shall not admit in evidence or act upon any
statement, confession, admission or information made
or given by the child or young person at a police
station unless there was present throughout the period
of time during which the statement, confession,
10 admission or information was made or given—

(c) one of his parents;

(d) a person aged 18 years or upwards who has
his guardianship; or

15 (e) with the consent of one of the persons
referred to in paragraph (c) or (d)—a
person aged 18 years or upwards who is
not—

(i) one of those persons; or

(ii) a member of the police force.

20 (2) Section 82 (2)—

At the end of section 82, insert :—

(2) If a court finds that a child is a neglected
child it may release the child—

25 (a) upon such terms and conditions as the court
may think fit and as are willingly undertaken
to be observed by the child's parents, one of
the child's parents or another person
approved by the court; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (b) for such period of time (whether expiring
before or after the date upon which the
child attains the age of 16 years) as the
court may think fit.

(3) (a) Section 83 (4)—

10 Omit “paragraph (e) of section eighty-two”,
insert instead “section 82 (1) (e)”.

(b) Section 83 (7)—

Omit “eighty-two of this Act”, insert instead “82
(1)”.

(4) Section 84 (1)—

15 Omit “eighty-two or section eighty-three of this Act”,
insert instead “82 (1) or 83”.

(5) Section 89 (3)—

Omit “the Intellectually”, insert instead “an
Intellectually”.

20 (6) (a) Section 90 (1)—

Omit “paragraph (c) of section eighty-two or
paragraph (b) of subsection one or paragraph
(b) of subsection two of section eighty-three of
this Act”, insert instead “section 82 (1) (c)
or section 83 (1) (b) or (2) (b)”.

25

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT
1939—*continued.*

(b) Section 90 (2)—

- 5 Omit “paragraph (b) of section eighty-two or paragraph (a) of subsection one or paragraph (a) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (b) or (2) or section 83 (1) (a) or (2) (a)”.

10 (7) Section 91 (1), (1A)—

Omit the subsections, insert instead :—

(1) Where—

- 15 (a) a person who, as a child or young person was, under section 82 (1) or section 83 (1) or (2), released on probation or was committed to the care of a person, breaks or is reasonably suspected of having broken the terms or conditions of his release or committal; or
- 20 (b) a person was, as a child, under section 82 (2), released upon his parents, one of his parents or another person undertaking to observe any terms or conditions that have been broken or are reasonably suspected of having been broken,
- 25

30 he may (whether or not a warrant has been issued under subsection (1A)) be apprehended by any constable or by any officer authorised by the Minister in that behalf and shall, upon being so apprehended, be taken to a shelter and shall, as soon as practicable thereafter, be brought before a court.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

- 5 (1A) Any justice, upon oath being made before
him by any constable or by an officer authorised by
the Minister in that behalf that, having made due
inquiry, he believes—
- 10 (a) that a person who, as a child or young
person, was, under section 82 (1) or section
83 (1) or (2), released on probation or
was committed to the care of a person has
broken the terms or conditions of his release
or committal; or
- 15 (b) that the terms or conditions upon which a
person was, as a child, released under
section 82 (2), have been broken,
- may—
- 20 (c) issue his summons for the appearance of the
person so released or committed before a
court; or
- (d) in the first instance issue his warrant
directing the apprehension of the person so
released or committed.

SCHEDULE 5.

Sec. 6.

25 AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939.

(1) Section 126—

Omit "eight", insert instead "10".

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Section 132 (1)—

5 Omit “two hundred dollars”, insert instead “\$1,000”.

(3) Section 146A—

After section 146, insert :—

146A. (1) When a child or young person is brought into a police station—

Notification
of parent or
guardian by
police.

10 (a) at which he is to be questioned about any offence that has been, or may have been, committed; or

15 (b) for the purpose of determining whether he is to be brought before a court as a neglected child or an uncontrollable child or young person within the meaning of Part XIV,

the officer in charge of the police station shall forthwith—

20 (c) notify a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person that the child or young person is at the police station; or

25 (d) cause a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person to be so notified.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) An officer in charge of a police station
who fails to comply with subsection (1) shall be guilty
of an offence against this Act unless he satisfies the
court—

- 10 (a) that he used all reasonable diligence in
attempting to comply with that subsection;
or
(b) that he had a reasonable excuse for failing
to comply with that subsection.

(4) Sections 148B, 148C—

After section 148A, insert :—

15 148B. (1) In this section—

“court”, except in subsection (7) (d), means any
court;

Notification
of certain
injuries to
children.

“prescribed person” means—

- 20 (a) a medical practitioner; and
(b) a person who is a member of any
class of persons prescribed for the
purposes of this paragraph, being a
person who follows a profession,
calling or vocation so prescribed, or
25 who holds any office so prescribed.

(2) Any person who forms the belief upon
reasonable grounds that a child—

- 30 (a) has been assaulted; or
(b) is a neglected child within the meaning of
Part XIV,

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

may—

- 5 (c) notify the Director of his belief and the grounds therefor either orally or in writing; or
- (d) cause the Director to be so notified.

10 (3) A prescribed person who, in the course of practising his profession, calling or vocation, or in exercising the functions of his office, as the case may be, has reasonable grounds to suspect that a child has been assaulted, ill-treated or exposed shall—

- 15 (a) notify the Director of the name or a description of the child and those grounds either orally or in writing; or
- (b) cause the Director to be so notified,
- promptly after those grounds arise.

20 (4) A prescribed person who fails to comply with subsection (3) shall be guilty of an offence against this Act.

 (5) Where the Director has been notified under subsection (2) or (3), he shall—

- 25 (a) promptly cause an investigation to be made into the matters notified to him; and
- (b) if he is satisfied that the child in respect of whom he was notified may have been assaulted, ill-treated or exposed, take such action as he believes appropriate, which may include reporting those matters to a constable of police.
- 30

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

- 5 (6) Where a person notifies the Director
pursuant to subsection (2) or (3)—
- 10 (a) the notification shall not, in any proceedings
before a court, tribunal or committee, be
held to constitute a breach of professional
etiquette or ethics or a departure from
accepted standards of professional conduct;
- 15 (b) no liability for defamation is incurred by
reason of the making of the notification;
- (c) the notification shall not constitute a
ground for civil proceedings for malicious
prosecution or for conspiracy;
- 20 (d) subject to subsections (7) and (8), the
notification shall not be admissible in
evidence in any proceedings before a court,
tribunal or committee and no evidence of
its contents is admissible; and
- 25 (e) subject to subsection (7), a person shall
not be compelled in any proceedings before
a court, tribunal or committee to produce
the notification, or any copy of, or extract
from the notification (if it is capable of
being produced) or to disclose, or give any
evidence of, any of the contents of the
notification.
- 30 (7) Subsection (6) (d) and (e) does not
apply in relation to—
- (a) the admissibility in, or of, evidence of a
notification made under subsection (2) or
(3);

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

- 5 (b) the production of such a notification, a copy thereof or an extract therefrom; or
- (c) the disclosure or giving of evidence of the contents of such a notification,
- either—
- 10 (d) in any proceedings before a court, within the meaning of section 81B, in which the child to whom the notification relates is brought before the court as a neglected child; or
- 15 (e) in support of, or in answer to, a charge or allegation made in proceedings referred to in subsection (6) (d) or (e) against any person in relation to his exercising or performing any of his powers, duties or functions in pursuance of this Act.
- 20 (8) Subsection (6) (d) does not apply where a notification under subsection (2) or (3) is tendered in evidence, or evidence in respect of such a notification is given—
- 25 (a) by the person by whom the notification was, or was caused to be, made; and
- (b) in answer to a charge or allegation made against him in proceedings referred to in subsection (6) (d).

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

5 148C. (1) Where the Director or a constable of police believes on reasonable grounds (which may consist wholly or partly of information received by him) that a child has suffered injury to his health as a result of the child's having been assaulted, ill-treated or exposed, he may serve a prescribed notice—

Medical examination:
reputedly injured children.

10 (a) naming or describing the child; and

(b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or another place specified in the notice for the purposes of the child's being medically examined,

on the person who appears to him to be a parent of the child or to have the care of the child for the time being.

20 (2) A person who fails to comply with the requirement contained in a notice served on him under subsection (1) shall be guilty of an offence against this Act unless it is proved that the person was not a parent of the child described in the notice and did not have the care of the child at the time the notice was served.

25 (3) Where a person fails to comply with the requirement contained in a notice served under subsection (1), a constable of police or an officer authorised by the Minister in that behalf may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a hospital or another place for the purpose of the child's being medically examined.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (4) A constable of police or an officer may,
when exercising his powers under subsection (3)—

(a) subject to paragraph (b), use all reasonable
force; and

10 (b) enter (if need be by force) any house,
building or other place but shall not enter
any place occupied as a dwelling except
under the authority of a warrant issued
under section 145 or 146.

(5) Where a child is presented to a medical
practitioner under subsection (1) or (3)—

15 (a) the practitioner may conduct, or cause to be
conducted, such medical examination of the
child as he thinks fit, including examination
at a hospital that is not the place specified
20 in the request made under subsection (1)
in respect of the child; and

(b) the Director shall, commencing with the
time at which the child is presented to the
practitioner and until the expiration of such
25 period of time as is reasonably necessary for
the child to be medically examined in
accordance with paragraph (a) or 72 hours,
whichever period first expires, be deemed to
have custody of the child—

30 (i) if the consent of a parent or any
other person who would, but for this
paragraph, have lawful custody of

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

5 the child to the examination has not
 been obtained or has been revoked;
 and

(ii) for the purpose only of enabling the
 examination to be conducted.

10 (6) No proceedings lie against a medical
 practitioner or a constable of police for or on account
 of any act, matter or thing done or ordered to be done
 by him, and purporting to be done for the purpose of
 carrying out the provisions of this section, if he has
 acted in good faith and with reasonable care.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977
[40c]

CHILD WELFARE (AMENDMENT) BILL, 1977

EXPLANATORY NOTE

THE objects of this Bill are—

- (a) to declare that Part IX of the Child Welfare Act, 1939 (hereinafter referred to as the "Principal Act"), which Part makes provision for dealing with intellectually handicapped persons, shall be deemed to have commenced on 1st January, 1974, and to remove any doubt that may exist as to the date on which certain other enactments effected amendments to that Act (clause 7);
- (b) to validate certain appointments and other acts done or omitted to be done by the Governor, the Minister for the time being administering the Principal Act and officers and employees of the Crown between the date on which Part IX of the Principal Act is deemed to have commenced and the last date on which an order referred to in paragraph (e) may be made (clause 8);
- (c) to validate certain orders that have been or may be made and other acts that have been or may be done or omitted to be done under Part IX of the Principal Act before the day appointed by the Governor for the commencement of certain amendments to the Principal Act made by the Bill (hereinafter referred to as the "appointed day") (clause 9);
- (d) to deem members of the Intellectually Handicapped Persons Review Tribunal holding office immediately before the establishment of the Intellectually Handicapped Persons Review Panel to be members of the latter body and to provide that the Chairman and Deputy Chairman of that Tribunal shall be respectively the first President and Deputy President of the Tribunals referred to in paragraph (j) (clause 10);
- (e) to empower the Minister, if he does so within 3 months of the appointed day, to order that certain persons who have previously been wards shall be dealt with for a period of 3 months, unless that period is extended by a Tribunal renewing the order, under the provisions of Part IX of the Principal Act as intellectually handicapped persons (clause 11);
- (f) to provide that the amendments taking effect on the appointed day that raise the age of criminal responsibility and increase the maximum monetary penalty under the Principal Act shall not have retrospective effect (clause 12);
- (g) to declare that a reference in the Principal Act to a "constable" or a "constable of police" includes a reference to any member of the police force (Schedule 1);

- (h) to provide for the establishment of an Intellectually Handicapped Persons Review Panel to be appointed by the Governor and for the terms of office of its members (Schedule 2 (2));
- (i) to provide for the appointment and terms of office of a President and Deputy President of the Tribunals referred to in paragraph (j) and that a Deputy President may exercise or perform the powers and duties of a President in certain circumstances (Schedule 2 (2));
- (j) to empower a President referred to in paragraph (i) to establish Intellectually Handicapped Persons Review Tribunals (herein referred to as "Tribunals") for the purposes of Part IX of the Principal Act and to provide for the procedure of, and for other matters relating to, the Tribunals (Schedule 2 (3));
- (k) to authorise the chairman of a Tribunal to require persons (including officers and employees of the Crown) to appear before the Tribunal for the purpose of giving evidence or to produce documents (including those in the possession of, or owned by, the Crown) to the Tribunal (Schedule 2 (3));
- (l) to empower the Minister to discharge from an institution a child or young person who has been committed to the institution for a specified term (Schedule 3);
- (m) to enable certain matters that are not admissible in evidence to be considered in proceedings before a court in which it is alleged that a child is a neglected child or that he has been assaulted (Schedule 4 (1));
- (n) to provide that certain information given by a child or young person at a police station is not admissible in evidence or otherwise in proceedings of a court where the child or young person has been—
 - (i) brought before the court as a neglected child or an uncontrollable child or young person; or
 - (ii) charged with an offence,
 unless one of his parents, an adult person having his guardianship or an adult person with the consent of one of those persons has been present throughout the time when the information was given (Schedule 4 (1));
- (o) to empower a court that finds a child to be a neglected child to release the child on certain terms and conditions imposed by the court without the child being placed on probation or committed to the care of a person by the court (Schedule 4 (2));
- (p) to raise the minimum age of criminal responsibility from 8 years to 10 years (Schedule 5 (1));
- (q) to increase the maximum monetary penalty that may be imposed for an offence against the Principal Act for which no other specific penalty has been provided from \$200 to \$1,000 (Schedule 5 (2));

- (r) to require the officer in charge of a police station, when a child or young person is brought into the police station—
- (i) at which he is to be questioned about an offence; or
 - (ii) for the purpose of determining whether he is to be brought before a court as a neglected child or an uncontrollable child or young person,
- to notify a parent or guardian of the child (or cause a parent or guardian of the child to be notified) that the child or young person is at the police station (Schedule 5 (3));
- (s) to require a medical practitioner and any other prescribed person (in certain circumstances), if he has reasonable grounds to suspect, and to permit anybody else, if he believes on reasonable grounds, that a child has been assaulted, ill-treated or exposed to notify the Director and to require the Director to take certain action in respect of any such notification (Schedule 5 (4));
- (t) to provide certain indemnities for and in respect of a person who notifies the Director as required or permitted in the circumstances referred to in paragraph (s) (Schedule 5 (4));
- (u) to provide, in certain circumstances, for the compulsory medical examination of a child who has reputedly been assaulted, ill-treated or exposed (Schedule 5 (4));
- (v) to empower a member of the police force or an authorised officer to use all reasonable force (subject to certain limitations on his power to enter a place occupied as a dwelling) when the member or officer is acting in the course of his authority to present a child for a medical examination referred to in paragraph (u) (Schedule 5 (4)); and
- (w) to make other provisions of a minor, a consequential or an ancillary nature.
-

The first part of the report deals with the general situation of the country and the position of the various groups.

The second part of the report deals with the economic situation and the measures taken to improve it.

The third part of the report deals with the social situation and the measures taken to improve it.

The fourth part of the report deals with the political situation and the measures taken to improve it.

The fifth part of the report deals with the cultural situation and the measures taken to improve it.

The sixth part of the report deals with the educational situation and the measures taken to improve it.

The seventh part of the report deals with the health situation and the measures taken to improve it.

The eighth part of the report deals with the housing situation and the measures taken to improve it.

The ninth part of the report deals with the transport situation and the measures taken to improve it.

The tenth part of the report deals with the communication situation and the measures taken to improve it.

The eleventh part of the report deals with the environment situation and the measures taken to improve it.

The twelfth part of the report deals with the international situation and the measures taken to improve it.

No. , 1977.

A BILL

To amend the Child Welfare Act, 1939, to make further provision in relation to neglected children and children who have been assaulted, ill-treated or exposed, and in certain other respects; and to validate certain matters.

[MR JACKSON—2 March, 1977.]

BE

Child Welfare (Amendment).

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

1. This Act may be cited as the "Child Welfare (Amendment) Act, 1977". Short title.

2. (1) Except as provided in subsections (2)–(6), this Act shall commence on the date of assent to this Act. Commencement.

10 (2) Section 6 shall, in its application to a provision of Schedules 1–5, commence on the day on which that provision commences.

(3) Schedules 2 and 3 and the several provisions of Schedules 4 and 5 shall commence on such day or days as 15 may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Sections 10 and 11 shall commence on the day on which Schedule 2 commences.

(5) Section 12 (1) shall commence on the day on 20 which Schedule 5 (1) commences.

(6) Section 12 (2) shall commence on the day on which Schedule 5 (2) commences.

3. The Child Welfare Act, 1939, is in this Act referred to as the Principal Act. Principal Act.

4.

Child Welfare (Amendment).

4. In this Act, "appointed day" means the day on which Schedule 2 commences. Interpre-
tation.

5. This Act contains the following Schedules :— Schedules.

5 SCHEDULE 1.—AMENDMENT TO PART I OF THE
CHILD WELFARE ACT, 1939.

SCHEDULE 2.—AMENDMENTS TO PART IX OF THE
CHILD WELFARE ACT, 1939.

SCHEDULE 3.—AMENDMENTS TO PART X OF THE
CHILD WELFARE ACT, 1939.

10 SCHEDULE 4.—AMENDMENTS TO PART XIV OF THE
CHILD WELFARE ACT, 1939.

SCHEDULE 5.—AMENDMENTS TO PART XVII OF THE
CHILD WELFARE ACT, 1939.

6. The Principal Act is amended in the manner set forth Amendment
of Act No.
17, 1939.
15 in Schedules 1-5.

7. (1) Section 3 of the Child Welfare (Amendment) Commence-
ment of
certain
enactments.
Act, 1967, shall be deemed to have commenced on 1st
January, 1974.

(2) For the purpose of removal of doubt it is declared
20 that—

(a) the provisions of section 10 of the Youth and
Community Services Act, 1973, in so far as they
effect the amendment specified in Part 2 of the
Schedule to that Act, and of Part 2 of that Schedule,
25 commenced; and

(b) the provisions of Part 1 of that Schedule amending
the Child Welfare (Amendment) Act, 1967, took
effect,

on 1st February, 1974.

Child Welfare (Amendment).

8. (1) In this section, "relevant period" means the interval of time commencing with 1st January, 1974, and continuing until the expiration of the period of 3 months commencing with the appointed day. Validation of certain appointments, etc.

5 (2) Any act, matter or thing that has been, or is, done or omitted to be done during the relevant period by—

(a) the Governor;

(b) the Minister for the time being administering the Principal Act; or

10 (c) an officer or employee of the Crown,

that—

(d) would have been, or would be, lawfully done or omitted to be done—

15 (i) if section 3 of the Child Welfare (Amendment) Act, 1967, had commenced on 1st January, 1974; or

20 (ii) in relation to a person, if that section had commenced on 1st January, 1974, and an order that could have been made in respect of the person under section 46 or 47 of the Principal Act had been or were in force in respect of the person at the time when the act, matter or thing was, or is, done or omitted to be done; and

25 (e) would not have been, or would not be, lawfully done or omitted to be done if this section had not been enacted,

is validated or authorised, as the case may require.

Child Welfare (Amendment).

9. Any act, matter or thing that has been, or is, done or omitted to be done before the appointed day by persons appointed under section 44 of the Principal Act, that —

Validation of orders, etc., of former Tribunal.

- 5 (a) could have been, or could be, lawfully done or omitted to be done by persons appointed under section 43A of the Principal Act, as amended by section 6 and Schedule 2, if the Principal Act, as so amended, had been or were in force at the time when the act, matter or thing was done or omitted to be done; and
- 10 (b) could not have been, or could not be, lawfully done or omitted to be done if this section had not been enacted,

15 is validated or authorised, as the case may require, and shall be deemed to have had and to have, or to have, the same consequences as if it had been or were lawfully done or omitted to be done.

10. (1) A person who, immediately before the appointed day, held office as a member of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (2) of that Act, as amended by this Act, as a member of the Intellectually Handicapped Persons Review Panel for a term of 3 years commencing with the appointed day.

Certain persons deemed appointed.

(2) A person who, immediately before the appointed day, held office as Chairman or Deputy Chairman of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (4) of that Act, as amended by this Act—

- 30 (a) in the case of the person who held office as Chairman—as President of the Intellectually Handicapped Persons Review Tribunals; and

(b)

Child Welfare (Amendment).

(b) in the case of the person who held office as Deputy Chairman—as Deputy President of the Intellectually Handicapped Persons Review Tribunals.

11. (1) In this section, “Part IX” means Part IX of the **Minister may make certain interim orders.**
5 Principal Act, as amended by this Act.

(2) Where at any time during the period of 3 months commencing with the appointed day, the Minister is satisfied that—

10 (a) a person who, at any time occurring after 31st December, 1973, but before the appointed day, has been—

(i) admitted to State control;

15 (ii) committed to the care of the Minister to be dealt with as a ward admitted to State control; or

(iii) committed to an institution within the meaning of the Principal Act, as amended by this Act,

20 is intellectually handicapped to such a degree that he requires, otherwise than for continuous medical treatment or attention in a hospital, care, protection or supervision in his own interests or in the interests of others; and

25 (b) the interests of the person would be promoted if he were dealt with as an intellectually handicapped person under the provisions of Part IX,

the Minister may make an order that the person be dealt with under the provisions of Part IX as an intellectually handicapped person and such an order shall, subject to 30 subsection (4), be deemed to have been duly made under section 46 of the Principal Act.

(3)

Child Welfare (Amendment).

(3) Before he makes an order in respect of a person under subsection (2), the Minister shall—

5 (a) if he knows the name and address of either parent of the person—serve notice on the parent, either personally or by post, of his intention to make the order; and

10 (b) if he has served a notice under paragraph (a)—consider any representations made to him by any person in respect of the firstmentioned person within 10 days of the date of service of the notice.

(4) Where an order is made under this section, Part IX has effect in relation to the order as if that Part had been amended—

15 (a) by omitting from section 48A (1) (b) the words “two years,” and by inserting instead the words “two years; or”;

(b) by inserting after section 48A (1) (b) the following paragraph :—

20 (c) notwithstanding paragraphs (a) and (b), remain in force, if the order has been made under section 11 (2) of the Child Welfare (Amendment) Act, 1977, for a period of 3 months,

25 (c) by inserting in section 48A (1) after the words “two years” where secondly occurring, the words “or 3 months”;

(d) by inserting after section 48A (5) the following subsection :—

30 (5A) A Tribunal may not make an interim determination under subsection (5) renewing an order made under section 11 (2) of the Child Welfare (Amendment) Act, 1977.

Child Welfare (Amendment).

12. (1) Notwithstanding section 126 of the Principal Savings Act, as amended by this Act, where a child—

(a) committed an offence before the day on which this subsection commences; and

5 (b) had, at the time he committed the offence, attained the age of eight years,

he may be found guilty of the offence.

(2) Notwithstanding section 132 (1) of the Principal Act, as amended by this Act, a person who, on or after the **10** day on which this subsection commences, is found guilty of an offence committed against the Principal Act before that day shall not be liable to any greater penalty than that to which he would have been liable if he had been found guilty of the offence immediately after he had committed it.

15

SCHEDULE 1.

Sec. 6.

AMENDMENT TO PART I OF THE CHILD WELFARE ACT, 1939.

Section 4 (3)—

After section 4 (2), insert :—

20 (3) A reference in this Act to a “constable” or a “constable of police” includes, and shall be deemed to have always included, a reference to any member of the police force.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2.

Sec. 6.

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939.

(1) (a) Section 43 (1), definition of "Deputy President"—

5 After the definition of "Court", insert :—

"Deputy President" means the Deputy
President of the Tribunals.

(b) Section 43 (1), definition of "Member"—

10 After the definition of "Intellectually handicapped
person", insert :—

"Member" means a member of the Review
Panel.

(c) Section 43 (1), definitions of "President" and
"Review Panel"—

15 After the definition of "Organisation", insert :—

"President" means the President of the
Tribunals.

20 "Review Panel" means the Intellectually
Handicapped Persons Review Panel
referred to in section 43A (1).

(d) Section 43 (1), definition of "Tribunal"—

Omit the definition, insert instead :—

25 "Tribunal" means an Intellectually Handi-
capped Persons Review Tribunal
established under section 44 (2).

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Sections 43A–43D—

5 After section 43, insert :—

43A. (1) There shall be an Intellectually Handi- **Review**
capped Persons Review Panel. **Panel.**

10 (2) Subject to this section, the Governor
may appoint persons as members of the Review
Panel.

(3) The members shall be appointed from
one or more of the following classes of persons :—

- (a) medical practitioners;
- (b) barristers and solicitors;
- 15 (c) persons having knowledge of and experience
in administration;
- (d) persons having knowledge of and experience
in education;
- 20 (e) persons having knowledge of and experience
in psychology;
- (f) persons having knowledge of and experience
in social work;
- 25 (g) persons in the opinion of the Governor
having other suitable qualifications or
experience.

(4) Of the members—

- (a) one shall be appointed as President of the
Tribunals; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (b) one shall be appointed as Deputy President
of the Tribunals,

in the instrument or instruments appointing them as
members or by a subsequent instrument or instruments
executed by the Governor.

(5) A person—

10 (a) who is a temporary patient, a continued
treatment patient, a protected person or
an incapable person within the meaning of
the Mental Health Act, 1958, or a person
15 under detention under Part VII of that Act;
or

(b) who is bankrupt, is applying to take the
benefit of any law for the relief of bankrupt
or insolvent debtors, whose debts are sub-
ject to a composition with his creditors, or
20 whose fees or allowances would, upon his
appointment, be subject to an assignment
for their benefit,

is not eligible to be appointed as a member.

25 (6) The Public Service Act, 1902, does not
apply to or in respect of the appointment of a member
and a member is not, in his capacity as a member,
subject to that Act while he holds office as a member.

30 43B. (1) Subject to subsection (4), a member shall hold office for the period of 3 years commencing with the day from which he is declared to be appointed in the instrument appointing him or such shorter period as may be specified in that instrument and may, if he is otherwise eligible, be re-appointed as a member.

Term and
vacation
of office,
etc.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) A member shall be paid such fees and allowances as may from time to time be determined in respect of him by the Governor.

(3) The Governor may, for any cause that to him seems sufficient, remove a member from office.

10 (4) A member shall be deemed to have vacated his office if he—

(a) dies;

(b) resigns his office by writing under his hand addressed to the Governor;

15 (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his fees or allowances, or estate, for their benefit;

20 (d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

25 (e) is removed from office by the Governor.

30 43c. (1) A President or Deputy President holds his office until he ceases to be a member and is eligible, if he is re-appointed as a member, to be appointed or re-appointed, as the case may be, as President or Deputy President.

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) A Deputy President may exercise or perform the powers or duties of a President under this Part—

(a) if the President—

10 (i) delegates his powers and duties to the Deputy President (which the President is hereby authorised to do);

(ii) is absent from the State; or

15 (iii) is prevented by illness or other incapacity from exercising or performing his powers or duties under this Part; or

(b) if there is no person holding the office of President.

20 (3) No person shall be concerned to inquire whether or not any occasion has arisen authorising a Deputy President to exercise or perform the powers or duties of a President and all acts or things done or omitted to be done by a Deputy President when exercising or performing those powers or duties shall
25 be as valid and shall have the same consequences as if they had been done or omitted to be done by a President.

30 43D. (1) A delegation under section 43C (2) (a) (i) shall be by instrument in writing and may be made subject to such conditions or such limitations as to the exercise or performance of the power or duty delegated, or as to time or circumstances, as may be specified in the instrument of delegation. Form and effect of delegation.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) A power or duty, the exercise or performance of which has been delegated under section 43C (2) (a) (i) may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

(3) Sections 44–44J—

10 Omit section 44, insert instead :—

44. (1) The President may establish an Intellectually Handicapped Persons Review Tribunal— Establishment of Tribunals.

(a) generally for the purposes of section 48A, 48B or 48G; or

15 (b) for the purposes of—

(i) any class of cases; or

(ii) any particular case,

that may arise or arises under any one or more of those sections.

20 (2) The President establishes a Tribunal by—

(a) appointing members to the Tribunal so that the Tribunal is constituted in accordance with this section;

25 (b) where the President and the Deputy President are not among the members so appointed—nominating one of those members as chairman of the Tribunal; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (c) notifying the members so appointed, or causing those members to be notified, of their appointment and the purpose for which the Tribunal has been established.

(3) A Tribunal shall consist of not less than 3 nor more than 5 members.

10 44A. (1) The procedure for the conduct of business of a Tribunal shall, subject to this Part and any rules made under subsection (5), be as determined by the Tribunal. Procedure of Tribunals.

(2) At a meeting of a Tribunal—

15 (a) if he has been appointed to the Tribunal—the President;

(b) if the President has not been appointed to the Tribunal but the Deputy President has been so appointed—the Deputy President;
20 or

(c) if a chairman for the Tribunal has been nominated under section 44 (2) (b)—that member,

shall preside as chairman of the Tribunal.

25 (3) Subject to section 48A, a Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

30 (4) The chairman of a Tribunal shall, in the event of an equality of votes at a meeting of the Tribunal, have a second or casting vote.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (5) Five members, who shall include the
President or Deputy President, or both, may make
rules not inconsistent with this Part for or with respect
to the convening of and procedure at meetings of a
Tribunal.

10 44B. A Tribunal is not bound by the rules or Evidence.
practice as to evidence and may inform itself of any
matter in such manner as it thinks fit.

44c. (1) The chairman of a Tribunal may—

Powers of
a chairman
of a
Tribunal.

15 (a) by instrument in writing under his hand,
require any person on whom the instrument
is served personally or by post—

20 (i) to appear before the Tribunal for
the purpose of giving evidence; or
(ii) to produce to the Tribunal any
document (including a document in
the possession of, or belonging to,
the Crown) that is relevant to the
purpose for which the Tribunal was
established,

25 at a time, date and place specified in the
instrument;

(b) require a person who appears before the
Tribunal to be sworn for the purpose of
his giving evidence on oath; and

30 (c) administer an oath referred to in paragraph
(b).

*Child Welfare (Amendment).*SCHEDULE 2—*continued.*AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) Where a document is produced to a Tribunal in response to a requirement made under subsection (1), the Tribunal may take possession of the document for such period as it considers necessary for the purposes of the Tribunal.

10 44D. (1) Any member of a Tribunal may require a person (including an officer or employee of the Crown) who appears before the Tribunal to answer a question that is reasonably related to the purpose for which the Tribunal was established. Questions of a member of a Tribunal.

15 (2) A person is not excused from answering a question put to him by a member of a Tribunal on the ground that the answer might tend to incriminate him but, where the person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is
20 admissible in evidence against him in criminal proceedings other than proceedings under section 44E (c) or in relation to a charge of perjury in respect of the answer.

44E. A person who—

Offences.

25 (a) refuses, fails or neglects to comply with a requirement made of him by—

(i) the chairman of a Tribunal under section 44C (1) (a) or (b); or

(ii) any member of a Tribunal under
30 section 44D (1),

to the extent to which he is lawfully able to comply with the requirement;

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (b) in purported compliance with a require-
ment made of him by the chairman of a
Tribunal under section 44c (1) (a) (ii),
knowingly furnishes information that is
false or misleading in a material particular;
or

10 (c) not having been sworn, makes a statement
that is false or misleading in a material
particular when he is appearing before the
Tribunal,

15 shall be guilty of an offence against this Act and
liable to a penalty not exceeding \$100.

20 44F. (1) A person, other than an officer, who is **Witnesses.**
required to appear or to give evidence during pro-
ceedings of a Tribunal is entitled to be paid such
allowances and expenses as the Minister may
determine in respect of him.

(2) For the purposes of section 18 of the
Defamation Act, 1974, the proceedings of a Tribunal
shall be deemed to be an inquiry within the meaning
of that section.

25 (3) A duly qualified legal practitioner acting
for a person required to give evidence during
proceedings of a Tribunal may—

(a) be present during those proceedings; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

- 5 (b) to the extent that the chairman of the
Tribunal permits—
- (i) address the Tribunal; and
 - (ii) examine the person for whom he is
acting,
- 0 in relation to matters in respect of which
a member of the Tribunal has questioned
that person.

44G. (1) A decision supported by a majority of Decisions
votes cast at a meeting of a Tribunal shall be the of Tribunals.
decision of the Tribunal.

- 15 (2) When a Tribunal makes a decision in the
exercise or performance of its powers or duties under
section 48A or 48B, each of its members shall record
his reasons for casting his vote on the decision and the
chairman of the Tribunal shall then cause a record of
20 those reasons to be conveyed to the Director.

(3) No decision of a Tribunal shall be
vitiated by reason only of any informality or want of
form.

25 44H. (1) The chairman of a Tribunal shall cause Record of
a record of the proceedings of a meeting of the proceedings.
Tribunal to be—

- (a) made in the prescribed manner; and
- (b) conveyed to the Director as soon as is
practicable after the conclusion of the
30 meeting.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) The Director shall cause records conveyed to him under subsection (1) and section 44G (2) to be preserved for the prescribed period of time after he receives them.

10 44I. The President for the time being may dissolve a Tribunal by giving notice or causing notice to be given of its dissolution personally or by post to the members who have been appointed to the Tribunal—

Dissolution of Tribunals.

(a) when the purpose for which the Tribunal was established has been achieved; or

(b) on any other reasonable grounds.

15 44J. No proceedings lie against a Tribunal or a member for or on account of any act, matter or thing done or ordered to be done by the Tribunal or member, and purporting to be done for the purposes of carrying out the provisions of this Part, if the Tribunal or member has acted in good faith and with reasonable care.

Certain proceedings prohibited.

(4) (a) Section 48A (2)—

Omit “two months”, insert instead “3 months”.

(b) Section 48A (2)—

25 Omit “Tribunal and request for the reasons stated that the order be renewed”, insert instead “President or, if there is no President for the time being, to the Deputy President and request for the reasons stated that the order be renewed by a Tribunal”.

30

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

- (c) Section 48A (2A)—
5 After section 48A (2), insert :—
 (2A) When the President or Deputy President
 receives reports and a request under subsection
 (2) he shall refer them to a Tribunal.
- (d) Section 48A (3)—
10 After “Tribunal”, insert “to which the request has
 been referred”.
- (e) Section 48A (4)—
 Omit “the Tribunal” where firstly occurring,
 insert instead “a Tribunal”.
- 15 (f) Section 48A (5)—
 Omit “the order” where firstly occurring, insert
 instead “an order”.
- (g) Section 48A (5), (6)—
20 Omit “the Tribunal” wherever occurring, insert
 instead “a Tribunal”.
- (5) (a) Section 48B (3)—
 Omit “the Tribunal for”, insert instead “the
 President, or if there is no President for the time
 being, to the Deputy President and request that”.
- 25 (b) Section 48B (3)—
 After “Part”, insert “be made by a Tribunal”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

- (c) Section 48B (3A)—
5 After section 48B (3), insert:—
(3A) When the President or Deputy President receives a request under subsection (3) he shall refer it to a Tribunal.
- (d) Section 48B (4)—
10 Omit “made to the Tribunal”, insert instead “referred to a Tribunal”.
- (e) Section 48B (5)—
Omit “the Tribunal”, insert instead “a Tribunal”.
- (f) Section 48B (6)—
15 Omit “The Tribunal if”, insert instead “If”.
- (g) Section 48B (6)—
Omit “the Tribunal may”, insert instead “, the Tribunal to which the application has been referred may”.
- 20 (6) Section 48G (4)—
Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.

Child Welfare (Amendment).

SCHEDULE 3.

Sec. 6.

AMENDMENTS TO PART X OF THE CHILD WELFARE
ACT, 1939.

(1) Section 54 (1)—

5 Omit the subsection.

(2) Section 54 (2)—

Omit “but has not been so committed for a specified term”.

(3) Section 54 (3)—

10 Omit “subsections one and two of this section”, insert instead “subsection (2)”.

(4) Section 54 (3)—

Omit “section ninety-four of this Act”, insert instead “section 94”.

15 (5) Section 54 (3)—

Omit “subsection four of this section”, insert instead “subsection (4)”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4.

Sec. 6.

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT, 1939.

(1) Sections 81B, 81C—

5 After section 81A, insert :—

81B. (1) In this section, "court" includes a court hearing or determining an appeal from a determination or an order made by— Courts may act on certain matters.

- (a) a magistrate; or
 - 10 (b) justices,
- exercising the jurisdiction of a children's court.

(2) Where a child has been brought before a court as a neglected child and—

- 15 (a) the complaint in respect of which he has been so brought alleges that he has been ill-treated or exposed; or
- (b) evidence has been presented to the court that the child has been assaulted,

20 the court, in hearing and determining the matter, may act upon any statement, document, information or matter that may, in its opinion, assist it to deal with the complaint, whether or not the statement, document, information or matter would be admissible in evidence.

25 81C. Subject to section 81B, where a child or young person is—

- (a) brought before a court as a neglected child or an uncontrollable child or young person; or
- 30 (b) is charged with an offence,

Certain statements, etc., inadmissible.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

5 the court, in hearing or determining the matter or
charge, shall not admit in evidence or act upon any
statement, confession, admission or information made
or given by the child or young person at a police
station unless there was present throughout the period
of time during which the statement, confession,
10 admission or information was made or given—

(c) one of his parents;

(d) a person aged 18 years or upwards who has
his guardianship; or

15 (e) with the consent of one of the persons
referred to in paragraph (c) or (d)—a
person aged 18 years or upwards who is
not—

(i) one of those persons; or

(ii) a member of the police force.

20 (2) Section 82 (2)—

At the end of section 82, insert :—

(2) If a court finds that a child is a neglected
child it may release the child—

25 (a) upon such terms and conditions as the court
may think fit and as are willingly undertaken
to be observed by the child's parents, one of
the child's parents or another person
approved by the court; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

- 5 (b) for such period of time (whether expiring before or after the date upon which the child attains the age of 16 years) as the court may think fit.
- (3) (a) Section 83 (4)—
10 Omit “paragraph (e) of section eighty-two”, insert instead “section 82 (1) (e)”.
- (b) Section 83 (7)—
Omit “eighty-two of this Act”, insert instead “82 (1)”.
- (4) Section 84 (1)—
15 Omit “eighty-two or section eighty-three of this Act”, insert instead “82 (1) or 83”.
- (5) Section 89 (3)—
Omit “the Intellectually”, insert instead “an Intellectually”.
- 20 (6) (a) Section 90 (1)—
Omit “paragraph (c) of section eighty-two or paragraph (b) of subsection one or paragraph (b) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (c) or section 83 (1) (b) or (2) (b)”.
- 25

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT
1939—*continued.*

(b) Section 90 (2)—

- 5 Omit “paragraph (b) of section eighty-two or paragraph (a) of subsection one or paragraph (a) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (b) or (2) or section 83 (1) (a) or (2) (a)”.

10 (7) Section 91 (1), (1A)—

Omit the subsections, insert instead :—

(1) Where—

- 15 (a) a person who, as a child or young person was, under section 82 (1) or section 83 (1) or (2), released on probation or was committed to the care of a person, breaks or is reasonably suspected of having broken the terms or conditions of his release or committal; or
- 20 (b) a person was, as a child, under section 82 (2), released upon his parents, one of his parents or another person undertaking to observe any terms or conditions that have been broken or are reasonably suspected of
- 25 having been broken,

he may (whether or not a warrant has been issued under subsection (1A)) be apprehended by any constable or by any officer authorised by the Minister in that behalf and shall, upon being so apprehended, be taken to a shelter and shall, as soon as practicable thereafter, be brought before a court.

30

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

- 5 (1A) Any justice, upon oath being made before
him by any constable or by an officer authorised by
the Minister in that behalf that, having made due
inquiry, he believes—
- 10 (a) that a person who, as a child or young
person, was, under section 82 (1) or section
83 (1) or (2), released on probation or
was committed to the care of a person has
broken the terms or conditions of his release
or committal; or
- 15 (b) that the terms or conditions upon which a
person was, as a child, released under
section 82 (2), have been broken,
- may—
- 20 (c) issue his summons for the appearance of the
person so released or committed before a
court; or
- (d) in the first instance issue his warrant
directing the apprehension of the person so
released or committed.

SCHEDULE 5.

Sec. 6.

25 AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939.

(1) Section 126—

Omit "eight", insert instead "10".

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Section 132 (1)—

5 Omit “two hundred dollars”, insert instead “\$1,000”.

(3) Section 146A—

After section 146, insert :—

146A. (1) When a child or young person is brought into a police station—

Notification of parent or guardian by police.

10 (a) at which he is to be questioned about any offence that has been, or may have been, committed; or

15 (b) for the purpose of determining whether he is to be brought before a court as a neglected child or an uncontrollable child or young person within the meaning of Part XIV,

the officer in charge of the police station shall forthwith—

20 (c) notify a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person that the child or young person is at the police station; or

25 (d) cause a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person to be so notified.

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (2) An officer in charge of a police station
who fails to comply with subsection (1) shall be guilty
of an offence against this Act unless he satisfies the
court—

- 10 (a) that he used all reasonable diligence in
attempting to comply with that subsection;
or
- (b) that he had a reasonable excuse for failing
to comply with that subsection.

(4) Sections 148B, 148C—

After section 148A, insert :—

15 148B. (1) In this section—

“court”, except in subsection (7) (d), means any
court;

Notification
of certain
injuries to
children.

“prescribed person” means—

- 20 (a) a medical practitioner; and
- (b) a person who is a member of any
class of persons prescribed for the
purposes of this paragraph, being a
person who follows a profession,
calling or vocation so prescribed, or
25 who holds any office so prescribed.

(2) Any person who forms the belief upon
reasonable grounds that a child—

- 30 (a) has been assaulted; or
- (b) is a neglected child within the meaning of
Part XIV,

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

may—

5 (c) notify the Director of his belief and the grounds therefor either orally or in writing; or

(d) cause the Director to be so notified.

10 (3) A prescribed person who, in the course of practising his profession, calling or vocation, or in exercising the functions of his office, as the case may be, has reasonable grounds to suspect that a child has been assaulted, ill-treated or exposed shall—

15 (a) notify the Director of the name or a description of the child and those grounds either orally or in writing; or

(b) cause the Director to be so notified, promptly after those grounds arise.

20 (4) A prescribed person who fails to comply with subsection (3) shall be guilty of an offence against this Act.

(5) Where the Director has been notified under subsection (2) or (3), he shall—

25 (a) promptly cause an investigation to be made into the matters notified to him; and

30 (b) if he is satisfied that the child in respect of whom he was notified may have been assaulted, ill-treated or exposed, take such action as he believes appropriate, which may include reporting those matters to a constable of police.

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

- 5 (6) Where a person notifies the Director
pursuant to subsection (2) or (3)—
- 10 (a) the notification shall not, in any proceedings
before a court, tribunal or committee, be
held to constitute a breach of professional
etiquette or ethics or a departure from
accepted standards of professional conduct;
- 15 (b) no liability for defamation is incurred by
reason of the making of the notification;
- (c) the notification shall not constitute a
ground for civil proceedings for malicious
prosecution or for conspiracy;
- 20 (d) subject to subsections (7) and (8), the
notification shall not be admissible in
evidence in any proceedings before a court,
tribunal or committee and no evidence of
its contents is admissible; and
- 25 (e) subject to subsection (7), a person shall
not be compelled in any proceedings before
a court, tribunal or committee to produce
the notification, or any copy of, or extract
from the notification (if it is capable of
being produced) or to disclose, or give any
evidence of, any of the contents of the
notification.
- 30 (7) Subsection (6) (d) and (e) does not
apply in relation to—
- (a) the admissibility in, or of, evidence of a
notification made under subsection (2) or
(3);

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

- 5 (b) the production of such a notification, a copy thereof or an extract therefrom; or
- (c) the disclosure or giving of evidence of the contents of such a notification,
- either—
- 10 (d) in any proceedings before a court, within the meaning of section 81B, in which the child to whom the notification relates is brought before the court as a neglected child; or
- 15 (e) in support of, or in answer to, a charge or allegation made in proceedings referred to in subsection (6) (d) or (e) against any person in relation to his exercising or performing any of his powers, duties or functions in pursuance of this Act.
- 20 (8) Subsection (6) (d) does not apply where a notification under subsection (2) or (3) is tendered in evidence, or evidence in respect of such a notification is given—
- 25 (a) by the person by whom the notification was, or was caused to be, made; and
- (b) in answer to a charge or allegation made against him in proceedings referred to in subsection (6) (d).

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

5 148C. (1) Where the Director or a constable of police believes on reasonable grounds (which may consist wholly or partly of information received by him) that a child has suffered injury to his health as a result of the child's having been assaulted, ill-treated or exposed, he may serve a prescribed notice—

Medical
examination:
reputedly
injured
children.

10 (a) naming or describing the child; and

(b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or another place specified in the notice for the purposes of the child's being medically examined,

15

on the person who appears to him to be a parent of the child or to have the care of the child for the time being.

20

(2) A person who fails to comply with the requirement contained in a notice served on him under subsection (1) shall be guilty of an offence against this Act unless it is proved that the person was not a parent of the child described in the notice and did not have the care of the child at the time the notice was served.

25

(3) Where a person fails to comply with the requirement contained in a notice served under subsection (1), a constable of police or an officer authorised by the Minister in that behalf may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a hospital or another place for the purpose of the child's being medically examined.

30

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

5 (4) A constable of police or an officer may,
when exercising his powers under subsection (3)—

(a) subject to paragraph (b), use all reasonable
force; and

10 (b) enter (if need be by force) any house,
building or other place but shall not enter
any place occupied as a dwelling except
under the authority of a warrant issued
under section 145 or 146.

(5) Where a child is presented to a medical
practitioner under subsection (1) or (3)—

15 (a) the practitioner may conduct, or cause to be
conducted, such medical examination of the
child as he thinks fit, including examination
at a hospital that is not the place specified
20 in the request made under subsection (1)
in respect of the child; and

(b) the Director shall, commencing with the
time at which the child is presented to the
practitioner and until the expiration of such
25 period of time as is reasonably necessary for
the child to be medically examined in
accordance with paragraph (a) or 72 hours,
whichever period first expires, be deemed to
have custody of the child—

30 (i) if the consent of a parent or any
other person who would, but for this
paragraph, have lawful custody of

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

5 the child to the examination has not
been obtained or has been revoked;
and

(ii) for the purpose only of enabling the
examination to be conducted.

10 (6) No proceedings lie against a medical
practitioner or a constable of police for or on account
of any act, matter or thing done or ordered to be done
by him, and purporting to be done for the purpose of
carrying out the provisions of this section, if he has
acted in good faith and with reasonable care.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977

[40c]

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 20, 1977.

An Act to amend the Child Welfare Act, 1939, to make further provision in relation to neglected children and children who have been assaulted, ill-treated or exposed, and in certain other respects; and to validate certain matters. [Assented to, 24th March, 1977.]

BE

Child Welfare (Amendment).

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

Short title. 1. This Act may be cited as the "Child Welfare (Amendment) Act, 1977".

**Commence-
ment.** 2. (1) Except as provided in subsections (2)–(6), this Act shall commence on the date of assent to this Act.

(2) Section 6 shall, in its application to a provision of Schedules 1–5, commence on the day on which that provision commences.

(3) Schedules 2 and 3 and the several provisions of Schedules 4 and 5 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Sections 10 and 11 shall commence on the day on which Schedule 2 commences.

(5) Section 12 (1) shall commence on the day on which Schedule 5 (1) commences.

(6) Section 12 (2) shall commence on the day on which Schedule 5 (2) commences.

**Principal
Act.**

3. The Child Welfare Act, 1939, is in this Act referred to as the Principal Act.

Child Welfare (Amendment).

4. In this Act, "appointed day" means the day on which Schedule 2 commences. Interpretation.

5. This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENT TO PART I OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 2.—AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 3.—AMENDMENTS TO PART X OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 4.—AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 5.—AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT, 1939.

6. The Principal Act is amended in the manner set forth in Schedules 1–5. Amendment of Act No. 17, 1939.

7. (1) Section 3 of the Child Welfare (Amendment) Act, 1967, shall be deemed to have commenced on 1st January, 1974. Commencement of certain enactments.

(2) For the purpose of removal of doubt it is declared that—

(a) the provisions of section 10 of the Youth and Community Services Act, 1973, in so far as they effect the amendment specified in Part 2 of the Schedule to that Act, and of Part 2 of that Schedule, commenced; and

(b) the provisions of Part 1 of that Schedule amending the Child Welfare (Amendment) Act, 1967, took effect,

on 1st February, 1974.

Child Welfare (Amendment).

Validation
of certain
appoint-
ments, etc.

8. (1) In this section, "relevant period" means the interval of time commencing with 1st January, 1974, and continuing until the expiration of the period of 3 months commencing with the appointed day.

(2) Any act, matter or thing that has been, or is, done or omitted to be done during the relevant period by—

- (a) the Governor;
- (b) the Minister for the time being administering the Principal Act; or
- (c) an officer or employee of the Crown,

that—

(d) would have been, or would be, lawfully done or omitted to be done—

(i) if section 3 of the Child Welfare (Amendment) Act, 1967, had commenced on 1st January, 1974; or

(ii) in relation to a person, if that section had commenced on 1st January, 1974, and an order that could have been made in respect of the person under section 46 or 47 of the Principal Act had been or were in force in respect of the person at the time when the act, matter or thing was, or is, done or omitted to be done; and

(e) would not have been, or would not be, lawfully done or omitted to be done if this section had not been enacted,

is validated or authorised, as the case may require.

Child Welfare (Amendment).

9. Any act, matter or thing that has been, or is, done or omitted to be done before the appointed day by persons appointed under section 44 of the Principal Act, that — Validation of orders, etc., of former Tribunal.

- (a) could have been, or could be, lawfully done or omitted to be done by persons appointed under section 43A of the Principal Act, as amended by section 6 and Schedule 2, if the Principal Act, as so amended, had been or were in force at the time when the act, matter or thing was done or omitted to be done; and
- (b) could not have been, or could not be, lawfully done or omitted to be done if this section had not been enacted,

is validated or authorised, as the case may require, and shall be deemed to have had and to have, or to have, the same consequences as if it had been or were lawfully done or omitted to be done.

10. (1) A person who, immediately before the appointed day, held office as a member of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (2) of that Act, as amended by this Act, as a member of the Intellectually Handicapped Persons Review Panel for a term of 3 years commencing with the appointed day. Certain persons deemed appointed.

(2) A person who, immediately before the appointed day, held office as Chairman or Deputy Chairman of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (4) of that Act, as amended by this Act—

- (a) in the case of the person who held office as Chairman—as President of the Intellectually Handicapped Persons Review Tribunals; and

(b)

Child Welfare (Amendment).

- (b) in the case of the person who held office as Deputy Chairman—as Deputy President of the Intellectually Handicapped Persons Review Tribunals.

Minister
may make
certain
interim
orders.

11. (1) In this section, "Part IX" means Part IX of the Principal Act, as amended by this Act.

(2) Where at any time during the period of 3 months commencing with the appointed day, the Minister is satisfied that—

- (a) a person who, at any time occurring after 31st December, 1973, but before the appointed day, has been—

- (i) admitted to State control;
- (ii) committed to the care of the Minister to be dealt with as a ward admitted to State control; or
- (iii) committed to an institution within the meaning of the Principal Act, as amended by this Act,

is intellectually handicapped to such a degree that he requires, otherwise than for continuous medical treatment or attention in a hospital, care, protection or supervision in his own interests or in the interests of others; and

- (b) the interests of the person would be promoted if he were dealt with as an intellectually handicapped person under the provisions of Part IX,

the Minister may make an order that the person be dealt with under the provisions of Part IX as an intellectually handicapped person and such an order shall, subject to subsection (4), be deemed to have been duly made under section 46 of the Principal Act.

Child Welfare (Amendment).

(3) Before he makes an order in respect of a person under subsection (2), the Minister shall—

- (a) if he knows the name and address of either parent of the person—serve notice on the parent, either personally or by post, of his intention to make the order; and
- (b) if he has served a notice under paragraph (a)—consider any representations made to him by any person in respect of the firstmentioned person within 10 days of the date of service of the notice.

(4) Where an order is made under this section, Part IX has effect in relation to the order as if that Part had been amended—

- (a) by omitting from section 48A (1) (b) the words “two years,” and by inserting instead the words “two years; or”;
- (b) by inserting after section 48A (1) (b) the following paragraph :—
 - (c) notwithstanding paragraphs (a) and (b), remain in force, if the order has been made under section 11 (2) of the Child Welfare (Amendment) Act, 1977, for a period of 3 months,
- (c) by inserting in section 48A (1) after the words “two years” where secondly occurring, the words “or 3 months”;
- (d) by inserting after section 48A (5) the following subsection :—

(5A) A Tribunal may not make an interim determination under subsection (5) renewing an order made under section 11 (2) of the Child Welfare (Amendment) Act, 1977.

Child Welfare (Amendment).

Savings.

12. (1) Notwithstanding section 126 of the Principal Act, as amended by this Act, where a child—

(a) committed an offence before the day on which this subsection commences; and

(b) had, at the time he committed the offence, attained the age of eight years,

he may be found guilty of the offence.

(2) Notwithstanding section 132 (1) of the Principal Act, as amended by this Act, a person who, on or after the day on which this subsection commences, is found guilty of an offence committed against the Principal Act before that day shall not be liable to any greater penalty than that to which he would have been liable if he had been found guilty of the offence immediately after he had committed it.

Sec. 6.

SCHEDULE 1.

AMENDMENT TO PART I OF THE CHILD WELFARE ACT, 1939.

Section 4 (3)—

After section 4 (2), insert :—

(3) A reference in this Act to a “constable” or a “constable of police” includes, and shall be deemed to have always included, a reference to any member of the police force.

Child Welfare (Amendment).

SCHEDULE 2.

Sec. 6.

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939.

(1) (a) Section 43 (1), definition of "Deputy President"—

After the definition of "Court", insert :—

"Deputy President" means the Deputy
President of the Tribunals.

(b) Section 43 (1), definition of "Member"—

After the definition of "Intellectually handicapped
person", insert :—

"Member" means a member of the Review
Panel.

(c) Section 43 (1), definitions of "President" and
"Review Panel"—

After the definition of "Organisation", insert :—

"President" means the President of the
Tribunals.

"Review Panel" means the Intellectually
Handicapped Persons Review Panel
referred to in section 43A (1).

(d) Section 43 (1), definition of "Tribunal"—

Omit the definition, insert instead :—

"Tribunal" means an Intellectually Handi-
capped Persons Review Tribunal
established under section 44 (2).

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(2) Sections 43A–43D—

After section 43, insert :—

**Review
Panel.**

43A. (1) There shall be an Intellectually Handicapped Persons Review Panel.

(2) Subject to this section, the Governor may appoint persons as members of the Review Panel.

(3) The members shall be appointed from one or more of the following classes of persons :—

- (a) medical practitioners;
- (b) barristers and solicitors;
- (c) persons having knowledge of and experience in administration;
- (d) persons having knowledge of and experience in education;
- (e) persons having knowledge of and experience in psychology;
- (f) persons having knowledge of and experience in social work;
- (g) persons in the opinion of the Governor having other suitable qualifications or experience.

(4) Of the members—

- (a) one shall be appointed as President of the Tribunals; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

- (b) one shall be appointed as Deputy President of the Tribunals,

in the instrument or instruments appointing them as members or by a subsequent instrument or instruments executed by the Governor.

(5) A person—

- (a) who is a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or
- (b) who is bankrupt, is applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, whose debts are subject to a composition with his creditors, or whose fees or allowances would, upon his appointment, be subject to an assignment for their benefit,

is not eligible to be appointed as a member.

(6) The Public Service Act, 1902, does not apply to or in respect of the appointment of a member and a member is not, in his capacity as a member, subject to that Act while he holds office as a member.

43B. (1) Subject to subsection (4), a member shall hold office for the period of 3 years commencing with the day from which he is declared to be appointed in the instrument appointing him or such shorter period as may be specified in that instrument and may, if he is otherwise eligible, be re-appointed as a member.

Term and vacation of office, etc.

SCHEDULE

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(2) A member shall be paid such fees and allowances as may from time to time be determined in respect of him by the Governor.

(3) The Governor may, for any cause that to him seems sufficient, remove a member from office.

(4) A member shall be deemed to have vacated his office if he—

(a) dies;

(b) resigns his office by writing under his hand addressed to the Governor;

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his fees or allowances, or estate, for their benefit;

(d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or

(e) is removed from office by the Governor.

43c. (1) A President or Deputy President holds his office until he ceases to be a member and is eligible, if he is re-appointed as a member, to be appointed or re-appointed, as the case may be, as President or Deputy President.

President
and Deputy
President.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) A Deputy President may exercise or perform the powers or duties of a President under this Part—

(a) if the President—

- (i) delegates his powers and duties to the Deputy President (which the President is hereby authorised to do);
- (ii) is absent from the State; or
- (iii) is prevented by illness or other incapacity from exercising or performing his powers or duties under this Part; or

(b) if there is no person holding the office of President.

(3) No person shall be concerned to inquire whether or not any occasion has arisen authorising a Deputy President to exercise or perform the powers or duties of a President and all acts or things done or omitted to be done by a Deputy President when exercising or performing those powers or duties shall be as valid and shall have the same consequences as if they had been done or omitted to be done by a President.

43D. (1) A delegation under section 43c (2) (a) (i) shall be by instrument in writing and may be made subject to such conditions or such limitations as to the exercise or performance of the power or duty delegated, or as to time or circumstances, as may be specified in the instrument of delegation.

Form and
effect of
delegation.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—continued.
**AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—continued.**

(2) A power or duty, the exercise or performance of which has been delegated under section 43c (2) (a) (i) may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

(3) Sections 44–44J—

Omit section 44, insert instead :—

44. (1) The President may establish an Intellectually Handicapped Persons Review Tribunal—

(a) generally for the purposes of section 48A, 48B or 48G; or

(b) for the purposes of—

(i) any class of cases; or

(ii) any particular case,

that may arise or arises under any one or more of those sections.

(2) The President establishes a Tribunal by—

(a) appointing members to the Tribunal so that the Tribunal is constituted in accordance with this section;

(b) where the President and the Deputy President are not among the members so appointed—nominating one of those members as chairman of the Tribunal; and

SCHEDULE

Establishment of Tribunals.

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(c) notifying the members so appointed, or causing those members to be notified, of their appointment and the purpose for which the Tribunal has been established.

(3) A Tribunal shall consist of not less than 3 nor more than 5 members.

44A. (1) The procedure for the conduct of business of a Tribunal shall, subject to this Part and any rules made under subsection (5), be as determined by the Tribunal. Procedure of Tribunals.

(2) At a meeting of a Tribunal—

(a) if he has been appointed to the Tribunal—the President;

(b) if the President has not been appointed to the Tribunal but the Deputy President has been so appointed—the Deputy President; or

(c) if a chairman for the Tribunal has been nominated under section 44 (2) (b)—that member,

shall preside as chairman of the Tribunal.

(3) Subject to section 48A, a Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

(4) The chairman of a Tribunal shall, in the event of an equality of votes at a meeting of the Tribunal, have a second or casting vote.

Child Welfare (Amendment).

SCHEDULE 2—continued.
**AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—continued.**

(5) Five members, who shall include the President or Deputy President, or both, may make rules not inconsistent with this Part for or with respect to the convening of and procedure at meetings of a Tribunal.

Evidence.

44B. A Tribunal is not bound by the rules or practice as to evidence and may inform itself of any matter in such manner as it thinks fit.

**Powers of
a chairman
of a
Tribunal.**

44c. (1) The chairman of a Tribunal may—

(a) by instrument in writing under his hand, require any person on whom the instrument is served personally or by post—

(i) to appear before the Tribunal for the purpose of giving evidence; or

(ii) to produce to the Tribunal any document (including a document in the possession of, or belonging to, the Crown) that is relevant to the purpose for which the Tribunal was established,

at a time, date and place specified in the instrument;

(b) require a person who appears before the Tribunal to be sworn for the purpose of his giving evidence on oath; and

(c) administer an oath referred to in paragraph (b).

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Where a document is produced to a Tribunal in response to a requirement made under subsection (1), the Tribunal may take possession of the document for such period as it considers necessary for the purposes of the Tribunal.

44D. (1) Any member of a Tribunal may require a person (including an officer or employee of the Crown) who appears before the Tribunal to answer a question that is reasonably related to the purpose for which the Tribunal was established. Questions of a member of a Tribunal.

(2) A person is not excused from answering a question put to him by a member of a Tribunal on the ground that the answer might tend to incriminate him but, where the person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under section 44E (c) or in relation to a charge of perjury in respect of the answer.

44E. A person who—

Offences.

(a) refuses, fails or neglects to comply with a requirement made of him by—

(i) the chairman of a Tribunal under section 44C (1) (a) or (b); or

(ii) any member of a Tribunal under section 44D (1),

to the extent to which he is lawfully able to comply with the requirement;

SCHEDULE

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(b) in purported compliance with a requirement made of him by the chairman of a Tribunal under section 44c (1) (a) (ii), knowingly furnishes information that is false or misleading in a material particular; or

(c) not having been sworn, makes a statement that is false or misleading in a material particular when he is appearing before the Tribunal,

shall be guilty of an offence against this Act and liable to a penalty not exceeding \$100.

Witnesses.

44F. (1) A person, other than an officer, who is required to appear or to give evidence during proceedings of a Tribunal is entitled to be paid such allowances and expenses as the Minister may determine in respect of him.

(2) For the purposes of section 18 of the Defamation Act, 1974, the proceedings of a Tribunal shall be deemed to be an inquiry within the meaning of that section.

(3) A duly qualified legal practitioner acting for a person required to give evidence during proceedings of a Tribunal may—

(a) be present during those proceedings; and

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(b) to the extent that the chairman of the Tribunal permits—

(i) address the Tribunal; and

(ii) examine the person for whom he is acting,

in relation to matters in respect of which a member of the Tribunal has questioned that person.

44G. (1) A decision supported by a majority of ^{Decisions} votes cast at a meeting of a Tribunal shall be the ^{of Tribunals.} decision of the Tribunal.

(2) When a Tribunal makes a decision in the exercise or performance of its powers or duties under section 48A or 48B, each of its members shall record his reasons for casting his vote on the decision and the chairman of the Tribunal shall then cause a record of those reasons to be conveyed to the Director.

(3) No decision of a Tribunal shall be vitiated by reason only of any informality or want of form.

44H. (1) The chairman of a Tribunal shall cause ^{Record of} a record of the proceedings of a meeting of the ^{Proceedings.} Tribunal to be—

(a) made in the prescribed manner; and

(b) conveyed to the Director as soon as is practicable after the conclusion of the meeting.

SCHEDULE

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(2) The Director shall cause records conveyed to him under subsection (1) and section 44G (2) to be preserved for the prescribed period of time after he receives them.

Dissolution
of Tribunals.

44I. The President for the time being may dissolve a Tribunal by giving notice or causing notice to be given of its dissolution personally or by post to the members who have been appointed to the Tribunal—

- (a) when the purpose for which the Tribunal was established has been achieved; or
- (b) on any other reasonable grounds.

Certain
proceedings
prohibited.

44J. No proceedings lie against a Tribunal or a member for or on account of any act, matter or thing done or ordered to be done by the Tribunal or member, and purporting to be done for the purposes of carrying out the provisions of this Part, if the Tribunal or member has acted in good faith and with reasonable care.

(4) (a) Section 48A (2)—

Omit “two months”, insert instead “3 months”.

(b) Section 48A (2)—

Omit “Tribunal and request for the reasons stated that the order be renewed”, insert instead “President or, if there is no President for the time being, to the Deputy President and request for the reasons stated that the order be renewed by a Tribunal”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(c) Section 48A (2A)—

After section 48A (2), insert :—

(2A) When the President or Deputy President receives reports and a request under subsection (2) he shall refer them to a Tribunal.

(d) Section 48A (3)—

After “Tribunal”, insert “to which the request has been referred”.

(e) Section 48A (4)—

Omit “the Tribunal” where firstly occurring, insert instead “a Tribunal”.

(f) Section 48A (5)—

Omit “the order” where firstly occurring, insert instead “an order”.

(g) Section 48A (5), (6)—

Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.

(5) (a) Section 48B (3)—

Omit “the Tribunal for”, insert instead “the President, or if there is no President for the time being, to the Deputy President and request that”.

(b) Section 48B (3)—

After “Part”, insert “be made by a Tribunal”.

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(c) Section 48B (3A)—

After section 48B (3), insert:—

(3A) When the President or Deputy President receives a request under subsection (3) he shall refer it to a Tribunal.

(d) Section 48B (4)—

Omit “made to the Tribunal”, insert instead “referred to a Tribunal”.

(e) Section 48B (5)—

Omit “the Tribunal”, insert instead “a Tribunal”.

(f) Section 48B (6)—

Omit “The Tribunal if”, insert instead “If”.

(g) Section 48B (6)—

Omit “the Tribunal may”, insert instead “, the Tribunal to which the application has been referred may”.

(6) Section 48G (4)—

Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.

Child Welfare (Amendment).

SCHEDULE 3.

Sec. 6.

**AMENDMENTS TO PART X OF THE CHILD WELFARE
ACT, 1939.**

(1) Section 54 (1)—

Omit the subsection.

(2) Section 54 (2)—

Omit "but has not been so committed for a specified term".

(3) Section 54 (3)—

Omit "subsections one and two of this section", insert instead "subsection (2)".

(4) Section 54 (3)—

Omit "section ninety-four of this Act", insert instead "section 94".

(5) Section 54 (3)—

Omit "subsection four of this section", insert instead "subsection (4)".

Child Welfare (Amendment).

Sec. 6.

SCHEDULE 4.

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT, 1939.

(1) Sections 81B, 81C—

After section 81A, insert :—

81B. (1) In this section, "court" includes a court hearing or determining an appeal from a determination or an order made by—

- (a) a magistrate; or
- (b) justices,

exercising the jurisdiction of a children's court.

(2) Where a child has been brought before a court as a neglected child and—

- (a) the complaint in respect of which he has been so brought alleges that he has been ill-treated or exposed; or
- (b) evidence has been presented to the court that the child has been assaulted,

the court, in hearing and determining the matter, may act upon any statement, document, information or matter that may, in its opinion, assist it to deal with the complaint, whether or not the statement, document, information or matter would be admissible in evidence.

81C. Subject to section 81B, where a child or young person is—

- (a) brought before a court as a neglected child or an uncontrollable child or young person; or
- (b) is charged with an offence,

Courts may act on certain matters.

Certain statements, etc., inadmissible.

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

the court, in hearing or determining the matter or charge, shall not admit in evidence or act upon any statement, confession, admission or information made or given by the child or young person at a police station unless there was present throughout the period of time during which the statement, confession, admission or information was made or given—

- (c) one of his parents;
- (d) a person aged 18 years or upwards who has his guardianship; or
- (e) with the consent of one of the persons referred to in paragraph (c) or (d)—a person aged 18 years or upwards who is not—
 - (i) one of those persons; or
 - (ii) a member of the police force.

(2) Section 82 (2)—

At the end of section 82, insert :—

(2) If a court finds that a child is a neglected child it may release the child—

- (a) upon such terms and conditions as the court may think fit and as are willingly undertaken to be observed by the child's parents, one of the child's parents or another person approved by the court; and

Child Welfare (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

(b) for such period of time (whether expiring before or after the date upon which the child attains the age of 16 years) as the court may think fit.

(3) (a) Section 83 (4)—

Omit “paragraph (e) of section eighty-two”, insert instead “section 82 (1) (e)”.

(b) Section 83 (7)—

Omit “eighty-two of this Act”, insert instead “82 (1)”.

(4) Section 84 (1)—

Omit “eighty-two or section eighty-three of this Act”, insert instead “82 (1) or 83”.

(5) Section 89 (3)—

Omit “the Intellectually”, insert instead “an Intellectually”.

(6) (a) Section 90 (1)—

Omit “paragraph (c) of section eighty-two or paragraph (b) of subsection one or paragraph (b) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (c) or section 83 (1) (b) or (2) (b)”.

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT
1939—*continued.*

(b) Section 90 (2)—

Omit “paragraph (b) of section eighty-two or paragraph (a) of subsection one or paragraph (a) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (b) or (2) or section 83 (1) (a) or (2) (a)”.

(7) Section 91 (1), (1A)—

Omit the subsections, insert instead :—

(1) Where—

- (a) a person who, as a child or young person was, under section 82 (1) or section 83 (1) or (2), released on probation or was committed to the care of a person, breaks or is reasonably suspected of having broken the terms or conditions of his release or committal; or
- (b) a person was, as a child, under section 82 (2), released upon his parents, one of his parents or another person undertaking to observe any terms or conditions that have been broken or are reasonably suspected of having been broken,

he may (whether or not a warrant has been issued under subsection (1A)) be apprehended by any constable or by any officer authorised by the Minister in that behalf and shall, upon being so apprehended, be taken to a shelter and shall, as soon as practicable thereafter, be brought before a court.

Child Welfare (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

(1A) Any justice, upon oath being made before him by any constable or by an officer authorised by the Minister in that behalf that, having made due inquiry, he believes—

- (a) that a person who, as a child or young person, was, under section 82 (1) or section 83 (1) or (2), released on probation or was committed to the care of a person has broken the terms or conditions of his release or committal; or
- (b) that the terms or conditions upon which a person was, as a child, released under section 82 (2), have been broken,

may—

- (c) issue his summons for the appearance of the person so released or committed before a court; or
- (d) in the first instance issue his warrant directing the apprehension of the person so released or committed.

Sec. 6.

SCHEDULE 5.

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939.

(1) Section 126—

Omit “eight”, insert instead “10”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Section 132 (1)—

Omit “two hundred dollars”, insert instead “\$1,000”.

(3) Section 146A—

After section 146, insert :—

146A. (1) When a child or young person is brought into a police station—

Notification
of parent or
guardian by
police.

(a) at which he is to be questioned about any offence that has been, or may have been, committed; or

(b) for the purpose of determining whether he is to be brought before a court as a neglected child or an uncontrollable child or young person within the meaning of Part XIV,

the officer in charge of the police station shall forthwith—

(c) notify a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person that the child or young person is at the police station; or

(d) cause a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person to be so notified.

Child Welfare (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) An officer in charge of a police station who fails to comply with subsection (1) shall be guilty of an offence against this Act unless he satisfies the court—

- (a) that he used all reasonable diligence in attempting to comply with that subsection; or
- (b) that he had a reasonable excuse for failing to comply with that subsection.

(4) Sections 148B, 148C—

After section 148A, insert :—

148B. (1) In this section—

“court”, except in subsection (7) (d), means any court;

“prescribed person” means—

- (a) a medical practitioner; and
- (b) a person who is a member of any class of persons prescribed for the purposes of this paragraph, being a person who follows a profession, calling or vocation, other than a solicitor or barrister in the course of his profession, so prescribed, or who holds any office so prescribed.

(2) Any person who forms the belief upon reasonable grounds that a child—

- (a) has been assaulted; or
- (b) is a neglected child within the meaning of Part XIV,

Notification
of certain
injuries to
children.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

may—

- (c) notify the Director of his belief and the grounds therefor either orally or in writing; or
- (d) cause the Director to be so notified.

(3) A prescribed person who, in the course of practising his profession, calling or vocation, or in exercising the functions of his office, as the case may be, has reasonable grounds to suspect that a child has been assaulted, ill-treated or exposed shall—

- (a) notify the Director of the name or a description of the child and those grounds either orally or in writing; or
- (b) cause the Director to be so notified,

promptly after those grounds arise.

(4) A prescribed person who fails to comply with subsection (3) shall be guilty of an offence against this Act.

(5) Where the Director has been notified under subsection (2) or (3), he shall—

- (a) promptly cause an investigation to be made into the matters notified to him; and
- (b) if he is satisfied that the child in respect of whom he was notified may have been assaulted, ill-treated or exposed, take such action as he believes appropriate, which may include reporting those matters to a constable of police.

Child Welfare (Amendment).

SCHEDULE 5—continued.
**AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—continued.**

(6) Where a person notifies the Director pursuant to subsection (2) or (3)—

- (a) the notification shall not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- (b) no liability for defamation is incurred by reason of the making of the notification;
- (c) the notification shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;
- (d) subject to subsections (7) and (8), the notification shall not be admissible in evidence in any proceedings before a court, tribunal or committee and no evidence of its contents is admissible; and
- (e) subject to subsection (7), a person shall not be compelled in any proceedings before a court, tribunal or committee to produce the notification, or any copy of, or extract from the notification (if it is capable of being produced) or to disclose, or give any evidence of, any of the contents of the notification.

(7) Subsection (6) (d) and (e) does not apply in relation to—

- (a) the admissibility in, or of, evidence of a notification made under subsection (2) or (3);

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

- (b) the production of such a notification, a copy thereof or an extract therefrom; or
 - (c) the disclosure or giving of evidence of the contents of such a notification,
- either—
- (d) in any proceedings before a court, within the meaning of section 81B, in which the child to whom the notification relates is brought before the court as a neglected child; or
 - (e) in support of, or in answer to, a charge or allegation made in proceedings referred to in subsection (6) (d) or (e) against any person in relation to his exercising or performing any of his powers, duties or functions in pursuance of this Act.
- (8) Subsection (6) (d) does not apply where a notification under subsection (2) or (3) is tendered in evidence, or evidence in respect of such a notification is given—
- (a) by the person by whom the notification was, or was caused to be, made; and
 - (b) in answer to a charge or allegation made against him in proceedings referred to in subsection (6) (d).

Child Welfare (Amendment).

 SCHEDULE 5—*continued.*

 AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
 1939—*continued.*

Medical
 examination:
 reputedly
 injured
 children.

148C. (1) Where the Director or a constable of police believes on reasonable grounds (which may consist wholly or partly of information received by him) that a child has suffered injury to his health as a result of the child's having been assaulted, ill-treated or exposed, he may serve a prescribed notice—

- (a) naming or describing the child; and
- (b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or another place specified in the notice for the purposes of the child's being medically examined,

on the person who appears to him to be a parent of the child or to have the care of the child for the time being.

(2) A person who fails to comply with the requirement contained in a notice served on him under subsection (1) shall be guilty of an offence against this Act unless it is proved that the person was not a parent of the child described in the notice and did not have the care of the child at the time the notice was served.

(3) Where a person fails to comply with the requirement contained in a notice served under subsection (1), a constable of police or an officer authorised by the Minister in that behalf may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a hospital or another place for the purpose of the child's being medically examined.

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(4) A constable of police or an officer may, when exercising his powers under subsection (3)—

- (a) subject to paragraph (b), use all reasonable force; and
- (b) enter (if need be by force) any house, building or other place but shall not enter any place occupied as a dwelling except under the authority of a warrant issued under section 145 or 146.

(5) Where a child is presented to a medical practitioner under subsection (1) or (3)—

- (a) the practitioner may conduct, or cause to be conducted, such medical examination of the child as he thinks fit, including examination at a hospital that is not the place specified in the request made under subsection (1) in respect of the child; and
- (b) the Director shall, commencing with the time at which the child is presented to the practitioner and until the expiration of such period of time as is reasonably necessary for the child to be medically examined in accordance with paragraph (a) or 72 hours, whichever period first expires, be deemed to have custody of the child—
 - (i) if the consent of a parent or any other person who would, but for this paragraph, have lawful custody of

Child Welfare (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

the child to the examination has not been obtained or has been revoked; and

- (ii) for the purpose only of enabling the examination to be conducted.

(6) No proceedings lie against a medical practitioner or a constable of police for or on account of any act, matter or thing done or ordered to be done by him, and purporting to be done for the purpose of carrying out the provisions of this section, if he has acted in good faith and with reasonable care.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

D. L. WHEELER,
for Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 16 March, 1977.*

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 20, 1977.

An Act to amend the Child Welfare Act, 1939, to make further provision in relation to neglected children and children who have been assaulted, ill-treated or exposed, and in certain other respects; and to validate certain matters. [Assented to, 24th March, 1977.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

T. J. CAHILL,
Chairman of Committees of the Legislative Assembly.

Child Welfare (Amendment).

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

Short title. **1.** This Act may be cited as the "Child Welfare (Amendment) Act, 1977".

Commence- **2.** (1) Except as provided in subsections (2)–(6), this
ment. Act shall commence on the date of assent to this Act.

(2) Section 6 shall, in its application to a provision of Schedules 1–5, commence on the day on which that provision commences.

(3) Schedules 2 and 3 and the several provisions of Schedules 4 and 5 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Sections 10 and 11 shall commence on the day on which Schedule 2 commences.

(5) Section 12 (1) shall commence on the day on which Schedule 5 (1) commences.

(6) Section 12 (2) shall commence on the day on which Schedule 5 (2) commences.

Principal **3.** The Child Welfare Act, 1939, is in this Act referred to
Act. as the Principal Act.

Child Welfare (Amendment).

4. In this Act, "appointed day" means the day on which Schedule 2 commences. Interpretation.

5. This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENT TO PART I OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 2.—AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 3.—AMENDMENTS TO PART X OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 4.—AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 5.—AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT, 1939.

6. The Principal Act is amended in the manner set forth in Schedules 1-5. Amendment of Act No. 17, 1939.

7. (1) Section 3 of the Child Welfare (Amendment) Act, 1967, shall be deemed to have commenced on 1st January, 1974. Commencement of certain enactments.

(2) For the purpose of removal of doubt it is declared that—

(a) the provisions of section 10 of the Youth and Community Services Act, 1973, in so far as they effect the amendment specified in Part 2 of the Schedule to that Act, and of Part 2 of that Schedule, commenced; and

(b) the provisions of Part 1 of that Schedule amending the Child Welfare (Amendment) Act, 1967, took effect,

on 1st February, 1974.

Child Welfare (Amendment).

Validation
of certain
appoint-
ments, etc.

8. (1) In this section, "relevant period" means the interval of time commencing with 1st January, 1974, and continuing until the expiration of the period of 3 months commencing with the appointed day.

(2) Any act, matter or thing that has been, or is, done or omitted to be done during the relevant period by—

- (a) the Governor;
- (b) the Minister for the time being administering the Principal Act; or
- (c) an officer or employee of the Crown,

that—

(d) would have been, or would be, lawfully done or omitted to be done—

(i) if section 3 of the Child Welfare (Amendment) Act, 1967, had commenced on 1st January, 1974; or

(ii) in relation to a person, if that section had commenced on 1st January, 1974, and an order that could have been made in respect of the person under section 46 or 47 of the Principal Act had been or were in force in respect of the person at the time when the act, matter or thing was, or is, done or omitted to be done; and

(e) would not have been, or would not be, lawfully done or omitted to be done if this section had not been enacted,

is validated or authorised, as the case may require.

Child Welfare (Amendment).

9. Any act, matter or thing that has been, or is, done or omitted to be done before the appointed day by persons appointed under section 44 of the Principal Act, that —

Validation of orders, etc., of former Tribunal.

- (a) could have been, or could be, lawfully done or omitted to be done by persons appointed under section 43A of the Principal Act, as amended by section 6 and Schedule 2, if the Principal Act, as so amended, had been or were in force at the time when the act, matter or thing was done or omitted to be done; and
- (b) could not have been, or could not be, lawfully done or omitted to be done if this section had not been enacted,

is validated or authorised, as the case may require, and shall be deemed to have had and to have, or to have, the same consequences as if it had been or were lawfully done or omitted to be done.

10. (1) A person who, immediately before the appointed day, held office as a member of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (2) of that Act, as amended by this Act, as a member of the Intellectually Handicapped Persons Review Panel for a term of 3 years commencing with the appointed day.

Certain persons deemed appointed.

(2) A person who, immediately before the appointed day, held office as Chairman or Deputy Chairman of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (4) of that Act, as amended by this Act—

- (a) in the case of the person who held office as Chairman—as President of the Intellectually Handicapped Persons Review Tribunals; and

(b)

Child Welfare (Amendment).

- (b) in the case of the person who held office as Deputy Chairman—as Deputy President of the Intellectually Handicapped Persons Review Tribunals.

Minister
may make
certain
interim
orders.

11. (1) In this section, “Part IX” means Part IX of the Principal Act, as amended by this Act.

(2) Where at any time during the period of 3 months commencing with the appointed day, the Minister is satisfied that—

- (a) a person who, at any time occurring after 31st December, 1973, but before the appointed day, has been—
- (i) admitted to State control;
 - (ii) committed to the care of the Minister to be dealt with as a ward admitted to State control; or
 - (iii) committed to an institution within the meaning of the Principal Act, as amended by this Act,

is intellectually handicapped to such a degree that he requires, otherwise than for continuous medical treatment or attention in a hospital, care, protection or supervision in his own interests or in the interests of others; and

- (b) the interests of the person would be promoted if he were dealt with as an intellectually handicapped person under the provisions of Part IX,

the Minister may make an order that the person be dealt with under the provisions of Part IX as an intellectually handicapped person and such an order shall, subject to subsection (4), be deemed to have been duly made under section 46 of the Principal Act.

(3)

Child Welfare (Amendment).

(3) Before he makes an order in respect of a person under subsection (2), the Minister shall—

- (a) if he knows the name and address of either parent of the person—serve notice on the parent, either personally or by post, of his intention to make the order; and
- (b) if he has served a notice under paragraph (a)—consider any representations made to him by any person in respect of the firstmentioned person within 10 days of the date of service of the notice.

(4) Where an order is made under this section, Part IX has effect in relation to the order as if that Part had been amended—

- (a) by omitting from section 48A (1) (b) the words “two years,” and by inserting instead the words “two years; or”;
- (b) by inserting after section 48A (1) (b) the following paragraph :—
 - (c) notwithstanding paragraphs (a) and (b), remain in force, if the order has been made under section 11 (2) of the Child Welfare (Amendment) Act, 1977, for a period of 3 months,
- (c) by inserting in section 48A (1) after the words “two years” where secondly occurring, the words “or 3 months”;
- (d) by inserting after section 48A (5) the following subsection :—

(5A) A Tribunal may not make an interim determination under subsection (5) renewing an order made under section 11 (2) of the Child Welfare (Amendment) Act, 1977.

Child Welfare (Amendment).

Savings.

12. (1) Notwithstanding section 126 of the Principal Act, as amended by this Act, where a child—

- (a) committed an offence before the day on which this subsection commences; and
- (b) had, at the time he committed the offence, attained the age of eight years,

he may be found guilty of the offence.

(2) Notwithstanding section 132 (1) of the Principal Act, as amended by this Act, a person who, on or after the day on which this subsection commences, is found guilty of an offence committed against the Principal Act before that day shall not be liable to any greater penalty than that to which he would have been liable if he had been found guilty of the offence immediately after he had committed it.

Sec. 6.**SCHEDULE 1.****AMENDMENT TO PART I OF THE CHILD WELFARE ACT, 1939.****Section 4 (3)—**

After section 4 (2), insert:—

(3) A reference in this Act to a “constable” or a “constable of police” includes, and shall be deemed to have always included, a reference to any member of the police force.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2.

Sec. 6.

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939.

(1) (a) Section 43 (1), definition of "Deputy President"—

After the definition of "Court", insert :—

"Deputy President" means the Deputy
President of the Tribunals.

(b) Section 43 (1), definition of "Member"—

After the definition of "Intellectually handicapped
person", insert :—

"Member" means a member of the Review
Panel.

(c) Section 43 (1), definitions of "President" and
"Review Panel"—

After the definition of "Organisation", insert :—

"President" means the President of the
Tribunals.

"Review Panel" means the Intellectually
Handicapped Persons Review Panel
referred to in section 43A (1).

(d) Section 43 (1), definition of "Tribunal"—

Omit the definition, insert instead :—

"Tribunal" means an Intellectually Handi-
capped Persons Review Tribunal
established under section 44 (2).

SCHEDULE

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(2) Sections 43A–43D—

After section 43, insert :—

 Review
 Panel.

 43A. (1) There shall be an Intellectually Handi-
 capped Persons Review Panel.

 (2) Subject to this section, the Governor
 may appoint persons as members of the Review
 Panel.

 (3) The members shall be appointed from
 one or more of the following classes of persons :—

- (a) medical practitioners;
- (b) barristers and solicitors;
- (c) persons having knowledge of and experience
 in administration;
- (d) persons having knowledge of and experience
 in education;
- (e) persons having knowledge of and experience
 in psychology;
- (f) persons having knowledge of and experience
 in social work;
- (g) persons in the opinion of the Governor
 having other suitable qualifications or
 experience.

(4) Of the members—

- (a) one shall be appointed as President of the
 Tribunals; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

- (b) one shall be appointed as Deputy President of the Tribunals,

in the instrument or instruments appointing them as members or by a subsequent instrument or instruments executed by the Governor.

(5) A person—

- (a) who is a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or
- (b) who is bankrupt, is applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, whose debts are subject to a composition with his creditors, or whose fees or allowances would, upon his appointment, be subject to an assignment for their benefit,

is not eligible to be appointed as a member.

(6) The Public Service Act, 1902, does not apply to or in respect of the appointment of a member and a member is not, in his capacity as a member, subject to that Act while he holds office as a member.

43B. (1) Subject to subsection (4), a member shall hold office for the period of 3 years commencing with the day from which he is declared to be appointed in the instrument appointing him or such shorter period as may be specified in that instrument and may, if he is otherwise eligible, be re-appointed as a member.

Term and
vacation
of office,
etc.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—continued.
**AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—continued.**

(2) A member shall be paid such fees and allowances as may from time to time be determined in respect of him by the Governor.

(3) The Governor may, for any cause that to him seems sufficient, remove a member from office.

(4) A member shall be deemed to have vacated his office if he—

(a) dies;

(b) resigns his office by writing under his hand addressed to the Governor;

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his fees or allowances, or estate, for their benefit;

(d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or

(e) is removed from office by the Governor.

**President
and Deputy
President.**

43c. (1) A President or Deputy President holds his office until he ceases to be a member and is eligible, if he is re-appointed as a member, to be appointed or re-appointed, as the case may be, as President or Deputy President.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) A Deputy President may exercise or perform the powers or duties of a President under this Part—

(a) if the President—

(i) delegates his powers and duties to the Deputy President (which the President is hereby authorised to do);

(ii) is absent from the State; or

(iii) is prevented by illness or other incapacity from exercising or performing his powers or duties under this Part; or

(b) if there is no person holding the office of President.

(3) No person shall be concerned to inquire whether or not any occasion has arisen authorising a Deputy President to exercise or perform the powers or duties of a President and all acts or things done or omitted to be done by a Deputy President when exercising or performing those powers or duties shall be as valid and shall have the same consequences as if they had been done or omitted to be done by a President.

43D. (1) A delegation under section 43C (2) (a) (i) shall be by instrument in writing and may be made subject to such conditions or such limitations as to the exercise or performance of the power or duty delegated, or as to time or circumstances, as may be specified in the instrument of delegation.

Form and
effect of
delegation.

SCHEDULE

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(2) A power or duty, the exercise or performance of which has been delegated under section 43C (2) (a) (i) may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

(3) Sections 44–44J—

Omit section 44, insert instead :—

Establish-
ment of
Tribunals.

44. (1) The President may establish an Intellectually Handicapped Persons Review Tribunal—

(a) generally for the purposes of section 48A, 48B or 48G; or

(b) for the purposes of—

(i) any class of cases; or

(ii) any particular case,

that may arise or arises under any one or more of those sections.

(2) The President establishes a Tribunal by—

(a) appointing members to the Tribunal so that the Tribunal is constituted in accordance with this section;

(b) where the President and the Deputy President are not among the members so appointed—nominating one of those members as chairman of the Tribunal; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(c) notifying the members so appointed, or causing those members to be notified, of their appointment and the purpose for which the Tribunal has been established.

(3) A Tribunal shall consist of not less than 3 nor more than 5 members.

44A. (1) The procedure for the conduct of ^{Procedure} business of a Tribunal shall, subject to this Part and ^{of} any rules made under subsection (5), be as determined by the Tribunal. ^{Tribunals.}

(2) At a meeting of a Tribunal—

(a) if he has been appointed to the Tribunal—the President;

(b) if the President has not been appointed to the Tribunal but the Deputy President has been so appointed—the Deputy President; or

(c) if a chairman for the Tribunal has been nominated under section 44 (2) (b)—that member,

shall preside as chairman of the Tribunal.

(3) Subject to section 48A, a Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

(4) The chairman of a Tribunal shall, in the event of an equality of votes at a meeting of the Tribunal, have a second or casting vote.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—continued.
**AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—continued.**

(5) Five members, who shall include the President or Deputy President, or both, may make rules not inconsistent with this Part for or with respect to the convening of and procedure at meetings of a Tribunal.

Evidence.

44B. A Tribunal is not bound by the rules or practice as to evidence and may inform itself of any matter in such manner as it thinks fit.

**Powers of
a chairman
of a
Tribunal.**

44C. (1) The chairman of a Tribunal may—

(a) by instrument in writing under his hand, require any person on whom the instrument is served personally or by post—

(i) to appear before the Tribunal for the purpose of giving evidence; or

(ii) to produce to the Tribunal any document (including a document in the possession of, or belonging to, the Crown) that is relevant to the purpose for which the Tribunal was established,

at a time, date and place specified in the instrument;

(b) require a person who appears before the Tribunal to be sworn for the purpose of his giving evidence on oath; and

(c) administer an oath referred to in paragraph (b).

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Where a document is produced to a Tribunal in response to a requirement made under subsection (1), the Tribunal may take possession of the document for such period as it considers necessary for the purposes of the Tribunal.

44D. (1) Any member of a Tribunal may require a person (including an officer or employee of the Crown) who appears before the Tribunal to answer a question that is reasonably related to the purpose for which the Tribunal was established. Questions of a member of a Tribunal.

(2) A person is not excused from answering a question put to him by a member of a Tribunal on the ground that the answer might tend to incriminate him but, where the person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under section 44E (c) or in relation to a charge of perjury in respect of the answer.

44E. A person who— Offences.

(a) refuses, fails or neglects to comply with a requirement made of him by—

(i) the chairman of a Tribunal under section 44C (1) (a) or (b); or

(ii) any member of a Tribunal under section 44D (1),

to the extent to which he is lawfully able to comply with the requirement;

SCHEDULE

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(b) in purported compliance with a requirement made of him by the chairman of a Tribunal under section 44c (1) (a) (ii), knowingly furnishes information that is false or misleading in a material particular; or

(c) not having been sworn, makes a statement that is false or misleading in a material particular when he is appearing before the Tribunal,

shall be guilty of an offence against this Act and liable to a penalty not exceeding \$100.

Witnesses.

44F. (1) A person, other than an officer, who is required to appear or to give evidence during proceedings of a Tribunal is entitled to be paid such allowances and expenses as the Minister may determine in respect of him.

(2) For the purposes of section 18 of the Defamation Act, 1974, the proceedings of a Tribunal shall be deemed to be an inquiry within the meaning of that section.

(3) A duly qualified legal practitioner acting for a person required to give evidence during proceedings of a Tribunal may—

(a) be present during those proceedings; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(b) to the extent that the chairman of the Tribunal permits—

(i) address the Tribunal; and

(ii) examine the person for whom he is acting,

in relation to matters in respect of which a member of the Tribunal has questioned that person.

44G. (1) A decision supported by a majority of ^{Decisions} votes cast at a meeting of a Tribunal shall be the ^{of Tribunals.} decision of the Tribunal.

(2) When a Tribunal makes a decision in the exercise or performance of its powers or duties under section 48A or 48B, each of its members shall record his reasons for casting his vote on the decision and the chairman of the Tribunal shall then cause a record of those reasons to be conveyed to the Director.

(3) No decision of a Tribunal shall be vitiated by reason only of any informality or want of form.

44H. (1) The chairman of a Tribunal shall cause ^{Record of} a record of the proceedings of a meeting of the ^{proceedings.} Tribunal to be—

(a) made in the prescribed manner; and

(b) conveyed to the Director as soon as is practicable after the conclusion of the meeting.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—continued.
**AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—continued.**

(2) The Director shall cause records conveyed to him under subsection (1) and section 44G (2) to be preserved for the prescribed period of time after he receives them.

Dissolution
of Tribunals.

44I. The President for the time being may dissolve a Tribunal by giving notice or causing notice to be given of its dissolution personally or by post to the members who have been appointed to the Tribunal—

- (a) when the purpose for which the Tribunal was established has been achieved; or
- (b) on any other reasonable grounds.

Certain
proceedings
prohibited.

44J. No proceedings lie against a Tribunal or a member for or on account of any act, matter or thing done or ordered to be done by the Tribunal or member, and purporting to be done for the purposes of carrying out the provisions of this Part, if the Tribunal or member has acted in good faith and with reasonable care.

(4) (a) Section 48A (2)—

Omit “two months”, insert instead “3 months”.

(b) Section 48A (2)—

Omit “Tribunal and request for the reasons stated that the order be renewed”, insert instead “President or, if there is no President for the time being, to the Deputy President and request for the reasons stated that the order be renewed by a Tribunal”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(c) Section 48A (2A)—

After section 48A (2), insert :—

(2A) When the President or Deputy President receives reports and a request under subsection (2) he shall refer them to a Tribunal.

(d) Section 48A (3)—

After “Tribunal”, insert “to which the request has been referred”.

(e) Section 48A (4)—

Omit “the Tribunal” where firstly occurring, insert instead “a Tribunal”.

(f) Section 48A (5)—

Omit “the order” where firstly occurring, insert instead “an order”.

(g) Section 48A (5), (6)—

Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.

(5) (a) Section 48B (3)—

Omit “the Tribunal for”, insert instead “the President, or if there is no President for the time being, to the Deputy President and request that”.

(b) Section 48B (3)—

After “Part”, insert “be made by a Tribunal”.

Child Welfare (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(c) Section 48B (3A)—

After section 48B (3), insert:—

(3A) When the President or Deputy President receives a request under subsection (3) he shall refer it to a Tribunal.

(d) Section 48B (4)—

Omit “made to the Tribunal”, insert instead “referred to a Tribunal”.

(e) Section 48B (5)—

Omit “the Tribunal”, insert instead “a Tribunal”.

(f) Section 48B (6)—

Omit “The Tribunal if”, insert instead “If”.

(g) Section 48B (6)—

Omit “the Tribunal may”, insert instead “, the Tribunal to which the application has been referred may”.

(6) Section 48G (4)—

Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.

Child Welfare (Amendment).

SCHEDULE 3.

Sec. 6.

AMENDMENTS TO PART X OF THE CHILD WELFARE
ACT, 1939.

(1) Section 54 (1)—

Omit the subsection.

(2) Section 54 (2)—

Omit “but has not been so committed for a specified term”.

(3) Section 54 (3)—

Omit “subsections one and two of this section”, insert instead “subsection (2)”.

(4) Section 54 (3)—

Omit “section ninety-four of this Act”, insert instead “section 94”.

(5) Section 54 (3)—

Omit “subsection four of this section”, insert instead “subsection (4)”.

Child Welfare (Amendment).

Sec. 6.

SCHEDULE 4.

AMENDMENTS TO PART XIV OF THE CHILD WELFARE
ACT, 1939.

(1) Sections 81B, 81C—

After section 81A, insert :—

Courts may
act on
certain
matters.

81B. (1) In this section, "court" includes a court hearing or determining an appeal from a determination or an order made by—

(a) a magistrate; or

(b) justices,

exercising the jurisdiction of a children's court.

(2) Where a child has been brought before a court as a neglected child and—

(a) the complaint in respect of which he has been so brought alleges that he has been ill-treated or exposed; or

(b) evidence has been presented to the court that the child has been assaulted,

the court, in hearing and determining the matter, may act upon any statement, document, information or matter that may, in its opinion, assist it to deal with the complaint, whether or not the statement, document, information or matter would be admissible in evidence.

Certain
statements,
etc.,
inadmissible.

81C. Subject to section 81B, where a child or young person is—

(a) brought before a court as a neglected child or an uncontrollable child or young person; or

(b) is charged with an offence,

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

the court, in hearing or determining the matter or charge, shall not admit in evidence or act upon any statement, confession, admission or information made or given by the child or young person at a police station unless there was present throughout the period of time during which the statement, confession, admission or information was made or given—

- (c) one of his parents;
- (d) a person aged 18 years or upwards who has his guardianship; or
- (e) with the consent of one of the persons referred to in paragraph (c) or (d)—a person aged 18 years or upwards who is not—
 - (i) one of those persons; or
 - (ii) a member of the police force.

(2) Section 82 (2)—

At the end of section 82, insert :—

(2) If a court finds that a child is a neglected child it may release the child—

- (a) upon such terms and conditions as the court may think fit and as are willingly undertaken to be observed by the child's parents, one of the child's parents or another person approved by the court; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

- (b) for such period of time (whether expiring before or after the date upon which the child attains the age of 16 years) as the court may think fit.
- (3) (a) Section 83 (4)—
Omit “paragraph (e) of section eighty-two”, insert instead “section 82 (1) (e)”.
- (b) Section 83 (7)—
Omit “eighty-two of this Act”, insert instead “82 (1)”.
- (4) Section 84 (1)—
Omit “eighty-two or section eighty-three of this Act”, insert instead “82 (1) or 83”.
- (5) Section 89 (3)—
Omit “the Intellectually”, insert instead “an Intellectually”.
- (6) (a) Section 90 (1)—
Omit “paragraph (c) of section eighty-two or paragraph (b) of subsection one or paragraph (b) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (c) or section 83 (1) (b) or (2) (b)”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT
1939—*continued.*

(b) Section 90 (2)—

Omit “paragraph (b) of section eighty-two or paragraph (a) of subsection one or paragraph (a) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (b) or (2) or section 83 (1) (a) or (2) (a)”.

(7) Section 91 (1), (1A)—

Omit the subsections, insert instead :—

(1) Where—

- (a) a person who, as a child or young person was, under section 82 (1) or section 83 (1) or (2), released on probation or was committed to the care of a person, breaks or is reasonably suspected of having broken the terms or conditions of his release or committal; or
- (b) a person was, as a child, under section 82 (2), released upon his parents, one of his parents or another person undertaking to observe any terms or conditions that have been broken or are reasonably suspected of having been broken,

he may (whether or not a warrant has been issued under subsection (1A)) be apprehended by any constable or by any officer authorised by the Minister in that behalf and shall, upon being so apprehended, be taken to a shelter and shall, as soon as practicable thereafter, be brought before a court.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—continued.
**AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—continued.**

(1A) Any justice, upon oath being made before him by any constable or by an officer authorised by the Minister in that behalf that, having made due inquiry, he believes—

- (a) that a person who, as a child or young person, was, under section 82 (1) or section 83 (1) or (2), released on probation or was committed to the care of a person has broken the terms or conditions of his release or committal; or
- (b) that the terms or conditions upon which a person was, as a child, released under section 82 (2), have been broken,

may—

- (c) issue his summons for the appearance of the person so released or committed before a court; or
 - (d) in the first instance issue his warrant directing the apprehension of the person so released or committed.
-

Sec. 6.

SCHEDULE 5.
**AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939.**

(1) Section 126—

Omit "eight", insert instead "10".

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Section 132 (1)—

Omit “two hundred dollars”, insert instead “\$1,000”.

(3) Section 146A—

After section 146, insert :—

146A. (1) When a child or young person is brought into a police station—

Notification
of parent or
guardian by
police.

- (a) at which he is to be questioned about any offence that has been, or may have been, committed; or
- (b) for the purpose of determining whether he is to be brought before a court as a neglected child or an uncontrollable child or young person within the meaning of Part XIV,

the officer in charge of the police station shall forthwith—

- (c) notify a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person that the child or young person is at the police station; or
- (d) cause a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person to be so notified.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—continued.
**AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—continued.**

(2) An officer in charge of a police station who fails to comply with subsection (1) shall be guilty of an offence against this Act unless he satisfies the court—

- (a) that he used all reasonable diligence in attempting to comply with that subsection; or
- (b) that he had a reasonable excuse for failing to comply with that subsection.

(4) Sections 148B, 148C—

After section 148A, insert :—

148B. (1) In this section—

“court”, except in subsection (7) (d), means any court;

“prescribed person” means—

- (a) a medical practitioner; and
- (b) a person who is a member of any class of persons prescribed for the purposes of this paragraph, being a person who follows a profession, calling or vocation, other than a solicitor or barrister in the course of his profession, so prescribed, or who holds any office so prescribed.

(2) Any person who forms the belief upon reasonable grounds that a child—

- (a) has been assaulted; or
- (b) is a neglected child within the meaning of Part XIV,

Notification
of certain
injuries to
children.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

may—

- (c) notify the Director of his belief and the grounds therefor either orally or in writing; or
- (d) cause the Director to be so notified.

(3) A prescribed person who, in the course of practising his profession, calling or vocation, or in exercising the functions of his office, as the case may be, has reasonable grounds to suspect that a child has been assaulted, ill-treated or exposed shall—

- (a) notify the Director of the name or a description of the child and those grounds either orally or in writing; or
- (b) cause the Director to be so notified,

promptly after those grounds arise.

(4) A prescribed person who fails to comply with subsection (3) shall be guilty of an offence against this Act.

(5) Where the Director has been notified under subsection (2) or (3), he shall—

- (a) promptly cause an investigation to be made into the matters notified to him; and
- (b) if he is satisfied that the child in respect of whom he was notified may have been assaulted, ill-treated or exposed, take such action as he believes appropriate, which may include reporting those matters to a constable of police.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—continued.
**AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—continued.**

(6) Where a person notifies the Director pursuant to subsection (2) or (3)—

- (a) the notification shall not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- (b) no liability for defamation is incurred by reason of the making of the notification;
- (c) the notification shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;
- (d) subject to subsections (7) and (8), the notification shall not be admissible in evidence in any proceedings before a court, tribunal or committee and no evidence of its contents is admissible; and
- (e) subject to subsection (7), a person shall not be compelled in any proceedings before a court, tribunal or committee to produce the notification, or any copy of, or extract from the notification (if it is capable of being produced) or to disclose, or give any evidence of, any of the contents of the notification.

(7) Subsection (6) (d) and (e) does not apply in relation to—

- (a) the admissibility in, or of, evidence of a notification made under subsection (2) or (3);

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

- (b) the production of such a notification, a copy thereof or an extract therefrom; or
- (c) the disclosure or giving of evidence of the contents of such a notification,

either—

- (d) in any proceedings before a court, within the meaning of section 81B, in which the child to whom the notification relates is brought before the court as a neglected child; or
- (e) in support of, or in answer to, a charge or allegation made in proceedings referred to in subsection (6) (d) or (e) against any person in relation to his exercising or performing any of his powers, duties or functions in pursuance of this Act.

(8) Subsection (6) (d) does not apply where a notification under subsection (2) or (3) is tendered in evidence, or evidence in respect of such a notification is given—

- (a) by the person by whom the notification was, or was caused to be, made; and
- (b) in answer to a charge or allegation made against him in proceedings referred to in subsection (6) (d).

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

Medical
examination:
reputedly
injured
children.

148c. (1) Where the Director or a constable of police believes on reasonable grounds (which may consist wholly or partly of information received by him) that a child has suffered injury to his health as a result of the child's having been assaulted, ill-treated or exposed, he may serve a prescribed notice—

- (a) naming or describing the child; and
- (b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or another place specified in the notice for the purposes of the child's being medically examined,

on the person who appears to him to be a parent of the child or to have the care of the child for the time being.

(2) A person who fails to comply with the requirement contained in a notice served on him under subsection (1) shall be guilty of an offence against this Act unless it is proved that the person was not a parent of the child described in the notice and did not have the care of the child at the time the notice was served.

(3) Where a person fails to comply with the requirement contained in a notice served under subsection (1), a constable of police or an officer authorised by the Minister in that behalf may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a hospital or another place for the purpose of the child's being medically examined.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(4) A constable of police or an officer may, when exercising his powers under subsection (3)—

- (a) subject to paragraph (b), use all reasonable force; and
- (b) enter (if need be by force) any house, building or other place but shall not enter any place occupied as a dwelling except under the authority of a warrant issued under section 145 or 146.

(5) Where a child is presented to a medical practitioner under subsection (1) or (3)—

- (a) the practitioner may conduct, or cause to be conducted, such medical examination of the child as he thinks fit, including examination at a hospital that is not the place specified in the request made under subsection (1) in respect of the child; and
- (b) the Director shall, commencing with the time at which the child is presented to the practitioner and until the expiration of such period of time as is reasonably necessary for the child to be medically examined in accordance with paragraph (a) or 72 hours, whichever period first expires, be deemed to have custody of the child—
 - (i) if the consent of a parent or any other person who would, but for this paragraph, have lawful custody of

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

the child to the examination has not
been obtained or has been revoked;
and

- (ii) for the purpose only of enabling the
examination to be conducted.

(6) No proceedings lie against a medical
practitioner or a constable of police for or on account
of any act, matter or thing done or ordered to be done
by him, and purporting to be done for the purpose of
carrying out the provisions of this section, if he has
acted in good faith and with reasonable care.

*In the name and on behalf of Her Majesty I assent to this
Act.*

A. R. CUTLER,
Governor.

*Government House,
Sydney, 24th March, 1977.*

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 20, 1977.

An Act to amend the Child Welfare Act, 1939, to make further provision in relation to neglected children and children who have been assaulted, ill-treated or exposed, and in certain other respects; and to validate certain matters. [Assented to, 24th March, 1977.]

BE

Child Welfare (Amendment).

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

Short title. 1. This Act may be cited as the "Child Welfare (Amendment) Act, 1977".

**Commence-
ment.** 2. (1) Except as provided in subsections (2)–(6), this Act shall commence on the date of assent to this Act.

(2) Section 6 shall, in its application to a provision of Schedules 1–5, commence on the day on which that provision commences.

(3) Schedules 2 and 3 and the several provisions of Schedules 4 and 5 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Sections 10 and 11 shall commence on the day on which Schedule 2 commences.

(5) Section 12 (1) shall commence on the day on which Schedule 5 (1) commences.

(6) Section 12 (2) shall commence on the day on which Schedule 5 (2) commences.

**Principal
Act.**

3. The Child Welfare Act, 1939, is in this Act referred to as the Principal Act.

Child Welfare (Amendment).

4. In this Act, "appointed day" means the day on which Schedule 2 commences. Interpretation.

5. This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENT TO PART I OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 2.—AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 3.—AMENDMENTS TO PART X OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 4.—AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 5.—AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT, 1939.

6. The Principal Act is amended in the manner set forth in Schedules 1–5. Amendment of Act No. 17, 1939.

7. (1) Section 3 of the Child Welfare (Amendment) Act, 1967, shall be deemed to have commenced on 1st January, 1974. Commencement of certain enactments.

(2) For the purpose of removal of doubt it is declared that—

(a) the provisions of section 10 of the Youth and Community Services Act, 1973, in so far as they effect the amendment specified in Part 2 of the Schedule to that Act, and of Part 2 of that Schedule, commenced; and

(b) the provisions of Part 1 of that Schedule amending the Child Welfare (Amendment) Act, 1967, took effect,

on 1st February, 1974.

Child Welfare (Amendment).

Validation
of certain
appoint-
ments, etc.

8. (1) In this section, "relevant period" means the interval of time commencing with 1st January, 1974, and continuing until the expiration of the period of 3 months commencing with the appointed day.

(2) Any act, matter or thing that has been, or is, done or omitted to be done during the relevant period by—

- (a) the Governor;
- (b) the Minister for the time being administering the Principal Act; or
- (c) an officer or employee of the Crown,

that—

(d) would have been, or would be, lawfully done or omitted to be done—

(i) if section 3 of the Child Welfare (Amendment) Act, 1967, had commenced on 1st January, 1974; or

(ii) in relation to a person, if that section had commenced on 1st January, 1974, and an order that could have been made in respect of the person under section 46 or 47 of the Principal Act had been or were in force in respect of the person at the time when the act, matter or thing was, or is, done or omitted to be done; and

(e) would not have been, or would not be, lawfully done or omitted to be done if this section had not been enacted,

is validated or authorised, as the case may require.

Child Welfare (Amendment).

9. Any act, matter or thing that has been, or is, done or omitted to be done before the appointed day by persons appointed under section 44 of the Principal Act, that — Validation of orders, etc., of former Tribunal.

- (a) could have been, or could be, lawfully done or omitted to be done by persons appointed under section 43A of the Principal Act, as amended by section 6 and Schedule 2, if the Principal Act, as so amended, had been or were in force at the time when the act, matter or thing was done or omitted to be done; and
- (b) could not have been, or could not be, lawfully done or omitted to be done if this section had not been enacted,

is validated or authorised, as the case may require, and shall be deemed to have had and to have, or to have, the same consequences as if it had been or were lawfully done or omitted to be done.

10. (1) A person who, immediately before the appointed day, held office as a member of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (2) of that Act, as amended by this Act, as a member of the Intellectually Handicapped Persons Review Panel for a term of 3 years commencing with the appointed day. Certain persons deemed appointed.

(2) A person who, immediately before the appointed day, held office as Chairman or Deputy Chairman of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (4) of that Act, as amended by this Act—

- (a) in the case of the person who held office as Chairman—as President of the Intellectually Handicapped Persons Review Tribunals; and

(b)

Child Welfare (Amendment).

- (b) in the case of the person who held office as Deputy Chairman—as Deputy President of the Intellectually Handicapped Persons Review Tribunals.

Minister
may make
certain
interim
orders.

11. (1) In this section, "Part IX" means Part IX of the Principal Act, as amended by this Act.

(2) Where at any time during the period of 3 months commencing with the appointed day, the Minister is satisfied that—

- (a) a person who, at any time occurring after 31st December, 1973, but before the appointed day, has been—

- (i) admitted to State control;
- (ii) committed to the care of the Minister to be dealt with as a ward admitted to State control; or
- (iii) committed to an institution within the meaning of the Principal Act, as amended by this Act,

is intellectually handicapped to such a degree that he requires, otherwise than for continuous medical treatment or attention in a hospital, care, protection or supervision in his own interests or in the interests of others; and

- (b) the interests of the person would be promoted if he were dealt with as an intellectually handicapped person under the provisions of Part IX,

the Minister may make an order that the person be dealt with under the provisions of Part IX as an intellectually handicapped person and such an order shall, subject to subsection (4), be deemed to have been duly made under section 46 of the Principal Act.

Child Welfare (Amendment).

(3) Before he makes an order in respect of a person under subsection (2), the Minister shall—

- (a) if he knows the name and address of either parent of the person—serve notice on the parent, either personally or by post, of his intention to make the order; and
- (b) if he has served a notice under paragraph (a)—consider any representations made to him by any person in respect of the firstmentioned person within 10 days of the date of service of the notice.

(4) Where an order is made under this section, Part IX has effect in relation to the order as if that Part had been amended—

- (a) by omitting from section 48A (1) (b) the words “two years,” and by inserting instead the words “two years; or”;
- (b) by inserting after section 48A (1) (b) the following paragraph :—
 - (c) notwithstanding paragraphs (a) and (b), remain in force, if the order has been made under section 11 (2) of the Child Welfare (Amendment) Act, 1977, for a period of 3 months,
- (c) by inserting in section 48A (1) after the words “two years” where secondly occurring, the words “or 3 months”;
- (d) by inserting after section 48A (5) the following subsection :—

(5A) A Tribunal may not make an interim determination under subsection (5) renewing an order made under section 11 (2) of the Child Welfare (Amendment) Act, 1977.

Child Welfare (Amendment).

Savings.

12. (1) Notwithstanding section 126 of the Principal Act, as amended by this Act, where a child—

(a) committed an offence before the day on which this subsection commences; and

(b) had, at the time he committed the offence, attained the age of eight years,

he may be found guilty of the offence.

(2) Notwithstanding section 132 (1) of the Principal Act, as amended by this Act, a person who, on or after the day on which this subsection commences, is found guilty of an offence committed against the Principal Act before that day shall not be liable to any greater penalty than that to which he would have been liable if he had been found guilty of the offence immediately after he had committed it.

Sec. 6.

SCHEDULE 1.
AMENDMENT TO PART I OF THE CHILD WELFARE ACT, 1939.
Section 4 (3)—

After section 4 (2), insert :—

(3) A reference in this Act to a “constable” or a “constable of police” includes, and shall be deemed to have always included, a reference to any member of the police force.

Child Welfare (Amendment).

SCHEDULE 2.

Sec. 6.

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939.

(1) (a) Section 43 (1), definition of "Deputy President"—

After the definition of "Court", insert :—

"Deputy President" means the Deputy
President of the Tribunals.

(b) Section 43 (1), definition of "Member"—

After the definition of "Intellectually handicapped
person", insert :—

"Member" means a member of the Review
Panel.

(c) Section 43 (1), definitions of "President" and
"Review Panel"—

After the definition of "Organisation", insert :—

"President" means the President of the
Tribunals.

"Review Panel" means the Intellectually
Handicapped Persons Review Panel
referred to in section 43A (1).

(d) Section 43 (1), definition of "Tribunal"—

Omit the definition, insert instead :—

"Tribunal" means an Intellectually Handi-
capped Persons Review Tribunal
established under section 44 (2).

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(2) Sections 43A–43D—

After section 43, insert :—

**Review
Panel.**

43A. (1) There shall be an Intellectually Handicapped Persons Review Panel.

(2) Subject to this section, the Governor may appoint persons as members of the Review Panel.

(3) The members shall be appointed from one or more of the following classes of persons :—

- (a) medical practitioners;
- (b) barristers and solicitors;
- (c) persons having knowledge of and experience in administration;
- (d) persons having knowledge of and experience in education;
- (e) persons having knowledge of and experience in psychology;
- (f) persons having knowledge of and experience in social work;
- (g) persons in the opinion of the Governor having other suitable qualifications or experience.

(4) Of the members—

- (a) one shall be appointed as President of the Tribunals; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

- (b) one shall be appointed as Deputy President of the Tribunals,

in the instrument or instruments appointing them as members or by a subsequent instrument or instruments executed by the Governor.

(5) A person—

- (a) who is a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or
- (b) who is bankrupt, is applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, whose debts are subject to a composition with his creditors, or whose fees or allowances would, upon his appointment, be subject to an assignment for their benefit,

is not eligible to be appointed as a member.

(6) The Public Service Act, 1902, does not apply to or in respect of the appointment of a member and a member is not, in his capacity as a member, subject to that Act while he holds office as a member.

43B. (1) Subject to subsection (4), a member shall hold office for the period of 3 years commencing with the day from which he is declared to be appointed in the instrument appointing him or such shorter period as may be specified in that instrument and may, if he is otherwise eligible, be re-appointed as a member.

Term and
vacation
of office,
etc.

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(2) A member shall be paid such fees and allowances as may from time to time be determined in respect of him by the Governor.

(3) The Governor may, for any cause that to him seems sufficient, remove a member from office.

(4) A member shall be deemed to have vacated his office if he—

(a) dies;

(b) resigns his office by writing under his hand addressed to the Governor;

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his fees or allowances, or estate, for their benefit;

(d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or

(e) is removed from office by the Governor.

43c. (1) A President or Deputy President holds his office until he ceases to be a member and is eligible, if he is re-appointed as a member, to be appointed or re-appointed, as the case may be, as President or Deputy President.

President
and Deputy
President.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) A Deputy President may exercise or perform the powers or duties of a President under this Part—

(a) if the President—

- (i) delegates his powers and duties to the Deputy President (which the President is hereby authorised to do);
- (ii) is absent from the State; or
- (iii) is prevented by illness or other incapacity from exercising or performing his powers or duties under this Part; or

(b) if there is no person holding the office of President.

(3) No person shall be concerned to inquire whether or not any occasion has arisen authorising a Deputy President to exercise or perform the powers or duties of a President and all acts or things done or omitted to be done by a Deputy President when exercising or performing those powers or duties shall be as valid and shall have the same consequences as if they had been done or omitted to be done by a President.

43D. (1) A delegation under section 43c (2) (a) (i) shall be by instrument in writing and may be made subject to such conditions or such limitations as to the exercise or performance of the power or duty delegated, or as to time or circumstances, as may be specified in the instrument of delegation.

Form and
effect of
delegation.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—continued.
**AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—continued.**

(2) A power or duty, the exercise or performance of which has been delegated under section 43c (2) (a) (i) may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

(3) Sections 44–44J—

Omit section 44, insert instead :—

44. (1) The President may establish an Intellectually Handicapped Persons Review Tribunal—

(a) generally for the purposes of section 48A, 48B or 48G; or

(b) for the purposes of—

(i) any class of cases; or

(ii) any particular case,

that may arise or arises under any one or more of those sections.

(2) The President establishes a Tribunal by—

(a) appointing members to the Tribunal so that the Tribunal is constituted in accordance with this section;

(b) where the President and the Deputy President are not among the members so appointed—nominating one of those members as chairman of the Tribunal; and

SCHEDULE

Establishment of Tribunals.

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(c) notifying the members so appointed, or causing those members to be notified, of their appointment and the purpose for which the Tribunal has been established.

(3) A Tribunal shall consist of not less than 3 nor more than 5 members.

44A. (1) The procedure for the conduct of business of a Tribunal shall, subject to this Part and any rules made under subsection (5), be as determined by the Tribunal. Procedure of Tribunals.

(2) At a meeting of a Tribunal—

(a) if he has been appointed to the Tribunal—the President;

(b) if the President has not been appointed to the Tribunal but the Deputy President has been so appointed—the Deputy President; or

(c) if a chairman for the Tribunal has been nominated under section 44 (2) (b)—that member,

shall preside as chairman of the Tribunal.

(3) Subject to section 48A, a Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

(4) The chairman of a Tribunal shall, in the event of an equality of votes at a meeting of the Tribunal, have a second or casting vote.

Child Welfare (Amendment).

SCHEDULE 2—continued.
**AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—continued.**

(5) Five members, who shall include the President or Deputy President, or both, may make rules not inconsistent with this Part for or with respect to the convening of and procedure at meetings of a Tribunal.

Evidence.

44B. A Tribunal is not bound by the rules or practice as to evidence and may inform itself of any matter in such manner as it thinks fit.

**Powers of
a chairman
of a
Tribunal.**

44c. (1) The chairman of a Tribunal may—

(a) by instrument in writing under his hand, require any person on whom the instrument is served personally or by post—

(i) to appear before the Tribunal for the purpose of giving evidence; or

(ii) to produce to the Tribunal any document (including a document in the possession of, or belonging to, the Crown) that is relevant to the purpose for which the Tribunal was established,

at a time, date and place specified in the instrument;

(b) require a person who appears before the Tribunal to be sworn for the purpose of his giving evidence on oath; and

(c) administer an oath referred to in paragraph (b).

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Where a document is produced to a Tribunal in response to a requirement made under subsection (1), the Tribunal may take possession of the document for such period as it considers necessary for the purposes of the Tribunal.

44D. (1) Any member of a Tribunal may require a person (including an officer or employee of the Crown) who appears before the Tribunal to answer a question that is reasonably related to the purpose for which the Tribunal was established. Questions of a member of a Tribunal.

(2) A person is not excused from answering a question put to him by a member of a Tribunal on the ground that the answer might tend to incriminate him but, where the person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under section 44E (c) or in relation to a charge of perjury in respect of the answer.

44E. A person who— Offences.

(a) refuses, fails or neglects to comply with a requirement made of him by—

(i) the chairman of a Tribunal under section 44C (1) (a) or (b); or

(ii) any member of a Tribunal under section 44D (1),

to the extent to which he is lawfully able to comply with the requirement;

SCHEDULE

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(b) in purported compliance with a requirement made of him by the chairman of a Tribunal under section 44c (1) (a) (ii), knowingly furnishes information that is false or misleading in a material particular; or

(c) not having been sworn, makes a statement that is false or misleading in a material particular when he is appearing before the Tribunal,

shall be guilty of an offence against this Act and liable to a penalty not exceeding \$100.

Witnesses.

44F. (1) A person, other than an officer, who is required to appear or to give evidence during proceedings of a Tribunal is entitled to be paid such allowances and expenses as the Minister may determine in respect of him.

(2) For the purposes of section 18 of the Defamation Act, 1974, the proceedings of a Tribunal shall be deemed to be an inquiry within the meaning of that section.

(3) A duly qualified legal practitioner acting for a person required to give evidence during proceedings of a Tribunal may—

(a) be present during those proceedings; and

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(b) to the extent that the chairman of the Tribunal permits—

(i) address the Tribunal; and

(ii) examine the person for whom he is acting,

in relation to matters in respect of which a member of the Tribunal has questioned that person.

44G. (1) A decision supported by a majority of ^{Decisions} votes cast at a meeting of a Tribunal shall be the ^{of Tribunals.} decision of the Tribunal.

(2) When a Tribunal makes a decision in the exercise or performance of its powers or duties under section 48A or 48B, each of its members shall record his reasons for casting his vote on the decision and the chairman of the Tribunal shall then cause a record of those reasons to be conveyed to the Director.

(3) No decision of a Tribunal shall be vitiated by reason only of any informality or want of form.

44H. (1) The chairman of a Tribunal shall cause ^{Record of} a record of the proceedings of a meeting of the ^{Proceedings.} Tribunal to be—

(a) made in the prescribed manner; and

(b) conveyed to the Director as soon as is practicable after the conclusion of the meeting.

SCHEDULE

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(2) The Director shall cause records conveyed to him under subsection (1) and section 44G (2) to be preserved for the prescribed period of time after he receives them.

Dissolution
of Tribunals.

44I. The President for the time being may dissolve a Tribunal by giving notice or causing notice to be given of its dissolution personally or by post to the members who have been appointed to the Tribunal—

- (a) when the purpose for which the Tribunal was established has been achieved; or
- (b) on any other reasonable grounds.

Certain
proceedings
prohibited.

44J. No proceedings lie against a Tribunal or a member for or on account of any act, matter or thing done or ordered to be done by the Tribunal or member, and purporting to be done for the purposes of carrying out the provisions of this Part, if the Tribunal or member has acted in good faith and with reasonable care.

(4) (a) Section 48A (2)—

Omit “two months”, insert instead “3 months”.

(b) Section 48A (2)—

Omit “Tribunal and request for the reasons stated that the order be renewed”, insert instead “President or, if there is no President for the time being, to the Deputy President and request for the reasons stated that the order be renewed by a Tribunal”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(c) Section 48A (2A)—

After section 48A (2), insert :—

(2A) When the President or Deputy President receives reports and a request under subsection (2) he shall refer them to a Tribunal.

(d) Section 48A (3)—

After “Tribunal”, insert “to which the request has been referred”.

(e) Section 48A (4)—

Omit “the Tribunal” where firstly occurring, insert instead “a Tribunal”.

(f) Section 48A (5)—

Omit “the order” where firstly occurring, insert instead “an order”.

(g) Section 48A (5), (6)—

Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.

(5) (a) Section 48B (3)—

Omit “the Tribunal for”, insert instead “the President, or if there is no President for the time being, to the Deputy President and request that”.

(b) Section 48B (3)—

After “Part”, insert “be made by a Tribunal”.

SCHEDULE

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(c) Section 48B (3A)—

After section 48B (3), insert:—

(3A) When the President or Deputy President receives a request under subsection (3) he shall refer it to a Tribunal.

(d) Section 48B (4)—

Omit “made to the Tribunal”, insert instead “referred to a Tribunal”.

(e) Section 48B (5)—

Omit “the Tribunal”, insert instead “a Tribunal”.

(f) Section 48B (6)—

Omit “The Tribunal if”, insert instead “If”.

(g) Section 48B (6)—

Omit “the Tribunal may”, insert instead “, the Tribunal to which the application has been referred may”.

(6) Section 48G (4)—

Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.

Child Welfare (Amendment).

SCHEDULE 3.

Sec. 6.

**AMENDMENTS TO PART X OF THE CHILD WELFARE
ACT, 1939.**

(1) Section 54 (1)—

Omit the subsection.

(2) Section 54 (2)—

Omit "but has not been so committed for a specified term".

(3) Section 54 (3)—

Omit "subsections one and two of this section", insert instead "subsection (2)".

(4) Section 54 (3)—

Omit "section ninety-four of this Act", insert instead "section 94".

(5) Section 54 (3)—

Omit "subsection four of this section", insert instead "subsection (4)".

Child Welfare (Amendment).

Sec. 6.

SCHEDULE 4.

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT, 1939.

(1) Sections 81B, 81C—

After section 81A, insert :—

81B. (1) In this section, "court" includes a court hearing or determining an appeal from a determination or an order made by—

- (a) a magistrate; or
- (b) justices,

exercising the jurisdiction of a children's court.

(2) Where a child has been brought before a court as a neglected child and—

- (a) the complaint in respect of which he has been so brought alleges that he has been ill-treated or exposed; or
- (b) evidence has been presented to the court that the child has been assaulted,

the court, in hearing and determining the matter, may act upon any statement, document, information or matter that may, in its opinion, assist it to deal with the complaint, whether or not the statement, document, information or matter would be admissible in evidence.

81C. Subject to section 81B, where a child or young person is—

- (a) brought before a court as a neglected child or an uncontrollable child or young person; or
- (b) is charged with an offence,

Courts may act on certain matters.

Certain statements, etc., inadmissible.

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

the court, in hearing or determining the matter or charge, shall not admit in evidence or act upon any statement, confession, admission or information made or given by the child or young person at a police station unless there was present throughout the period of time during which the statement, confession, admission or information was made or given—

- (c) one of his parents;
- (d) a person aged 18 years or upwards who has his guardianship; or
- (e) with the consent of one of the persons referred to in paragraph (c) or (d)—a person aged 18 years or upwards who is not—
 - (i) one of those persons; or
 - (ii) a member of the police force.

(2) Section 82 (2)—

At the end of section 82, insert :—

(2) If a court finds that a child is a neglected child it may release the child—

- (a) upon such terms and conditions as the court may think fit and as are willingly undertaken to be observed by the child's parents, one of the child's parents or another person approved by the court; and

Child Welfare (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

(b) for such period of time (whether expiring before or after the date upon which the child attains the age of 16 years) as the court may think fit.

(3) (a) Section 83 (4)—

Omit “paragraph (e) of section eighty-two”, insert instead “section 82 (1) (e)”.

(b) Section 83 (7)—

Omit “eighty-two of this Act”, insert instead “82 (1)”.

(4) Section 84 (1)—

Omit “eighty-two or section eighty-three of this Act”, insert instead “82 (1) or 83”.

(5) Section 89 (3)—

Omit “the Intellectually”, insert instead “an Intellectually”.

(6) (a) Section 90 (1)—

Omit “paragraph (c) of section eighty-two or paragraph (b) of subsection one or paragraph (b) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (c) or section 83 (1) (b) or (2) (b)”.

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT
1939—*continued.*

(b) Section 90 (2)—

Omit “paragraph (b) of section eighty-two or paragraph (a) of subsection one or paragraph (a) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (b) or (2) or section 83 (1) (a) or (2) (a)”.

(7) Section 91 (1), (1A)—

Omit the subsections, insert instead :—

(1) Where—

- (a) a person who, as a child or young person was, under section 82 (1) or section 83 (1) or (2), released on probation or was committed to the care of a person, breaks or is reasonably suspected of having broken the terms or conditions of his release or committal; or
- (b) a person was, as a child, under section 82 (2), released upon his parents, one of his parents or another person undertaking to observe any terms or conditions that have been broken or are reasonably suspected of having been broken,

he may (whether or not a warrant has been issued under subsection (1A)) be apprehended by any constable or by any officer authorised by the Minister in that behalf and shall, upon being so apprehended, be taken to a shelter and shall, as soon as practicable thereafter, be brought before a court.

Child Welfare (Amendment).

SCHEDULE 4—continued.
**AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—continued.**

(1A) Any justice, upon oath being made before him by any constable or by an officer authorised by the Minister in that behalf that, having made due inquiry, he believes—

- (a) that a person who, as a child or young person, was, under section 82 (1) or section 83 (1) or (2), released on probation or was committed to the care of a person has broken the terms or conditions of his release or committal; or
- (b) that the terms or conditions upon which a person was, as a child, released under section 82 (2), have been broken,

may—

- (c) issue his summons for the appearance of the person so released or committed before a court; or
- (d) in the first instance issue his warrant directing the apprehension of the person so released or committed.

Sec. 6.

SCHEDULE 5.
**AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939.**

(1) Section 126—

Omit “eight”, insert instead “10”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Section 132 (1)—

Omit “two hundred dollars”, insert instead “\$1,000”.

(3) Section 146A—

After section 146, insert :—

146A. (1) When a child or young person is brought into a police station—

Notification
of parent or
guardian by
police.

(a) at which he is to be questioned about any offence that has been, or may have been, committed; or

(b) for the purpose of determining whether he is to be brought before a court as a neglected child or an uncontrollable child or young person within the meaning of Part XIV,

the officer in charge of the police station shall forthwith—

(c) notify a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person that the child or young person is at the police station; or

(d) cause a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person to be so notified.

Child Welfare (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) An officer in charge of a police station who fails to comply with subsection (1) shall be guilty of an offence against this Act unless he satisfies the court—

- (a) that he used all reasonable diligence in attempting to comply with that subsection; or
- (b) that he had a reasonable excuse for failing to comply with that subsection.

(4) Sections 148B, 148C—

After section 148A, insert :—

148B. (1) In this section—

“court”, except in subsection (7) (d), means any court;

“prescribed person” means—

- (a) a medical practitioner; and
- (b) a person who is a member of any class of persons prescribed for the purposes of this paragraph, being a person who follows a profession, calling or vocation, other than a solicitor or barrister in the course of his profession, so prescribed, or who holds any office so prescribed.

(2) Any person who forms the belief upon reasonable grounds that a child—

- (a) has been assaulted; or
- (b) is a neglected child within the meaning of Part XIV,

Notification
of certain
injuries to
children.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

may—

- (c) notify the Director of his belief and the grounds therefor either orally or in writing; or
- (d) cause the Director to be so notified.

(3) A prescribed person who, in the course of practising his profession, calling or vocation, or in exercising the functions of his office, as the case may be, has reasonable grounds to suspect that a child has been assaulted, ill-treated or exposed shall—

- (a) notify the Director of the name or a description of the child and those grounds either orally or in writing; or
- (b) cause the Director to be so notified,

promptly after those grounds arise.

(4) A prescribed person who fails to comply with subsection (3) shall be guilty of an offence against this Act.

(5) Where the Director has been notified under subsection (2) or (3), he shall—

- (a) promptly cause an investigation to be made into the matters notified to him; and
- (b) if he is satisfied that the child in respect of whom he was notified may have been assaulted, ill-treated or exposed, take such action as he believes appropriate, which may include reporting those matters to a constable of police.

Child Welfare (Amendment).

SCHEDULE 5—continued.
**AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—continued.**

(6) Where a person notifies the Director pursuant to subsection (2) or (3)—

- (a) the notification shall not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- (b) no liability for defamation is incurred by reason of the making of the notification;
- (c) the notification shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;
- (d) subject to subsections (7) and (8), the notification shall not be admissible in evidence in any proceedings before a court, tribunal or committee and no evidence of its contents is admissible; and
- (e) subject to subsection (7), a person shall not be compelled in any proceedings before a court, tribunal or committee to produce the notification, or any copy of, or extract from the notification (if it is capable of being produced) or to disclose, or give any evidence of, any of the contents of the notification.

(7) Subsection (6) (d) and (e) does not apply in relation to—

- (a) the admissibility in, or of, evidence of a notification made under subsection (2) or (3);

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

- (b) the production of such a notification, a copy thereof or an extract therefrom; or
 - (c) the disclosure or giving of evidence of the contents of such a notification,
- either—
- (d) in any proceedings before a court, within the meaning of section 81B, in which the child to whom the notification relates is brought before the court as a neglected child; or
 - (e) in support of, or in answer to, a charge or allegation made in proceedings referred to in subsection (6) (d) or (e) against any person in relation to his exercising or performing any of his powers, duties or functions in pursuance of this Act.
- (8) Subsection (6) (d) does not apply where a notification under subsection (2) or (3) is tendered in evidence, or evidence in respect of such a notification is given—
- (a) by the person by whom the notification was, or was caused to be, made; and
 - (b) in answer to a charge or allegation made against him in proceedings referred to in subsection (6) (d).

Child Welfare (Amendment).

 SCHEDULE 5—*continued.*

 AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
 1939—*continued.*

Medical
 examination:
 reputedly
 injured
 children.

148C. (1) Where the Director or a constable of police believes on reasonable grounds (which may consist wholly or partly of information received by him) that a child has suffered injury to his health as a result of the child's having been assaulted, ill-treated or exposed, he may serve a prescribed notice—

- (a) naming or describing the child; and
- (b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or another place specified in the notice for the purposes of the child's being medically examined,

on the person who appears to him to be a parent of the child or to have the care of the child for the time being.

(2) A person who fails to comply with the requirement contained in a notice served on him under subsection (1) shall be guilty of an offence against this Act unless it is proved that the person was not a parent of the child described in the notice and did not have the care of the child at the time the notice was served.

(3) Where a person fails to comply with the requirement contained in a notice served under subsection (1), a constable of police or an officer authorised by the Minister in that behalf may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a hospital or another place for the purpose of the child's being medically examined.

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(4) A constable of police or an officer may, when exercising his powers under subsection (3)—

- (a) subject to paragraph (b), use all reasonable force; and
- (b) enter (if need be by force) any house, building or other place but shall not enter any place occupied as a dwelling except under the authority of a warrant issued under section 145 or 146.

(5) Where a child is presented to a medical practitioner under subsection (1) or (3)—

- (a) the practitioner may conduct, or cause to be conducted, such medical examination of the child as he thinks fit, including examination at a hospital that is not the place specified in the request made under subsection (1) in respect of the child; and
- (b) the Director shall, commencing with the time at which the child is presented to the practitioner and until the expiration of such period of time as is reasonably necessary for the child to be medically examined in accordance with paragraph (a) or 72 hours, whichever period first expires, be deemed to have custody of the child—
 - (i) if the consent of a parent or any other person who would, but for this paragraph, have lawful custody of

Child Welfare (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

the child to the examination has not been obtained or has been revoked; and

- (ii) for the purpose only of enabling the examination to be conducted.

(6) No proceedings lie against a medical practitioner or a constable of police for or on account of any act, matter or thing done or ordered to be done by him, and purporting to be done for the purpose of carrying out the provisions of this section, if he has acted in good faith and with reasonable care.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

D. L. WHEELER,
for Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 16 March, 1977.*

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 20, 1977.

An Act to amend the Child Welfare Act, 1939, to make further provision in relation to neglected children and children who have been assaulted, ill-treated or exposed, and in certain other respects; and to validate certain matters. [Assented to, 24th March, 1977.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

T. J. CAHILL,
Chairman of Committees of the Legislative Assembly.

Child Welfare (Amendment).

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

Short title. **1.** This Act may be cited as the "Child Welfare (Amendment) Act, 1977".

Commence- **2.** (1) Except as provided in subsections (2)–(6), this
ment. Act shall commence on the date of assent to this Act.

(2) Section 6 shall, in its application to a provision of Schedules 1–5, commence on the day on which that provision commences.

(3) Schedules 2 and 3 and the several provisions of Schedules 4 and 5 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Sections 10 and 11 shall commence on the day on which Schedule 2 commences.

(5) Section 12 (1) shall commence on the day on which Schedule 5 (1) commences.

(6) Section 12 (2) shall commence on the day on which Schedule 5 (2) commences.

Principal **3.** The Child Welfare Act, 1939, is in this Act referred to
Act. as the Principal Act.

Child Welfare (Amendment).

4. In this Act, "appointed day" means the day on which Schedule 2 commences. Interpretation.

5. This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENT TO PART I OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 2.—AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 3.—AMENDMENTS TO PART X OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 4.—AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT, 1939.

SCHEDULE 5.—AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT, 1939.

6. The Principal Act is amended in the manner set forth in Schedules 1-5. Amendment of Act No. 17, 1939.

7. (1) Section 3 of the Child Welfare (Amendment) Act, 1967, shall be deemed to have commenced on 1st January, 1974. Commencement of certain enactments.

(2) For the purpose of removal of doubt it is declared that—

(a) the provisions of section 10 of the Youth and Community Services Act, 1973, in so far as they effect the amendment specified in Part 2 of the Schedule to that Act, and of Part 2 of that Schedule, commenced; and

(b) the provisions of Part 1 of that Schedule amending the Child Welfare (Amendment) Act, 1967, took effect,

on 1st February, 1974.

Child Welfare (Amendment).

Validation
of certain
appoint-
ments, etc.

8. (1) In this section, "relevant period" means the interval of time commencing with 1st January, 1974, and continuing until the expiration of the period of 3 months commencing with the appointed day.

(2) Any act, matter or thing that has been, or is, done or omitted to be done during the relevant period by—

- (a) the Governor;
- (b) the Minister for the time being administering the Principal Act; or
- (c) an officer or employee of the Crown,

that—

(d) would have been, or would be, lawfully done or omitted to be done—

(i) if section 3 of the Child Welfare (Amendment) Act, 1967, had commenced on 1st January, 1974; or

(ii) in relation to a person, if that section had commenced on 1st January, 1974, and an order that could have been made in respect of the person under section 46 or 47 of the Principal Act had been or were in force in respect of the person at the time when the act, matter or thing was, or is, done or omitted to be done; and

(e) would not have been, or would not be, lawfully done or omitted to be done if this section had not been enacted,

is validated or authorised, as the case may require.

Child Welfare (Amendment).

9. Any act, matter or thing that has been, or is, done or omitted to be done before the appointed day by persons appointed under section 44 of the Principal Act, that —

Validation of orders, etc., of former Tribunal.

- (a) could have been, or could be, lawfully done or omitted to be done by persons appointed under section 43A of the Principal Act, as amended by section 6 and Schedule 2, if the Principal Act, as so amended, had been or were in force at the time when the act, matter or thing was done or omitted to be done; and
- (b) could not have been, or could not be, lawfully done or omitted to be done if this section had not been enacted,

is validated or authorised, as the case may require, and shall be deemed to have had and to have, or to have, the same consequences as if it had been or were lawfully done or omitted to be done.

10. (1) A person who, immediately before the appointed day, held office as a member of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (2) of that Act, as amended by this Act, as a member of the Intellectually Handicapped Persons Review Panel for a term of 3 years commencing with the appointed day.

Certain persons deemed appointed.

(2) A person who, immediately before the appointed day, held office as Chairman or Deputy Chairman of the Intellectually Handicapped Persons Review Tribunal under Part IX of the Principal Act shall, on that day, be deemed to have been appointed under section 43A (4) of that Act, as amended by this Act—

- (a) in the case of the person who held office as Chairman—as President of the Intellectually Handicapped Persons Review Tribunals; and

(b)

Child Welfare (Amendment).

- (b) in the case of the person who held office as Deputy Chairman—as Deputy President of the Intellectually Handicapped Persons Review Tribunals.

Minister
may make
certain
interim
orders.

11. (1) In this section, "Part IX" means Part IX of the Principal Act, as amended by this Act.

(2) Where at any time during the period of 3 months commencing with the appointed day, the Minister is satisfied that—

- (a) a person who, at any time occurring after 31st December, 1973, but before the appointed day, has been—
- (i) admitted to State control;
 - (ii) committed to the care of the Minister to be dealt with as a ward admitted to State control; or
 - (iii) committed to an institution within the meaning of the Principal Act, as amended by this Act,

is intellectually handicapped to such a degree that he requires, otherwise than for continuous medical treatment or attention in a hospital, care, protection or supervision in his own interests or in the interests of others; and

- (b) the interests of the person would be promoted if he were dealt with as an intellectually handicapped person under the provisions of Part IX,

the Minister may make an order that the person be dealt with under the provisions of Part IX as an intellectually handicapped person and such an order shall, subject to subsection (4), be deemed to have been duly made under section 46 of the Principal Act.

(3)

Child Welfare (Amendment).

(3) Before he makes an order in respect of a person under subsection (2), the Minister shall—

- (a) if he knows the name and address of either parent of the person—serve notice on the parent, either personally or by post, of his intention to make the order; and
- (b) if he has served a notice under paragraph (a)—consider any representations made to him by any person in respect of the firstmentioned person within 10 days of the date of service of the notice.

(4) Where an order is made under this section, Part IX has effect in relation to the order as if that Part had been amended—

- (a) by omitting from section 48A (1) (b) the words “two years,” and by inserting instead the words “two years; or”;
- (b) by inserting after section 48A (1) (b) the following paragraph :—
 - (c) notwithstanding paragraphs (a) and (b), remain in force, if the order has been made under section 11 (2) of the Child Welfare (Amendment) Act, 1977, for a period of 3 months,
- (c) by inserting in section 48A (1) after the words “two years” where secondly occurring, the words “or 3 months”;
- (d) by inserting after section 48A (5) the following subsection :—

(5A) A Tribunal may not make an interim determination under subsection (5) renewing an order made under section 11 (2) of the Child Welfare (Amendment) Act, 1977.

Child Welfare (Amendment).

Savings.

12. (1) Notwithstanding section 126 of the Principal Act, as amended by this Act, where a child—

- (a) committed an offence before the day on which this subsection commences; and
- (b) had, at the time he committed the offence, attained the age of eight years,

he may be found guilty of the offence.

(2) Notwithstanding section 132 (1) of the Principal Act, as amended by this Act, a person who, on or after the day on which this subsection commences, is found guilty of an offence committed against the Principal Act before that day shall not be liable to any greater penalty than that to which he would have been liable if he had been found guilty of the offence immediately after he had committed it.

Sec. 6.**SCHEDULE 1.****AMENDMENT TO PART I OF THE CHILD WELFARE ACT, 1939.****Section 4 (3)—**

After section 4 (2), insert:—

(3) A reference in this Act to a “constable” or a “constable of police” includes, and shall be deemed to have always included, a reference to any member of the police force.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2.

Sec. 6.

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939.

(1) (a) Section 43 (1), definition of "Deputy President"—

After the definition of "Court", insert :—

"Deputy President" means the Deputy
President of the Tribunals.

(b) Section 43 (1), definition of "Member"—

After the definition of "Intellectually handicapped
person", insert :—

"Member" means a member of the Review
Panel.

(c) Section 43 (1), definitions of "President" and
"Review Panel"—

After the definition of "Organisation", insert :—

"President" means the President of the
Tribunals.

"Review Panel" means the Intellectually
Handicapped Persons Review Panel
referred to in section 43A (1).

(d) Section 43 (1), definition of "Tribunal"—

Omit the definition, insert instead :—

"Tribunal" means an Intellectually Handi-
capped Persons Review Tribunal
established under section 44 (2).

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Sections 43A–43D—

After section 43, insert :—

Review
Panel.

43A. (1) There shall be an Intellectually Handicapped Persons Review Panel.

(2) Subject to this section, the Governor may appoint persons as members of the Review Panel.

(3) The members shall be appointed from one or more of the following classes of persons :—

- (a) medical practitioners;
- (b) barristers and solicitors;
- (c) persons having knowledge of and experience in administration;
- (d) persons having knowledge of and experience in education;
- (e) persons having knowledge of and experience in psychology;
- (f) persons having knowledge of and experience in social work;
- (g) persons in the opinion of the Governor having other suitable qualifications or experience.

(4) Of the members—

- (a) one shall be appointed as President of the Tribunals; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

- (b) one shall be appointed as Deputy President of the Tribunals,

in the instrument or instruments appointing them as members or by a subsequent instrument or instruments executed by the Governor.

(5) A person—

- (a) who is a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or
- (b) who is bankrupt, is applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, whose debts are subject to a composition with his creditors, or whose fees or allowances would, upon his appointment, be subject to an assignment for their benefit,

is not eligible to be appointed as a member.

(6) The Public Service Act, 1902, does not apply to or in respect of the appointment of a member and a member is not, in his capacity as a member, subject to that Act while he holds office as a member.

43B. (1) Subject to subsection (4), a member shall hold office for the period of 3 years commencing with the day from which he is declared to be appointed in the instrument appointing him or such shorter period as may be specified in that instrument and may, if he is otherwise eligible, be re-appointed as a member.

Term and
vacation
of office,
etc.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—continued.
**AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—continued.**

(2) A member shall be paid such fees and allowances as may from time to time be determined in respect of him by the Governor.

(3) The Governor may, for any cause that to him seems sufficient, remove a member from office.

(4) A member shall be deemed to have vacated his office if he—

(a) dies;

(b) resigns his office by writing under his hand addressed to the Governor;

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his fees or allowances, or estate, for their benefit;

(d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or

(e) is removed from office by the Governor.

**President
and Deputy
President.**

43c. (1) A President or Deputy President holds his office until he ceases to be a member and is eligible, if he is re-appointed as a member, to be appointed or re-appointed, as the case may be, as President or Deputy President.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) A Deputy President may exercise or perform the powers or duties of a President under this Part—

(a) if the President—

(i) delegates his powers and duties to the Deputy President (which the President is hereby authorised to do);

(ii) is absent from the State; or

(iii) is prevented by illness or other incapacity from exercising or performing his powers or duties under this Part; or

(b) if there is no person holding the office of President.

(3) No person shall be concerned to inquire whether or not any occasion has arisen authorising a Deputy President to exercise or perform the powers or duties of a President and all acts or things done or omitted to be done by a Deputy President when exercising or performing those powers or duties shall be as valid and shall have the same consequences as if they had been done or omitted to be done by a President.

43D. (1) A delegation under section 43C (2) (a) (i) shall be by instrument in writing and may be made subject to such conditions or such limitations as to the exercise or performance of the power or duty delegated, or as to time or circumstances, as may be specified in the instrument of delegation.

Form and
effect of
delegation.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—continued.

**AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—continued.**

(2) A power or duty, the exercise or performance of which has been delegated under section 43C (2) (a) (i) may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

(3) Sections 44–44J—

Omit section 44, insert instead :—

Establish-
ment of
Tribunals.

44. (1) The President may establish an Intellectually Handicapped Persons Review Tribunal—

(a) generally for the purposes of section 48A, 48B or 48G; or

(b) for the purposes of—

(i) any class of cases; or

(ii) any particular case,

that may arise or arises under any one or more of those sections.

(2) The President establishes a Tribunal by—

(a) appointing members to the Tribunal so that the Tribunal is constituted in accordance with this section;

(b) where the President and the Deputy President are not among the members so appointed—nominating one of those members as chairman of the Tribunal; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(c) notifying the members so appointed, or causing those members to be notified, of their appointment and the purpose for which the Tribunal has been established.

(3) A Tribunal shall consist of not less than 3 nor more than 5 members.

44A. (1) The procedure for the conduct of ^{Procedure} business of a Tribunal shall, subject to this Part and ^{of} any rules made under subsection (5), be as determined by the Tribunal. ^{Tribunals.}

(2) At a meeting of a Tribunal—

(a) if he has been appointed to the Tribunal—the President;

(b) if the President has not been appointed to the Tribunal but the Deputy President has been so appointed—the Deputy President; or

(c) if a chairman for the Tribunal has been nominated under section 44 (2) (b)—that member,

shall preside as chairman of the Tribunal.

(3) Subject to section 48A, a Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

(4) The chairman of a Tribunal shall, in the event of an equality of votes at a meeting of the Tribunal, have a second or casting vote.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—continued.
**AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—continued.**

(5) Five members, who shall include the President or Deputy President, or both, may make rules not inconsistent with this Part for or with respect to the convening of and procedure at meetings of a Tribunal.

Evidence.

44B. A Tribunal is not bound by the rules or practice as to evidence and may inform itself of any matter in such manner as it thinks fit.

**Powers of
a chairman
of a
Tribunal.**

44C. (1) The chairman of a Tribunal may—

(a) by instrument in writing under his hand, require any person on whom the instrument is served personally or by post—

(i) to appear before the Tribunal for the purpose of giving evidence; or

(ii) to produce to the Tribunal any document (including a document in the possession of, or belonging to, the Crown) that is relevant to the purpose for which the Tribunal was established,

at a time, date and place specified in the instrument;

(b) require a person who appears before the Tribunal to be sworn for the purpose of his giving evidence on oath; and

(c) administer an oath referred to in paragraph (b).

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Where a document is produced to a Tribunal in response to a requirement made under subsection (1), the Tribunal may take possession of the document for such period as it considers necessary for the purposes of the Tribunal.

44D. (1) Any member of a Tribunal may require a person (including an officer or employee of the Crown) who appears before the Tribunal to answer a question that is reasonably related to the purpose for which the Tribunal was established.

Questions
of a
member of
a Tribunal.

(2) A person is not excused from answering a question put to him by a member of a Tribunal on the ground that the answer might tend to incriminate him but, where the person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under section 44E (c) or in relation to a charge of perjury in respect of the answer.

44E. A person who—

Offences.

(a) refuses, fails or neglects to comply with a requirement made of him by—

(i) the chairman of a Tribunal under section 44C (1) (a) or (b); or

(ii) any member of a Tribunal under section 44D (1),

to the extent to which he is lawfully able to comply with the requirement;

SCHEDULE

Child Welfare (Amendment).

 SCHEDULE 2—*continued.*

 AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
 1939—*continued.*

(b) in purported compliance with a requirement made of him by the chairman of a Tribunal under section 44c (1) (a) (ii), knowingly furnishes information that is false or misleading in a material particular; or

(c) not having been sworn, makes a statement that is false or misleading in a material particular when he is appearing before the Tribunal,

shall be guilty of an offence against this Act and liable to a penalty not exceeding \$100.

Witnesses.

44F. (1) A person, other than an officer, who is required to appear or to give evidence during proceedings of a Tribunal is entitled to be paid such allowances and expenses as the Minister may determine in respect of him.

(2) For the purposes of section 18 of the Defamation Act, 1974, the proceedings of a Tribunal shall be deemed to be an inquiry within the meaning of that section.

(3) A duly qualified legal practitioner acting for a person required to give evidence during proceedings of a Tribunal may—

(a) be present during those proceedings; and

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(b) to the extent that the chairman of the Tribunal permits—

(i) address the Tribunal; and

(ii) examine the person for whom he is acting,

in relation to matters in respect of which a member of the Tribunal has questioned that person.

44G. (1) A decision supported by a majority of ^{Decisions} votes cast at a meeting of a Tribunal shall be the ^{of Tribunals.} decision of the Tribunal.

(2) When a Tribunal makes a decision in the exercise or performance of its powers or duties under section 48A or 48B, each of its members shall record his reasons for casting his vote on the decision and the chairman of the Tribunal shall then cause a record of those reasons to be conveyed to the Director.

(3) No decision of a Tribunal shall be vitiated by reason only of any informality or want of form.

44H. (1) The chairman of a Tribunal shall cause ^{Record of} a record of the proceedings of a meeting of the ^{proceedings.} Tribunal to be—

(a) made in the prescribed manner; and

(b) conveyed to the Director as soon as is practicable after the conclusion of the meeting.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—continued.
**AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—continued.**

(2) The Director shall cause records conveyed to him under subsection (1) and section 44G (2) to be preserved for the prescribed period of time after he receives them.

Dissolution
of Tribunals.

44I. The President for the time being may dissolve a Tribunal by giving notice or causing notice to be given of its dissolution personally or by post to the members who have been appointed to the Tribunal—

- (a) when the purpose for which the Tribunal was established has been achieved; or
- (b) on any other reasonable grounds.

Certain
proceedings
prohibited.

44J. No proceedings lie against a Tribunal or a member for or on account of any act, matter or thing done or ordered to be done by the Tribunal or member, and purporting to be done for the purposes of carrying out the provisions of this Part, if the Tribunal or member has acted in good faith and with reasonable care.

(4) (a) Section 48A (2)—

Omit “two months”, insert instead “3 months”.

(b) Section 48A (2)—

Omit “Tribunal and request for the reasons stated that the order be renewed”, insert instead “President or, if there is no President for the time being, to the Deputy President and request for the reasons stated that the order be renewed by a Tribunal”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(c) Section 48A (2A)—

After section 48A (2), insert :—

(2A) When the President or Deputy President receives reports and a request under subsection (2) he shall refer them to a Tribunal.

(d) Section 48A (3)—

After “Tribunal”, insert “to which the request has been referred”.

(e) Section 48A (4)—

Omit “the Tribunal” where firstly occurring, insert instead “a Tribunal”.

(f) Section 48A (5)—

Omit “the order” where firstly occurring, insert instead “an order”.

(g) Section 48A (5), (6)—

Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.

(5) (a) Section 48B (3)—

Omit “the Tribunal for”, insert instead “the President, or if there is no President for the time being, to the Deputy President and request that”.

(b) Section 48B (3)—

After “Part”, insert “be made by a Tribunal”.

Child Welfare (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART IX OF THE CHILD WELFARE ACT,
1939—*continued.*

(c) Section 48B (3A)—

After section 48B (3), insert:—

(3A) When the President or Deputy President receives a request under subsection (3) he shall refer it to a Tribunal.

(d) Section 48B (4)—

Omit “made to the Tribunal”, insert instead “referred to a Tribunal”.

(e) Section 48B (5)—

Omit “the Tribunal”, insert instead “a Tribunal”.

(f) Section 48B (6)—

Omit “The Tribunal if”, insert instead “If”.

(g) Section 48B (6)—

Omit “the Tribunal may”, insert instead “, the Tribunal to which the application has been referred may”.

(6) Section 48G (4)—

Omit “the Tribunal” wherever occurring, insert instead “a Tribunal”.

Child Welfare (Amendment).

SCHEDULE 3.

Sec. 6.

AMENDMENTS TO PART X OF THE CHILD WELFARE
ACT, 1939.

(1) Section 54 (1)—

Omit the subsection.

(2) Section 54 (2)—

Omit “but has not been so committed for a specified term”.

(3) Section 54 (3)—

Omit “subsections one and two of this section”, insert instead “subsection (2)”.

(4) Section 54 (3)—

Omit “section ninety-four of this Act”, insert instead “section 94”.

(5) Section 54 (3)—

Omit “subsection four of this section”, insert instead “subsection (4)”.

Child Welfare (Amendment).

Sec. 6.

SCHEDULE 4.

AMENDMENTS TO PART XIV OF THE CHILD WELFARE
ACT, 1939.

(1) Sections 81B, 81C—

After section 81A, insert :—

Courts may
act on
certain
matters.

81B. (1) In this section, "court" includes a court hearing or determining an appeal from a determination or an order made by—

(a) a magistrate; or

(b) justices,

exercising the jurisdiction of a children's court.

(2) Where a child has been brought before a court as a neglected child and—

(a) the complaint in respect of which he has been so brought alleges that he has been ill-treated or exposed; or

(b) evidence has been presented to the court that the child has been assaulted,

the court, in hearing and determining the matter, may act upon any statement, document, information or matter that may, in its opinion, assist it to deal with the complaint, whether or not the statement, document, information or matter would be admissible in evidence.

Certain
statements,
etc.,
inadmissible.

81C. Subject to section 81B, where a child or young person is—

(a) brought before a court as a neglected child or an uncontrollable child or young person; or

(b) is charged with an offence,

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
1939—*continued.*

the court, in hearing or determining the matter or charge, shall not admit in evidence or act upon any statement, confession, admission or information made or given by the child or young person at a police station unless there was present throughout the period of time during which the statement, confession, admission or information was made or given—

- (c) one of his parents;
- (d) a person aged 18 years or upwards who has his guardianship; or
- (e) with the consent of one of the persons referred to in paragraph (c) or (d)—a person aged 18 years or upwards who is not—
 - (i) one of those persons; or
 - (ii) a member of the police force.

(2) Section 82 (2)—

At the end of section 82, insert :—

(2) If a court finds that a child is a neglected child it may release the child—

- (a) upon such terms and conditions as the court may think fit and as are willingly undertaken to be observed by the child's parents, one of the child's parents or another person approved by the court; and

SCHEDULE

Child Welfare (Amendment).

 SCHEDULE 4—*continued.*

 AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
 1939—*continued.*

- (b) for such period of time (whether expiring before or after the date upon which the child attains the age of 16 years) as the court may think fit.
- (3) (a) Section 83 (4)—
 Omit “paragraph (e) of section eighty-two”, insert instead “section 82 (1) (e)”.
- (b) Section 83 (7)—
 Omit “eighty-two of this Act”, insert instead “82 (1)”.
- (4) Section 84 (1)—
 Omit “eighty-two or section eighty-three of this Act”, insert instead “82 (1) or 83”.
- (5) Section 89 (3)—
 Omit “the Intellectually”, insert instead “an Intellectually”.
- (6) (a) Section 90 (1)—
 Omit “paragraph (c) of section eighty-two or paragraph (b) of subsection one or paragraph (b) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (c) or section 83 (1) (b) or (2) (b)”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT
1939—*continued.*

(b) Section 90 (2)—

Omit “paragraph (b) of section eighty-two or paragraph (a) of subsection one or paragraph (a) of subsection two of section eighty-three of this Act”, insert instead “section 82 (1) (b) or (2) or section 83 (1) (a) or (2) (a)”.

(7) Section 91 (1), (1A)—

Omit the subsections, insert instead :—

(1) Where—

- (a) a person who, as a child or young person was, under section 82 (1) or section 83 (1) or (2), released on probation or was committed to the care of a person, breaks or is reasonably suspected of having broken the terms or conditions of his release or committal; or
- (b) a person was, as a child, under section 82 (2), released upon his parents, one of his parents or another person undertaking to observe any terms or conditions that have been broken or are reasonably suspected of having been broken,

he may (whether or not a warrant has been issued under subsection (1A)) be apprehended by any constable or by any officer authorised by the Minister in that behalf and shall, upon being so apprehended, be taken to a shelter and shall, as soon as practicable thereafter, be brought before a court.

SCHEDULE

Child Welfare (Amendment).

 SCHEDULE 4—*continued.*

 AMENDMENTS TO PART XIV OF THE CHILD WELFARE ACT,
 1939—*continued.*

(1A) Any justice, upon oath being made before him by any constable or by an officer authorised by the Minister in that behalf that, having made due inquiry, he believes—

(a) that a person who, as a child or young person, was, under section 82 (1) or section 83 (1) or (2), released on probation or was committed to the care of a person has broken the terms or conditions of his release or committal; or

(b) that the terms or conditions upon which a person was, as a child, released under section 82 (2), have been broken,

may—

(c) issue his summons for the appearance of the person so released or committed before a court; or

(d) in the first instance issue his warrant directing the apprehension of the person so released or committed.

Sec. 6.

SCHEDULE 5.

 AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
 1939.

(1) Section 126—

Omit “eight”, insert instead “10”.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(2) Section 132 (1)—

Omit “two hundred dollars”, insert instead “\$1,000”.

(3) Section 146A—

After section 146, insert :—

146A. (1) When a child or young person is brought into a police station—

Notification
of parent or
guardian by
police.

- (a) at which he is to be questioned about any offence that has been, or may have been, committed; or
- (b) for the purpose of determining whether he is to be brought before a court as a neglected child or an uncontrollable child or young person within the meaning of Part XIV,

the officer in charge of the police station shall forthwith—

- (c) notify a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person that the child or young person is at the police station; or
- (d) cause a parent of or any person aged 18 years or upwards who has the guardianship of the child or young person to be so notified.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—continued.
**AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—continued.**

(2) An officer in charge of a police station who fails to comply with subsection (1) shall be guilty of an offence against this Act unless he satisfies the court—

- (a) that he used all reasonable diligence in attempting to comply with that subsection; or
- (b) that he had a reasonable excuse for failing to comply with that subsection.

(4) Sections 148B, 148C—

After section 148A, insert :—

148B. (1) In this section—

“court”, except in subsection (7) (d), means any court;

“prescribed person” means—

- (a) a medical practitioner; and
- (b) a person who is a member of any class of persons prescribed for the purposes of this paragraph, being a person who follows a profession, calling or vocation, other than a solicitor or barrister in the course of his profession, so prescribed, or who holds any office so prescribed.

(2) Any person who forms the belief upon reasonable grounds that a child—

- (a) has been assaulted; or
- (b) is a neglected child within the meaning of Part XIV,

Notification
of certain
injuries to
children.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

may—

- (c) notify the Director of his belief and the grounds therefor either orally or in writing; or
- (d) cause the Director to be so notified.

(3) A prescribed person who, in the course of practising his profession, calling or vocation, or in exercising the functions of his office, as the case may be, has reasonable grounds to suspect that a child has been assaulted, ill-treated or exposed shall—

- (a) notify the Director of the name or a description of the child and those grounds either orally or in writing; or
- (b) cause the Director to be so notified,

promptly after those grounds arise.

(4) A prescribed person who fails to comply with subsection (3) shall be guilty of an offence against this Act.

(5) Where the Director has been notified under subsection (2) or (3), he shall—

- (a) promptly cause an investigation to be made into the matters notified to him; and
- (b) if he is satisfied that the child in respect of whom he was notified may have been assaulted, ill-treated or exposed, take such action as he believes appropriate, which may include reporting those matters to a constable of police.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—continued.
**AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—continued.**

(6) Where a person notifies the Director pursuant to subsection (2) or (3)—

- (a) the notification shall not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
- (b) no liability for defamation is incurred by reason of the making of the notification;
- (c) the notification shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;
- (d) subject to subsections (7) and (8), the notification shall not be admissible in evidence in any proceedings before a court, tribunal or committee and no evidence of its contents is admissible; and
- (e) subject to subsection (7), a person shall not be compelled in any proceedings before a court, tribunal or committee to produce the notification, or any copy of, or extract from the notification (if it is capable of being produced) or to disclose, or give any evidence of, any of the contents of the notification.

(7) Subsection (6) (d) and (e) does not apply in relation to—

- (a) the admissibility in, or of, evidence of a notification made under subsection (2) or (3);

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

- (b) the production of such a notification, a copy thereof or an extract therefrom; or
- (c) the disclosure or giving of evidence of the contents of such a notification,

either—

- (d) in any proceedings before a court, within the meaning of section 81B, in which the child to whom the notification relates is brought before the court as a neglected child; or
- (e) in support of, or in answer to, a charge or allegation made in proceedings referred to in subsection (6) (d) or (e) against any person in relation to his exercising or performing any of his powers, duties or functions in pursuance of this Act.

(8) Subsection (6) (d) does not apply where a notification under subsection (2) or (3) is tendered in evidence, or evidence in respect of such a notification is given—

- (a) by the person by whom the notification was, or was caused to be, made; and
- (b) in answer to a charge or allegation made against him in proceedings referred to in subsection (6) (d).

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

Medical
examination:
reputedly
injured
children.

148c. (1) Where the Director or a constable of police believes on reasonable grounds (which may consist wholly or partly of information received by him) that a child has suffered injury to his health as a result of the child's having been assaulted, ill-treated or exposed, he may serve a prescribed notice—

- (a) naming or describing the child; and
- (b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or another place specified in the notice for the purposes of the child's being medically examined,

on the person who appears to him to be a parent of the child or to have the care of the child for the time being.

(2) A person who fails to comply with the requirement contained in a notice served on him under subsection (1) shall be guilty of an offence against this Act unless it is proved that the person was not a parent of the child described in the notice and did not have the care of the child at the time the notice was served.

(3) Where a person fails to comply with the requirement contained in a notice served under subsection (1), a constable of police or an officer authorised by the Minister in that behalf may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a hospital or another place for the purpose of the child's being medically examined.

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

(4) A constable of police or an officer may, when exercising his powers under subsection (3)—

- (a) subject to paragraph (b), use all reasonable force; and
- (b) enter (if need be by force) any house, building or other place but shall not enter any place occupied as a dwelling except under the authority of a warrant issued under section 145 or 146.

(5) Where a child is presented to a medical practitioner under subsection (1) or (3)—

- (a) the practitioner may conduct, or cause to be conducted, such medical examination of the child as he thinks fit, including examination at a hospital that is not the place specified in the request made under subsection (1) in respect of the child; and
- (b) the Director shall, commencing with the time at which the child is presented to the practitioner and until the expiration of such period of time as is reasonably necessary for the child to be medically examined in accordance with paragraph (a) or 72 hours, whichever period first expires, be deemed to have custody of the child—
 - (i) if the consent of a parent or any other person who would, but for this paragraph, have lawful custody of

SCHEDULE

Child Welfare (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART XVII OF THE CHILD WELFARE ACT,
1939—*continued.*

the child to the examination has not
been obtained or has been revoked;
and

- (ii) for the purpose only of enabling the
examination to be conducted.

(6) No proceedings lie against a medical
practitioner or a constable of police for or on account
of any act, matter or thing done or ordered to be done
by him, and purporting to be done for the purpose of
carrying out the provisions of this section, if he has
acted in good faith and with reasonable care.

*In the name and on behalf of Her Majesty I assent to this
Act.*

A. R. CUTLER,
Governor.

*Government House,
Sydney, 24th March, 1977.*